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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA

CHARLES CASTILLO and **DEIDRE BEAN**,
individually and on behalf of all others similarly
situated,

Plaintiffs,

vs.

HOLY NAMES UNIVERSITY, a California
Non-Profit Corporation,

Defendant.

CASE NO. HG21097245

**FIRST AMENDED CLASS ACTION
COMPLAINT FOR:**

- (1) Failure to Pay all Wages Due at the Time of Discharge (Cal. Labor Code §§ 201-203);
- (2) Failure to Pay Wages for All Hours Worked (Cal. Labor Code §§ 226.2, 1194, 194.2);
- (3) Failure to Permit and Authorize Paid Rest Breaks (Cal. Labor Code §§ 226.2, 226.7 and Wage Order No. 4-2001, § 12);
- (4) Failure to Issue Accurate Wage Statements (Cal. Labor Code §§ 226(a), (e), 226.2(a));
- (5) Failure to Reimburse for Necessarily Incurred Business Expenses (Cal. Labor Code § 2802);
- (6) Unfair, Unlawful, or Fraudulent Business Practices (Cal. Bus. & Prof. Code §§ 17200 *et seq.*); and
- (7) Civil Penalties Pursuant to Private Attorneys General Act, Labor Code §§ 2698 *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiffs Charles Castillo and Diedre Bean, on behalf of themselves and all others similarly
2 situated, complain and allege the following:

3 INTRODUCTION

4 1. This is a class action under California Code of Civil Procedure § 382 brought on behalf
5 of Plaintiff Bean and all other part-time faculty employed by the Holy Names University (“HNU” or
6 “Defendant”) in California (“Part-time Faculty Class Members”) from four years prior to the filing of
7 this Complaint through to the present (“Class Period”) for unpaid wages, unpaid premium pay, statutory
8 penalties, injunctive and equitable relief, and reasonable attorneys’ fees and costs, pursuant to Labor
9 Code §§ 226.2, 1194, 1194.2, 226.7, 201-203, 226(a)(1)-(3), (a)(5), (a)(9), (e) and Wage Order No. 4-
2001, §§ 4, 12.

10 2. Plaintiffs Castillo and Bean (“Plaintiffs”) also bring this class action on behalf of
11 themselves and all other similarly situated individuals currently and formerly employed by HNU in
12 California (“General Class Members”) from one year prior to the filing of this Complaint through to the
13 date of trial (“Wage Statement Class Period”) for statutory penalties and reasonable attorneys’ fees and
14 costs pursuant to Labor Code § 226(a)(6), and (e).

15 3. Plaintiffs Bean and Castillo also bring this class action on behalf of themselves and all
16 individuals employed by HNU in California who were required by HNU to work remotely from home
17 (“Expense Reimbursement Class Members” or “ER Class Members”) beginning on or about March 16,
18 2020 through to the trial date or up to the time employees are permitted to return to work at the HNU
19 campus or no longer required by HNU to work from home (“ER Class Period”) for unreimbursed
20 expenses and Defendant’s violations of California’s wage and hour laws and unfair competition laws, as
described more fully below, have been ongoing since at least four years prior to the filing of this
Complaint and are continuing at present.

21 4. As a result of the above Labor Code violations, Defendant committed unfair, unlawful,
22 and fraudulent business practices, in violation of the UCL.

23 5. Plaintiffs Bean and Castillo also bring this action as a representative action under Labor
24 Code Private Attorneys General Act (“PAGA”), Labor Code §§ 2698 et seq., for civil penalties for the
25 violations of Labor Code §§ 201-202, 1194, 226(a)(1)-(a)(3), (a)(5), (a)(6), and (a)(9), 226.2, 226.7 and
26 Wage Order No. 4, §§ 4, 12 alleged herein, on behalf of themselves and other current and current and
27 former part-time faculty members employed by Defendant in California (“Adjunct Aggrieved
28 Employees”) during the PAGA Period, and for civil penalties for the violation of Labor Code § 2802 on
behalf of themselves and all other individuals employed by Defendant in California (“Aggrieved

Employees”) during the PAGA Period. The “PAGA Period” is designated as April 15, 2020 through to the present.

PARTIES

6. Plaintiff Castillo is a resident of Hayward, California who was employed by HNU as an adjunct instructor during the Spring 2019 semester and as a full-time instructor between approximately August 2019 and May 2020. During his periods of employment, Plaintiff was subject to Defendant’s unlawful conduct described herein.

7. Plaintiff Bean is a resident of San Leandro, California. Since 2013 HNU employed Plaintiff Bean as an adjunct instructor on a semester-by-semester basis pursuant to a part-time faculty contract. Plaintiff Bean’s last contract of employment was for the Fall 2020 semester. During her periods of employment, Plaintiff Bean was subject to Defendant’s unlawful conducted described herein.

8. Defendant is a private non-profit university, incorporated in California and located in Oakland, California.

JURISDICTION

9. This Court has jurisdiction over Plaintiff Bean’s and Part-Time Faculty Class Members’ claims for the failure to pay wages for all hours worked Labor Code §§ 226.2, 1194, 1194.2 and Wage Order No. 4-2001, § 4.

10. This Court has jurisdiction over Plaintiff Bean’s and Part-Time Faculty Class Members’ claims for the failure to permit and authorize paid rest breaks under Labor Code §§ 226.2, 226.7.

11. This Court has jurisdiction over Plaintiff Bean’s and Part-Time Faculty Class Members’ claims for the failure to pay all wages due at the time of discharge under Labor Code §§ 201-203.

12. This Court has jurisdiction over Plaintiff Bean’s and Part-Time Faculty Class Members’ claims for the failure to issue accurate wage statements under Labor Code §§ 226(a)(1)-(a)(3), (a)(5), (a)(9), 226.2(a) and Plaintiffs’ and Class Members’ claims for the failure to issue accurate wage statements under Labor Code § 226(a)(6), (e).

13. This Court has jurisdiction over Plaintiff Bean’s and Part-Time Faculty Class Members’ claims for injunctive relief under Labor Code § 226(h).

14. This Court has jurisdiction over Plaintiffs Bean and Castillo and ER Class Members’ claims for failure to reimburse for all necessarily incurred business expenses under Labor Code § 2802.

