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ALAMEDA COUNTY

AUG 02 2021

CLERK OF THE SUPERIOR COURT

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13 OFIR STOLARSKI and KIANA SCHMITT, and all others similarly situated
14 (Additional Counsel for Plaintiffs on Next Page)

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA
(UNLIMITED JURISDICTION)**

13 OFIR STOLARSKI and KIANA
14 SCHMITT, on behalf of themselves, all
15 others similarly situated, and as "aggrieved
16 employees" on behalf of other "aggrieved
17 employees" under the Labor Code Private
18 Attorney General Act of 2004,

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Plaintiffs,

vs.

13 THE GOLDEN STATE ACADEMY LLC,
14 a California limited liability company; THE
15 GOLDEN STATE ACADEMY, LLC, a
16 California entity of unknown form;
17 VICTOR RIVAS UMANA, an individual,
18 and DOES 1-50, inclusive,

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Defendants.

Case No.:

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Failure to Provide Rest Periods (Lab. Code §§ 226.7 and 1198);
2. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
3. Failure to Pay All Wages Earned for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 226.2, 510, 1194, 1197, and 1198);
4. Failure to Indemnify for Expenses (Lab. Code 2802)
5. Failure to Provide Paid Sick Leave and Notice of Available Sick Leave (Lab. Code §§ 245-249)
6. Wage Statement Penalties (Lab. Code §§ 226, 226.2);
7. Waiting Time Penalties (Lab. Code §§ 201, 202, and 203);
8. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.); and
9. Civil Penalties (Lab. Code §§ 2698, et seq.).

JURY TRIAL DEMANDED

BY FAX

AUG 02 REC'D



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ADDITIONAL ATTORNEY FOR PLAINTIFF

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1 Plaintiffs, OFIR STOLARSKI and KIANA SCHMITT (hereafter “Plaintiffs”), on behalf
2 of themselves and all others similarly situated, complain and allege as follows:

3 **INTRODUCTION**

4 1. Plaintiffs bring this class and representative action against Defendants THE
5 GOLDEN STATE ACADEMY LLC, a California limited liability company, THE GOLDEN
6 STATE ACADEMY, LLC, a California entity of unknown form, VICTOR RIVAS UMANA, an
7 individual, and DOES 1–50, inclusive (collectively “Defendants”) for alleged violations of the
8 California Labor Code, Industrial Welfare Commission Order No. 5–2001 (hereafter “the Wage
Order”), and the Business and Professions Code.

9 2. As set forth in more detail below, Plaintiffs allege that Defendants are liable to
10 them and other similarly situated current and former employees in California for unpaid wages
11 and other related relief. These claims are based on Defendants’ alleged failures to: (1) Properly
12 classify their employees (2) Provide all meal and rest periods in compliance with California law,
13 (3) Pay all wages earned for all hours worked at the correct rates of pay, (4) Pay for all
14 nonproductive time and rest and recovery periods, (5) Indemnify for all expenses, (6) Provide
15 paid sick leave and notice of paid sick leave, (7) Provide accurate and complete itemized written
16 wage statements, (8) Timely pay all final wages upon termination of employment, and (9) Fairly
17 compete. Accordingly, Plaintiffs now seek to recover unpaid wages and related relief through this
class action.

18 **JURISDICTION AND VENUE**

19 3. This court has subject matter jurisdiction because the aggregate claims of
20 Plaintiffs, inclusive of all relief, place more than \$25,000 in controversy.

21 4. There is no basis for federal question subject matter jurisdiction in this case.
22 Specifically, Plaintiffs assert claims that solely arise under California law, rather than federal
23 law.

24 5. There is also no basis for federal diversity jurisdiction in this case.

25 6. Venue is proper in Alameda County pursuant to California Code of Civil
26 Procedure § 395(a) and § 395.5 in that liability arose in Alameda County because at least some
27 of the transactions that are the subject matter of this Complaint occurred therein and/or because
each defendant is found, maintains offices, transacts business, and/or has an agent therein.

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PARTIES

7. Plaintiff Ofir (Natalie) Stolarski ("STOLARSKI") is a resident of California.

8. Plaintiff Kiana Schmitt ("SCHMITT") is a resident of California.

9. At all relevant times, Plaintiffs were "employees" within the meaning of Title 8 California Code of Regulations § 11050 and "aggrieved employees" within the meaning of Labor Code § 2699(c).

10. Defendant THE GOLDEN STATE ACADEMY LLC, is a limited liability company organized and existing under the laws of California and also a citizen of California based on Plaintiffs' information and belief.

11. Defendant THE GOLDEN STATE ACADEMY, LLC, is a California entity of unknown form and a citizen of California based on Plaintiffs' information and belief.

12. Defendant VICTOR RIVAS UMANA is an individual and a citizen of California based on Plaintiffs' information and belief.

13. In relevant part, California Labor Code § 558.1 states:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term "other person acting on behalf of an employer" is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term "managing agent" has the same meaning as in subdivision (b) of § 3294 of the Civil Code.

14. Based on Plaintiffs' information and belief, Defendant VICTOR RIVAS UMANA is natural person and an owner, director, officer, and/or managing agent of Defendants THE GOLDEN STATE ACADEMY LLC, and THE GOLDEN STATE ACADEMY, LLC, who directly or indirectly, or through an agent or any other person, employed or exercised control over the wages, hours, or working conditions of Plaintiffs and the Class. Therefore, he is liable to Plaintiffs and the Class for his violations of, or causing Defendants to violate the Labor Code and the Wage Order pursuant to Labor Code section 558.1.

15. At all relevant times, Plaintiffs and the Class Members were employees of Defendants. Defendants engaged, suffered, and permitted them to work. Defendants could



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1 terminate Plaintiffs and the Class Members at will. Defendants trained Plaintiffs and the Class
2 Members how to perform the work. Defendants assigned Plaintiffs and the Class Members the
3 clients they serviced. Defendants collected payment from the clients. Defendants paid Plaintiffs
4 and the Class Members a nonnegotiable rate of pay. The work Plaintiffs and the Class Members
5 performed was wholly within the scope of Defendants' usual course of business of providing
6 educational speech and debate coaching. Defendants knew or should have known their actions
of misclassifying employees as independent contractors violated California law.

7 16. Plaintiffs are ignorant of the true names, capacities, relationships, and extents of
8 participation in the conduct alleged herein of the Defendants sued as DOES 1–50, inclusive, but
9 are informed and believe and thereon allege that said Defendants are legally responsible for the
10 wrongful conduct alleged herein and therefore sue these Defendants by such fictitious names.
11 Plaintiffs will amend their complaint to allege the true names and capacities of the DOE
12 Defendants when ascertained.

13 17. Plaintiffs are informed and believe and thereon allege that, at all relevant times
14 herein, all Defendants were the agents, employees, servants, masters, and/or employers of the
15 remaining Defendants, and, in doing the things hereinafter alleged, were acting within the course
16 and scope of such agency or employment and with the approval and ratification of each of the
other Defendants.

17 18. At all relevant times, in perpetrating the acts and omissions alleged herein,
18 Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or
19 lack thereof, which resulted in Defendants not paying Plaintiffs and other members of the below-
20 described class in accordance with applicable laws as alleged herein.

21 19. Plaintiffs are informed and believe and thereon allege that each and every one of
22 the acts and omissions alleged herein was performed by, and/or attributable to, all Defendants,
23 each acting as agents and/or employees, and/or under the direction and control of each of the other
24 Defendants, and that said acts and failures to act were within the course and scope of said agency,
employment, and/or direction and control.

25 **CLASS ALLEGATIONS**

26 20. This action has been brought and may be maintained as a class action pursuant to
27 California Code of Civil Procedure § 382 because there is a well-defined community of interest
28 among the persons who comprise the readily ascertainable class defined below and because



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1 Plaintiffs is unaware of any difficulties likely to be encountered in managing this case as a class
2 action.

3 21. **Class Definition:** The class is defined as follows: All individuals currently and
4 formerly employed or contracted with, in California as employees or independent contractors,
5 including but not limited to coaches, instructors, head coaches, lead coaches, assistant coaches,
6 and workers in comparable positions at any time during the period beginning four years prior to
7 the filing of this action and ending on the date that final judgment is entered in this action (“Class”
8 or “Class Members”).

9 22. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiffs reserve the
10 right to amend or modify the class definition with greater specificity, by further division into
11 subclasses and/or by limitation to particular issues.

12 23. **Numerosity:** The Class Members are so numerous that the individual joinder of
13 each individual Class Member is impractical. While Plaintiffs do not currently know the exact
14 number of Class Members, Plaintiffs are informed and believe that the actual number exceeds the
15 minimum required for numerosity under California laws.

16 24. **Commonality and Predominance:** Common questions of law and fact exist as to
17 all Class Members and predominate over any questions which affect only individual Class
18 Members. These questions include, but are not limited to:

19 A. Whether Defendants willfully misclassified the Class Members as
20 independent contractors;

21 B. Whether Defendants failed to provide the Class Members with all meal and
22 rest periods in compliance with California law;

23 C. Whether Defendants failed to pay the Class Members for all nonproductive
24 time and rest and recovery periods;

25 D. Whether Defendants failed to pay all wages earned to the Class Members
26 for all hours worked at the correct rates of pay;

27 E. Whether Defendants failed to indemnify the Class Members for all
28 reasonable expenses incurred during the course of employment;

F. Whether Defendants failed to provide the Class Members with paid sick
leave and notice of available sick leave.

G. Whether Defendants knowingly and intentionally failed to provide the



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1 Class Members with accurate written wage statements;

2 H. Whether Defendants willfully failed to provide the Class Members with
3 timely final wages upon termination of employment;

4 I. Whether Defendants engaged in unfair competition within the meaning of
5 Business and Professions Code §§ 17200, et seq., with respect to the Class Members; and

6 J. Whether Class Members are entitled to restitution of money or property
7 that Defendants may have acquired from them through alleged Labor Code violations.

8 25. **Typicality:** Plaintiffs' claims are typical of the other Class Members' claims.
9 Plaintiffs are informed and believe and thereon allege that Defendants have a policy and/or
10 practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor
11 Code, the Wage Order, and the Business and Professions Code.

12 26. **Adequacy of Class Representative:** Plaintiffs are adequate class representatives
13 in that they have no interests that are adverse to, or otherwise in conflict with, the interests of
14 absent Class Members. Plaintiffs are dedicated to vigorously prosecuting this action on behalf of
15 Class Members. Plaintiffs will fairly and adequately represent and protect the interests of Class
16 Members.

17 27. **Adequacy of Class Counsel:** Plaintiffs' counsel are adequate class counsel in that
18 they have no known conflicts of interest with Plaintiffs or absent Class Members, are experienced
19 in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of
20 Plaintiffs and absent Class Members.

21 28. **Superiority:** A class action is vastly superior to other available means for fair and
22 efficient adjudication of Class Members' claims and would be beneficial to the parties and the
23 Court. Class action treatment will allow a number of similarly situated persons to simultaneously
24 and efficiently prosecute their common claims in a single forum without the unnecessary
25 duplication of effort and expense that numerous individual actions would entail. In addition, the
26 monetary amounts due to many individual Class Members are likely to be relatively small and
27 would thus make it difficult, if not impossible, for individual Class Members to both seek and
28 obtain relief. Moreover, a class action will serve an important public interest by permitting Class
Members to effectively pursue the recovery of monies owed to them. Further, a class action will
prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.



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STATEMENT OF FACTS

29. Defendants advertise that they are an afterschool program that coach students in speech and debate. Defendants began to employ Plaintiff Stolarski on approximately March 18, 2018 as a speech coach and instructor. In approximately August 2019, Defendants promoted Plaintiff Stolarski to off-site coordinator. Defendants continuously employed her in that capacity until on or about June 11, 2020, though Defendants characterized her and the other Class Members as independent contractors.

30. Defendants employed Plaintiff Schmitt for the first time in approximately November 2017 as a speech coach and instructor. In approximately September 2019, Defendants promoted Plaintiff Schmitt to lead speech instructor. Defendants continuously employed her in that capacity until on or about June 13, 2020, though Defendants characterized her and the other Class Members as independent contractors.

31. At all times during the relevant time-period, Plaintiffs were Defendants' employees, regardless of whether Defendants misclassified them as independent contractors or properly classified them as employees. At times during the relevant time-period, Defendants misclassified Plaintiffs and other speech coach and instructors similarly situated as independent contractors. At other times, they correctly classified them as employees, though the terms and conditions of their relationship with Defendants remained largely the same. At all relevant times, Defendants directed and controlled Plaintiffs and the Class Members in all aspects of their work performance. Defendants required Plaintiffs and the Class Members to sign a contract with Defendants which stated that the "agreement is an employment-at-will agreement." Defendants required Plaintiffs and the other Class Members to adhere to the student schedules that Defendants set for them, work from Defendants' provided locations, use Defendants' equipment and supplies to perform their tasks, and wear apparel clearly displaying Defendants' logo, and they prohibited Plaintiffs and the Class Members from working for "competing businesses." Defendants required Plaintiffs and the other Class Members to ensure that "no significant or avoidable competitive conflicts arise from their work with non-Golden State Academy students[.]" Defendants determined what "scripts" (books) Plaintiffs and the Class Members used. Defendants required Plaintiffs and the Class Members to review, "cut through" (summarize) evidence cards and compile those cards to create instructional briefs for students. Defendants also required Plaintiffs and the other Class Members to summarize and transcribe, or "cut" (summarize) scripts from



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books.

32. Regardless of the hours spent on these “cuts,” Defendants compensated Plaintiffs and the other Class Members with a flat rate of \$15 or \$75 per each script cut.

33. Throughout the relevant time period, Defendants required Plaintiffs to perform the coaching services Defendants advertised to their customers as described above. At all relevant times, Defendants required the other Class Members to perform the same services. Defendants compensated Plaintiffs and the Class Members on a bi-weekly basis. Defendants required Plaintiffs and the Class Members to record their hours using *Microsoft Excel* sheets titled “payroll forms.” Defendants compensated Plaintiffs and the Class Members with two different hourly rates of pay for in class “instructional hours” and for preparation (“prep”). The “prep” work Defendants required included gathering and researching materials for students and communicating with the students’ parents. Defendants compensated Plaintiffs at an hourly rate of \$35 for instructional hours and \$30 for prep work.

34. Plaintiffs and the Class Members often worked more than eight (8) hours in a workday and/or more than forty (40) hours in a workweek. In addition to prep work, Defendants scheduled Plaintiffs and the Class Members for instructional sessions on approximately five (5) to six (6) days in a workweek. Plaintiffs and the Class Members worked approximately 32 to 40 hours of instructional hours and 30 to 50 hours of prep time in a bi-weekly pay period. Defendants, however, failed to compensate Plaintiffs and the Class Members at the correct overtime rates, one and one-half time their regular rates of pay, for all overtime hours worked. Instead, Defendants compensated them for all hours worked at their applicable base rate.

