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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

ADAM FLIGSTEN and JONATHAN WANG,
individually and on behalf of all others similarly
situated,

Plaintiffs,

vs.

MUSICIANS INSTITUTE, INC., a California
Corporation,

Defendant.

CASE NO. 21STCV38365

**SECOND AMENDED CLASS, COLLECTIVE
AND REPRESENTATIVE ACTION
COMPLAINT FOR:**

- (1) Failure to Pay for All Hours Worked (Cal. Labor Code §§ 1194, 1194.2; IWC Wage Order No. 4-2001, § 4);
- (2) Failure to Pay Overtime (Cal. Labor Code §§ 510, 1194; IWC Wage Order No. 4-2001, § 3);
- (3) Failure to Authorize and Permit Off-Duty Rest Breaks and Pay Premium Pay (Cal. Labor Code § 226.7; IWC Wage Order No. 4-2001, §§ 4, 12);
- (4) Failure to Provide Meal Breaks and Pay Premium Pay (Cal. Labor Code §§ 226.7, 512; IWC Wage Order No. 4-2001, § 11);
- (5) Failure to Issue Accurate Itemized Wage Statements (Cal. Labor Code § 226(a) and (e));
- (6) Failure to Pay Compensation Due Upon Discharge (Cal. Labor Code §§ 201-203);
- (7) Failure to Reimburse for Business-Related Expenses (Cal. Labor Code § 2802);
- (8) Unfair, Unlawful, and/or Fraudulent Business Practices (Cal. Bus. & Prof. Code §§ 17200 *et seq.*);
- (9) Fair Labor Standards Act (29 U.S.C. § 216(b); and
- (10) Civil Penalties Pursuant to Private Attorneys General Act, Labor Code §§ 2698 *et seq.*

DEMAND FOR JURY TRIAL

1 Plaintiffs Adam Fligsten and Jonathan Wang (“Plaintiffs”), on behalf of themselves and all others
2 similarly situated, complain and allege the following:

3 **INTRODUCTION**

4 1. This is a class action under California Code of Civil Procedure § 382 seeking from
5 Defendant Musicians Institute, Inc. (“Musicians Institute” or “Defendant”) damages for unpaid wages,
6 unpaid premium pay, unreimbursed business expenses, statutory penalties, interest, other equitable and
7 injunctive relief, and reasonable attorneys’ fees and costs under California Labor Code (“Labor Code”) §§
8 1194, 1194.2, 226.7, 510, 512, 226(a), (e), 201-203, 2802, and IWC Wage Order (“Wage Order”) No.
9 4-2001 §§ 3, 4, 11 and 12, and restitution under California’s Unfair Competition Law (“UCL”), Business
10 & Professions Code §§ 17200 *et seq.* Plaintiff Fligsten seeks damages for unpaid wages, unpaid overtime,
11 unpaid premium pay, and unreimbursed expenses, and statutory damages for unlawful wage statements
12 and waiting time penalties on behalf of the classes, as defined below. Plaintiff Fligsten and Wang together
13 seek restitution on behalf of the class, as defined below, for the unpaid wages, unpaid premium pay, and
14 unreimbursed expenses.

15 2. Another action alleging similar violations and seeking damages and statutory penalties
16 based on the alleged violations of Labor Code §§ 226(a), 226.7, 510, 512, 1194, 201-203, 2802, and civil
17 penalties pursuant to PAGA, Labor Code § 2699 was previously filed in Arbitration before JAMS by
18 another instructor employed by the Defendant. That action is styled *Tagliarino v. Musician’s Institute,*
19 *Inc.*, Judicate West, Case No. A268536-46. On July 21, 2020, the parties in that case entered into a
20 claims’-made settlement. Following preliminary approval by a JAMS Arbitrator, notice was sent out to
21 the putative class members of whom, according to the papers submitted in arbitration, there are
22 approximately 503. However, upon information and belief, less than half of the 503 class members
23 submitted claims. The settlement, including the PAGA civil penalties component, was finally approved
24 by a JAMS Arbitrator on or about December 28, 2020.

25 3. However, Musicians Institute’s Employee Acknowledgment and Arbitration Agreement
26 (“Arbitration Agreement”) provided that “[n]o arbitrator shall have the authority under this agreement to
27 order any such class, collective or representative action.”

28 4. Additionally, any settlement of a PAGA claim requires court approval pursuant to Labor
Code § 2699(l)(2), and therefore cannot be approved by an arbitrator.

5. Plaintiff Wang was not aware of the *Tagliarino* settlement until well after final approval
was granted and did not submit a claim in that case. Further, in executing the Arbitration Agreement in
connection with his employment with Defendant, Plaintiff Wang specifically preserved his right – as that

1 agreement permitted him to do – to bring “a class, collective, private attorney general, representative or
2 other similar [action]” in court.

3 6. Plaintiff Fligsten submitted a claim in the *Tagliarino* action, but subsequently withdrew
4 his claim and submitted an opt out request. In executing the Arbitration Agreement as part of his
5 employment, Plaintiff Fligsten also preserved his right to bring “a class, collective, private attorney
6 general, representative or other similar [action]” in court.

7 7. Plaintiff Fligsten brings this action on behalf of himself and all other similarly situated
8 individuals currently and formerly employed in California by Musicians Institute as instructors (“Class
9 Members”) from the four years prior to the filing of this Action through to the trial date (“Class Period”).
10 Defendant’s violations of California’s wage and hour laws, as described more fully below, have been
ongoing for at least the past four years, and are continuing at present.