15. This Court has jurisdiction over the claims for restitution arising from Defendant’s violations of Labor Code § 2802, and under the UCL, Bus. & Prof. Code §§ 17203 and 17204.

1 16. This Court has jurisdiction over the claims for declaratory relief under the UCL, Bus. &
2 Prof. Code §§ 17200 et seq.

3 17. This Court has jurisdiction over Plaintiffs Bean and Castillo's PAGA claims for civil
4 penalties under Labor Code § 2699. On April 15, 2021, Plaintiff Castillo provided PAGA Notice
5 pursuant to Labor Code § 2699.3 to the California Labor and Workforce Development Agency
6 ("LWDA") and Defendant. In this PAGA Notice, Plaintiff Castillo gave notice of his intention to seek
7 PAGA penalties for violations of Labor Code §§ 201-202, 1194, 1194.2, 226.2, 226.7, 226(a)(1)-(a)(3),
8 (a)(5), (a)(6), and (a)(9), and 2802 and included facts and theories supporting the alleged violations.

9 18. Defendant attempted to cure the violation of Labor Code § 226(a)(6). Plaintiff Castillo
10 disputed that Defendant had cured the alleged violation of Labor Code § 226(a)(6). The LWDA
11 requested further information within the 17-day statutory period, which Defendant provided, and to
12 which Plaintiff Castillo replied and continued to dispute that Defendant had cured. On June 10, 2021,
13 the LWDA issued its decision as to the cure dispute finding that Defendant had failed to cure its
14 violation of Labor Code § 226(a)(6). Accordingly, Plaintiff Castillo may proceed with the PAGA claim
15 based on the alleged violation of Labor Code § 226(a)(6). *See* Lab. Code § 2699.3(c)(3).

16 19. The LWDA has provided no notice to Plaintiff Castillo within the period specified in
17 Labor Code § 2699.3 regarding its intentions to investigate or not to investigate Plaintiffs' other claims.
18 Plaintiffs have therefore fully complied with the PAGA procedural requirements and may comments
19 this representative action pursuant to Labor Code § 2699. On June 7, 2021, Plaintiffs submitted an
20 amended PAGA Notice adding Plaintiff Bean as an additional representative of Aggrieved Employees
21 and Adjunct Aggrieved Employees for the violations of Labor Code §§ 226(a)(1)-(a)(3), (a)(5) and
22 (a)(9), 226.2(a), 226.2, 1194, 1194.2, 226.7, 201-203, and 2802 alleged in the initial PAGA notice.

23 20. The amount in controversy for each Plaintiff, including claims for civil penalties and pro
24 rata share of attorney's fees, is less than seventy-five thousand dollars (\$75,000).

25 VENUE

26 21. Venue is proper in the County of Alameda pursuant to Cal. Civ. Proc. Code §§ 395(a)
27 and 395.5. Defendant's principal place of business is in Oakland, Alameda County.

28 FACTUAL ALLEGATIONS COMMON TO ALL CLASS MEMBERS

A. Defendant's Business

 22. Defendant is a private, Roman Catholic university located in Oakland, California. The
university offers undergraduate and graduate degree programs and adult degree completion programs.

1 HNU's programs are offered throughout the year, during the 16-week fall and spring semesters, and
2 shorter summer sessions. Upon information and belief, during the Class Period HNU employed more
3 than 400 individuals, including staff, full and part-time faculty.

4 ***B. Factual Allegations Relevant to Claims of Part-Time Faculty Class Members***

5 ***i. Part-Time Faculty Class Members are Non-Exempt Piece Rate Employees***

6 23. During the Class Period, Part-Time Faculty Class Members were non-exempt employees.
7 From the beginning of the Class Period through to September 8, 2020, Part-Time Faculty Class
8 Members were non-exempt because they did not earn enough to qualify for the professional exemption
9 under the Wage Order No. 4-2001, the only potentially applicable exemption. Under that exemption, in
10 order to be exempt an employee must earn "a monthly salary equivalent to no less than two (2) times the
11 state minimum wage for full-time employment" which is defined under Labor Code § 515(c) as 40 hour
12 per week ("minimum earnings requirement"). See Wage Order No. 4-2001, § 1(A)(3)(d); see also Labor
13 Code § 515.

14 24. Effective September 8, 2020, the Legislature enacted Labor Code § 515.7 which
15 expanded the professional exemption set out in Wage Order No. 4 to include instructors employed by
16 private non-profit universities and colleges who meet certain minimum payment requirements other than
17 the minimum salary threshold under the Wage Order. Pursuant to § 515.7, such instructors may be
18 classified as exempt even if they do not meet the minimum salary required under Wage Order No. 4, §
19 1(A)(3)(c) so long as they are paid a *salary* and either (1) the salary is calculated based on specified
20 minimum per classroom hour rate, or (2) if they are employed under a CBA, the CBA provides in clear
21 and unambiguous terms that instructors are exempt.

22 25. During the Class Period, including after September 8, 2020, HNU has compensated Part-
23 Time Faculty Class Members a set amount per course, which is based on the number of courses taught.
24 As a result, HNU's compensated and continues to compensate Part-Time Faculty Class Members on a
25 piece-rate basis and not a salary basis.

26 26. Additionally, during the Class Period, including after September 8, 2020, HNU has
27 employed Part-Time Faculty Class Members pursuant to a uniform part-time faculty contract
28 (hereinafter the "Part-Time Faculty Contract") that provides HNU with the right to reduce Part-Time
Faculty Class Members' compensation based on low enrollment. As a result, HNU compensation to
Part-Time Faculty Class Members is not a salary.

27 27. As a result of the foregoing, Labor Code § 515.7 does not apply to Part-Time Faculty
28 Class Members

1 ii. *Defendant's Compensation Practices Applicable to Part-Time Faculty Class Members*
2 *Violated California's Minimum Wage and Rest Break Laws*

3 28. During the Class Period, HNU's Part-Time Faculty Contract provided that the policies
4 and procedures applicable to part-time faculty as outlined in the HNU Faculty Handbook are
5 incorporated by reference into the contract.

6 29. During the Class Period, the Part-Time Faculty Contract provided that Part-Time Faculty
7 Class Members were appointed to teach for a specific academic term, and for a specific and defined
8 period of time (hereinafter, "Contract Period"). Additionally, the Part-Time Faculty Contract provides
9 that the Part-Time Faculty Class Member is not entitled to a renewal of the contract or to be employed
10 as a regular faculty. As such, Part-Time Faculty Class Members are employed for a specific, finite
11 period of time.