35. Further, during summer sessions, Defendants compensated Plaintiffs and the Class Members with a fixed salary for each session. Each summer session is scheduled for two weeks, 11 days. Defendants, however, only compensated Plaintiffs and the Class Members for the “services” Defendants listed in the summer contracts/agreements that they required Plaintiffs and the Class Members to sign and failed to compensate them for all prep work that Defendants required Plaintiffs and the Class Members to complete for the summer sessions. Further, because Defendants paid the salaries as “full compensation for the Services” listed in their summer agreements, Defendants failed to compensate Plaintiffs and the Class Members for rest and recovery time, and other nonproductive time. Other nonproductive time such as, but was not limited to, organizing and managing the mock tournaments, sending reminder and progress emails



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1 to students and their parents, setting up and organizing online tournament systems, creating
2 evaluation template materials and other similar materials for company use, and helping organize
3 and create the entire schedule for summer camp sessions.

4 36. Defendants required Plaintiffs and the Class Members to accompany and
5 chaperone Defendants' students to speech and debate tournaments and competitions. Defendants
6 compensated Plaintiffs and the Class Members with a flat rate of \$275 for lead chaperones and
7 \$175 for secondary chaperones for each day. Defendants, however, required Plaintiffs and the
8 Class Members to work approximately 12 to 16 hours on such workdays. As a result, Defendants
9 often compensated them with less than applicable minimum wages for all hours worked at such
10 tournaments, and failed to pay overtime and double-time for such work. Defendants also required
11 Plaintiffs and the Class Members to attend staff meetings several times during each session.
12 Defendants, however, failed to compensate Plaintiffs and the Class Members for all the meeting
13 hours.

14 37. Defendants required Plaintiffs and the other Class Members to arrive early and
15 before their first scheduled class to open the doors and let the students in for safety purposes.
16 Defendants also required Plaintiffs and the other Class Members "to wait until all the students are
17 picked up" and to clean and organize their classrooms at the end of their classes. Defendants
18 instructed Plaintiffs and the Class Members that:

19 "The students are to wait in the classroom until their parents have arrived for pick up. No
20 coach should leave another coach responsible for this responsibility. This is a shared one,
21 if someone leaves without prior approval from Nathan or Victor, will result in a warning
22 for the first offense and termination or deduction of pay for the second offense."

23 Defendants, however, prohibited Plaintiffs and the other Class Members from reporting all hours
24 they spent performing these pre- and post-class duties and failed to compensate them for such
25 hours worked.

26 38. Defendants required Plaintiffs and the other Class Members to travel in their
27 personal vehicle between different worksites in the same day. Defendants did not reimburse
28 Plaintiffs and the other Class Members for the mileage they incurred in such travel, nor did they
offer them transportation. Defendants also required Plaintiffs and the other Class Members to use



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1 their personal mobile phones to communicate with students' parents and co-workers and to attend
2 remote staff meetings. Defendants did not offer mobile phones to Plaintiffs and the other Class
3 Members for this purpose, nor did they reimburse them for use of their personal mobile phones.
4 Furthermore, Defendants required Plaintiffs and the Class Members to use their personal laptops
5 to prepare their lessons, develop curriculums, attend remote meetings, coordinate with co-
6 workers, communicate with students and parents, conduct classes, and perform all related work
7 duties. Defendants did not offer laptops to Plaintiffs and the Class Members for such purposes,
8 nor did Defendants reimburse Plaintiffs and the Class Members for use of their personal laptops.

9 39. Throughout their employment, Defendants required Plaintiffs and the Class
10 Members to monitor the students at all times, including during their meal and rest periods.
11 Therefore, Defendants failed to provide Plaintiffs and the Class Members with duty-free, 30-
12 minute meal periods or paid uninterrupted, duty-free 10-minute rest periods for every four hours
13 worked or major fraction thereof. Throughout their employment, Defendants did not pay premium
14 wages to Plaintiffs and the Class Members for workdays in which Defendants failed to provide
15 them with one or more meal periods or rest breaks required by law. Defendants also failed to
16 provide Plaintiffs and the Class Members with the paid sick leave they were entitled to.

17 40. Though Defendants issued payments by check to Plaintiffs and the other Class
18 Members for the services they provided on a biweekly basis, Defendants did not issue Plaintiffs
19 and the other Class Members itemized wage statements stating the wages they earned, the rates
20 they earned them at, and the hours they worked. Defendants also failed to provide Plaintiffs and
21 the other Class Members with itemized wage statements or separate writings that set forth the
22 amount of paid sick leave available.

23 **FIRST CAUSE OF ACTION**

24 **FAILURE TO PROVIDE REST BREAKS**

25 **(Lab. Code §§ 226.7 and 1198)**

26 **(By Plaintiffs and the Class against all Defendants)**

27 41. Plaintiffs incorporates all paragraphs of this Complaint as if fully alleged herein.

28 42. At all relevant times during the applicable limitations period, Plaintiffs and the
Class Members have been employees of Defendants and entitled to the benefits and protections
of California Labor Code §§ 226.7 and 1198, and the Wage Order.

43. In relevant part, California Labor Code § 1198 states:



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1 The maximum hours of work and the standard conditions of labor fixed by the
2 commission shall be the maximum hours of work and the standard conditions of
3 labor for employees. The employment of any employee for longer hours than
4 those fixed by the order or under conditions of labor prohibited by the order is
5 unlawful.

6 44. In relevant part, § 12 of the Wage Order states:

7 **Rest Periods**

8 (A) “Every employer shall authorize and permit all employees to take rest
9 periods, which insofar as practicable shall be in the middle of each work period.
10 The authorized rest period time shall be based on the total hours worked daily at
11 the rate of ten (10) minutes net rest time per four (4) hours or major fraction
12 thereof. However, a rest period need not be authorized for employees whose total
13 daily work time is less than three and one-half (3 1/2) hours. Authorized rest
14 period time shall be counted as hours worked for which there shall be no
15 deduction from wages.”

16 (B) If an employer fails to provide an employee a rest period in accordance
17 with the applicable provisions of this Order, the employer shall pay the employee
18 one (1) hour of pay at the employee’s regular rate of compensation for each work
19 day that the rest period is not provided.”

20 45. In relevant part, California Labor Code § 226.7 states:

21 (b) An employer shall not require an employee to work during a meal or rest
22 period mandated pursuant to an applicable statute, or applicable regulation,
23 standard, or order of the Industrial Welfare Commission, the Occupational
24 Safety and Health Standards Board, or the Division of Occupational Safety and
25 Health.

26 (c) If an employer fails to provide an employee a meal period or rest period
27 in accordance with a state law, including, but not limited to, an applicable statute
28 or applicable regulation, standard, or order of the Industrial Welfare
Commission, the Occupational Safety and Health Standards Board, or the
Division of Occupational Safety and Health, the employer shall pay the
employee one additional hour of pay at the employee’s regular rate of
compensation for each work day that the meal or rest period is not provided.

46. Pursuant to the Wage Order, Plaintiffs and the Class Members were entitled to be
provided with net rest breaks of at least ten minutes for each four-hour period of work, or major
fraction thereof.

47. Defendants intentionally failed to provide Plaintiffs and the Class Members with



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1 all required 10-minute rest periods free from any work duties in accordance with the Wage Order.

2 48. At all relevant times, Defendants failed to authorize and permit Plaintiffs and the
3 Class Members to take 10-minute rest breaks every four hours worked or major fraction thereof
4 as required by the Wage Order. Furthermore, Defendants failed to pay premium wages for days
5 on which they failed to provide Plaintiffs and the Class Members with timely meal and rest
6 periods.

7 49. Plaintiffs are informed and believe and thereon allege that, at all relevant times
8 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
9 which resulted in Defendants not providing the Class with all rest breaks required by California
10 law.

11 50. In relevant part, California Labor Code § 558.1 states:

12 (a) Any employer or other person acting on behalf of an employer, who violates,
13 or causes to be violated, any provision regulating minimum wages or hours and
14 days of work in any order of the Industrial Welfare Commission, or violates, or
15 causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held
16 liable as the employer for such violation.

17 (b) For purposes of this section, the term “other person acting on behalf of an
18 employer” is limited to a natural person who is an owner, director, officer, or
19 managing agent of the employer, and the term “managing agent” has the same
20 meaning as in subdivision (b) of § 3294 of the Civil Code.

21 51. Based on Plaintiffs’ information and belief, Defendant VICTOR RIVAS
22 UMANA is natural person and an owner, director, officer, and/or managing agent of Defendants
23 THE GOLDEN STATE ACADEMY LLC, and THE GOLDEN STATE ACADEMY, LLC, who
24 directly or indirectly, or through an agent or any other person, employed or exercised control
25 over the wages, hours, or working conditions of Plaintiffs and the Class. Therefore, he is liable
26 to Plaintiffs and the Class for his violations of, or causing Defendants to violate the Labor Code
27 and the Wage Order pursuant to Labor Code section 558.1.

28 52. As a result of Defendants’ unlawful conduct, Plaintiffs and the Class Members
have suffered damages in an amount, subject to proof, to the extent they were not paid additional
wages owed for all rest breaks not provided to them.

53. By reason of the above, pursuant to California Labor Code § 226.7, Plaintiffs and
the Class Members are entitled to premium wages for workdays in which one or rest breaks were



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not provided to them.

SECOND CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIODS

(Lab. Code §§ 226.7, 512, and 1198)

(By Plaintiffs and the Class against all Defendants)

54. Plaintiffs incorporates all paragraphs of this Complaint as if fully alleged herein.

55. At all relevant times during the applicable limitations period, Plaintiffs and the Class Members have been employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 512 and 1198, and the Wage Order.

56. In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

57. In relevant part, California Labor Code § 512 states:

An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

58. In relevant part, § 11 of the Wage Order states:

Meal Periods

(A) “No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day’s work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30-minute meal period, the meal period shall be considered



1 an 'on duty' meal period and counted as time worked. An 'on duty' meal
2 period shall be permitted only when the nature of the work prevents an
3 employee from being relieved of all duty and when by written agreement
4 between the parties an on-the-job paid meal period is agreed to. The
written agreement shall state that the employee may, in writing, revoke the
agreement at any time."

5 (B) If an employer fails to provide an employee a meal period in
6 accordance with the applicable provisions of this Order, the employer shall
7 pay the employee one (1) hour of pay at the employee's regular rate of
compensation for each work day that the meal period is not provided."

8 59. In relevant part, California Labor Code § 226.7 states:

9 (b) An employer shall not require an employee to work during a meal
10 or rest period mandated pursuant to an applicable statute, or applicable
11 regulation, standard, or order of the Industrial Welfare Commission, the
Occupational Safety and Health Standards Board, or the Division of
Occupational Safety and Health.

12 (c) If an employer fails to provide an employee a meal period or rest
13 period in accordance with a state law, including, but not limited to, an
14 applicable statute or applicable regulation, standard, or order of the
15 Industrial Welfare Commission, the Occupational Safety and Health
16 Standards Board, or the Division of Occupational Safety and Health, the
17 employer shall pay the employee one additional hour of pay at the
employee's regular rate of compensation for each work day that the meal
or rest period is not provided.

18 60. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiffs and the
19 Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day
20 they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled
21 to a second 30-minute meal period when they worked more than 10 hours in a workday.

22 61. Defendants intentionally failed to provide Plaintiffs and the Class Members with
23 all required 30-minute, duty-free meal periods in accordance with the Wage Order.

24 62. At all relevant times, Defendants failed to provide Plaintiffs and the Class
25 Members with all timely 30-minute duty-free meal periods within the first five hours of work.
26 Furthermore, Defendants failed to pay premium wages for days on which they failed to provide
Plaintiffs and the Class Members with timely, duty-free meal periods.

27 63. Plaintiffs are informed and believe and thereon allege that, at all relevant times
28 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy



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1 which resulted in Defendants not providing the Class with all off-duty meal periods required by
2 California law.

3 64. In relevant part, California Labor Code § 558.1 states:

4 (a) Any employer or other person acting on behalf of an employer, who violates,
5 or causes to be violated, any provision regulating minimum wages or hours and
6 days of work in any order of the Industrial Welfare Commission, or violates, or
7 causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held
8 liable as the employer for such violation.

9 (b) For purposes of this section, the term “other person acting on behalf of an
10 employer” is limited to a natural person who is an owner, director, officer, or
11 managing agent of the employer, and the term “managing agent” has the same
12 meaning as in subdivision (b) of § 3294 of the Civil Code.

13 65. Based on Plaintiffs’ information and belief, Defendant VICTOR RIVAS
14 UMANA is natural person and an owner, director, officer, and/or managing agent of Defendants
15 THE GOLDEN STATE ACADEMY LLC, and THE GOLDEN STATE ACADEMY, LLC, who
16 directly or indirectly, or through an agent or any other person, employed or exercised control
17 over the wages, hours, or working conditions of Plaintiffs and the Class. Therefore, he is liable
18 to Plaintiffs and the Class for his violations of, or causing Defendants to violate the Labor Code
19 and the Wage Order pursuant to Labor Code section 558.1.

20 66. As a result of Defendants’ unlawful conduct, Plaintiffs and the Class Members
21 have suffered damages in an amount, subject to proof, to the extent they were not paid additional
22 wages owed for all meal periods not provided to them.

23 67. By reason of the above, pursuant to California Labor Code § 226.7, Plaintiffs and
24 the Class Members are entitled to premium wages for workdays in which one or more timely,
25 off-duty meal periods were not provided to them.

26 **THIRD CAUSE OF ACTION**

27 **FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED**

28 **(Lab. Code §§ 226.2, 510, 1194, 1197, and 1198)**

(By Plaintiffs and the Class against Defendants)

68. Plaintiffs incorporates all paragraphs of the Complaint as if fully alleged herein.

69. At all relevant times, Plaintiffs and the other Class Members have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor



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1 Code §§ 226.2, 510, 1194, 1197, and 1198 and the Wage Order.

2 70. § 2 of the Wage Order defines “hours worked” as “the time during which an
3 employee is subject to the control of an employer, and includes all the time the employee is
4 suffered or permitted to work, whether or not required to do so.”