11 8. During the Class Period, Defendant failed to pay Plaintiffs and Class Members at least the
12 minimum wage for all hours worked in violation of Wage Order No. 4-2001 § 4 and Labor Code § 1194.
13 Defendant paid Class Members on an hourly basis, and expected them to complete all their required work,
14 including, but not limited to, grading. However, Defendant maintained a written policy pursuant to which
15 it allotted only a small amount of time for grading – four minutes per project, assignment or exam. This
16 amount of time was insufficient to grade a project or an exam, and Defendant knew or should have known
17 this. As such, Defendant expected, suffered and permitted Class Members to perform off-the-clock work.
18 Additionally, Defendant discouraged requests for preapproval of time worked outside the classroom
19 hours. And, the system designed by Defendant of requiring Class Members to obtain preapproval of hours
20 worked outside the classroom was also unworkable because an instructor would have to predict what work
he or she may have to complete, such as predicting when a student may seek guidance or ask questions
before or after class, which was often difficult to do.

21 9. During the Class Period, Defendant failed to pay Plaintiffs and Class Members for hours
22 worked in excess of 8 hours in day and 40 hours per week at the legally required overtime rate, in violation
23 of Labor Code §§ 510, 1194 and Wage Order No. 4-2001, § 3.

24 10. During the Class Period, Defendant failed to authorize and permit Plaintiffs and Class
25 Members to take off-duty rest breaks as required under Wage Order No. 4-2001 § 12, and failed to pay
premium pay for missed rest breaks in violation of Labor Code § 226.7 and Wage Order No. 4-2001 § 12.

26 11. During the Class Period, Defendant failed to provide Plaintiffs and Class Members with
27 off-duty meal breaks as required under Labor Code § 512 and Wage Order No. 4-2001 § 11, and failed to
28

1 pay premium pay for missed meal breaks in violation of Labor Code § 226.7 and Wage Order No. 4-2001
2 § 11.

3 12. During the Class Period, Defendant failed to pay Class Members all wages due upon
4 discharge or termination of employment in violation of Labor Code §§ 201-203.

5 13. Plaintiff Fligsten also brings this action on behalf of himself and all other similarly situated
6 individuals currently and formerly employed by Defendant in California from one year prior to the filing
7 of this Action through to the trial date (“Wage Statement Subclass Period”) for statutory penalties,
8 injunctive relief, and reasonable attorneys’ fees and costs pursuant to Labor Code § 226(a), (e), and (h)
9 (“Wage Statement Class”). During the Wage Statement Subclass Period, Defendant knowingly and
10 intentionally failed to furnish Plaintiff Fligsten and Wage Statement Class Members with accurate
11 itemized wage statements by failing to include on their wage statements their total number of hours
12 worked during each pay period. Instead, Defendant listed the number of hours taught and the product of
13 the number of hours allotted for grading multiplied by the number of assignments, exams, or projects
14 graded. Despite paying Wage Statement Class Members on an hourly basis, Defendant also did not
15 require them to track their hours worked and as a result could not list on their wage statements actual total
16 number of hours worked.

17 14. Additionally, Plaintiff Fligsten brings this action on behalf of himself and all other
18 similarly situated individuals currently and formerly employed in California by Defendant during the
19 Class Period and who were or are required to work remotely from home, either due to the closures
20 resulting from the Covid-19 pandemic or because they taught online courses at any point during the Class
21 Period (“Unreimbursed Expense Class Members”), for the violation of Labor Code § 2802. Defendant
22 required some of the Class Members to teach online courses throughout the Class Period, and required all
23 employees, including but not limited to adjunct instructors, to work remotely from home during the Covid-
24 19 pandemic. To perform their duties, Unreimbursed Expense Class Members incurred necessary and
25 reasonable business expenses including but not limited to the cost of home internet. However, Defendant
26 did not reimburse Plaintiff Fligsten and Unreimbursed Expense Class Members for these necessarily
27 incurred business expenses, in violation of Labor Code § 2802.

28 15. Plaintiffs Fligsten and Wang together seek restitution pursuant to the UCL for unpaid
wages as a result of off-the-clock work, unpaid overtime, unpaid premium pay for missed rest and meal
breaks, and unreimbursed expenses, as alleged above. Defendant’s violations of California’s wage and
hour laws, as described more fully below, have been ongoing for at least the past four years, and are
continuing at present.

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

17. Plaintiff Fligsten also brings this case as a Fair Labor Standards Act (“FLSA”) collective action on behalf of himself and all other current and former employees of Defendant who were instructors and worked in the state of California anytime during the FLSA Period, defined as October 19, 2018 through the present (“FLSA Class Members”) for the failure to pay at least the minimum wage for all hours worked and overtime.

18. Plaintiff Fligsten also brings this action as a representative action under Labor Code Private Attorneys General Act (“PAGA”), Labor Code § 2698 et seq., for civil penalties for the violations of Labor Code § 226(a) on behalf of himself and all other current and former instructors employed by Defendant in California (“Instructor Aggrieved Employees”) and on behalf of himself and all other current and former employees employed by Defendant in California for the violations of Labor Code § 2802 (“Aggrieved Employees”).

PARTIES

19. Plaintiff Fligsten is a resident of Los Angeles who was employed by Defendant as an instructor since approximately 2013 through the present. During his employment, Plaintiff Fligsten was subject to Defendant's unlawful conduct described herein.

20. Plaintiff Wang is a resident of Playa Del Rey who was employed by Defendant as an instructor from approximately 2013 until April 2018. During his employment, Plaintiff Wang was subject to Defendant's unlawful conduct described herein.

21. Defendant is a private for-profit postsecondary education institution located in Los Angeles, California. It is a college of contemporary music that offers Bachelor of Music, Associate of Arts Degrees, and Certificates.

JURISDICTION

22. This Court has jurisdiction over Plaintiff Fligsten's and Class Members' claims for failure to pay at least minimum wage for all hours worked under Labor Code §§ 1194, 1194.2 and Wage Order No. 4-2001 § 4.

23. This Court has jurisdiction over Plaintiff Fligsten's and Class Members' claims for failure to pay overtime pursuant to Labor Code §§ 510 and 1194, and Wage Order No. 4-2001 § 3.