12 30. As result being employed on a contract-by-contract basis for a specific, definite period of
13 time, HNU discharges Part-Time Faculty Class Members from employment at the end of the time set
14 out in their Part-Time Faculty Contracts (hereinafter, "Discharge Date").

15 31. However, rather than pay all compensation due on the Discharge Date, HNU pays its
16 Part-Time Faculty Class Members, according to its normal payroll calendar, which routinely results in
17 HNU issuing the final paycheck under the contracts after the Discharge Date.

18 32. Additionally, as a consequence of Defendant's failure to pay wages due for pre and post
19 contract work, and a result of HNU's failure to pay premium pay for unpaid or missed
20 rest breaks, Class Members did not receive all compensation due on discharge or ever.

21 33. As a result, HNU violated Labor Code §§ 201-202, and Plaintiff and part-time faculty
22 class members are entitled waiting time penalties pursuant to Labor Code § 203.

23 34. During the Class Period, HNU employed Part-Time Faculty Class Members pursuant to a
24 uniform Part-Time Faculty Contract. The Part-Time Faculty Contract included among other terms the
25 contract beginning and end dates. The contract beginning date routinely corresponded with the first date
26 of classes.

27 35. However, HNU required and expected, Plaintiff Bean and Part-Time Faculty Class
28 Members to work prior to the first date of the class, i.e. the beginning of the contract start date. Plaintiff
Bean and Part-Time Faculty Class Members routinely did work prior to the beginning of the Class
Period, for which HNU did not pay them. Such work included, but is and was not limited to preparation
for the course, preparation of lesson plans, syllabi, and the like, and HNU required training.

1 36. Additionally, end date of the contract routinely corresponded with last day of classes,
2 however, HNU required and expected Part-Time Faculty Class Members to perform work, which
3 included, but was not limited to, grading final exams, and submitting grades.

4 37. During the Class Period, Part-Time Faculty Class Members did routinely perform work
5 after the end of the contract period, for which HNU did pay them in violation of Labor Code §§1194,
6 1194.2, 226.2, and Wage Order No. 4, § 4.

7 38. During the Class Period, Plaintiff Bean and other Part-Time Faculty Class Members
8 routinely worked at least 3.5 hours or more on any given day, including because they were scheduled to
9 teach classes for 3.5 hours or longer. Because Part-Time Faculty Class Members are non-exempt piece
10 rate workers, Defendant was required to pay them separately and hourly for rest breaks and to permit
11 and authorize them to take off-duty rest breaks. However, Defendant did not maintain a policy and/or
12 practice of paying separately and hourly for rest break time.

13 39. Additionally, Defendant failed to permit and authorize off-duty rest breaks because
14 Defendant maintained policies and/or practices that impeded Part-Time Faculty Class Members' ability
15 to take off-duty rest periods. These policies and/or practices included, but were not limited to, expecting
16 and/or requiring Part-Time Faculty Class Members to be available to students prior to class, during
17 classroom breaks, and after class.

18 40. As a result, Defendant failed to authorize and permit compliant rest breaks in accordance
19 with Wage Order No. 4-2001, § 12(A) thereby triggering an obligation to make premium payments
20 under Labor Code §§ 226.2, 226.7 and Wage Order No. 4-2001, § 12(B).

21 ***C. Defendant Failed to Issue Accurate Wage Statements Pursuant to Labor Code § 226(a)(1)-***
22 ***(a)(3), (a)(5), and (a)(9), 226.2(a)***

23 41. During the Wage Statement Class Period, Defendant failed to issue accurate itemized
24 wage statements to Plaintiff Bean and Part-Time Faculty Class Members. In particular, because Part-
25 Time Faculty Class Members were non-exempt, Defendant was required under Labor Code § 226(a)(2)
26 and (a)(9), to furnish them with wage statements containing entries for their total hours worked, and all
27 applicable hourly rates in effect during the pay period and the corresponding number of hours worked at
28 each hourly rate.

 42. Additionally, Defendant was required under Labor Code § 226(a)(3) to furnish Part-Time
Faculty Class Members with wage statements that included the number of piece-rate units earned and
any applicable piece rate, and under Labor Code § 226.2(a) to furnish the Part-Time Faculty Class with
wage statements that itemized total hours of compensable rest and recovery periods, the rate of

1 compensation, and the gross wages paid for those periods during the pay period; and total hours of
2 nonproductive time, the rate of compensation, and the gross wages paid for that time during the pay
3 period.

4 43. Defendant, however, issued wage statements that included only a lump sum earned
5 during each pay period with no hours, pieces, or hourly rates or gross wages earned for rest periods and
6 nonproductive time.

7 44. Defendant's practice of furnishing Part-Time Faculty Class Members incomplete and/or
8 inaccurate wage statements in violation of Labor Code § 226(a) and § 226.2(a) was not an isolated and
9 unintentional payroll error due to a clerical or inadvertent mistake, but rather was willful and intentional
10 and the result of Defendant's regular compensation policies.

11 45. Part-Time Faculty Class Members could not promptly and easily determine from the
12 wage statements alone, without reference to other document or information, including wage statements
13 from previous pay periods, their regular hourly rate, the total hours worked at that rate, the total hours
14 worked during the pay period, number of pieces worked. As a result, Part-Time Faculty Class Members
15 suffered injury for the purposes of Labor Code § 226(e).

16 46. Additionally, as described above, Plaintiff Bean and Part-Time Faculty Class Members
17 performed work both before the beginning and after the end of their contracts for which they were not
18 provided a wage statement in violation of Labor Code § 226.

19 47. Plaintiff Bean's claim on behalf of herself and Part-Time Faculty Class Members for
20 inaccurate wage statements relates back to the filing of the original Complaint because this claim rests
21 on the same general set of facts as the inaccurate wage statement claim alleged by Plaintiff Castillo in
22 the original Complaint and alleges the same injury, which is the inability to promptly and easily
23 determined from the wage statements alone information required to be provided pursuant to items (2) to
24 (4), inclusive, (6), and (9) of subdivision (a) of Labor Code § 226.