5 71. § 3 of the Wage Order states:

6 (A) Daily Overtime - General Provisions

7 (1) The following overtime provisions are applicable to employees 18
8 years of age or over and to employees 16 or 17 years of age who are not
9 required by law to attend school and are not otherwise prohibited by law
10 from engaging in the subject work. Such employees shall not be employed
11 more than eight (8) hours in any workday or more than 40 hours in any
12 workweek unless the employee receives one and one-half (1 ½) times such
13 employee’s regular rate of pay for all hours worked over 40 hours in the
14 workweek. Eight (8) hours of labor constitutes a day’s work. Employment
15 beyond eight (8) hours in any workday or more than six (6) days in any
16 workweek is permissible provided the employee is compensated for such
17 overtime at not less than:

18 (a) One and one-half (1 ½) times the employee’s regular rate of pay for all
19 hours worked in excess of eight (8) hours up to and including 12 hours in
20 any workday, and for the first eight (8) hours worked on the seventh (7th)
21 consecutive day of work in a workweek.

22 (b) Double the employee’s regular rate of pay for all hours worked in
23 excess of 12 hours in any workday and for all hours worked in excess of
24 eight (8) hours on the seventh (7th) consecutive day of work in a workweek.

25 (c) The overtime rate of compensation required to be paid to a nonexempt
26 full-time salaried employee shall be computed by using the employee’s
27 regular hourly salary as one-fortieth (1/40) of the employee’s weekly
28 salary.

72. Section 4 of the Wage Order requires an employer to pay non-exempt employees
at least the minimum wage set forth therein for all hours worked, which consists of all hours that
an employer has actual or constructive knowledge that employees are working.

73. Labor Code § 510 states:

Eight hours of labor constitutes a day’s work. Any work in excess of eight
hours in one workday and any work in excess of 40 hours in any one
workweek and the first eight hours worked on the seventh day of work in
any one workweek shall be compensated at the rate of no less than one and



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one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this § requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.

74. Labor Code § 1194 invalidates any agreement between an employer and an employee to work for less than the minimum wage required under the applicable Wage Order.

75. Labor Code § 1197 makes it unlawful for an employer to pay an employee less than the minimum wage required under the applicable Wage Order for all hours worked during a payroll period.

76. Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

77. In conjunction, these provisions of the Labor Code require employers to pay non-exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours worked, including unrecorded hours when the employer knew or reasonably should have known that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22 Cal.4th 575, 585.)

78. At all relevant times during the applicable limitations period, Defendants failed to pay minimum, overtime, and double-time wages to Plaintiffs and the Class Members for all hours worked.

79. Labor Code § 226.2 states,

(a) For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:

(1) Employees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.

80. Pursuant to Labor Code § 226.2, the Wage Order and *Vaquero v. Stoneledge Furniture LLC* (2017) 9 Cal.App.5th 98, Defendants were also required to separately compensate Plaintiffs and the Class for rest periods of at least 10 minutes for each four-hour period of work or major fraction thereof, whether or not rest periods were provided and for all



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1 nonproductive time in addition to their commission. Defendants failed to compensate Plaintiffs
2 and the Class Members separately for their 10-minute rest periods and recovery time and for
3 other nonproductive time.

4 81. In relevant part, California Labor Code § 558.1 states:

5 (a) Any employer or other person acting on behalf of an employer, who violates,
6 or causes to be violated, any provision regulating minimum wages or hours and
7 days of work in any order of the Industrial Welfare Commission, or violates, or
8 causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held
9 liable as the employer for such violation.

10 (b) For purposes of this section, the term “other person acting on behalf of an
11 employer” is limited to a natural person who is an owner, director, officer, or
12 managing agent of the employer, and the term “managing agent” has the same
13 meaning as in subdivision (b) of § 3294 of the Civil Code.

14 82. Based on Plaintiffs’ information and belief, Defendant VICTOR RIVAS
15 UMANA is natural person and an owner, director, officer, and/or managing agent of Defendants
16 THE GOLDEN STATE ACADEMY LLC, and THE GOLDEN STATE ACADEMY, LLC, who
17 directly or indirectly, or through an agent or any other person, employed or exercised control
18 over the wages, hours, or working conditions of Plaintiffs and the Class. Therefore, he is liable
19 to Plaintiffs and the Class for his violations of, or causing Defendants to violate the Labor Code
20 and the Wage Order pursuant to Labor Code section 558.1.

21 83. Plaintiffs are informed and believe and thereon allege that, at all relevant times,
22 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants’
23 failure to compensate Plaintiffs and the other Class Members for all hours worked as required by
24 California law.

25 84. As a result of Defendants’ unlawful conduct, Plaintiffs and the other Class
26 Members have suffered damages, in an amount subject to proof, to the extent they were not paid
27 the full amount of wages earned during each pay period during the applicable limitations period,
28 including minimum and overtime wages.

85. Pursuant to Labor Code § 1194, Plaintiffs, on behalf of themselves and Class
Members, seek to recover unpaid wages, liquidated damages in amounts equal to the amounts of
unpaid wages, interest thereon, and awards of reasonable costs and attorneys’ fees, all in amounts
subject to proof.



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FOURTH CAUSE OF ACTION
**FAILURE TO PROVIDE PAID SICK LEAVE AND NOTICE OF AVAILABLE SICK
LEAVE**

(Lab. Code §§ 245-249)

(By Plaintiffs and the Class against all Defendants)

86. Plaintiffs incorporates all paragraphs of this Complaint as if fully alleged herein.

87. At all relevant times during the applicable limitations period, Plaintiffs and the Class have been employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 245-249.

88. Labor Code § 246 states,

An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section.

89. Lab.Code § 246(i) states that,

An employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages.

90. Plaintiffs and Class Members were entitled to accrue and use paid sick leave pursuant to Labor Code §§ 245-249.

91. Defendants failed to provide Plaintiffs and Class Members with the paid sick leave they were entitled to.

92. Defendants also failed to provide Plaintiffs and Class Members with an itemized wage statement or separate writing that set forth the amount of paid sick leave available.

93. By reason of the above, Plaintiffs and the members of the Class are entitled to all remedies available to them pursuant to California Labor Code §§ 245-249.

FIFTH CAUSE OF ACTION

FAILURE TO INDEMNIFY

(Lab. Code §§ 1198 & 2802)

(By Plaintiffs and the Class against all Defendants)

94. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.



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1 95. At all relevant times, Plaintiffs and the Class have been non-exempt employees
2 of Defendants and entitled to the benefits and protections of the California Labor Code sections
3 1198 and 2802 and the Wage Order.

4 96. In pertinent part, California Labor Code section 2802(a) states, “An employer
5 shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee
6 in direct consequence of the discharge of his or her duties.”

7 97. Section 9(B) of the Wage Order states,

8 When tools or equipment are required by the employer or are necessary to the
9 performance of a job, such tools and equipment shall be provided and maintained
10 by the employer, except that an employee whose wages are at least two (2) times
11 the minimum wage provided herein may be required to provide and maintain
12 hand tools and equipment customarily required by the trade or craft.

13 98. Labor Code section 1198 prohibits employers from employing their employees
14 under conditions prohibited by the Wage Order.

15 99. At relevant times during the applicable limitations period, Defendants required
16 Plaintiffs and the other Class Members to travel in their personal vehicle between different
17 worksites in the same day. Defendants did not reimburse Plaintiffs and the other Class Members
18 for the mileage they incurred in such travel, nor did they offer Plaintiffs and the Class Members
19 transportation. Defendants also required Plaintiffs and the other Class Members to use their
20 personal mobile phones to communicate with students’ parents and co-workers and to attend
21 remote staff meetings. Defendants did not offer mobile phones to Plaintiffs and the other Class
22 Members for this purpose, nor did they reimburse Plaintiffs and the Class Members for use of
23 their personal mobile phones. Furthermore, Defendants required Plaintiffs and the Class Members
24 to use their personal laptops to prepare their lessons, develop curricula, attend remote meetings,
25 coordinate with co-workers, communicate with students and parents, conduct classes, and
26 perform all related work duties. Defendants did not offer laptops to Plaintiffs and the Class
27 Members for such purposes, nor did they reimburse Plaintiffs and the Class Members for use of
28 their personal laptops.

 100. Plaintiffs are informed and believes and thereon alleges that, at all relevant times,
Defendants maintained a policy, practice, or a lack of a policy which resulted in Defendants’
failure to indemnify Plaintiffs and the Class for the reasonable expenses they incurred during
the course of performing their duties.



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101. In relevant part, California Labor Code § 558.1 states:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of § 3294 of the Civil Code.

102. Based on Plaintiffs’ information and belief, Defendant VICTOR RIVAS UMANA is natural person and an owner, director, officer, and/or managing agent of Defendants THE GOLDEN STATE ACADEMY LLC, and THE GOLDEN STATE ACADEMY, LLC, who directly or indirectly, or through an agent or any other person, employed or exercised control over the wages, hours, or working conditions of Plaintiffs and the Class. Therefore, he is liable to Plaintiffs and the Class for his violations of, or causing Defendants to violate the Labor Code and the Wage Order pursuant to Labor Code section 558.1.

103. By reason of the above, Plaintiffs and the members of the Class are entitled to reimbursement for all necessary expenditures and losses and interest due and owing to them within four years (4) of the date of the filing of the Complaint until the date of entry of judgment pursuant to California Labor Code section 2802(b). Further, Plaintiffs, on behalf of themselves and the Class, prays for reasonable attorney’s fees pursuant to Labor Code section 2802(c).

104. Additionally, with respect to this cause of action, on behalf of themselves and the Class, Plaintiffs pray for an award of reasonable attorney fees and costs, including interest thereon, as permitted by law, all in amounts subject to proof.

SIXTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS

(Lab. Code §§ 226 and 226.2)

(By Plaintiffs and the Class against all Defendants)

105. Plaintiffs incorporate all paragraphs of the Complaint as if fully alleged herein.

106. At all relevant times during the applicable limitations period, Plaintiffs and the other Class Members have been employees of Defendants and entitled to the benefits and



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1 protections of California Labor Code § 226.

2 107. Pursuant to California Labor Code § 226(a), Plaintiffs and the other Class
3 Members were entitled to receive, bi-weekly or at the time of each payment of wages, an accurate
4 itemized statement showing:

- 5 (1) Gross wages earned,
6 (2) Total hours worked by the employee, except for any employee whose
7 compensation is solely based on a salary and who is exempt from payment of
8 overtime under subdivision (a) of § 515 or any applicable order of the Industrial
9 Welfare Commission,
10 (3) The number of piece rate units earned and any applicable piece rate if the
11 employee is paid on a piece-rate basis,
12 (4) All deductions, provided that all deductions made on written orders of the
13 employee may be aggregated and shown as one item,
14 (5) Net wages earned,
15 (6) The inclusive dates of the period for which the employee is paid,
16 (7) The name of the employee and his or her social security number, except
17 that by January 1, 2008, only the last four digits of his or her social security number
18 or an employee identification number other than a social security number may be
19 shown on the itemized statement,
20 (8) The name and address of the legal entity that is the employer, and
21 (9) All applicable hourly rates in effect during the pay period and the
22 corresponding number of hours worked at each hourly rate by the employee.

23 108. Pursuant to California Labor Code § 226(e), an employee suffering injury as a
24 result of a knowing and intentional failure by an employer to comply with subdivision (a) is
25 entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period
26 in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a
27 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and
28 is entitled to an award of costs and reasonable attorneys' fees.

109. Pursuant to California Labor Code § 226(e), an employee is deemed to suffer
injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer
injury if the employer fails to provide accurate and complete information as required by California
Labor Code § 226(a) and the employee cannot "promptly and easily determine" from the wage
statement alone one or more of the following:

A. The amount of the gross wages or net wages paid to the employee during the pay
period or any of the other information required to be provided on the itemized wage statement



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1 pursuant to California Labor Code § 226(a);

2 B. Which deductions the employer made from gross wages to determine the net
3 wages paid to the employee during the pay period;

4 C. The name and address of the employer and, if the employer is a farm labor
5 contractor, as defined in subdivision (b) of § 1682 of the California Labor Code, the name and
6 address of the legal entity that secured the services of the employer during the pay period; and

7 D. The name of the employee and only the last four digits of his or her social security
8 number or an employee identification number other than a social security number.

9 110. “Promptly and easily determine,” as stated in California Labor Code § 226(e),
10 means a reasonable person would be able to readily ascertain the information without reference
11 to other documents or information.

12 111. As alleged herein, Defendants failed to provide Plaintiffs and the other Class
13 Members with all meal and rest periods in compliance with California law. They also failed to
14 provide them with premium wages on workdays they failed to provide them with one or more
15 meal and/or rest periods in compliance with California law. Further, Defendants failed to
16 compensate Plaintiffs and the other Class Members for all hours worked. Defendants did not state
17 all wages earned, including those described above, on wage statements issued to Plaintiffs and
18 the Class Members. As a result, Defendants have failed to properly itemize Plaintiffs and the other
19 Class Members’ gross and net wages earned, total hours worked, hourly rate of pay, the
20 corresponding number of hours worked at each hourly rate, and other requirements of California
21 Labor Code § 226. As a result, Defendants have violated California Labor Code § 226.

22 112. Defendants’ failure to provide Plaintiffs and the other Class Members with
23 accurate wage statements was knowing and intentional. Defendants had the ability to provide
24 Plaintiffs and the other Class Members with accurate wage statements but intentionally provided
25 wage statements that Defendants knew were not accurate.

26 113. As a result of being provided with inaccurate wage statements by Defendants,
27 Plaintiffs and the other Class Members have suffered injury. Their legal rights to receive accurate
28 wage statements were violated and they were misled about the amount of wages they had actually
earned and were owed. In addition, the absence of accurate information on their wage statements
prevented immediate challenges to Defendants’ unlawful pay practices, has required discovery
and mathematical computations to determine the amounts of wages owed, has caused difficulty



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1 and expense in attempting to reconstruct time and pay records and/or has led to the submission of
2 inaccurate information about wages to state and federal government agencies. Further, Plaintiffs
3 and the other Class Members were not able to ascertain from the wage statements whether
4 Defendants complied with their obligations under California Labor Code § 226(a).

5 114. Pursuant to California Labor Code § 226(e), Plaintiffs and the other Class
6 Members are entitled to recover the greater of actual damages, or penalties of fifty dollars (\$50)
7 for the initial pay period in which a violation of California Labor Code § 226(a) occurred and one
8 hundred dollars for each violation of California Labor Code § 226(a) in a subsequent pay period,
9 not to exceed an aggregate penalty of four thousand dollars (\$4,000) per Class Member, and are
also entitled to an award of costs and reasonable attorneys' fees.

10 115. In relevant part, California Labor Code § 558.1 states:

11 (a) Any employer or other person acting on behalf of an employer, who violates,
12 or causes to be violated, any provision regulating minimum wages or hours and
13 days of work in any order of the Industrial Welfare Commission, or violates, or
14 causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held
liable as the employer for such violation.

15 (b) For purposes of this section, the term "other person acting on behalf of an
16 employer" is limited to a natural person who is an owner, director, officer, or
17 managing agent of the employer, and the term "managing agent" has the same
meaning as in subdivision (b) of § 3294 of the Civil Code.