24. This Court has jurisdiction over Plaintiff Fligsten's and Class Members' claims for failure to authorize and permit them to take off-duty rest breaks, and failure to pay premium pay for missed rest breaks, under Labor Code § 226.7 and Wage Order No. 4-2001 §§ 4, 12.

1 25. This Court has jurisdiction over Plaintiff Fligsten's and Class Members' claims for failure
2 to provide off-duty meal breaks and failure to pay premium pay for missed meal breaks under Labor Code
3 §§ 226.7, 512 and Wage Order No. 4-2001 § 11.

4 26. This Court has jurisdiction over Plaintiff Fligsten's and Wage Statement Class Members'
5 claims for statutory penalties under Labor Code §§ 226(a), (e).

6 27. This Court has jurisdiction over Plaintiff Fligsten's and Class Members' claims for
7 compensation due upon discharge from employment under Labor Code §§ 201-203.

8 28. This Court has jurisdiction over Plaintiff Fligsten's and Unreimbursed Expense Class
9 Members' claims for reimbursement of business expenses under Labor Code § 2802.

10 29. This Court has jurisdiction over Plaintiffs' claims for restitution arising from Defendant's
11 labor code violations under the UCL, Bus. & Prof. Code §§ 17203 and 17204.

12 30. This Court has jurisdiction over Plaintiffs' claims for declaratory and injunctive relief
13 under the UCL, Bus. & Prof. Code §§ 17200 et seq.

14 31. This Court has jurisdiction over Plaintiff Fligsten's FLSA claims under 29 U.S.C. §§ 206,
15 207, and 216(b).

16 32. This Court has jurisdiction over Plaintiff Fligsten's PAGA claim for civil penalties under
17 Labor Code § 2699. On September 1, 2021, Plaintiff Fligsten provided PAGA Notice pursuant to Labor
18 Code § 2699.3 to the California Labor and Workforce Development Agency ("LWDA") and Defendant.
19 In his PAGA Notice, Plaintiff Fligsten gave notice of his intention to seek PAGA penalties for the
20 violations of Labor Code § 226(a) on behalf of himself and Instructor Aggrieved Employees, and for the
21 violations of Labor Code § 2802 on behalf of himself and Aggrieved Employees. On November 3, 2021,
22 Plaintiff Fligsten submitted an Amended PAGA Notice to correct the spelling of Defendant's name.

23 33. The LWDA provided no notice to Plaintiff Fligsten within the period specified in Labor
24 Code § 2699.3 regarding its intention to investigation or not to investigate Plaintiff Fligsten's claims.
25 Plaintiff Fligsten has therefore fully complied with the PAGA procedural requirements and may
26 commence this representative action pursuant to Labor Code § 2699.

27 34. This Court has jurisdiction over Plaintiff Fligsten's claims for reasonable attorneys' fees
28 and costs pursuant to Labor Code §§ 1194, 226(e), 2802(c), 2699(g)(1) and Plaintiffs' claims for
reasonable attorneys' fees pursuant to Cal. Civ. Proc. Code § 1021.5.

VENUE

35. Venue is proper in the County of Los Angeles pursuant to Cal. Civ. Proc. Code §§ 395(a)
and 395.5. Defendant is a California corporation with its headquarters located in Los Angeles. Venue is

1 therefore proper in Los Angeles. The unlawful acts alleged herein have a direct effect on Plaintiffs and all
2 employees within the State of California including Los Angeles County.

3 **FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS**

4 36. Defendant is a for-profit college of contemporary music that offers Certificates in music
5 performance and composition. The college is divided into two schools. The School of Performance
6 Studies and the School of Industry Studies, which are further divided into Academic Programs. Courses
7 are offered on a quarterly system with 10 weeks of instruction and one week of testing. Defendant
8 employs Class Members as instructors to teach the courses offered at its campuses and online.

9 **Defendant Failed to Pay Class Members for All Hours Worked**

10 37. During the Class Period, Plaintiffs and Class Members were required and/or expected to
11 perform tasks outside of the time spent providing instruction, including but not limited to, lesson planning,
12 grading, paperwork, and communicating with students outside of class time. Class Members did not fall
13 under any exemption under Wage Order No. 4-2001 because they were hourly employees. As non-exempt
14 employees, Plaintiffs and Class Members were entitled to receive minimum wage for all hours worked.

15 38. During the Class Period, however, Defendant maintained a policy and/or practice of paying
16 Class Members only for the hours spent providing instructional time during the academic term and for a
17 small fraction of grading time (four minutes per exam or project) it actually took Class Members to grade.

18 39. Defendant knew or should have known that four minutes was typically not sufficient to
19 grade a project or exam. For example, some projects consisted of a ten to twenty-minute video that
20 instructors had to watch in full in order to grade. As such, Defendant expected, suffered and permitted
21 Class Members to perform off-the-clock work.

22 40. Additionally, Defendant required and/or expected Class Members to perform other work
23 for which Defendant did not pay them, including, but not limited to, preparing and/or updating course
24 materials, communicating with students outside of class including nurturing and promoting students in
25 the pursuit of learning and professionalism, evaluating students' performance, encouraging and mentoring
26 students. In order to be paid for this work, Defendant required Class Members to submit requests for
27 preapproval. However, Defendant discouraged such requests and often denied them. Additionally, this
28 system designed by Defendant for preapproval of hours worked outside the classroom was also
unworkable because an instructor would have to predict what work he or she may have to complete, which
often difficult to do, such as predicting when a student may seek guidance or ask questions before or after
class.

1 41. Thus, Defendant failed to pay Class Members at least minimum wage for all hours worked,
2 in violation of Labor Code §§ 1194, 1194.2 and Wage Order No. 4-2001, § 4 and 29 U.S.C. § 206.