25 ***D. Defendant Failed to Issue Accurate Wage Statements Pursuant to Labor Code § 226(a)(6)***

26 48. From the beginning of the Wage Statement Class Period and, upon information and
27 belief, through to May 10, 2020, Defendant failed to issue accurate wage statements to Plaintiffs Bean
28 and Castillo and General Class Members. Defendant was required pursuant to Labor Code § 226(a)(6)
to furnish Plaintiffs Bean and Castillo and other General Class Members wage statements containing the
inclusive dates of period for which they were paid.

1 49. However, Defendant issued wage statements that only contained the check date and the
2 end date of the pay period for which the employee was paid, and which did not contain the start date of
3 each pay period.

4 50. Defendant's practice of furnishing Plaintiff and other General Class Members incomplete
5 wage statements in violation of Labor Code § 226(a) was not an isolated and unintentional payroll error
6 due to a clerical or inadvertent mistake, but rather was willful and intentional.

7 51. Plaintiff and other General Class Members could not promptly and easily determine from
8 the wage statements alone, without reference to other document or information, the beginning date of
9 each pay period. As a result, Plaintiff and other General Class Members suffered injury for the purposes
10 of Labor Code § 226(e).

11 ***E. Defendant Failed to Reimburse Business Expenses***

12 52. During the ER Class Period, Plaintiffs Bean and Castillo and other ER Class Members
13 were required to work remotely from home, due to the COVID-19 crises, and those ER Class Members
14 who were faculty members were required to develop alternative methods to deliver curriculum and
15 manage operations.

16 53. During the ER Class Period, Defendant required and expected Plaintiffs Bean and
17 Castillo and other ER Class Members to be readily available by laptop computer, mobile phone, email,
18 and/or videoconferencing, and Defendant required and expected instructors, including part-time faculty,
19 to deliver curriculum as closely as possible to as if they were at their regular campus location.

20 54. As a result of working remotely, in direct consequence of carrying out their duties, or
21 their obedience to the directions of Defendant, Plaintiffs Bean and Castillo and other ER Class Members
22 incurred home office expenses, as described above.

23 55. Defendant knew or should have known that Plaintiffs Bean and Castillo and other ER
24 Class Members incurred these home office expenses. However, Defendant maintained policies and/or
25 practices that denied full reimbursement for these expenses.

26 56. Defendant's policies and/or practices thus have required and/or with Defendant's
27 knowledge thereof have permitted, Plaintiffs Bean and Castillo and other ER Class Members to pay for
28 their home office expenses incurred in direct discharge of their job duties on behalf of Defendant,
without reimbursement by Defendant in full or at all, for such expenses.

 57. During the ER Class Period, Defendant failed and/or refused to reimburse Plaintiffs Bean
and Castillo and other ER Class Members for their home office expenses incurred by them in their work
as they have carried out their work duties for Defendant. As a result, Plaintiffs Bean and Castillo and

1 other ER Class Members have been harmed by Defendant's failure to reimburse their home office
2 expenses in clear violation of § 2802 of the California Labor Code.

3 ***F. Defendant's Labor Code Violations Were Unfair Business Practices***

4 58. From at least four years prior to the filing of the Complaint and through the present,
5 Defendant has adopted and used unfair business practices to reduce Part-Time Faculty Class Members'
6 and ER Class Members' compensation and increase profits. These unfair business practices include
7 failing to pay Part-Time Faculty Class Members for all hours worked, including rest break time, failure
8 to pay premium pay for missed and/or unpaid rest breaks, and failure to reimburse ER Class Members
9 for their necessarily incurred business expenses.

10 **CLASS ACTION ALLEGATIONS**

11 59. Plaintiffs Bean and Castillo bring this class action pursuant to Cal. Civ. Pro. Code § 382
12 on behalf of the Part-Time Faculty Class and ER Class, as defined above. Upon information and belief,
13 there are more than 100 members in each Class. The members of the Classes are so numerous that
14 joinder of all members is impractical.

15 60. Plaintiffs' claims are typical of the claims of the members of the Classes they seek to
16 represent. Plaintiff Bean was employed by HNU as a part-time adjunct instructor was (a) not provided
17 with separate and hourly pay for nonproductive time and rest breaks, (b) not permitted to take off duty
18 rest breaks, (c) not paid all wages due at the time of discharge, (d) not provided with accurate itemized
19 wage statements. Plaintiffs Castillo was also employed by HNU and he and Plaintiff Bean were (a) not
20 provided with accurate wage statement for each pay period that contained the beginning and end dates
21 of each pay period; and (b) were required to perform work remotely from home and were not
22 reimbursed for incurred home office expenses.

23 61. Plaintiffs will fairly and adequately represent the interests of each Class. Plaintiffs have
24 no conflict of interest with any member of the Classes. Plaintiffs have retained competent and
25 experienced counsel in complex class action litigation. Plaintiffs' counsel have the expertise and
26 financial resources to adequately represent the interests of the Classes.

27 62. Common questions of law and fact exist as to all members of the Classes and
28 predominate over any questions solely affecting individual members of the Classes. Among the
questions of law and fact common to the Plaintiffs and the Classes are the following:

- a. Whether Part-Time Faculty Class Members were discharged from employment at the end
of the time set out in their Part-Time Faculty Contracts;