18 116. Based on Plaintiffs' information and belief, Defendant VICTOR RIVAS
19 UMANA is natural person and an owner, director, officer, and/or managing agent of Defendants
20 THE GOLDEN STATE ACADEMY LLC, and THE GOLDEN STATE ACADEMY, LLC, who
21 directly or indirectly, or through an agent or any other person, employed or exercised control
22 over the wages, hours, or working conditions of Plaintiffs and the Class. Therefore, he is liable
23 to Plaintiffs and the Class for his violations of, or causing Defendants to violate the Labor Code
24 and the Wage Order pursuant to Labor Code section 558.1.

25 117. Accordingly, with respect to this cause of action, on behalf of themselves and the
26 other Class Members, Plaintiffs prays for the herein stated relief and for an award of all reasonable
27 costs and attorneys' fees, including interest thereon, as permitted by law, all in amounts subject
28 to proof.

SEVENTH CAUSE OF ACTION



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WAITING TIME PENALTIES

(Lab. Code §§ 201, 202, and 203)

(By Plaintiffs and the Class against all Defendants)

118. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

119. At all relevant times during the applicable limitations period, Plaintiffs and the Class have been non-exempt employees of Defendants and entitled to the benefits and protections of California Labor Code §§ 201–203, and the Wage Order.

120. Labor Code § 201 provides that all earned and unpaid wages of an employee who is discharged are due and payable immediately at the time of discharge.

121. Labor Code § 202 provides that all earned and unpaid wages of an employee who quits after providing at least 72-hours notice before quitting are due and payable at the time of quitting and that all earned and unpaid wages of an employee who quits without providing at least 72-hours notice before quitting are due and payable within 72 hours.

122. By failing to pay earned minimum, overtime, and premium wages to Plaintiffs and the Class, Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code § 201 or § 202.

123. Plaintiffs are informed and believe that Defendants’ failures to timely pay all final wages to him and the Class Members have been willful in that Defendants have the ability to pay final wages in accordance with Labor Code §§ 201 and 202 but have intentionally adopted policies or practice that are incompatible with those requirements.

124. In relevant part, California Labor Code § 558.1 states:

(a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.

(b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of § 3294 of the Civil Code.

125. Based on Plaintiffs’ information and belief, Defendant VICTOR RIVAS UMANA is natural person and an owner, director, officer, and/or managing agent of Defendants



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1 THE GOLDEN STATE ACADEMY LLC, and THE GOLDEN STATE ACADEMY, LLC, who
2 directly or indirectly, or through an agent or any other person, employed or exercised control
3 over the wages, hours, or working conditions of Plaintiffs and the Class. Therefore, he is liable
4 to Plaintiffs and the Class for his violations of, or causing Defendants to violate the Labor Code
and the Wage Order pursuant to Labor Code section 558.1.

5 126. Labor Code § 203 provides that the wages of an employee continue on a daily
6 basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and
7 unpaid wages to the employee in accordance with Labor Code § 201, or § 202.

8 127. Defendants failed to pay Plaintiffs and the Class Members whose employment
9 ended all of the earned, but unpaid wages described above by the conclusion of their employment.

10 128. Plaintiffs are informed and believe that Defendants' failures to timely pay
11 Plaintiffs and the Class all of their earned and unpaid wages have been willful in that, at all
12 relevant times, Defendants have deliberately maintained policies and practices that violate the
13 requirements of the Labor Code and the Wage Order, even though at all relevant times, they have
14 had the ability to comply with those legal requirements.

15 129. Pursuant to Labor Code § 203, Plaintiffs seeks waiting time penalties on behalf of
16 themselves and the Class, in amounts subject to proof not to exceed 30 days of waiting time
penalties for each Class Member.

17 **EIGHTH CAUSE OF ACTION**

18 **UNFAIR COMPETITION**

19 **(Bus. & Prof. Code §§ 17200, et seq.)**

20 **(By Plaintiffs and the Class against all Defendants)**

21 130. Plaintiffs incorporate all paragraphs of the Complaint as if fully alleged herein.

22 131. At all relevant times during the applicable limitations period, Plaintiffs and the
23 other Class Members have been employees of Defendants and entitled to the benefits and
protections of the Business and Professions Code §§ 17200, et seq.

24 132. The unlawful conduct of Defendants alleged herein amounts to and constitutes
25 unfair competition within the meaning of California Business & Professions Code §§ 17200, et
26 seq. Due to their unfair and unlawful business practices as alleged herein, Defendants have
27 unfairly gained a competitive advantage over other comparable companies doing business in
28 California that comply with their legal obligations to, among other things, pay their employees



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1 premium wages for workdays in which they did not provide employees with one or more meal
2 and rest periods, reimburse their employees for reasonable expenses incurred during the course
3 of performing their duties, and pay them all earned wages for all non-productive and all regular
4 and overtime hours worked at the correct rates of pay.

5 133. In relevant part, California Labor Code § 558.1 states:

6 (a) Any employer or other person acting on behalf of an employer, who violates,
7 or causes to be violated, any provision regulating minimum wages or hours and
8 days of work in any order of the Industrial Welfare Commission, or violates, or
9 causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held
10 liable as the employer for such violation.

11 (b) For purposes of this section, the term “other person acting on behalf of an
12 employer” is limited to a natural person who is an owner, director, officer, or
13 managing agent of the employer, and the term “managing agent” has the same
14 meaning as in subdivision (b) of § 3294 of the Civil Code.

15 134. Based on Plaintiffs’ information and belief, Defendant VICTOR RIVAS
16 UMANA is natural person and an owner, director, officer, and/or managing agent of Defendants
17 THE GOLDEN STATE ACADEMY LLC, and THE GOLDEN STATE ACADEMY, LLC, who
18 directly or indirectly, or through an agent or any other person, employed or exercised control
19 over the wages, hours, or working conditions of Plaintiffs and the Class. Therefore, he is liable
20 to Plaintiffs and the Class for his violations of, or causing Defendants to violate the Labor Code
21 and the Wage Order pursuant to Labor Code section 558.1.

22 135. As a result of Defendants’ unfair competition as herein alleged, Plaintiffs and the
23 other Class Members have suffered injuries in fact and lost money or property. Defendants
24 deprived Plaintiffs and the other Class Members of minimum, overtime, off-the-clock, paid sick
25 leave and notice of paid sick leave, compensation for non-productive time, and premium wages
26 and reimbursement for expenses that Plaintiffs and the other Class Members incurred during the
27 course of performing their duties.

28 136. Pursuant to California Business & Professions Code § 17203, Plaintiffs and the
other Class Members are entitled to restitution of all monies rightfully belonging to them that
Defendants did not pay them, or that Defendants otherwise retained by means of their unlawful
and unfair business practices.

137. Plaintiffs and the other Class Members are entitled to reasonable attorneys’ fees in



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1 connection with their unfair competition claims pursuant to California Code of Civil Procedure
2 § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

3 **NINTH CAUSE OF ACTION**

4 **CIVIL PENALTIES**

5 **(By Plaintiffs and the Class against all Defendants)**

6 138. Plaintiffs incorporate all paragraphs of this Complaint as if fully alleged herein.

7 139. The “Aggrieved Employees” are all members of the Class defined above who
8 Defendants employed during the period beginning in May 26, 2020 and ending on the date that
9 final judgment is entered in this action.

10 140. Labor Code § 204 states

11 (a) All wages, other than those mentioned in Section 201,
12 201.3, 202, 204.1, or 204.2, earned by any person in any
13 employment are due and payable twice during each calendar
14 month, on days designated in advance by the employer as the
15 regular paydays. Labor performed between the 1st and 15th days,
16 inclusive, of any calendar month shall be paid for between the 16th
17 and the 26th day of the month during which the labor was
18 performed, and labor performed between the 16th and the last day,
19 inclusive, of any calendar month, shall be paid for between the 1st
20 and 10th day of the following month. ...

21 (b) (1) Notwithstanding any other provision of this
22 section, all wages earned for labor in excess of the normal work
23 period shall be paid no later than the payday for the next regular
24 payroll period.

25 (2) An employer is in compliance with the requirements of
26 subdivision (a) of Section 226 relating to total hours worked by the
27 employee, if hours worked in excess of the normal work period
28 during the current pay period are itemized as corrections on the
paystub for the next regular pay period. Any corrections set out in
a subsequently issued paystub shall state the inclusive dates of the
pay period for which the employer is correcting its initial report of
hours worked.

(c) However, when employees are covered by a collective
bargaining agreement that provides different pay arrangements,
those arrangements shall apply to the covered employees.

(d) The requirements of this section shall be deemed satisfied
by the payment of wages for weekly, biweekly, or semimonthly



1 payroll if the wages are paid not more than seven calendar days
2 following the close of the payroll period.

3 141. Defendants paid wages to employees on regular intervals. Defendants, however,
4 failed to pay Plaintiffs on such intervals for all wages earned and all hours worked. On
5 information and belief, Plaintiffs allege that Defendants also failed to pay the Aggrieved
6 Employees on such intervals for all wages earned and all hours worked.

7 142. Labor Code section 226.8 states:

8 (a) It is unlawful for any person or employer to engage in any of the
9 following activities:

10 (1) Willful misclassification of an individual as an independent
11 contractor.

12 (2) Charging an individual who has been willfully
13 misclassified as an independent contractor a fee, or making
14 any deductions from compensation, for any purpose,
15 including for goods, materials, space rental, services,
16 government licenses, repairs, equipment maintenance, or
17 fines arising from the individual's employment where any
18 of the acts described in this paragraph would have violated
19 the law if the individual had not been misclassified.

20 (b) If the Labor and Workforce Development Agency or a court issues
21 a determination that a person or employer has engaged in any of
22 the enumerated violations of subdivision (a), the person or
23 employer shall be subject to a civil penalty of not less than five
24 thousand dollars (\$5,000) and not more than fifteen thousand
25 dollars (\$15,000) for each violation, in addition to any other
26 penalties or fines permitted by law.

27 (c) If the Labor and Workforce Development Agency or a court issues
28 a determination that a person or employer has engaged in any of
the enumerated violations of subdivision (a) and the person or
employer has engaged in or is engaging in a pattern or practice of
these violations, the person or employer shall be subject to a civil
penalty of not less than ten thousand dollars (\$10,000) and not
more than twenty-five thousand dollars (\$25,000) for each
violation, in addition to any other penalties or fines permitted by
law.

143. "Willful misclassification means avoiding employee status for an individual by
voluntarily and knowingly misclassifying that individual as an independent contractor." (Id., §



1 (i)(4.)

2 144. Defendants misclassified Plaintiffs and the Class Members as independent
3 contractors and engaged in a pattern and/or practice of so doing.

4 145. During the applicable time period, Defendants violated California Labor Code
5 §§ 201, 202, 203, 204, 226, 226.2, 226.7, 226.8, 245-249, 510, 512, 558, 558.1, 1194, 1197,
6 1198, 2753, and 2802.

7 146. California Labor Code §§ 2699 (a) and (g) authorize an aggrieved employee, on
8 behalf of themselves and other current or former employees, to bring a civil action to recover
9 civil penalties pursuant to the procedures specified in California Labor Code § 2699.3.

10 147. Pursuant to California Labor Code §§ 2699 (a) and (f), Plaintiffs and the Class
11 are entitled to recover civil penalties for each of the Defendants' violations of California Labor
12 Code §§ 201, 202, 203, 204, 226, 226.2, 226.7, 226.8, 245-249, 510, 512, 1194, 1197, 1198, and
13 2802 during the applicable limitations period in the following amounts:

14 A. For violations of California Labor Code § 204, one hundred dollars
15 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
16 (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation
17 (penalty amounts established by California Labor Code § 210).

18 B. For violations of California Labor Code § 226 (a), two hundred fifty
19 dollars (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars
20 (\$1,000.00) for each Aggrieved Employee for each subsequent violation (penalty amounts
21 established by California Labor Code § 226.3).

22 C. For violations of California Labor Code § 226.8, twenty-five thousand
23 dollars (\$25,000.00) for each Aggrieved Employee for each violation of California Labor Code
24 § 226.8 as part of a pattern or practice in addition to any other penalties or fines permitted by
25 law, or alternatively, fifteen thousand (\$15,000.00) for each Aggrieved Employee for each
26 violation of California Labor Code § 226.8 in addition to any other penalties or fines permitted
27 by law (penalties set by Labor Code § 226.8(b) and (c)).

28 D. For violations of California Labor Code §§ 510 and 512, fifty dollars
(\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00)
for each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts
established by California Labor Code § 558).



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1 E. For violations of California Labor Code § 1197, one hundred dollars
2 (\$100.00) for each Aggrieved Employee for each initial and intentional violation and two
3 hundred fifty dollars (\$250.00) for each Aggrieved Employee for each subsequent violation, per
4 pay period (regardless of whether the initial violations were intentionally committed) (penalty
5 amounts established by California Labor Code § 1197.1).

6 F. For violations of California Labor Code §§ 201, 202, 203, 226.2, 226.7,
7 245-249, 1194, 1198, and 2802, one hundred dollars (\$100.00) for each Aggrieved Employee
8 per pay period for each initial violation and two hundred dollars (\$200.00) for each Aggrieved
9 Employee per pay period for each subsequent violation (penalty amounts established by
10 California Labor Code § 2699 (f)(2)).

11 148. Plaintiffs have complied with the procedures for bringing suit specified in
12 California Labor Code § 2699.3. By letter dated May 26, 2021, Plaintiff Schmitt filed written
13 notice online with the Labor and Workforce Development Agency (“LWDA”) and gave written
14 notice by certified mail to Defendants of the specific provisions of the California Labor Code
15 alleged to have been violated, including the facts and theories to support the alleged violations.
16 By letter dated May 28, 2021, Plaintiff Stolarski filed written notice online with the Labor and
17 Workforce Development Agency (“LWDA”) and gave written notice by certified mail to
18 Defendants of the specific provisions of the California Labor Code alleged to have been violated,
19 including the facts and theories to support the alleged violations. A true and correct copy of the
20 notices to the LWDA dated May 26, 2021 and May 28, 2021 are attached collectively as **Exhibit**
21 **A**. Plaintiffs accompanied their LWDA notices with a fee in the amount of \$75.00. The LWDA
22 has failed to take action in response within 65 calendar days of the date of Plaintiffs’ notice, but
23 Plaintiffs anticipate that the LWDA will provide written notice to Plaintiffs informing them that
24 it does not intend to investigate these allegations.

25 149. Pursuant to California Labor Code § 2699 (g), Plaintiffs and the Class Members
26 are entitled to an award of civil penalties, reasonable attorney’s fees and costs in connection with
27 their claims for civil penalties.