3 **Defendant Failed to Pay Class Members Overtime**

4 42. During the Class Period, Class Members routinely worked more than 8 hours in day and
5 40 hours per week. Defendant was required to pay Class Members overtime for the hours worked in excess
6 of 8 hours and 40 hours per week. However, Defendant failed to pay overtime, in violation of Labor Code
7 §§ 510, 1194 and Wage Order No. 4-2001, § 3 and 29 U.S.C. § 207.

8 **Defendant Violated California's Rest Break Laws**

9 43. During the Class Period, Plaintiffs and Class Members routinely worked at least 3.5 hours
10 or more on any given day because Defendant scheduled them to teach for 3.5 hours or longer (including
11 shorter back to back classes that in combination were longer than 3.5 hours), and/or because Defendant
12 scheduled them to teach shorter classes but required and/or expected them to arrive prior to start of class
and to remain after class to answer students' questions and/or hold office hours, which resulted in Class
Members working 3.5 hours or longer in a row.

13 44. Defendant also had policies and/or practices in place which impeded Class Members'
14 ability to take off-duty rest breaks during these times, including the policy and/or practice of requiring
15 Class Members to mentor students and to be available to them for questions before and after class, as well
16 as during classroom break time as alleged in the previous paragraph.

17 45. Defendant knew or should have known that Class Members were impeded from taking off-
18 duty rest breaks. Defendant was required but failed, as alleged above, to permit and authorize them to take
19 off-duty rest breaks for shifts of 3.5 hours or longer, pursuant to Labor Code § 226.7 and Wage Order No.
20 4-2001, § 12, thereby triggering an obligation to make premium payments under Labor Code § 226.7 and
Wage Order No. 4-2001, § 12(B), which it also did not pay.

21 **Defendant Violated California's Meal Period Laws**

22 46. During the Class Period, Class Members worked at least 5 hours or longer. Defendant had
23 policies and/or practices in place which impeded Class Members' ability to take off-duty meal breaks
24 during these times, including the policy and/or practice of requiring Class Members to be available to
students for questions before and after class, as well as during classroom break time as alleged above.

25 47. As a result, Class Members were not relieved of all duties for at least 30 minutes before
26 the end of their fifth hour of work, as required under Labor Code § 512(a) and Wage Order No. 4-2001,
27 § 11. Defendant also failed to pay premium pay for missed meal breaks in violation of Labor Code §
28 226.7.

1 **Defendant Failed to Issue Accurate Itemized Wage Statements**

2 48. During the Wage Statement Subclass Period, Defendant was required to issue accurate
3 itemized wage statements to Class Members semimonthly or at the time of each payment of wages
4 containing the number of hours worked during each period, pursuant to subdivision (a)(2) of § 226(a).

5 49. However, during the Wage Statement Subclass Period, Defendant failed to list the total
6 hours spent working each pay period. Rather, Defendant issued wage statements that failed to include
7 accurate total hours worked because Defendant did not require Wage Statement Class Members to track
8 their hours worked and thus could not include an accurate number of hours worked on the wage
9 statements, and denied compensation for much of the time spent working outside the classroom, including
10 by allotting insufficient time for grading, and denying pay for other work outside the classroom.
11 Additionally, Defendant sometimes did not include any total for the hours worked during a pay period.

12 50. Defendant knew that it did not track Wage Statement Class Members' hours worked and
13 knew that it did not include the actual hours worked by the Wage Statement Class Members. As a result,
14 Defendant's issuance of inaccurate wage statements was knowing and intentional.

15 51. As the total hours worked entry contained in wage statements issued to Wage Statement
16 Class Members was inaccurate, Plaintiff Fligsten and Class Members could not readily ascertain the
17 number of total hours they worked in any given pay period. As a result, Plaintiff Fligsten and Class
18 Members suffered injury.

19 **Defendant Failed to Pay All Wages Owed Upon Discharge**

20 52. As a result of failing to pay wages for all hours worked, failing to pay overtime, and failing
21 to pay premium pay for missed breaks, Defendant failed to pay Class Members all wages due upon
22 discharge from employment in violation of Labor Code §§ 201-203.

23 **Defendant Failed to Reimburse Unreimbursed Expense Class Members for their Necessarily**
24 **Incurred Business Expenses**

25 53. Defendant did not reimburse Plaintiff Fligsten and Unreimbursed Expense Class Members
26 for necessary incurred business expenses they incurred, including but not limited to the costs of internet,
27 as a result of working from home either resulting from closures due to the COVID-19 pandemic or as a
28 result of teaching online classes. In particular, Defendant had a written policy of allowing Unreimbursed
Expense Class Members to seek reimbursement for a "bump in internet speed" but no policy of allowing
Unreimbursed Expense Class Members to seek reimbursement for a reasonable portion of their home
internet as required by Labor Code § 2802.

1 54. Defendant was aware, or should have been aware, that Unreimbursed Expense Class
2 Members incurred home internet expenses in direct consequence of the discharge of their job duties
3 because Defendant required Unreimbursed Expense Class Members to work from home.

4 55. As a result, Defendant knowingly permitted Plaintiff Fligsten and Unreimbursed Expense
5 Class Members to pay for expenses incurred in direct consequence of discharging their duties for
6 Defendant, without any reimbursement or reimbursement in full by Defendant for the internet service
7 expense.

8 56. Plaintiff Fligsten and Unreimbursed Expense Class Members have been harmed by
9 Defendant's unlawful business expense policies and/or practice and/or lack of such policies and/or
10 practices in that they have not been paid for certain business expenses incurred while employed by
11 Defendant, thereby diminishing their agreed-upon compensation, in substantial amounts to be proved at
12 trial.

13 **Defendant's Labor Code Violations Were Unfair Business Practice**

14 57. From at least four years prior to filing this Action, through the present, Defendant has
15 adopted and used unfair business practices to reduce Plaintiffs', Class Members' and Unreimbursed
16 Expense Class Members' compensation and increase profits. These unfair business practices include
17 failing to pay members of the Class for all hour worked and overtime, as applicable, failing to authorize
18 and permit timely off-duty rest periods; failing to provide off-duty meal breaks and failing to pay premium
19 pay for missed breaks; and failing to reimburse necessarily incurred business expenses.