- 1 b. Whether Defendant violated Labor Code § 203 by failing to pay Part-Time Faculty Class
2 Members for all of their wages due to them upon separation from employment, including
3 wages for rest break time and work performed before the beginning of their contracts and
4 after the end of their contracts;
- 5 c. Whether a course rate is a piece rate;
- 6 d. Whether Part-Time Faculty Class Members are entitled to separate and hourly pay for
7 rest break time under Labor Code §§ 226.2, 1194, and Wage Order No. 4, §§ 4, 12;
- 8 e. Whether Defendant maintained policies and/or practices that prevented or impeded Part-
9 Time Faculty Class Members from taking compliant rest periods during the Class Period;
- 10 f. Whether Defendant violated Labor Code § 226.7 and Wage Order No. 4-2001 § 12 by
11 failing to pay one hour of premium pay to each member of the Part-Time Faculty Class
12 for each day that a compliant rest period was not provided;
- 13 g. Whether Part-Time Faculty Class Members are entitled to separate and hourly pay for
14 their time spent working before the start date of the contract and after the end of the
15 contract under Labor Code §§ 226.2, 1194, and Wage Order No. 4, §§ 4, 12;
- 16 h. Whether Defendant violated Labor Code §§ 226(a) and 226.2(a) by failing to issue
17 itemized wage statements to Plaintiff Bean and Part-Time Faculty Class Members;
- 18 a. Whether Defendant violated Labor Code § 226(a)(6) by failing to issue accurate wage
19 statements to Plaintiffs Bean and Castillo and other Class Members;
- 20 b. Whether Defendant's violation of Labor Code § 226(a) and 226.2(a) was knowing and
21 intentional;
- 22 c. Whether Plaintiffs Bean and Castillo and other Class Members and Part-Time Faculty
23 Class Members suffered injury for the purposes of Labor Code § 226(e);
- 24 d. Whether Plaintiffs Bean and Castillo and other ER Class Members incurred
25 unreimbursed business expenses as a result of being required to work remotely from
26 home beginning on or about March 16, 2020;
- 27 e. Whether Labor Code § 2802 violation constitute unfair, unlawful, and fraudulent
28 business practices, in violation of UCL;
- f. Whether Plaintiffs Bean and Castillo and members of the Classes are entitled to
restitution under Bus. & Prof. Code § 17200 *et seq.* for unpaid wages, unpaid premium
pay, and unreimbursed business expenses, as applicable;

- 1 g. The proper formula(s) for calculating damages, interest, and restitution owed to Plaintiffs
2 Bean and Castillo and members of the Classes;
3 h. Whether the Part-Time Faculty Class and/or the ER Class is entitled to declaratory relief;
4 and;
5 i. Whether the Part-Time Faculty Class and/or the ER Class is entitled to injunctive relief.

6 63. Class action treatment is superior to any alternative to ensure the fair and efficient
7 adjudication of the controversy alleged herein. Such treatment will permit a large number of similarly
8 situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and
9 without duplication of effort and expense that numerous individual actions would entail. No difficulties
10 are likely to be encountered in the management of this class action that would preclude its maintenance
11 as a class action, and no superior alternative exists for the fair and efficient adjudication of this
12 controversy. Members of each Class are readily identifiable from Defendant's employee rosters and/or
13 payroll records.

14 64. Defendant's actions are generally applicable to the entire Part-Time Faculty Class and
15 ER Class. Prosecution of separate actions by individual members of each Class creates the risk of
16 inconsistent or varying adjudications of the issues presented herein, which, in turn, would establish
17 incompatible standards of conduct for Defendant.

18 65. Because joinder of all members is impractical, a class action is superior to other available
19 methods for the fair and efficient adjudication of this controversy. Furthermore, the amounts at stake
20 for many members of each Class, while substantial, may not be sufficient to enable them to maintain
21 separate suits against Defendant.

22 **FIRST CAUSE OF ACTION**

23 **Failure to Pay All Wages Due at the Time of Discharge**

24 **[Cal. Labor Code §§ 201-203]**

25 **(On Behalf of Plaintiff Bean and Part-Time Faculty Class Members)**

26 66. Plaintiff Bean re-alleges and incorporates by reference each and every allegation set forth
27 in the preceding paragraphs.

28 67. Labor Code §§ 201 and 202 require Defendant to pay all compensation due and owing to
Part-Time Faculty Class Members promptly after their discharge from employment. Labor Code § 203
provides that if an employer willfully fails to pay compensation promptly upon discharge or resignation,
as required by §§ 201 and 202, then the employer is liable for penalties in the form of continued
compensation up to 30 work days.

1 68. As alleged herein, Defendant failed to pay Plaintiff Bean and other Part-Time Faculty
2 Class Members all wages due upon their discharge from employment because Defendant followed its
3 regular payroll schedule which routinely resulted in payment of wages after their end date of Part-Time
4 Faculty Class Members' contracts and therefore late.

5 69. As alleged herein, Defendant failed to pay Plaintiff and other Part-Time Faculty Class
6 Members for their time spent on rest breaks separately and apart from the piece (i.e. course
7 compensation), premium pay for missed and/or unpaid rest breaks, and their time spent working before
8 the beginning of their contracts and after the end of their contracts, and as a result failed to pay all
9 wages due and owing to Plaintiff Bean and Part-Time Faculty Class Members upon their termination or
separation from employment with Defendant, as required by Labor Code §§ 201 and 202.

10 70. In light of the clear law requiring that Defendant pay all wages due at the time of
11 discharge and the clear limited duration of Part-Time Faculty Class Members' contracts, the clear law
12 requiring that Defendant pay for time spent on rest breaks, to authorize and permit Part-Time Faculty
13 Class Members to take off-duty rest breaks and pay premium pay for missed and/or unpaid rest breaks,
14 and time worked outside the contract Defendant's failure to pay wages for such time and failure to pay
such wage upon discharge was willful.

15 71. As a result, Defendant is liable to Plaintiff Bean and Part-Time Faculty Class Members
16 for waiting time penalties amounting to thirty (30) days wages for each formerly employed Part-Time
17 Faculty Class Member pursuant to Labor Code § 203.

18 72. Plaintiff Bean, on behalf of herself and all other Part-Time Faculty Class Members,
19 requests relief as described below.

20 **SECOND CAUSE OF ACTION**

21 **Failure to Pay Separately and Hourly for All Hours Worked** 22 **[Cal. Labor Code §§ 226.2, 1194, 1194.2; Wage Order No. 4-2001, § 4]** 23 **(On Behalf of Plaintiff Bean and Part-Time Faculty Class Members)**

24 73. Plaintiff Bean re-alleges and incorporates by reference each and every allegation set forth
25 in the preceding paragraphs.

26 74. Labor Code § 1194 provides, in relevant part:

27 “Notwithstanding any agreement to work for a lesser wage, any employee receiving less
28 than the legal minimum wage ... applicable to the employee is entitled to recover in a civil
action the unpaid balance of the full amount of this minimum wage [...], including interest
thereon, reasonable attorney's fees, and costs of suit.”

 75. Labor Code § 1194.2 provides, in relevant part:

1 "In any action under ... Section 1194 to recover wages because of the payment of a wage
2 less than the minimum wage fixed by an order of the commission, an employee shall be
3 entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid
4 and interest thereon. ..."

5 76. Labor Code § 226.2(a)(1) states that "employees shall be compensated for ...
6 nonproductive time separate from any piece-rate compensation."