28 **PRAYER FOR RELIEF**

WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly situated, prays
for relief and judgment against Defendants as follows:

A. An order that the action be certified as a class action;



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- 1 B. An order that Plaintiffs be appointed class representative;
2 C. An order that counsel for Plaintiffs be appointed class counsel;
3 D. Unpaid Wages;
4 E. Actual Damages;
5 F. Statutory Damages;
6 G. Civil Penalties
7 H. Liquidated Damages;
8 I. Restitution;
9 J. Declaratory and injunctive relief;
10 K. Equitable relief;
11 L. Pre-judgment interest;
12 M. Statutory penalties;
13 N. Costs of suit;
14 O. Interest;
15 P. Reasonable attorneys' fees; and
16 Q. Such other relief as the Court deems just and proper.

17 **DEMAND FOR JURY TRIAL**

18 Plaintiffs, on behalf of themselves and all others similarly situated, hereby demand a jury
19 trial on all issues so triable.

20 Respectfully submitted,

21 THE SPIVAK LAW FIRM

22 Dated: August 2, 2021

23 By

24 
25 DAVID SPIVAK,
26 CAROLINE TAHMASSIAN,
27 MAYA CHEAITANI,
28 Attorneys for Plaintiffs, OFIR STOLARSKI,
KIANA SCHMITT and all others similarly
situated



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2 C. An order that counsel for Plaintiffs be appointed class counsel;
3 D. Unpaid Wages;
4 E. Actual Damages;
5 F. Statutory Damages;
6 G. Civil Penalties
7 H. Liquidated Damages;
8 I. Restitution;
9 J. Declaratory and injunctive relief;
10 K. Equitable relief;
11 L. Pre-judgment interest;
12 M. Statutory penalties;
13 N. Costs of suit;
14 O. Interest;
15 P. Reasonable attorneys' fees; and
16 Q. Such other relief as the Court deems just and proper.

17 **DEMAND FOR JURY TRIAL**

18 Plaintiffs, on behalf of themselves and all others similarly situated, hereby demand a jury
19 trial on all issues so triable.

20 Respectfully submitted,

21 THE SPIVAK LAW FIRM

22 Dated: August 2, 2021

23 By _____
24 DAVID SPIVAK,
25 CAROLINE TAHMASSIAN,
26 MAYA CHEAITANI,
27 Attorneys for Plaintiffs, OFIR STOLARSKI,
28 KIANA SCHMITT and all others similarly
situated



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EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

May 26, 2021

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

RE: *Ofir (Natalie) Stolarski / TGSA*

To whom it may concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*, Ofir (Natalie) Stolarski (hereafter “Stolarski”) provides notice on behalf of herself and all individuals, currently and formerly employed or contracted with, in California as employees or independent contractors, including but not limited to coaches, instructors, head coaches, lead coaches, assistant coaches, and workers in comparable positions (hereafter “Aggrieved Employees”) by The Golden State Academy LLC, a California limited liability company, The Golden State Academy, LLC, a California entity of unknown form, and Victor Rivas Umana, an individual who resides in California and is the owner, director, and chief executive officer of the aforementioned entity (hereafter collectively “TGSA”) of violations of Labor Code §§ 201, 202, 203, 204, 226, 226.2, 226.7, 226.8, 245-249, 510, 512, 558, 558.1, 1194, 1197, 1198, 2750.3, 2753, and 2802.

At all relevant times, TGSA has employed persons, conducted business in, and engaged in illegal payroll practices and policies in California. Stolarski and the Aggrieved Employees are “employees” within the meaning of Wage Order 5-

2001 (hereafter “the Wage Order”), subdivision (2)(F) and “Aggrieved Employees” within the meaning of Labor Code § 2699, subdivision (c).

Statement of Facts

TGSA advertises that it is an afterschool program that coaches students in speech and debate. TGSA began to employ Stolarski on approximately March 18, 2018 as a speech coach and instructor. In approximately August 2019, TGSA promoted Stolarski to off-site coordinator. TGSA continuously employed her in that capacity until on or about June 11, 2020, though it characterized her and the other Aggrieved Employees as independent contractors. TGSA, nonetheless, required Stolarski and the Aggrieved Employees to sign a contract with TGSA which stated that the “agreement is an employment-at-will agreement.” TGSA required Stolarski and the other Aggrieved Employees to adhere to the student schedules that it set for them, work from TGSA-provided locations, use TGSA’s equipment and supplies to perform their tasks, and wear apparel clearly displaying TGSA’s logo, and it prohibited them from working for “competing businesses.” TGSA required Stolarski and the other Aggrieved Employees to ensure that “no significant or avoidable competitive conflicts arise from their work with non-GSA students[.]” TGSA determined what “scripts” (books) Stolarski and the Aggrieved Employees used. TGSA also required Stolarski and the Aggrieved Employees to review, “cut through” (summarize) evidence cards and compile those cards to create instructional briefs for students.

Throughout the relevant time period, TGSA required Stolarski to perform the coaching services it advertised to its customers as described above. At all relevant times, TGSA required the other Aggrieved Employees to perform the same services. TGSA compensated Stolarski and the Aggrieved Employees on a bi-weekly basis. TGSA required Stolarski and the Aggrieved Employees to record their hours using *Microsoft Excel* sheets titled “payroll forms.” TGSA compensated Stolarski and the Aggrieved Employees with two different hourly rates of pay for in class “instructional hours” and for preparation (“prep”). The “prep” TGSA required included gathering and researching materials for students and communicating with the students’ parents. TGSA compensated Stolarski at an hourly rate of \$35 for instructional hours and \$30 for prep work.

Stolarski and the Aggrieved Employees often worked more than eight (8) hours in a workday and/or more than forty (40) hours in a workweek. In addition to prep work, TGSA scheduled Stolarski and the Aggrieved Employees for instructional sessions on approximately five (5) to six (6) days in a workweek. Stolarski and the Aggrieved Employees worked approximately 32 to 40 hours of instructional hours and 30 to 50 hours of prep time in a bi-weekly pay period. TGSA, however, failed to compensate Stolarski and the Aggrieved Employees at the correct overtime rates, one and one-half time their regular rates of pay, for all overtime hours worked. Instead, TGSA compensated them for all hours worked at their applicable base rate.

Further, during summer sessions, TGSA compensated Stolarski and the Aggrieved Employees with a fixed salary for each session. Each summer session is scheduled for two weeks, 11 days. TGSA, however, only compensated Stolarski and the Aggrieved Employees for the “services” it listed in the summer contracts/agreements that it required Stolarski and the Aggrieved Employees to sign and failed to compensate them for all prep work that TGSA required Stolarski and the Aggrieved Employees to complete. Further, because TGSA paid the salaries as “full compensation for the Services” listed in their summer agreements, TGSA failed to compensate Stolarski and the Aggrieved Employees for rest and recovery time, and other nonproductive time. Other nonproductive time such as, but was not limited to, organizing and managing the mock tournaments, sending reminder and progress emails to students and parents, setting up and organizing online tournament systems, creating evaluation template materials and other similar materials for company use, and helping organize and create the entire schedule for summer camp sessions.

TGSA required Stolarski and the Aggrieved Employees to accompany and chaperone TGSA’s students to speech and debate tournaments and competitions. TGSA compensated Stolarski and the Aggrieved Employees with a flat rate of \$275 for lead chaperones and \$175 for secondary chaperones for each day. TGSA, however, required Stolarski and the Aggrieved Employees to work approximately 12 to 16 hours on such workdays. As a result, TGSA often

compensated them with less than applicable minimum wages for all hours worked at such tournaments, and failed to pay overtime and double-time for such work. TGSA also required Stolarski and the Aggrieved Employees to attend staff meetings several times during each session. TGSA, however, failed to compensate Stolarski and the Aggrieved Employees for all the meeting hours.

TGSA required Stolarski and the other Aggrieved Employees to arrive early and before their first scheduled class to open the doors and let the students in for safety purposes. TGSA also required Stolarski and the other Aggrieved Employees “to wait until all the students are picked up” and to clean and organize their classrooms at the end of their classes. TGSA instructed Stolarski and the Aggrieved Employees that:

The students are to wait in the classroom until their parents have arrived for pick up. No coach should leave another coach responsible for this responsibility. This is a shared one, if someone leaves without prior approval from Nathan or Victor, will result in a warning for the first offense and termination or deduction of pay for the second offense.”

TGSA, however, prohibited Stolarski and the other Aggrieved Employees from reporting all hours they spent performing these pre- and post-class duties and failed to compensate them for such hours worked.

TGSA required Stolarski and the other Aggrieved Employees to travel in their personal vehicle between different worksites in the same day. TGSA did not reimburse Stolarski and the other Aggrieved Employees for the mileage they incurred in such travel, nor did it offer them transportation. TGSA also required Stolarski and the other Aggrieved Employees to use their personal mobile phones to communicate with students’ parents and co-workers and to attend remote staff meetings. TGSA did not offer mobile phones to Stolarski and the other Aggrieved Employees for this purpose, nor did it reimburse them for use of their personal mobile phones. Furthermore, TGSA required Stolarski and the Aggrieved Employees to use their personal laptops to prepare their lessons, develop curriculums, attend remote meetings, coordinate with co-workers, communicate with students and parents, conduct classes, and perform all related

work duties. TGSA did not offer laptops to Stolarski and the Aggrieved Employees for such purposes, nor did it reimburse them for use of their personal laptops.

Throughout their employment, TGSA required Stolarski and the Aggrieved Employees to monitor the students at all times, including during their meal and rest periods. Therefore, TGSA failed to provide Stolarski and the Aggrieved Employees with duty-free, 30-minute meal periods or paid uninterrupted duty-free 10-minute rest periods for every four hours worked or major fraction thereof. Throughout their employment, TGSA did not pay premium wages to Stolarski and the Aggrieved Employees for workdays in which it failed to provide them with one or more meal periods or rest breaks required by law. TGSA also failed to provide Stolarski and the Aggrieved Employees with the paid sick leave they were entitled to.

Though TGSA issued payments by check to Stolarski and the other Aggrieved Employees for the services they provided on a biweekly basis, TGSA did not issue Stolarski and the other Aggrieved Employees itemized wage statements stating the wages they earned, the rates they earned them at, and the hours they worked. TGSA also failed to provide Stolarski and the other Aggrieved Employees with itemized wage statements or separate writings that set forth the amount of paid sick leave available.

TGSA's conduct toward Stolarski and the Aggrieved Employees described above was at all times knowing, intentional, and willful.

In sum, TGSA engaged in the following violations:

1. Willful misclassification of Stolarski and the Aggrieved Employees as independent contractors;
2. Failure to authorize and permit Stolarski and the Aggrieved Employees to take duty-free rest breaks;

3. Failure to provide Stolarski and the Aggrieved Employees with all duty-free meal periods;
4. Failure to compensate Stolarski and the Aggrieved Employees at one hour's pay for each workday with one or more unprovided rest breaks;
5. Failure to compensate Stolarski and the Aggrieved Employees at one hour's pay for each workday with one or more unprovided meal periods;
6. Failure to provide Stolarski and the Aggrieved Employees with paid rest and recovery time;
7. Failure to pay Stolarski and the Aggrieved Employees minimum wages for all hours worked;
8. Failure to pay Stolarski and the Aggrieved Employees one and one-half times their regular rates of pay for all hours worked over eight hours in one workday, over 40 hours in one workweek, and/or up to eight hours on the seventh consecutive workday in a workweek;
9. Failure to pay Stolarski and the Aggrieved Employees double the State minimum wage for all hours worked over twelve hours in one workday and/or over eight hours on the seventh consecutive workday in a workweek;
10. Failure to reimburse Stolarski and the Aggrieved Employees for all reasonable business expenses;
11. Failure to provide Stolarski and the Aggrieved Employees with accurate wage statements; and
12. Failure to timely pay Stolarski and the Aggrieved Employees all earned and unpaid wages during, and at the conclusion of, their employment with TGSA.

Accordingly, Stolarski now seeks civil penalties on behalf of herself and the other Aggrieved Employees based on TGSA's violations of the California Labor Code.

The Wage Order

The Wage Order applies to “all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis.” Wage Order, § 1. The Wage Order defines “Public Housekeeping Industry” to include “Private schools, colleges, or universities, and similar establishments which provide board or lodging in addition to educational facilities.” *Id.* § 2(P). At all relevant times during the applicable limitations period, TGSA hired Stolarski and the Aggrieved Employees as instructors at its private speech and debate schools. Accordingly, Stolarski and the other Aggrieved Employees are entitled to the protections provided under the Wage Order.

Willful Independent Contractor Misclassification **(Lab. Code §§ 226.8 and 2750.3)**

Labor Code section 226.8 states:

- (a) It is unlawful for any person or employer to engage in any of the following activities:
 - (1) Willful misclassification of an individual as an independent contractor.
 - (2) Charging an individual who has been willfully misclassified as an independent contractor a fee, or making any deductions from compensation, for any purpose, including for goods, materials, space rental, services, government licenses, repairs, equipment maintenance, or fines arising from the individual's employment where any of the acts described in this paragraph would have violated the law if the individual had not been misclassified.
- (b) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has

engaged in any of the enumerated violations of subdivision (a), the person or employer shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law.

- (c) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.

“Willful misclassification means avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor.” (*Id.*, § (i)(4).)

At all relevant times, Stolarski and the Aggrieved Employees were employees of TGSA. TGSA engaged, suffered, and permitted them to work. TGSA could terminate Stolarski and the Aggrieved Employees at will. TGSA assigned Stolarski and the Aggrieved Employees the clients they serviced. TGSA collected payment from the clients. The work Stolarski and the Aggrieved Employees performed was wholly within the scope of TGSA’s usual course of business of coaching speeches and debates. However, at all relevant times, TGSA issued Forms 1099 to Stolarski and the Aggrieved Employees. TGSA knew or should have known its actions of misclassifying employees as independent contractors violated California law.

TGSA misclassified Stolarski and the Aggrieved Employees as independent contractors and engaged in a pattern and/or practice of so doing. Through its misclassification of Stolarski and every other Aggrieved Employee, TGSA has engaged in a pattern and practice of willful misclassification of its employees as

independent contractors for its own financial benefit. Each person or entity referenced above collectively as TGSA advised the others to treat Stolarski and the Aggrieved Employees at issue in this case as independent contractors.

In relevant part, Labor Code section 558.1 states:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.
- (b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

At all relevant times, Victor Rivas Umana was an employer of Stolarski and the Aggrieved Employees, and/or “owner,” “managing agent,” and/or “officer” of The Golden State Academy LLC and the other employers identified above. Victor Rivas Umana, directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Aggrieved Employees, and caused the violations to the Labor Code and the Wage Order described above.