20 **CLASS ACTION ALLEGATIONS**

21 36. Plaintiffs brings this class action pursuant to Cal. Civ. Proc. Code. § 382 on behalf of the
22 Class, the Wage Statement Class, and the Unreimbursed Expense Class. Upon information and belief,
23 there are more than 100 Class Members in each Class. The members of the Classes are so numerous that
24 joinder of all members is impractical.

25 37. Plaintiffs' claims are typical of the claims of the members of each Class because Plaintiffs
26 were instructors who were not paid for all hours spent working for Defendant, not paid overtime as
27 applicable, not authorized and permitted to take paid off-duty rest periods and meal breaks, not paid
28 premium pay for missed breaks, and not reimbursed for business expenses incurred in the discharge of
their duties for Defendant. Plaintiff Fligsten's claims are also typical of the claims of the Wage Statement
Class because he was not provided with an accurate and itemized wage statement each pay period.

 38. Plaintiffs will fairly and adequately represent the interests of the Classes. Plaintiffs have
no conflict of interest with any member of the Classes. Plaintiffs have retained competent and experienced

1 counsel in complex class action litigation. Plaintiffs' counsel have the expertise and financial resources
2 to adequately represent the interests of the Classes.

3 39. Common questions of law and fact exist as to all members of the Classes and predominate
4 over any questions solely affecting individual members of the Classes. Among the questions of law and
5 fact common to the Plaintiffs and the Classes are the following:

- 6 a. Whether Defendant suffered, permitted and/or required Plaintiffs and Class Members
7 to work off-the-clock;
- 8 b. Whether Defendant violated Labor Code § 1194 and IWC Wage Order No. 4-2001 §
9 4 by failing to pay Plaintiffs and Class Members at least minimum wage for all hours
10 spent performing work;
- 11 c. Whether Defendant violated Labor Code §§ 510 and 1194 and Wage Order No. 4-
12 2001, § 3 by failing to pay Plaintiffs and Class Members overtime;
- 13 d. Whether Defendant violated 29 U.S.C. §§ 206 and 207 by failing to pay Plaintiffs and
14 Class Members for all hours worked and/ or overtime;
- 15 e. Whether Defendant violated Wage Order No. 4-2001 §§ 11 and 12 by maintaining
16 policies and practices that prevented or impeded Class Members from taking off-duty
17 rest periods and meal breaks;
- 18 f. Whether Defendant violated Labor Code §§ 226.7 and 512 and Wage Order No. 4-
19 2001 § 11 and 12 by failing to pay one hour of premium pay for each day that a paid rest
20 period or unpaid meal period was not provided during the Class Period;
- 21 g. Whether Defendant violated Labor Code § 226(a) by failing to issue itemized wage
22 statements to Plaintiff Fligsten and Wage Statement Class Members;
- 23 h. Whether Defendant's violation of Labor Code § 226(a) was knowing and intentional;
- 24 i. Whether Wage Statement Class Members suffered injury for the purposes of Labor
25 Code § 226(e);
- 26 j. Whether Defendant violated Labor Code § 201-203 by failing to pay Class Members
27 for all of their wages due to them at the time of discharge from employment;
- 28 k. Whether Plaintiffs, Class Members, and Unreimbursed Expense Class Members,
incurred internet service expenses in order to perform their duties for Defendant;
- l. Whether Defendant violated Labor Code § 2802 by failing to reimburse Plaintiffs and
Unreimbursed Expense Class Members for their necessarily incurred business
expenses;

- 1 m. Whether these violations constitute unfair, unlawful, and fraudulent business practices,
2 in violation of UCL;
- 3 n. Whether the Classes are entitled to restitution under Bus. & Prof. Code §§ 17200 *et*
4 *seq.* for uncompensated wages and unpaid premium pay; and
- 5 o. The proper formula(s) for calculating damages, interest, and restitution owed to
6 Plaintiffs and the Classes;
- 7 p. Whether the Classes are entitled to declaratory and injunctive relief.

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

16 41. Defendant's actions are generally applicable to all members of each Class. Prosecution of
17 separate actions by individual members of each Class creates the risk of inconsistent or varying
18 adjudications of the issues presented herein, which, in turn, would establish incompatible standards of
19 conduct for Defendant.

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

24 **COLLECTIVE ACTION ALLEGATIONS**

25 43. Plaintiff Fligsten brings a claim for violation of Fair Labor Standards Act ("FLSA")
26 pursuant to 29 U.S.C. § 216(b), on behalf of the FLSA Class, as defined above.

27 44. For purposes of this action, including notice, the names and addresses of individuals who
28 are members of the FLSA Class are readily available to Defendant.

45. At all times relevant, Plaintiff Fligsten and the members of the FLSA Class have been
similarly situated, have had substantially similar job requirements and pay provisions, and have been
subject to Defendant's common policies of willfully failing and refusing to pay at least minimum wage
for all hours worked and overtime wages.

FIRST CAUSE OF ACTION
Failure to Pay Minimum Wage

[Cal. Labor Code §§ 1194, 1194.2, IWC Wage Order No. 4-2001 § 4]

46. Plaintiff Fligsten re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

47. Labor Code § 1194 provides, in relevant part:

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

Labor Code § 1194.2 provides, in relevant part:

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

Section 4 of Wage Order No. 4-2001(B) provides, in relevant part:

“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, ...”

48. As set forth above, during the Class Period, Plaintiffs and Class Members were required and/or expected, as part of their job duties, to perform work outside of teaching time, including, but not limited to, preparing and/or updating course materials, communicating with students outside of class including nurturing and promoting students in the pursuit of learning and professionalism, evaluating students’ performance, encouraging and mentoring students, for which Defendant did not compensate them. Thus, Class Members were not paid at least minimum wage for all of their hours spent working for Defendant.