7 77. As set forth above, during the Class Period, Plaintiff Bean and Part-Time Faculty Class
8 Members were non-exempt employees either because they earned less than the minimum earnings
9 requirement and/or because they were paid a flat course rate which is a piece-rate (i.e. a fixed amount
10 for the time spent on teaching courses), but Defendant did not compensate them for their nonproductive
11 time spent working before the beginning of their contracts, separately from the course rate, or at all.

12 78. Accordingly, pursuant to § 4 of the Wage Order and Labor Code §§ 226.2, 1194, and
13 1194.2, Plaintiff Bean and the Part-Time Faculty Class are entitled to recover, at a minimum, their
14 unpaid hourly wages, plus liquidated damages in an additional amount equal to the total amount of
15 applicable minimum wages unlawfully withheld during the Class Period for Part-Time Faculty Class
16 Members' time spent on work outside their contracts.

17 79. Plaintiff Bean, on behalf of herself and all other Part-Time Faculty Class Members,
18 requests relief as described below.
19

20 **THIRD CAUSE OF ACTION**

21 **Failure to Pay Separately and Hourly for Rest Breaks And/or** 22 **Failure to Permit and Authorize Paid Rest Breaks, and Failure to Pay Rest Break Premiums** 23 **[Cal. Labor Code §§ 226.2, 226.7; Wage Order No. 4-2001, § 12]** 24 **(On Behalf of Plaintiff Bean and Part-Time Faculty Class Members)**

25 80. Plaintiff Bean re-alleges and incorporates by reference each and every allegation set forth
26 in the preceding paragraphs.

27 81. Labor Code § 226.2(a)(1) states that "employees shall be compensated for rest and
28 recovery periods.... separate from any piece-rate compensation."

82. Wage Order No. 4-2001 § 12(A) provides:

"(A) Every employer shall authorize and permit all employees to take rest periods, which
insofar as practicable shall be in the middle of each work period. The authorized rest
period time shall be based on the total hours worked daily at the rate of ten minutes net
rest time per four hours or major fraction thereof. However, a rest period need not be
authorized for employees whose total daily work time is less than three and one-half (3
1/2) hours. Authorized rest period time shall be counted as hours worked for which there
shall be no deduction from wages."

1 83. California Labor Code § 226.7(a) provides, “No employer shall require any employee to
2 work during any meal or rest period mandated by an applicable order of the Industrial Welfare
3 Commission.”

4 84. As set forth above, during the Class Period, Plaintiff Bean and Part-Time Faculty Class
5 Members regularly worked 3.5 consecutive hours or more in a workday.

6 85. As Part-Time Faculty Class Members were piece-rate workers, Defendant violated Labor
7 Code 226.2, because it was required, but failed to compensate them for their time spent on rest breaks
8 separately and apart from the course rate. As a result, Defendant was required, but failed to pay
9 premium pay pursuant to Labor Code § 226.7 and Wage Order No. 4-2001, § 12.

10 86. Additionally, because Part-Time Faculty Class Members they were non-exempt
11 employees, Defendant was required but failed to authorize and permit them to take paid off-duty rest
12 breaks because Defendant required and/or expected all Part-Time Faculty Class Members to remain
13 available to students for questions before, during and after class. As a result, Defendant was required,
14 but failed to pay premium pay pursuant to Labor Code § 226.7 and Wage Order No. 4-2001, § 12.

15 87. Plaintiff Bean, on behalf of herself and all other Part-Time Faculty Class Members,
16 requests relief as described below.

17 **FOURTH CAUSE OF ACTION**

18 **Failure to Issue Accurate Wage Statements**

19 **[Cal. Labor Code §§ 226(a), (e), 226.2(a)]**

20 **(On Behalf of Plaintiffs, Part-Time Faculty Class Members, and General Class Members)**

21 88. Plaintiffs Bean and Castillo re-allege and incorporate by reference each and every
22 allegation set forth in the preceding paragraphs.

23 89. During the relevant statutory period, Defendant failed to furnish Plaintiff Bean and Part-
24 Time Faculty Class Members with accurate itemized wage statements containing total hours worked by
25 the employee, and all applicable hourly rates in effect during the pay period and the corresponding
26 number of hours worked at each hourly rate by the employee, in violation of Labor Code § 226(a).

27 90. Additionally, Defendant failed to furnish Plaintiff Bean and Part-Time Faculty Class
28 Members with accurate wage statements itemized the number of piece-rate units earned and any
applicable piece rate; total hours of compensable rest and recovery periods, the rate of compensation,
and the gross wages paid for those periods during the pay period; and total hours of nonproductive time,
the rate of compensation, and the gross wages paid for that time during the pay period, in violation of
Labor Code §§ 226(a)(3) and 226.2(a).

91. During the period from one year prior to the filing of the Complaint through to May 10, 2020, Defendant also failed, as a matter of policy and practice, to furnish Plaintiffs Bean and Castillo and other General Class Members with accurate wage statements containing the inclusive dates of the period for which the employee is paid, in violation of Labor Code § 226(a)(6).

92. Defendant's failure to furnish accurate itemized wage statements to Plaintiffs Bean and Part-Time Faculty Class Members was knowing and intentional, and Defendant's failure to furnish complete wage statements to Plaintiffs Bean and Castillo and General Class Members was knowing and intentional.

93. Part-Time Faculty Class Members and General Class Members suffered injury as a result of Defendant's knowing and intentional failure to comply with Labor Code § 226(a) and/or § 226.2(a).

94. As a result, Part-Time Faculty Class Members and General Class Members are entitled to recover \$50 for each initial pay period with a violation, and \$100 for each subsequent pay period with a violation, up to an amount **not** exceeding an aggregate penalty of \$4,000 for each Wage Statement Subclass Member, pursuant to Labor Code § 226(e).

95. Plaintiffs Bean and Castillo, on behalf of themselves and all other Part-Time Faculty Class Members and General Class Members, request relief as described below.

FIFTH CAUSE OF ACTION
Failure to Reimburse for Business Expenses
[Labor Code § 2802]

(On Behalf of Plaintiffs Bean and Castillo and ER Class Members)

96. Plaintiffs Bean and Castillo re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

97. Labor Code § 2802(a) provides that “[a]n employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequences of the discharges of his or her duties, or of his or her obedience to the directions of the employer.”