At all relevant times, Stolarski and the Aggrieved Employees were employees of Victor Rivas Umana. Victor Rivas Umana engaged, and suffered and permitted, Stolarski and the Aggrieved Employees to work. Victor Rivas Umana was clearly aware that Stolarski and the Aggrieved Employees worked for his company and had the power to prevent them from working. Victor Rivas Umana also exercised control over Stolarski and the Aggrieved Employees’ wages, hours, and working

conditions. Further, Victor Rivas Umana had the right to control and exercised such control over the manner in which Stolarski and the Aggrieved Employees performed their work for Victor Rivas Umana. The services they rendered were at all times an integral part of Victor Rivas Umana's business. The relationship between Stolarski and the Aggrieved Employees, on one hand, and Victor Rivas Umana, on the other, was terminable at-will without cause. Despite these circumstances, Victor Rivas Umana willfully misclassified Stolarski and the Aggrieved Employees as independent contractors. He has engaged in a pattern and/or practice of doing so.

Accordingly, on behalf of herself and the Aggrieved Employees, Stolarski seeks against TGSA civil penalties as follows:

1. \$25,000.00 for each aggrieved employee for each violation of California Labor Code section 226.8 as part of a pattern or practice in addition to any other penalties or fines permitted by law (penalties set by Labor Code section 226.8(c)); or alternatively,
2. \$15,000.00 for each aggrieved employee for each violation of California Labor Code section 226.8 in addition to any other penalties or fines permitted by law (penalties set by Labor Code section 226.8(b)).

Failure to Provide Rest Breaks and Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

In relevant part, California Labor Code § 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, Section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

In relevant part, Section 12 of the Wage Order states:

Rest Periods:

- 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 (10) minutes net rest time per four (4) 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.
- B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

California Labor Code § 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

- (c) If an employer fails to provide an employee a meal period or rest or recovery period in accordance with a state law, including but not limited to an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest or recovery period is not provided.

TGSA failed to provide Stolarski and the Aggrieved Employees all duty-free rest breaks and/or meal periods. As a result, TGSA violated California Labor Code §§ 226.7, 512, and 1198.

Accordingly, Stolarski seeks civil penalties on behalf of herself and the Aggrieved Employees as follows:

1. \$100 for each aggrieved employee per pay period in which initial violations of California Labor Code § 226.7 occurred, and \$200 for each aggrieved employee per pay period in which subsequent violations of § 226.7 occurred (penalties set by California Labor Code § 2699(f)(2));
2. \$50 for each aggrieved employee per pay period in which initial violations of California Labor Code § 512 occurred and \$100 for each aggrieved employee per pay period in which subsequent violations of § 512 occurred (penalties set by California Labor Code § 558); and
3. \$100 for each aggrieved employee per pay period in which initial violations of California Labor Code § 1198 occurred, and \$200 for each aggrieved employee per pay period in which subsequent

violations of § 1198 occurred (penalties set by California Labor Code § 2699(f)(2)).

Failure to Pay Wages For All Hours Worked At The Correct Rates of Pay (Lab. Code §§ 510, 1194, 1197, and 1198)

Under Labor Code § 1197, “The minimum wage for employees fixed by the [Industrial Welfare] commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

Section 4 of Wage Order states:

“Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

In relevant part, Section 2 of the Wage Order states:

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, California Labor Code § 1194 states,

(a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

In relevant part, Section 3 of the Wage Order states,

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.

In relevant part, California Labor Code § 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be

compensated at the rate of no less than twice the regular rate of pay of an employee.

As described above, TGSA failed to pay minimum, overtime and double-time wages to Stolarski and the Aggrieved Employees for all hours worked. Accordingly, Stolarski seeks civil penalties on behalf of herself and the Aggrieved Employees as follows:

1. \$50 for each aggrieved employee per pay period in which initial violations of California Labor Code § 510 occurred and \$100 for each aggrieved employee per pay period in which subsequent violations of § 510 occurred (penalties set by California Labor Code § 558);
2. \$100 for each aggrieved employee per pay period in which initial violations of § 1194 occurred, and \$200 for each aggrieved employee per pay period in which subsequent violations of § 1194 occurred (penalties set by Labor Code § 2699(f)(2));
3. \$100 for each aggrieved employee for each initial and intentional violation of California Labor Code section 1197, and \$250 for each aggrieved employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed) (penalties set by California Labor Code section 1197.1); and
4. \$100 for each aggrieved employee for each initial violation of California Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

Failure to Pay For Nonproductive Time and Rest and Recovery Periods
(Lab. Code § 226.2)

Labor Code § 226.2 states,

For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:

Employees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.

...

Employees shall be compensated for other nonproductive time at an hourly rate that is no less than the applicable minimum wage.

Lab.Code § 226.2(a)(1), (4).

As described above, TGSA failed to separately compensate Stolarski and the Aggrieved Employees for rest and recovery time, and other nonproductive time, such as, but not limited to, organizing and managing the mock tournaments, sending reminder and progress emails to students and parents, setting up and organizing online tournament systems, creating evaluation template materials and other similar materials for company use, and helping organize and create the entire schedule for summer camp sessions.

Accordingly, Stolarski now seeks civil penalties for these Labor Code violations that TGSA has committed against him and the Aggrieved Employees at \$100 for each Aggrieved Employee for each initial violation of California Labor Code §§ 226.2(a)(1) and (4), and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

California Labor Code § 204 states all wages (other than those mentioned in Labor Code §§ 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month,

shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

As alleged herein, TGSA failed to provide Stolarski and the Aggrieved Employees all wages owed, including, but not limited to, all minimum, overtime and double-time wages at the legal rates of pay for all minimum, overtime and double-time hours worked. As a result, TGSA failed to pay Stolarski and the Aggrieved Employees all wages within the time periods set by California Labor Code § 204. As a result, TGSA has violated California Labor Code § 204. Accordingly, Stolarski seeks civil penalties on behalf of herself and the Aggrieved Employees as follows:

1. For all initial violations of Labor Code § 204 that are deemed to be neither willful nor intentional, \$100.00 for each aggrieved employee per pay period for each violation (penalties set by California Labor Code § 210);
2. For all initial violations of Labor Code § 204 that are deemed to be either willful or intentional, \$200.00 for each aggrieved employee, per pay period for each violation (penalties set by California Labor Code § 210); and
3. For all subsequent violations of Labor Code § 204, regardless of whether the initial violation of Labor Code § 204 is deemed to be either willful or intentional, \$200.00 for each aggrieved employee, per pay period for each violation (penalties set by California Labor Code § 210).

Failures to Timely Pay Wages Upon Termination
(Lab. Code §§ 201-203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay, without abatement or reduction, in accordance §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

By failing to pay wages to Stolarski and Aggrieved Employees as set forth above TGSA is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and Aggrieved Employees, Stolarski seeks civil penalties from TGSA as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and

4. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Indemnify for Expenses
(Lab. Code 2802)

In pertinent part, Labor Code § 2802, subdivision (a), states, “An employer shall indemnify his or her employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

At all relevant times during the applicable limitations period, TGSA required Stolarski and the other Aggrieved Employees to incur expenses, including mobile phone **and laptop use**. It did not reimburse them for such expenses.

Accordingly, Stolarski seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of California Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

Failure To Provide Paid Sick Leave and Notice of Available Sick Leave
(Labor Code §§ 245-249)

Labor Code § 246 states,

An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section.

Lab.Code § 246(a) (effective July 1, 2015). It also states that,

An employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages.

Lab.Code § 246(i). Stolarski and the Aggrieved Employees were entitled to accrue and use paid sick leave pursuant to Labor Code §§ 245-249. TGSA, however, failed to provide them with the paid sick leave they were entitled to. TGSA also failed to provide Stolarski and the Aggrieved Employees with an itemized wage statement or separate writing that set forth the amount of paid sick leave available.

Accordingly, Stolarski seeks civil penalties on behalf of herself and Aggrieved Employees as follows:

1. For violations of Labor Code § 245, \$100 per aggrieved employee for each of the pay periods in which initial violations of Labor Code § 245 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of Labor Code § 245 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code §§ 246, \$100 per aggrieved employee for each of the pay periods in which initial violations of Labor Code § 246 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of Labor Code § 246 occurred (penalties set by Labor Code § 2699(f)(2));
3. For violations of Labor Code § 247, \$100 per aggrieved employee for each of the pay periods in which initial violations of Labor Code § 247 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of Labor Code §§ 247 occurred (penalties set by Labor Code § 2699(f)(2));

4. For violations of Labor Code § 247, \$100 per aggrieved employee for each of the pay periods in which initial violations of Labor Code § 247 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of Labor Code § 247 occurred (penalties set by Labor Code § 2699(f)(2));
5. For violations of Labor Code § 248, \$100 per aggrieved employee for each of the pay periods in which initial violations of Labor Code § 248 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of Labor Code § 248 occurred (penalties set by Labor Code § 2699(f)(2)); and
6. For violations of Labor Code § 249, \$100 per aggrieved employee for each of the pay periods in which initial violations of Labor Code § 249 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of Labor Code § 249 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure To Provide Accurate Wage Statements
(Lab. Code §§ 226 and 226.2)

Labor Code § 226(a) requires an employer to provide an employee, either semimonthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;

4. All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
5. Net wages earned,
6. The inclusive dates of the period for which the employee is paid,
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer, and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all times relevant during the applicable limitations period, TGSA violated California Labor Code § 226, by failing to issue wage statements of any kind and by failing to properly and accurately itemize each Aggrieved Employee's gross wages earned and it failed to meet the other requirements of California Labor Code § 226.

Labor Code § 226.2 states,

For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:

The itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items specified in that subdivision, separately state the following, to which the provisions of Section 226 shall also be applicable:

The total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period.

Except for employers paying compensation for other nonproductive time in accordance with paragraph (7), the total hours of other nonproductive time, as determined under paragraph (5), the rate of compensation, and the gross wages paid for that time during the pay period.

Lab.Code § 226.2(a)(2).

TGSA failed to issue to Stolarski and the Aggrieved Employees itemized wage statements that state the total hours worked, and the hourly rates for non-staging and non-designing tasks. Also, TGSA failed to issue to Stolarski and the Aggrieved Employees itemized wage statements that correctly state the total hours of compensable rest and recovery periods, the rate of compensation, the gross wages paid for the pay period, and the total hours of other nonproductive time.

Further, by failing to accurately record all hours worked and all wages earned for instructional and non-instructional hours and all earned premium wages for the unprovided meal and rest periods as described above, TGSA failed to provide Stolarski and the Aggrieved Employees with accurate written wage statements pursuant to the Labor Code § 226(a). Thus, the wage statements of Stolarski and the Aggrieved Employees have not accurately reflected their applicable rates of pay, hours worked, and the amounts of their net and gross wages.

Accordingly, Stolarski seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code § 2699(f)(2));

2. \$250 for each Aggrieved Employee for each initial violation of California Labor Code § 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by California Labor Code § 226.3); and
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.2, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Individual Liability
(Labor Code § § 558.1 and 2753)

In relevant part, California Labor Code § 558.1 states:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.
- (b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of § 3294 of the Civil Code.

In relevant part, California Labor Code § 2753 states:

- (a) A person who, for money or other valuable consideration, knowingly advises an employer to treat an individual as an

independent contractor to avoid employee status for that individual shall be jointly and severally liable with the employer if the individual is found not to be an independent contractor.

The Wage Order states:

If, in the opinion of the Division after due investigation, it is found that the enforcement of any provision contained in Section 7, Records; Section 12, Rest Periods; Section 13, Change Rooms and Resting Facilities; Section 14, Seats; Section 15, Temperature; or Section 16, Elevators, would not materially affect the welfare or comfort of employees and would work an undue hardship on the employer, exemption may be made at the discretion of the Division. Such exemptions shall be in writing to be effective and may be revoked after reasonable notice is given in writing. Application for exemption shall be made by the employer or by the employee and/or the employee's representative to the Division in writing. A copy of the application shall be posted at the place of employment at the time the application is filed with the division.

At all relevant times, Victor Rivas Umana was an employer of Stolarski and the Aggrieved Employees, and/or "owner," "managing agent," and/or "officer" of The Golden State Academy LLC and the other employers identified above. Victor Rivas Umana, directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Aggrieved Employees, and caused the violations to the Labor Code and the Wage Order described above.

At all relevant times, Stolarski and the Aggrieved Employees were employees of Victor Rivas Umana. Victor Rivas Umana engaged, and suffered and permitted, Stolarski and the Aggrieved Employees to work. Victor Rivas Umana was clearly aware that Stolarski and the Aggrieved Employees worked for his company and had the power to prevent them from working. Victor Rivas Umana also exercised control over Stolarski and the Aggrieved Employees' wages, hours, and working

conditions. Further, Victor Rivas Umana had the right to control and exercised such control over the manner in which Stolarski and the Aggrieved Employees performed their work for Victor Rivas Umana. The services they rendered were at all times an integral part of Victor Rivas Umana's business. The relationship between Stolarski and the Aggrieved Employees, on one hand, and Victor Rivas Umana, on the other, was terminable at will without cause. Despite these circumstances, Victor Rivas Umana willfully misclassified Stolarski and the Aggrieved Employees as independent contractors. He has engaged in a pattern and/or practice of doing so.

Labor Code § 2753 provides for joint and several liability for a person who "knowingly advises an employer to treat an individual as an independent contractor to avoid employee status for that individual." Victor Rivas Umana is and was, at relevant times, an owner, director, officer, or managing agent of TGSA and violated or caused to be violated the provisions regulating the misclassification of employees as independent contractors. He knowingly advised the other employers identified above to treat Stolarski and the Aggrieved Employees as independent contractors and not employees. Therefore, he is individually liable for misclassification.

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Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys' fees and costs under Labor Code § 2699, subdivision (g) (1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure §1021.5 to resolve this matter before litigation.

Sincerely,

David Spivak, Esq.

david@spivaklaw.com

cc: Ofir (Natalie) Stolarski
Walter Haines, Esq.

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SPIVAK LAW

***SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND
EMAIL***

May 26, 2021

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

RE: *Kiana Schmitt / TGSA*

To whom it may concern:

Pursuant to the California Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*, Kiana Schmitt (hereafter “Schmitt”) provides notice on behalf of herself and all individuals, currently and formerly employed or contracted with, in California as employees or independent contractors, including but not limited to coaches, instructors, head coaches, lead coaches, assistant coaches, and workers in comparable positions (hereafter “Aggrieved Employees”) by The Golden State Academy LLC, a California limited liability company, The Golden State Academy, LLC, a California entity of unknown form, and Victor Rivas Umana, an individual who resides in California and is the owner, director, and chief executive officer of the aforementioned entity (hereafter collectively “TGSA”) of violations of Labor Code §§ 201, 202, 203, 204, 226, 226.2, 226.7, 226.8, 245-249, 510, 512, 558, 558.1, 1194, 1197, 1198, 2750.3, 2753, and 2802.