49. Accordingly, pursuant to Labor Code §§ 1194 and 1194.2 and Wage Order No. 4-2001, § 4 Class Members are entitled to recover, at a minimum, their unpaid wages, plus liquidated damages in an additional amount equal to the total wages unlawfully withheld during the Class Period.

50. Plaintiff Fligsten, on behalf of himself and all other Class Members, requests relief as described below.

SECOND CAUSE OF ACTION
Failure to Pay Overtime

[Cal. Labor Code §§ 510, 1194 and Wage Order No. 4-2001, § 3]

58. Plaintiff Fligsten re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

59. Labor Code § 510 and the applicable Wage Order require that an employer compensate all work performed by an employee in excess of either (8) hours per workday and forty (40) hours per workweek, at one and one-half times the employee's regular rate.

60. Labor Code § 1194 states that any employee receiving less than the legal overtime compensation applicable is entitled to recover in a civil action the unpaid balance of the full amount of his or her overtime compensation, including interest thereon, and reasonable attorneys' fees and costs.

61. Class Members worked more than eight (8) hours per workday and more than forty (40) hours per workweek. However, Defendant knowingly and willfully failed to pay overtime pay, in violation of the Labor Code and applicable Wage Order.

62. Accordingly, pursuant to § 3 of the Wage Order and Labor Code §§ 510, 1194, Plaintiff Fligsten and Class Members are entitled to recover, at a minimum, an amount equal to the total amount of unpaid overtime wages unlawfully withheld.

63. Plaintiff Fligsten, on behalf of himself and all other Class Members, requests relief as described below.

THIRD CAUSE OF ACTION

Failure to Authorize and Permit Paid Rest Periods or Pay Missed Rest Period Premiums
[Cal. Labor Code § 226.7; IWC Wage Order No. 4-2001 § 12]]

51. Plaintiff Fligsten re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

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

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

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

54. As set forth above, during the Class Period, Defendant regularly failed to authorize and permit Plaintiff Fligsten and Class Members to take paid off-duty rest breaks and/or impeded them from taking rest breaks by requiring and/or expecting them to remain available to students for questions before, during and after class, in violation of Wage Order No. 4-2001 § 12.

55. As a result of Defendant's policies and practices, Plaintiffs and Class Members were not

1 authorized and permitted to take compliant rest breaks, and are entitled to recover one additional hour of
2 pay at the employee's regular rate of compensation for each day in which Defendant failed to authorize
3 and permit Class Members to take paid rest periods as required under Labor Code § 226.7 and Wage
4 Order No. 4-2001 § 12.

5 56. Plaintiff Fligsten, on behalf of himself and all other Class Members, requests relief as
6 described below.

7 **FOURTH CAUSE OF ACTION**

8 **Failure to Authorize and Permit Meal Periods or Pay Missed Meal Period Premiums**
9 **[Cal. Labor Code §§ 226.7, 512; Wage Order No. 4-2001, § 11]**

10 57. Plaintiff Fligsten re-alleges and incorporates by reference each and every allegation set
11 forth in the preceding paragraphs.

12 58. Pursuant to Labor Code § 226.7(b), "(b) An employer shall not require an employee to
13 work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
14 regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health
15 Standards Board, or the Division of Occupational Safety and Health."

16 59. Pursuant to Labor Code § 512(a), "(a) An employer shall not employ an employee for a
17 work period of more than five hours per day without providing the employee with a meal period of not
18 less than 30 minutes...."

19 60. Pursuant to Wage Order No. 4-2001, § 11, "No employer shall employ any person for a
20 work period of more than five (5) hours without a meal period of not less than 30 minutes...."

21 61. If an employer fails to provide the meal period, it shall pay the employee one hour of pay
22 at the employee's regular rate of compensation for each workday that the meal period is not provided.
23 *Id.*; Labor Code § 226.7(c).

24 62. Defendant failed to provide Class Members with off-duty meal breaks because Defendant
25 required and/or expected all Class Members to remain available to students for questions before, during
26 and after class. As a result, Defendant was required, but failed to pay premium pay pursuant to Labor
27 Code § 226.7 and Wage Order No. 4-2001, § 11.

28 63. Plaintiff Fligsten, on behalf of himself and all other Class Members, requests relief as
described below.

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FIFTH CAUSE OF ACTION
Failure to Issue Accurate Itemized Wage Statements
[Labor Code §§ 226(a), (e)]

36. Plaintiff Fligsten re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

37. During the Wage Statement Subclass Period, Defendant failed to furnish Class Members with accurate itemized wage statements in violation of Labor Code § 226(a) total hours worked, in violation of Labor Code § 226(a)(2).

38. Plaintiff Fligsten and Class Members suffered injury as a result of Defendant's knowing and intentional failure to comply with Labor Code § 226(a).

39. As a result of Defendant's knowing and intentional violations of Labor Code § 226(a) described above, Class Members are entitled to recover an initial penalty of \$50, and subsequent penalties of \$100, for each incomplete and/or inaccurate wage statement issued to them, up to an amount not exceeding an aggregate penalty of \$4,000 for each Class Member, pursuant to Labor Code § 226(e).

40. Plaintiff Fligsten, on behalf of himself and all other Class Members, requests relief as described below.

SIXTH CAUSE OF ACTION
Failure to Pay Compensation Due Upon Discharge
[Cal. Labor Code §§ 201-203]

36. Plaintiff Fligsten re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

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

38. As a result of failing to pay wages for all hours worked, and failing to pay premium pay for missed breaks, Defendant failed to pay Class Members all wages due upon discharge from employment.

39. In light of the clear law requiring that Defendant pay all wages owed on the day an employee is discharged, Defendant's failure to pay wages at the end of each contract was willful.