98. As described above, on or about March 16, 2020, Defendant instituted a policy and/or practice of requiring all of its non-essential employees (which included Plaintiffs Bean and Castillo and other ER Class Members) to work remotely, away from Defendant's premises. While working remotely, Defendant required and expected and continues to require and expect ER Class Members to be in communication through such means that included, but was not limited to email, mobile phone, and/or videoconferencing and for those ER Class Members who were faculty members to prepare and deliver curriculum as closely as possible to as if they were at their regular campus location.

1 99. As a result of Defendant's remote work policies and/or practices, Plaintiffs Bean and
2 Castillo and other ER Class Members, in order to discharge their job duties for Defendant and/or their
3 obedience to the directions of the employer, incurred expenses that included but were not limited to
4 internet and mobile phone.

5 100. However, Defendant maintained a policy and/or practice of denying Plaintiffs Bean and
6 Castillo and other ER Class Members full reimbursement, or any reimbursement, for these expenses.

7 101. Defendant's failure to pay for or reimburse the work-related business expenses of
8 Plaintiffs Bean and Castillo and other ER Class Members violated non-waivable rights secured to them
9 by Labor Code § 2802. Plaintiffs Bean and Castillo and other ER Class Members are entitled to
10 reimbursement for these necessary expenditures, plus interest and reasonable attorneys' fees and costs,
11 under Labor Code § 2802.

12 102. Plaintiffs Bean and Castillo, on behalf of themselves and all other ER Class Members,
13 request relief as described below.

14 **SIXTH CAUSE OF ACTION**

15 **Violation of Unfair Competition Laws**

16 **[Cal. Bus. & Prof. Code § 17200 *et seq.*]**

17 **(On Behalf of Plaintiffs, Part-Time Faculty Class Members, and ER Class Members)**

18 103. Plaintiffs Bean and Castillo re-allege and incorporate by reference each and every
19 allegation set forth in the preceding paragraphs.

20 104. The UCL prohibits any unlawful, unfair, or fraudulent business practices. Labor Code
21 § 90.5(a) states that it is the public policy of California to vigorously enforce minimum labor standards
22 in order to ensure employees are not required to work under substandard and unlawful conditions, and
23 to protect employers who comply with the law from those who attempt to gain competitive advantage at
24 the expense of their workers by failing to comply with minimum labor standards. Through its actions
25 alleged herein, Defendant has engaged in unfair competition within the meaning of the UCL, because
26 Defendant's conduct has violated state wage and hour laws as herein described.

27 105. Beginning at least four years prior to the filing of the Complaint, Defendant committed,
28 and continues to commit, acts of unfair competition, as defined in the UCL by wrongfully denying Part-
Time Faculty Class Members wages for all hours worked including rest break time and time spent
working outside their contracts, premium pay, and beginning at least in March 2020 wrongfully denying
ER Class Members reimbursement for their necessarily incurred business expenses.

106. By its actions and omissions, Defendant has substantially injured Plaintiffs Bean and Castillo and the other Part-Time Faculty Class Members and ER Class Members. Defendant's conduct as herein alleged has damaged Plaintiffs and other Part-Time Faculty Class Members and ER Class Members and was substantially injurious to them.

107. The harm to Plaintiffs Bean and Castillo, Part-Time Faculty Class Members, and ER Class Members resulting from Defendant's labor code violations outweighs the utility, if any, of Defendant's policies and practices. Therefore, Defendant's actions described herein constitute an unfair business practice or act within the meaning of the UCL.

108. Plaintiffs Bean and Castillo, on behalf of themselves and all other Part-Time Faculty Class Member and ER Class Members, request relief as described below.

SEVENTH CAUSE OF ACTION

Civil Penalties

[Cal. Bus. & Prof. Code §§ 2698 *et seq.*]

(On Behalf of Plaintiffs, Adjunct Aggrieved Employees, and Aggrieved Employees)

109. Plaintiffs Bean and Castillo re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

110. Plaintiffs Bean and Castillo are “aggrieved employees” under PAGA as they were employed by Defendant during the applicable statutory period and suffered one or more of the Labor Code violations alleged herein. As such, Plaintiffs Bean and Castillo seek to recover, on behalf of themselves and all other currently and formerly employed aggrieved employees who are or were part-time faculty members of HNU and were non-exempt under California law (“Adjunct Aggrieved Employees”) and on behalf of themselves and all other current and former employees of HNU (“Aggrieved Employees”), as applicable, civil penalties provided by PAGA, plus reasonable attorneys’ fees and costs, as follows:

Violation of Labor Code §§ 201-203

111. During the PAGA Period, Defendant willfully failed to pay Adjunct Aggrieved Employees all compensation due upon termination of employment as required under Labor Code §§ 201 and 202, as described above. As a result, Defendant is liable to Adjunct Aggrieved Employees for penalties pursuant to Labor Code § 203.

112. Under Labor Code § 2699(f)(2), Adjunct Aggrieved Employees are entitled to a PAGA penalty equal to one hundred dollars (\$100) per pay period per Adjunct Aggrieved Employee for each

1 initial violation of Labor Code §§ 201-203, and two hundred dollars (\$200) per pay period for each
2 subsequent violation.

3 **Violation of Labor Code §§ 226.2, 1194**

4 113. During the PAGA Period, Defendant failed to pay Adjunct Aggrieved Employees wages
5 for all hours worked in violation of Labor Code §§ 226.2, 1194, as described above.

6 114. Under Labor Code § 2699(f)(2), Adjunct Aggrieved Employees are entitled to a PAGA
7 penalty equal to one hundred dollars (\$100) per pay period per Adjunct Aggrieved Employee for each
8 initial violation of Labor Code §§ 226.2, 1194, and two hundred dollars (\$200) per pay period for each
9 subsequent violation.

10 **Violation of Labor Code §§ 226.2 and 226.7**

11 115. During the PAGA Period, Defendant failed to pay separately and hourly for rest break
12 time and/or failed to authorize and permit off-duty rest breaks, and failed to pay missed rest break
13 premiums in violation of Labor Code §§ 226.2, 226.7, as described above.

14 116. Under Labor Code § 2699(f)(2), Adjunct Aggrieved Employees are entitled to a PAGA
15 penalty equal to one hundred dollars (\$100) per pay period per Adjunct Aggrieved Employee for each
16 initial violation of Labor Code §§ 226.2, 226.7, and two hundred dollars (\$200) per pay period for each
17 subsequent violation.