At all relevant times, TGSA has employed persons, conducted business in, and engaged in illegal payroll practices and policies in California. Schmitt and the Aggrieved Employees are “employees” within the meaning of Wage Order 5-

2001 (hereafter “the Wage Order”), subdivision (2)(F) and “Aggrieved Employees” within the meaning of Labor Code § 2699, subdivision (c).

Statement of Facts

TGSA advertises that it is an afterschool program that coaches students in speech and debate. TGSA employed Schmitt for the first time in approximately November 2017 as a speech coach and instructor. In approximately September 2019, TGSA promoted Schmitt to lead speech instructor. TGSA continuously employed her in that capacity until on or about June 13, 2020, though it characterized her and the other Aggrieved Employees as independent contractors. TGSA, nonetheless, required Schmitt and the Aggrieved Employees to sign a contract with TGSA which stated that the “agreement is an employment-at-will agreement.” TGSA required Schmitt and the other Aggrieved Employees to adhere to the student schedules that it set for them, work from TGSA-provided locations, use TGSA’s equipment and supplies to perform their tasks, wear apparel clearly displaying TGSA’s logo, and prohibited them from working for “competing businesses.” TGSA required Schmitt and the other Aggrieved Employees to ensure that “no significant or avoidable competitive conflicts arise from their work with non-GSA students[.]” TGSA determined what “scripts” (books) Schmitt and the Aggrieved Employees used. TGSA also required Schmitt and the Aggrieved Employees to review, “cut through” (summarize), and provide students with a set number of scripts for each session.

Throughout the relevant time period, TGSA required Schmitt to perform the coaching services it advertised to its customers as described above. At all relevant times, TGSA required the other Aggrieved Employees to perform the same services. TGSA compensated Schmitt and the Aggrieved Employees on a bi-weekly basis. TGSA required Schmitt and the Aggrieved Employees to record their hours using *Microsoft Excel* sheets titled “payroll forms.” TGSA compensated Schmitt and the Aggrieved Employees with two different hourly rates of pay for in class “instructional hours” and for preparation (“prep”). The “prep” TGSA required included gathering and researching materials for

students and communicating with the students' parents. TGSA compensated Schmitt at an hourly rate of \$35 for instructional hours and \$30 for prep work.

Schmitt and the Aggrieved Employees often worked more than eight (8) hours in a workday and/or more than forty (40) hours in a workweek. In addition to prep work, TGSA scheduled Schmitt and the Aggrieved Employees for instructional sessions approximately five (5) to six (6) days in a workweek. Schmitt and the Aggrieved Employees worked approximately 32 to 40 hours of instructional hours and 30 to 50 hours of prep time in a bi-weekly pay period. TGSA, however, failed to compensate Schmitt and the Aggrieved Employees at the correct overtime rates, one and one-half time their regular rates of pay, for all overtime hours worked. Instead, TGSA compensated them for all hours worked at their applicable base rate. TGSA also required Schmitt and the other Aggrieved Employees to summarize and transcribe, or "cut" (summarize) scripts from books. Regardless of the hours spent on these "cuts," TGSA compensated Schmitt and the other Aggrieved Employees with a flat rate of \$15 or \$75 per each script cut.

Further, during summer sessions, TGSA compensated Schmitt and the Aggrieved Employees with a fixed salary for each session. Each summer session is scheduled for two weeks, 11 days. TGSA, however, only compensated Schmitt and the Aggrieved Employees for the "services" it listed in the summer contracts/agreements that it required Schmitt and the Aggrieved Employees to sign and failed to compensate them for all prep work that TGSA required Schmitt and the Aggrieved Employees to complete. Further, because TGSA paid the salaries as "full compensation for the Services" listed in their summer agreements, TGSA failed to compensate Schmitt and the Aggrieved Employees for rest and recovery time, and other nonproductive time. Other nonproductive time such as, but not limited to, organizing and managing the mock tournaments, sending reminder and progress emails to students and parents, setting up and organizing online tournament systems, creating evaluation template materials and other similar materials for company use, and helping organize and create the entire schedule for summer camp sessions.

TGSA required Schmitt and the Aggrieved Employees to accompany and chaperone TGSA's students to speech and debate tournaments and competitions. TGSA compensated Schmitt and the Aggrieved Employees with a flat rate of \$275 for lead chaperones and \$175 for secondary chaperones for each day. TGSA, however, required Schmitt and the Aggrieved Employees to work approximately 12 to 16 hours on such workdays. As a result, TGSA often compensated them with less than applicable minimum wages for all hours worked at such tournaments, and failed to pay overtime and double-time for such work. TGSA also required Schmitt and the Aggrieved Employees to attend staff meetings several times during each session. TGSA, however, failed to compensate Schmitt and the Aggrieved Employees for all the meeting hours.

TGSA required Schmitt and the other Aggrieved Employees to arrive early and before their first scheduled class to open the doors and let the students in for safety purposes. TGSA also required Schmitt and the other Aggrieved Employees "to wait until all the students are picked up" and to clean and organize their classrooms at the end of their classes. TGSA instructed Schmitt and the Aggrieved Employees that:

The students are to wait in the classroom until their parents have arrived for pick up. No coach should leave another coach responsible for this responsibility. This is a shared one, if someone leaves without prior approval from Nathan or Victor, will result in a warning for the first offense and termination or deduction of pay for the second offense."

TGSA, however, prohibited Schmitt and the other Aggrieved Employees from reporting all hours they spent performing these pre- and post-class duties and failed to compensate them for such hours worked.

TGSA required Schmitt and the other Aggrieved Employees to travel in their personal vehicle between different worksites on the same day. TGSA did not reimburse Schmitt and the other Aggrieved Employees for the mileage they incurred in such travel, nor did it offer them transportation. TGSA also required Schmitt and the other Aggrieved Employees to use their personal mobile phones to communicate with students' parents and co-workers and to

attend remote staff meetings. TGSA did not offer mobile phones to Schmitt and the other Aggrieved Employees for this purpose, nor did it reimburse them for use of their personal mobile phones. Furthermore, TGSA required Young and the Aggrieved Employees to use their personal laptops to prepare their lessons, develop curriculums, attend remote meetings, coordinate with co-workers, communicate with students and parents, conduct classes, and perform all related work duties. TGSA did not offer laptops to Young and the Aggrieved Employees for such purposes, nor did it reimburse them for use of their personal laptops.

Throughout their employment, TGSA required Schmitt and the Aggrieved Employees to monitor the students at all times, including during their meal and rest periods. Therefore, TGSA failed to provide Schmitt and the Aggrieved Employees with duty-free, 30-minute meal periods or paid uninterrupted duty-free 10-minute rest periods for every four hours worked or major fraction thereof. Throughout their employment, TGSA did not pay premium wages to Schmitt and the Aggrieved Employees for workdays in which it failed to provide them with one or more meal period or rest break required by law. TGSA also failed to provide Schmitt and the Aggrieved Employees with the paid sick leave they were entitled to.

Though TGSA issued payments by check to Schmitt and the other Aggrieved Employees for the services they provided on a biweekly basis, TGSA did not issue Schmitt and the other Aggrieved Employees itemized wage statements stating the wages they earned, the rates they earned them at, and the hours they worked. TGSA also failed to provide Schmitt and the other Aggrieved Employees with itemized wage statements or separate writings that set forth the amount of paid sick leave available.

TGSA's conduct toward Schmitt and the Aggrieved Employees described above was at all times knowing, intentional, and willful.

In sum, TGSA engaged in the following violations:

1. Willful misclassification of Schmitt and the Aggrieved Employees as independent contractors;
2. Failure to authorize and permit Schmitt and the Aggrieved Employees to take duty-free rest breaks;
3. Failure to provide Schmitt and the Aggrieved Employees with all duty-free meal periods;
4. Failure to compensate Schmitt and the Aggrieved Employees at one hour's pay for each workday with one or more unprovided rest breaks;
5. Failure to compensate Schmitt and the Aggrieved Employees at one hour's pay for each workday with one or more unprovided meal periods;
6. Failure to provide Schmitt and the Aggrieved Employees with paid rest and recovery time;
7. Failure to pay Schmitt and the Aggrieved Employees minimum wages for all hours worked;
8. Failure to pay Schmitt and the Aggrieved Employees one and one-half times their regular rates of pay for all hours worked over eight hours in one workday, over 40 hours in one workweek, and/or up to eight hours on the seventh consecutive workday in a workweek;
9. Failure to pay Schmitt and the Aggrieved Employees double the State minimum wage for all hours worked over twelve hours in one workday and/or over eight hours on the seventh consecutive workday in a workweek;
10. Failure to reimburse Schmitt and the Aggrieved Employees for all reasonable business expenses;
11. Failure to provide Schmitt and the Aggrieved Employees with accurate wage statements; and

12. Failure to timely pay Schmitt and the Aggrieved Employees all earned and unpaid wages during, and at the conclusion of, their employment with TGSA.

Accordingly, Schmitt now seeks civil penalties on behalf of herself and the other Aggrieved Employees based on TGSA's violations of the California Labor Code.

The Wage Order

The Wage Order applies to "all persons employed in the public housekeeping industry whether paid on a time, piece rate, commission, or other basis." Wage Order, § 1. The Wage Order defines "Public Housekeeping Industry" to include "Private schools, colleges, or universities, and similar establishments which provide board or lodging in addition to educational facilities." *Id.* § 2(P). At all relevant times during the applicable limitations period, TGSA hired Schmitt and the Aggrieved Employees as instructors at its private speech and debate schools. Accordingly, Schmitt and the other Aggrieved Employees are entitled to the protections provided under the Wage Order.

Willful Independent Contractor Misclassification **(Lab. Code §§ 226.8 and 2750.3)**

Labor Code section 226.8 states:

- (a) It is unlawful for any person or employer to engage in any of the following activities:
 - (1) Willful misclassification of an individual as an independent contractor.
 - (2) Charging an individual who has been willfully misclassified as an independent contractor a fee, or making any deductions from compensation, for any purpose, including for goods, materials, space rental,

services, government licenses, repairs, equipment maintenance, or fines arising from the individual's employment where any of the acts described in this paragraph would have violated the law if the individual had not been misclassified.

- (b) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a), the person or employer shall be subject to a civil penalty of not less than five thousand dollars (\$5,000) and not more than fifteen thousand dollars (\$15,000) for each violation, in addition to any other penalties or fines permitted by law.
- (c) If the Labor and Workforce Development Agency or a court issues a determination that a person or employer has engaged in any of the enumerated violations of subdivision (a) and the person or employer has engaged in or is engaging in a pattern or practice of these violations, the person or employer shall be subject to a civil penalty of not less than ten thousand dollars (\$10,000) and not more than twenty-five thousand dollars (\$25,000) for each violation, in addition to any other penalties or fines permitted by law.

“Willful misclassification means avoiding employee status for an individual by voluntarily and knowingly misclassifying that individual as an independent contractor.” (*Id.*, § (i)(4).)

At all relevant times, Schmitt and the Aggrieved Employees were employees of TGSA. TGSA engaged, suffered, and permitted them to work. TGSA could terminate Schmitt and the Aggrieved Employees at will. TGSA assigned Schmitt and the Aggrieved Employees the clients they serviced. TGSA collected payment from the clients. The work Schmitt and the Aggrieved Employees performed was wholly within the scope of TGSA’s usual course of

business of coaching speeches and debates. However, at all relevant times, TGSA issued Forms 1099 to Young and the Aggrieved Employees. TGSA knew or should have known its actions of misclassifying employees as independent contractors violated California law.

TGSA misclassified Schmitt and the Aggrieved Employees as independent contractors and engaged in a pattern and/or practice of so doing. Through its misclassification of Schmitt and every other Aggrieved Employee, TGSA has engaged in a pattern and practice of willful misclassification of its employees as independent contractors for its own financial benefit. Each person or entity referenced above collectively as TGSA advised the others to treat Schmitt and the Aggrieved Employees at issue in this case as independent contractors.

In relevant part, Labor Code section 558.1 states:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.
- (b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

At all relevant times, Victor Rivas Umana was an employer of Schmitt and the Aggrieved Employees, and/or “owner,” “managing agent,” and/or “officer” of The Golden State Academy LLC and the other employers identified above. Victor Rivas Umana, directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working

conditions of the Aggrieved Employees, and caused the violations to the Labor Code and the Wage Order described above.

At all relevant times, Schmitt and the Aggrieved Employees were employees of Victor Rivas Umana. Victor Rivas Umana engaged, and suffered and permitted, Schmitt and the Aggrieved Employees to work. Victor Rivas Umana was clearly aware that Schmitt and the Aggrieved Employees worked for his company and had the power to prevent them from working. Victor Rivas Umana also exercised control over Schmitt and the Aggrieved Employees' wages, hours, and working conditions. Further, Victor Rivas Umana had the right to control and exercised such control over the manner in which Schmitt and the Aggrieved Employees performed their work for Victor Rivas Umana. The services they rendered were at all times an integral part of Victor Rivas Umana's business. The relationship between Schmitt and the Aggrieved Employees, on one hand, and Victor Rivas Umana, on the other, was terminable at-will without cause. Despite these circumstances, Victor Rivas Umana willfully misclassified Schmitt and the Aggrieved Employees as independent contractors. He has engaged in a pattern and/or practice of doing so.

Accordingly, on behalf of herself and the Aggrieved Employees, Schmitt seeks against TGSA civil penalties as follows:

1. \$25,000.00 for each aggrieved employee for each violation of California Labor Code section 226.8 as part of a pattern or practice in addition to any other penalties or fines permitted by law (penalties set by Labor Code section 226.8(c)); or alternatively,
2. \$15,000.00 for each aggrieved employee for each violation of California Labor Code section 226.8 in addition to any other penalties or fines permitted by law (penalties set by Labor Code section 226.8(b)).

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Failure to Provide Rest Breaks and Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

In relevant part, California Labor Code § 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee.

An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, Section 11 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not

more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

- (B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

In relevant part, Section 12 of the Wage Order states:

Rest Periods:

- 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 (10) minutes net rest time per four (4) 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.

- B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

California Labor Code § 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal period or rest or recovery period in accordance with a state law, including but not limited to an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each work day that the meal or rest or recovery period is not provided.

TGSA failed to provide Schmitt and the Aggrieved Employees all duty-free rest breaks and/or meal periods. As a result, TGSA violated California Labor Code §§ 226.7, 512, and 1198.