40. As a result, Defendant is liable to Plaintiff Fligsten and other members of the Waiting Time Penalty Class for waiting time penalties pursuant to Labor Code § 203.

1 41. Plaintiff Fligsten, on behalf of himself and all other formerly employed Class Members,
2 requests relief as described below.

3 **SEVENTH CAUSE OF ACTION**
4 **Failure to Reimburse Cell Phone Business Expenses**
5 **[Cal. Labor Code § 2802]**

6 41. Plaintiff Fligsten re-alleges and incorporates by reference each and every allegation set
7 forth in the preceding paragraphs.

8 42. Labor Code § 2802 provides: “[a]n employer shall indemnify his or her employee for all
9 necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his
10 or her duties.”

11 43. In order to discharge their duties for Defendant, the Unreimbursed Expenses Class
12 Members were expected and/or required to incur unreimbursed expenses in carrying out their work duties
13 for Defendant. These expenses include but are not limited to home internet, home or mobile telephone
14 expenses, ink toner/cartridges and paper and other expenses associated with working from home.

15 44. Although having knowledge of such expenses, Defendant did not reimburse the
16 Unreimbursed Expense Class Members for their business expenses, fully or at all, as required by Labor
17 Code § 2802.

18 45. Defendant’s failure to reimburse Unreimbursed Expense Class Members business
19 expenses violated non-waivable rights secured to them by Labor Code § 2802. Plaintiff Fligsten and
20 Unreimbursed Expense Class Members are entitled to reimbursement for these business expenses, plus
21 interest and attorneys’ fees and costs, under Labor Code § 2802.

22 46. Plaintiff Fligsten, on behalf of himself and Unreimbursed Expense Class Members,
23 requests relief as described below.

24 **EIGHTH CAUSE OF ACTION**
25 **Violation of Unfair Competition Laws**
26 **[Cal. Bus. & Prof. Code § 17200 *et seq.*]**

27 47. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the
28 preceding paragraphs.

 48. The UCL prohibits any unlawful, unfair, or fraudulent business practices. Labor Code
§ 90.5(a) states that it is the public policy of California to vigorously enforce minimum labor standards in
order to ensure employees are not required to work under substandard and unlawful conditions, and to
protect employers who comply with the law from those who attempt to gain competitive advantage at the
expense of their workers by failing to comply with minimum labor standards. Through its actions alleged

1 herein, Defendant has engaged in unfair competition within the meaning of the UCL, because Defendant's
2 conduct has violated state wage and hour laws as herein described.

3 49. Beginning at least four years prior to the filing of this Action, Defendant committed, and
4 continues to commit, acts of unfair competition, as defined in the UCL by wrongfully denying Class
5 Members payment in the amount of at least minimum wages for all their hours worked and / or overtime
6 in violation of Labor Code §§ 1194 and 510 and IWC Wage Order No. 4-2001, §§ 3-4; failing to authorize
7 and permit paid rest breaks and pay premium pay for missed rest breaks in violation of Labor Code §
8 226.7 and Wage Order No. 4-2001 § 12; by failing to provide unpaid off-duty meal breaks and pay
9 premium pay for missed meal breaks in violation of Labor Code §§ 226.7 and 512 and Wage Order No.
10 4-2001 § 11; and by failing to reimburse Unreimbursed Expense Class Members business expenses in
11 violation of Labor Code § 2802.

12 50. By its actions and omissions, Defendant has substantially injured Class Members, and
13 Unreimbursed Expense Class Members. The harm to Class Members, and Unreimbursed Expense Class
14 Members resulting from Defendant's labor code violations outweighs the utility, if any, of Defendant's
15 policies and practices. Therefore, Defendant's actions described herein constitute an unfair business
16 practice or act within the meaning of the UCL.

17 51. Plaintiffs, on behalf of themselves and all other Class Members and Unreimbursed
18 Expense Class Members, request relief as described below.

19
20 **NINTH CAUSE OF ACTION**
21 **Violation of Fair Labor Standards Act**
22 **29 U.S.C. § 216(b)**

23 52. Plaintiff Fligsten re-alleges and incorporates by reference each and every allegation set
24 forth in the preceding paragraphs.

25 53. Plaintiff Fligsten brings this action as a collective action pursuant to 29 U.S.C. § 216(b),
26 on behalf of himself and the FLSA Class of all individuals employed as instructors by Defendant during
27 the FLSA Class Period.

28 54. Plaintiff Fligsten and the members of the FLSA Class are similarly situated in that they
were subject to Defendant's common practice and policy of unlawfully refusing to pay them minimum
wage for all hours worked in violation of 209 U.S.C. § 206, and refusing to pay them overtime wages for
all hours worked in excess of 40 hours per week, in violation of 29 U.S.C. § 207.

55. This action may be brought and maintained as an "opt-in" collective action pursuant to
section 16(b) of the FLSA because the claims of Plaintiff Fligsten are similar to the claims of the members
of the FLSA Class.

56. At all relevant times, an employment relationship existed between Defendant and the members of the FLSA Class, including Plaintiff Fligsten.

57. At all relevant times, Defendant employed and continues to employ FLSA Class Members as “employees” within the meaning of the FLSA, 29 U.S.C. § 203, as indicated by the substantial level of control that Defendant wields over FLSA Class Members.

58. Defendants willfully and intentionally violated the provisions of the FLSA by failing to pay Plaintiff and the FLSA Class overtime wages as required by 29 U.S.C. § 207. Defendant engaged in this practice throughout the three-year statute of limitations that applies to this cause of action pursuant to 29 U.S.C. § 255.

59. As a result of Defendant's conduct, Plaintiff Fligsten and FLSA Class members who opt-in are entitled to recovery in the amount of their respective unpaid waged and overtime, liquidated damages, prejudgment interest, attorneys' fees and costs, and any other relief the Court deems just and proper pursuant to 29 U.S.C. § 216(b).