18 **Violation of Labor Code §§ 226(a), 226.2(a)**

19 117. During the PAGA Period, Defendant failed to issue accurate itemized wage statements to
20 Adjunct Aggrieved Employees that included accurate entries for total hours worked, all applicable
21 hourly rates, gross and net wages earned, number of piece-rate units earned, applicable piece rate and
22 other required piece rate information in violation of Labor Code §§ 226(a)(1)-(a)(3), (a)(5) and (a)(9),
23 226.2(a)(2) as described above.

24 118. Under Labor Code § 2699(f)(2), Adjunct Aggrieved Employees are entitled to a PAGA
25 penalty equal to one hundred dollars (\$100) per pay period per Adjunct Aggrieved Employee for each
26 initial violation of Labor Code §§ 226(a) and 226.2(a) and two hundred dollars (\$200) per pay period
27 for each subsequent violation.

28 **Violation of Labor Code § 226(a)(6)**

119. From the beginning of the PAGA Period and through to May 10, 2020, Defendant failed
to issue accurate wage statements to Aggrieved Employees that included the beginning date of each pay
period in violation of Labor Code § 226(a)(6).

1 120. Under Labor Code § 2699(f)(2), Aggrieved Employees are entitled to a PAGA penalty
2 equal to one hundred dollars (\$100) per pay period per Aggrieved Employee for each initial violation of
3 Labor Code §§ 226(a) and 226.2(a) and two hundred dollars (\$200) per pay period for each subsequent
4 violation.

5
6 **Violation of Labor Code § 2802**

7 121. During the PAGA Period, Defendant failed to reimburse Aggrieved Employees for their
8 necessarily incurred business expenses as alleged herein, in violation of Labor Code § 2802.

9 122. Under Labor Code § 2699(f)(2), Aggrieved Employees are entitled to a PAGA penalty
10 equal to one hundred dollars (\$100) per pay period per Aggrieved Employee for each initial violation of
11 Labor Code § 2802 and two hundred dollars (\$200) per pay period for each subsequent violation.

12 **PRAYER FOR RELIEF**

13 **WHEREFORE**, Plaintiffs Bean and Castillo, on behalf of themselves and the Classes, pray
14 for the following relief:

15 A. An Order that this action may proceed and be maintained as a class action, with the Class
16 and ER Class as designated and defined in this Complaint, and that the Plaintiffs and their counsel be
17 certified as representatives and Counsel for the Classes each of the Plaintiffs seeks to represent.

18 B. On the First Cause of Action: That the Court find and declare that Defendant has violated
19 §§ 201-203 of the California Labor Code, and award Plaintiff Bean and Part-Time Faculty Class
20 Members penalties in the amount of 30 days' wages per Part-Time Faculty Class Member.

21 C. On the Second Cause of Action: That the Court find and declare that Defendant violated
22 Labor Code §§ 226.2, Wage Order No. 4-2001, § 4 and/or Labor Code §§ 1194, 1194.2 and Wage Order
23 No. 4-2001, § 4, by failing to pay Plaintiff Bean and Part-Time Faculty Class Members for their time
24 spent working outside of their contracts separately and apart from the course rate compensation, or at
25 all, and award Plaintiff Bean and the Part-Time Faculty Class the amount of their unpaid minimum
26 wages owed to them for their time spent working outside their contracts, plus liquidated damages in an
27 additional amount equal to the amount of wages unlawfully withheld during the Class Period.

28 D. On the Third Cause of Action: That the Court find and declare that Defendant violated
Labor Code §§ 226.2, 226.7 and Wage Order No. 4-2001, § 12 by failing to pay Plaintiff Bean and Part-
Time Faculty Class Members for their time spent on rest breaks separately and apart from the course
rate, and/or that Defendant violated Labor Code § 226.7 and Wage Order No. 4-2001, § 12 by failing to

1 authorize and permit timely off-duty rest breaks, and award Plaintiff Bean and the Part-Time Faculty
2 Class unpaid premium pay for missed rest breaks.

3 E. On the Fourth Cause of Action: That the Court find and declare that Defendant has
4 violated §§ 226(a), (e), 226.2(a) of the California Labor Code; award Plaintiffs Bean and Castillo and
5 other Part-Time Faculty Class Members and General Class Members statutory penalties under Labor
6 Code § 226(e); enjoin Defendant under Labor Code § 226(h) from continuing to issue unlawful wage
statements.

7 F. On the Fifth Cause of Action: That the Court find and declare that Defendant violated
8 Labor Code § 2802 by failing to reimburse Plaintiffs Bean and Castillo and ER Class Members for their
9 business expenses incurred in carrying out their work for Defendant during the ER Class Period, and
10 award Plaintiffs Bean and Castillo and other ER Class Members their unreimbursed business expenses,
that they are owed, pursuant to Labor Code § 2802, in the amount to be proved at trial;

11 G. On the Sixth Cause of Action: That the Court find and declare Defendant has violated the
12 UCL by failing to pay for all hours worked, failing to pay premium pay, and failing to reimburse
13 Plaintiffs Bean and Castillo, Part-Time Faculty Class Members and ER Class Members for business
14 expenses and award restitution to the members of the Classes in the amount of unpaid wages, unpaid
15 premium pay, and unreimbursed expenses, as applicable; and that the Court enjoin Defendant from
16 continuing to enforce policies and practices that violate Labor Code § 2802.

17 H. On the Seventh Cause of Action: Civil penalties pursuant to PAGA.

18 I. That the Court award attorneys' fees and costs of suit to the extent permitted by law,
19 including, but not limited to, Labor Code §§ 1194(a), 226(e), 226(h), 2802(c), and Cal. Civ. Pro. Code §
1021.5; and

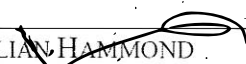
20 J. All other relief as this Court deems proper.

21 **JURY DEMAND**

22 Plaintiffs hereby demand trial by jury of all claims against Defendant alleged herein.

23 Dated: August 5, 2021

Respectfully submitted,

24
25 
26 JULIAN HAMMOND
HAMMONDLAW, P.C.

27 Attorneys for Plaintiffs and the Putative Classes
28