Accordingly, Schmitt seeks civil penalties on behalf of herself and the Aggrieved Employees as follows:

1. \$100 for each aggrieved employee per pay period in which initial violations of California Labor Code § 226.7 occurred, and \$200

for each aggrieved employee per pay period in which subsequent violations of § 226.7 occurred (penalties set by California Labor Code § 2699(f)(2));

2. \$50 for each aggrieved employee per pay period in which initial violations of California Labor Code § 512 occurred and \$100 for each aggrieved employee per pay period in which subsequent violations of § 512 occurred (penalties set by California Labor Code § 558); and
3. \$100 for each aggrieved employee per pay period in which initial violations of California Labor Code § 1198 occurred, and \$200 for each aggrieved employee per pay period in which subsequent violations of § 1198 occurred (penalties set by California Labor Code § 2699(f)(2)).

**Failure to Pay Wages For All Hours Worked At The Correct Rates of Pay
(Lab. Code §§ 510, 1194, 1197, and 1198)**

Under Labor Code § 1197, “The minimum wage for employees fixed by the [Industrial Welfare] commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

Section 4 of Wage Order states:

“Every employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise.”

In relevant part, Section 2 of the Wage Order states:

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the

employee is suffered or permitted to work, whether or not required to do so.

In relevant part, California Labor Code § 1194 states,

(a) Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including interest thereon, reasonable attorney's fees, and costs of suit.

Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

In relevant part, Section 3 of the Wage Order states,

(A) Daily Overtime - General Provisions

(1) The following overtime provisions are applicable to employees 18 years of age or over and to employees 16 or 17 years of age who are not required by law to attend school and are not otherwise prohibited by law from engaging in the subject work. Such employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (1 ½) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes a day's work. Employment beyond eight (8) hours in any workday or more than six (6) days in any workweek is permissible provided the employee is compensated for such overtime at not less than:

(a) One and one-half (1 ½) times the employee's regular rate of pay for all hours worked in excess of eight (8) hours

up to and including 12 hours in any workday, and for the first eight (8) hours worked on the seventh (7th) consecutive day of work in a workweek.

In relevant part, California Labor Code § 510 states:

Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

As described above, TGSA failed to pay minimum, overtime and double-time wages to Schmitt and the Aggrieved Employees for all hours worked. Accordingly, Schmitt seeks civil penalties on behalf of herself and the Aggrieved Employees as follows:

1. \$50 for each aggrieved employee per pay period in which initial violations of California Labor Code § 510 occurred and \$100 for each aggrieved employee per pay period in which subsequent violations of § 510 occurred (penalties set by California Labor Code § 558);
2. \$100 for each aggrieved employee per pay period in which initial violations of § 1194 occurred, and \$200 for each aggrieved employee per pay period in which subsequent violations of § 1194 occurred (penalties set by Labor Code § 2699(f)(2));
3. \$100 for each aggrieved employee for each initial and intentional violation of California Labor Code section 1197, and \$250 for

each aggrieved employee for each subsequent violation, per pay period (regardless of whether the initial violations were intentionally committed) (penalties set by California Labor Code section 1197.1); and

4. \$100 for each aggrieved employee for each initial violation of California Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

Failure to Pay For Nonproductive Time and Rest and Recovery Periods
(Lab. Code § 226.2)

Labor Code § 226.2 states,

For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:

Employees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.

...

Employees shall be compensated for other nonproductive time at an hourly rate that is no less than the applicable minimum wage.

Lab.Code § 226.2(a)(1), (4).

As described above, TGSA failed to separately compensate Schmitt and the Aggrieved Employees for such work or separately compensate them for rest and recovery time.

Accordingly, Schmitt now seeks civil penalties for these Labor Code violations that TGSA has committed against him and the Aggrieved Employees at \$100 for each Aggrieved Employee for each initial violation of California Labor Code §§ 226.2(a)(1) and (4), and \$200 for each Aggrieved Employee for each subsequent violation, per pay period (penalties set by California Labor Code §

2699(f)(2)).

Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

California Labor Code § 204 states all wages (other than those mentioned in Labor Code §§ 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

As alleged herein, TGSA failed to provide Schmitt and the Aggrieved Employees all wages owed, including, but not limited to, all minimum, overtime and double-time wages at the legal rates of pay for all minimum, overtime and double-time hours worked. As a result, TGSA failed to pay Schmitt and the Aggrieved Employees all wages within the time periods set by California Labor Code § 204. As a result, TGSA has violated California Labor Code § 204. Accordingly, Schmitt seeks civil penalties on behalf of herself and the Aggrieved Employees as follows:

1. For all initial violations of Labor Code § 204 that are deemed to be neither willful nor intentional, \$100.00 for each aggrieved employee per pay period for each violation (penalties set by California Labor Code § 210);
2. For all initial violations of Labor Code § 204 that are deemed to be either willful or intentional, \$200.00 for each aggrieved employee, per pay period for each violation (penalties set by California Labor Code § 210); and

3. For all subsequent violations of Labor Code § 204, regardless of whether the initial violation of Labor Code § 204 is deemed to be either willful or intentional, \$200.00 for each aggrieved employee, per pay period for each violation (penalties set by California Labor Code § 210).

Failures to Timely Pay Wages Upon Termination
(Lab. Code §§ 201-203)

Under Labor Code § 201, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay, without abatement or reduction, in accordance §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

By failing to pay wages to Schmitt and Aggrieved Employees as set forth above, TGSA is liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of herself and Aggrieved Employees, Schmitt seeks civil penalties from TGSA as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and
4. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Indemnify for Expenses
(Lab. Code 2802)

In pertinent part, Labor Code § 2802, subdivision (a), states, “An employer shall indemnify his or her employee for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

At all relevant times during the applicable limitations period, TGSA required Schmitt and the other Aggrieved Employees to incur expenses, including mobile phone and laptop use. It did not reimburse them for such expenses.

Accordingly, Schmitt seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of California Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code section 2699(f)(2)).

Failure To Provide Paid Sick Leave and Notice of Available Sick Leave
(Labor Code §§ 245-249)

Labor Code § 246 states,

An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section.

Lab.Code § 246(a) (effective July 1, 2015). It also states that,

An employer shall provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages.

Lab.Code § 246(i). Schmitt and the Aggrieved Employees were entitled to accrue and use paid sick leave pursuant to Labor Code §§ 245-249. TGSA, however, failed to provide them with the paid sick leave they were entitled to. TGSA also failed to provide Schmitt and the Aggrieved Employees with an itemized wage statement or separate writing that set forth the amount of paid sick leave available.

Accordingly, Young seeks civil penalties on behalf of herself and Aggrieved Employees as follows:

1. For violations of Labor Code § 245, \$100 per aggrieved employee for each of the pay periods in which initial violations of Labor Code § 245 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of Labor Code § 245 occurred (penalties set by Labor Code § 2699(f)(2));

2. For violations of Labor Code §§ 246, \$100 per aggrieved employee for each of the pay periods in which initial violations of Labor Code § 246 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of Labor Code § 246 occurred (penalties set by Labor Code § 2699(f)(2));
3. For violations of Labor Code § 247, \$100 per aggrieved employee for each of the pay periods in which initial violations of Labor Code § 247 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of Labor Code §§ 247 occurred (penalties set by Labor Code § 2699(f)(2));
4. For violations of Labor Code § 247, \$100 per aggrieved employee for each of the pay periods in which initial violations of Labor Code § 247 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of Labor Code § 247 occurred (penalties set by Labor Code § 2699(f)(2));
5. For violations of Labor Code § 248, \$100 per aggrieved employee for each of the pay periods in which initial violations of Labor Code § 248 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of Labor Code §§ 248 occurred (penalties set by Labor Code § 2699(f)(2)); and
6. For violations of Labor Code § 249, \$100 per aggrieved employee for each of the pay periods in which initial violations of Labor Code § 249 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of Labor Code §§ 249 occurred (penalties set by Labor Code § 2699(f)(2)).

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Failure To Provide Accurate Wage Statements
(Lab. Code §§ 226 and 226.2)

Labor Code § 226(a) requires an employer to provide an employee, either semimonthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
5. Net wages earned,
6. The inclusive dates of the period for which the employee is paid,
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer, and

9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all times relevant during the applicable limitations period, TGSA violated California Labor Code § 226, by failing to issue wage statements of any kind and by failing to properly and accurately itemize each Aggrieved Employee's gross wages earned and it failed to meet the other requirements of California Labor Code § 226.

Labor Code § 226.2 states,

For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:

The itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items specified in that subdivision, separately state the following, to which the provisions of Section 226 shall also be applicable:

The total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period.

Except for employers paying compensation for other nonproductive time in accordance with paragraph (7), the total hours of other nonproductive time, as determined under paragraph (5), the rate of compensation, and the gross wages paid for that time during the pay period.

Lab.Code § 226.2(a)(2).

TGSA failed to issue to Schmitt and the Aggrieved Employees itemized wage statements that state the total hours worked, and the hourly rates for non-staging and non-designing tasks. Also, TGSA failed to issue to Schmitt and the

Aggrieved Employees itemized wage statements that correctly state the total hours of compensable rest and recovery periods, the rate of compensation, the gross wages paid for the pay period, and the total hours of other nonproductive time.

Further, by failing to accurately record all hours worked and all wages earned for instructional and non-instructional hours and all earned premium wages for the unprovided meal and rest periods as described above, TGSA failed to provide Schmitt and the Aggrieved Employees with accurate written wage statements pursuant to the Labor Code § 226(a). Thus, the wage statements of Schmitt and the Aggrieved Employees have not accurately reflected their applicable rates of pay, hours worked, and the amounts of their net and gross wages.

Accordingly, Schmitt seeks civil penalties on behalf of herself and the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of California Labor Code § 1198, and \$200 for each Aggrieved Employee for each subsequent violation (penalties set by California Labor Code § 2699(f)(2));
2. \$250 for each Aggrieved Employee for each initial violation of California Labor Code § 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by California Labor Code § 226.3); and
3. \$100 for each Aggrieved Employee for each initial violation of California Labor Code § 226.2, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

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Individual Liability
(Labor Code §§ 558.1 and 2753)

In relevant part, California Labor Code § 558.1 states:

- (a) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.
- (b) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of § 3294 of the Civil Code.

In relevant part, California Labor Code § 2753 states:

- (a) A person who, for money or other valuable consideration, knowingly advises an employer to treat an individual as an independent contractor to avoid employee status for that individual shall be jointly and severally liable with the employer if the individual is found not to be an independent contractor.

The Wage Order states:

If, in the opinion of the Division after due investigation, it is found that the enforcement of any provision contained in Section 7, Records; Section 12, Rest Periods; Section 13, Change Rooms and Resting Facilities; Section 14, Seats; Section 15, Temperature;

or Section 16, Elevators, would not materially affect the welfare or comfort of employees and would work an undue hardship on the employer, exemption may be made at the discretion of the Division. Such exemptions shall be in writing to be effective and may be revoked after reasonable notice is given in writing. Application for exemption shall be made by the employer or by the employee and/or the employee's representative to the Division in writing. A copy of the application shall be posted at the place of employment at the time the application is filed with the division.

At all relevant times, Victor Rivas Umana was an employer of Schmitt and the Aggrieved Employees, and/or "owner," "managing agent," and/or "officer" of The Golden State Academy LLC and the other employers identified above. Victor Rivas Umana, directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Aggrieved Employees, and caused the violations to the Labor Code and the Wage Order described above.

At all relevant times, Schmitt and the Aggrieved Employees were employees of Victor Rivas Umana. Victor Rivas Umana engaged, and suffered and permitted, Schmitt and the Aggrieved Employees to work. Victor Rivas Umana was clearly aware that Schmitt and the Aggrieved Employees worked for his company and had the power to prevent them from working. Victor Rivas Umana also exercised control over Schmitt and the Aggrieved Employees' wages, hours, and working conditions. Further, Victor Rivas Umana had the right to control and exercised such control over the manner in which Schmitt and the Aggrieved Employees performed their work for Victor Rivas Umana. The services they rendered were at all times an integral part of Victor Rivas Umana's business. The relationship between Schmitt and the Aggrieved Employees, on one hand, and Victor Rivas Umana, on the other, was terminable at will without cause. Despite these circumstances, Victor Rivas Umana willfully misclassified Schmitt and the Aggrieved Employees as independent contractors. He has engaged in a pattern and/or practice of doing so.

Labor Code § 2753 provides for joint and several liability for a person who “knowingly advises an employer to treat an individual as an independent contractor to avoid employee status for that individual.” Victor Rivas Umana is and was, at relevant times, an owner, director, officer, or managing agent of TGSA and violated or caused to be violated the provisions regulating the misclassification of employees as independent contractors. He knowingly advised the other employers identified above to treat Schmitt and the Aggrieved Employees as independent contractors and not employees. Therefore, he is individually liable for misclassification.

Conclusion

As noted above, this letter constitutes the required notice under the California Labor Code Private Attorneys General Act of 2004. Please be advised that I will seek both reasonable attorneys’ fees and costs under Labor Code § 2699, subdivision (g) (1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure §1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

david@spivaklaw.com

cc: Kiana Schmitt
Walter Haines, Esq.

The Golden State Academy LLC
c/o Nicholas Heimlich, Esq.
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LWDA / TGSA

5/26/2021

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PROOF OF SERVICE

State of California,
County of Los Angeles

1. I am a citizen of the United States and am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to the within action. My business address is 16530 Ventura Blvd., Suite 203, Encino, California 91436.

2. I am familiar with the practice of The Spivak Law Firm, for collection and processing of correspondence for mailing with the United States Postal Service. It is the practice that correspondence is deposited with the United States Postal Service the same day it is submitted for mailing.

On Monday, August 02, 2021, I served the foregoing document described as **PLAINTIFFS' FIRST AMENDED COMPLAINT** on interested parties by placing a true and correct copy thereof enclosed in a sealed envelope, with postage fully prepaid, addressed as follows:

Victor Rivas Umana
C/O Vinod Nichani
Nichani Law Firm
111 N. Market Street, Suite 300
San Jose, CA 95113
vinod@nichanilaw.com

The Golden State Academy, LLC, a California entity of unknown form
C/O Vinod Nichani
Nichani Law Firm
111 N. Market Street, Suite 300
San Jose, CA 95113
vinod@nichanilaw.com

The Golden State Academy LLC, a California limited liability company
C/O Vinod Nichani
Nichani Law Firm
111 N. Market Street, Suite 300
San Jose, CA 95113
vinod@nichanilaw.com

_____ (BY MAIL) I caused such an envelope to be mailed by placing it for collection and mailing, in the course of ordinary business practice, with other correspondence of The Spivak Law Firm, 16530 Ventura Blvd., Suite 203, Encino, California 91436.

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XXXX (BY EMAIL) I caused the documents to be sent to the persons at the electronic service addresses listed above from my electronic service address nora@spivaklaw.com.

EXECUTED on Monday, August 02, 2021, at Burbank, California.

XXXX (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

____ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

November

NORA GREER