TENTH CAUSE OF ACTION
Civil Penalties
[Cal. Labor Code § 2698 *et seq.*]

60. Plaintiff Fligsten re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

61. Plaintiff Fligsten is an “aggrieved employee” under PAGA as he was employed by Defendant during the applicable statutory period and suffered one or more of the Labor Code violations alleged herein. As such Plaintiff Fligsten seeks to recover, on behalf of himself and all other current and former Instructor Aggrieved Employees and on behalf of himself and all current and former Aggrieved Employees, as applicable, civil penalties provided by PAGA, plus reasonable attorneys’ fees and costs, as follows:

Violation of Labor Code § 226(a)

62. Defendant failed to issue accurate itemized wage statements to Instructor Aggrieved Employees that included accurate entries for the total hours worked during each pay period because Defendant sometimes did not include any total for the hours worked, and because Defendant did not include all hours worked by the Instructor Aggrieved Employees as a result of not tracking hours worked by them.

63. Pursuant to Labor Code § 266.3, Plaintiff Fligsten and Instructor Aggrieved Employees are entitled to two hundred fifty dollars (\$250) for each pay period with an initial violation, and one thousand dollars (\$1,000) for each pay period with a subsequent violation.

64. Alternatively, pursuant to Labor Code § 2699(f)(2), Instructor Aggrieved Employees are entitled to PAGA penalties equal to one hundred dollars (\$100) for each pay period with an initial violation, and two hundred dollars (\$200) for each pay period with a subsequent violation.

Violation of Labor Code § 2802

65. Defendant failed to reimburse Aggrieved Employees for their necessarily incurred business expenses as alleged herein, in violation of Labor Code § 2802.

66. Pursuant to Labor Code § 2699(f)(2), Aggrieved Employees are entitled to PAGA penalties equal to one hundred dollars (\$100) for each pay period with an initial violation, and two hundred dollars (\$200) for each pay period with a subsequent violation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the Classes, pray for the following relief:

A. An Order that this action may proceed and be maintained as a class action, with the Classes as designated and defined in this Complaint, and that the Plaintiffs and their counsel be certified as representatives and Counsel for the Classes, respectively.

B. On the First Cause of Action: That the Court find and declare that Defendant violated Labor Code §§ 1194, and 1194.2 and Wage Order No. 4-2001, § 4 by failing to pay Plaintiff Fligsten and Class Members for all hours worked, plus liquidated damages in an additional amount equal to wages unlawfully withheld during the Class Period;

C. On the Second Cause of Action: That the Court find and declare that Defendant violated California Labor Code §§ 510, 1194 and IWC Wage Order No. 4-2001, § 3, and award Plaintiff Fligsten and Class Members, at a minimum, an amount equal to the total amount of unpaid overtime wages unlawfully withheld from him, and interest thereon;

D. On the Third Cause of Action: That the Court find and declare that Defendant violated Labor Code § 226.7 and Wage Order No. 4-2001, § 12 by failing to authorize and permit timely off-duty rest breaks, and failing to pay premium pay for rest breaks; and award the Class unpaid wages for rest break time and unpaid premium pay for missed rest breaks.

E. On the Fourth Cause of Action: That the Court find and declare that Defendant violated Labor Code §§ 226.7 and 512 and Wage Order No. 4-3002, § 11 by failing to authorize and permit timely off-duty meal breaks, and award Plaintiff Fligsten and the Class unpaid premium pay for missed meal breaks.

1 F. On the Fifth Cause of Action: That the Court find and declare that Defendant violated
2 Labor Code § 226(a), and award Plaintiff Fligsten Class Members who worked for Defendant during the
3 one year prior to the filing of this action statutory penalties under Labor Code § 226(e);

4 G. On the Sixth Cause of Action: That the Court find and declare that Defendant has violated
5 Labor Code §§ 201–202, and award Plaintiff Fligsten and Class Members, who were discharged from
6 employment during the three years prior to the filing of this action, waiting time penalties under Labor
7 Code § 203;

8 H. On the Seventh Cause of Action: That the Court find and declare that Defendant’s business
9 expense policies and/or practices violate California law, including Labor Code § 2802, and award Plaintiff
10 Fligsten and Unreimbursed Expense Class Members all business expenses, and interest thereon, that they
11 are owed, pursuant to Labor Code § 2802, in an amount to be proved at trial.

12 I. On the Eighth Cause of Action: That the Court find and declare Defendant has violated the
13 UCL and award restitution to the Plaintiffs and the Classes, including, but not limited to, unpaid wages,
14 unpaid overtime, an additional hour of pay at the employee’s regular rate of compensation for each day
15 that a rest break or meal break was not provided during the Class Period, and reimbursement of business
16 expenses in the amount to be proved at trial.

17 J. On the Ninth Cause of Action: That the Court find and declare that Defendant has violated
18 29 U.S.C. §§ 206 and 207 by failing to pay Plaintiff Fligsten and FLSA Class Members for all hours
19 worked and for overtime, and award Plaintiff Fligsten and FLSA Class Members an amount equal to the
20 total amount of wages unlawfully withheld during the FLSA Class Period, liquidated damages equal to
21 the total amount of overtime wages unlawfully withheld, interest, and reasonable attorneys’ fees and costs.

22 K. On the Tenth Cause of Action: Civil penalties pursuant to PAGA.

23 L. That the Court award attorneys’ fees and costs of suit to the extent permitted by law,
24 including, but not limited to, Labor Code §§ 226(e) and (h), 1194, 2802(c), 2699(g)(1), 29 U.S.C. §
25 216(b), and Cal. Civil Procedure Code § 1021.5.

26 M. All other relief as this Court deems proper

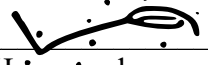
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JURY DEMAND

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

Dated: July 24, 2023

HammondLaw, P.C.



Julian Hammond
Counsel for Plaintiffs