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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

**FIRST AMENDED CLASS 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 Authorize and Permit Paid Rest Breaks and Pay Premium Pay** (Cal. Labor Code § 226.7; IWC Wage Order No. 4-2001, §§ 4, 12);
- (3) **Failure to Issue Accurate Itemized Wage Statements** (Cal. Labor Code §§ 226(a) and (e));
- (4) **Failure to Reimburse for Business-Related Expenses** (Cal. Labor Code § 2802);
- (5) **Unfair, Unlawful, and/or Fraudulent Business Practices** (Cal. Bus. & Prof. Code § 17200 *et seq.*); and
- (6) **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 Institution, 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, 226(a), (e), 2802, and IWC Wage Order (“Wage Order”) No. 4-2001 §§ 4 and
9 12, and restitution under California’s Unfair Competition Law (“UCL”), Business & Professions Code §§
10 17200 *et seq.* Plaintiff Fligsten seeks damages for unpaid wages, unpaid premium pay, and unreimbursed
11 expenses, and statutory damages for unlawful wage statements on behalf of the classes, as defined below.
12 Plaintiff Fligsten and Wang together seek restitution on behalf of the class, as defined below, for the
13 unpaid wages, unpaid premium pay, and unreimbursed expenses.

14 2. An action alleging similar violations and seeking damages, statutory penalties based on the
15 alleged violations of Labor Code §§ 226(a), 226.7, 1194, 201-230, 2802, and civil penalties pursuant to
16 PAGA, Labor Code § 2699 was previously filed by another instructor employed by the Defendant in
17 Arbitration before JAMS. That action is styled *Tagliarino v. Musician’s Institute, Inc.*, Judicate West,
18 Case No. A268536-46. On July 21, 2020, the parties in that case entered into a claims’-made settlement.
19 Following preliminary approval by a JAMS Arbitrator, notice was sent out to the putative class members
20 of whom, according to the papers submitted in arbitration, there are approximately 503. However, upon
21 information and belief, less than half of the 503 class members submitted claims. The settlement,
22 including the PAGA civil penalties component, was finally approved by a JAMS Arbitrator on or about
23 December 28, 2020.

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

27 4. Additionally, any settlement of a PAGA claim requires court approval pursuant to Labor
28 Code § 2699(1)(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 Employee Acknowledgment
and Arbitration Agreement (“Arbitration Agreement”) in connection with his employment with

1 Defendant, Plaintiff Wang specifically preserved his right – as that agreement permitted him to do – to
2 bring “a class, collective, private attorney general, representative or 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 (“Class Members”) from
9 the four years prior to the filing of this Action through to the trial date (“Class Period”). Defendant’s
10 violations of California’s wage and hour laws, as described more fully below, have been ongoing for at
11 least the past four years, and are continuing at present.

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

24 9. 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
26 premium pay for missed rest breaks in violation of Labor Code § 226.7 and Wage Order No. 4-2001 § 12.

27 10. Plaintiff Fligsten also brings this action on behalf of himself and all other similarly situated
28 individuals currently and formerly employed by Defendant in California from one year prior to the filing
of this Action through to the trial date (“Wage Statement Subclass Period”) for statutory penalties,
injunctive relief, and reasonable attorneys’ fees and costs pursuant to Labor Code § 226(a), (e), and (h)
 (“Wage Statement Class”). During the Wage Statement Subclass Period, Defendant knowingly and
intentionally failed to furnish Plaintiff Fligsten and Wage Statement Class Members with accurate

1 itemized wage statements by failing to include on their wage statements their total number of hours
2 worked during each pay period. Instead, Defendant listed the number of hours taught and the product of
3 the number of hours allotted to grading multiplied by the number of assignments, exams, or projects
4 graded. Despite paying Wage Statement Class Members on an hourly basis, Defendant also did not
5 require them to track their hours worked and as a result could not list on their wage statements actual total
6 number of hours worked.

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

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

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

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

30 ///

1 **PARTIES**

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

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

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

11 **JURISDICTION**

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

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

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

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

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

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

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

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

26. This Court has jurisdiction over Plaintiff Fligsten's claims for reasonable attorneys' fees 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

27. Venue is proper in the County of Los Angeles pursuant to Cal. Civ. Proc. Code §§ 395(a) and 395.5. Defendant is California corporation with its headquarters located in Los Angeles. Venue is therefore proper in Los Angeles. The unlawful acts alleged herein have a direct effect on Plaintiffs and all employees within the State of California including Los Angeles County.

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

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

Defendant Failed to Pay Class Members for All Hours Worked

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

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

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

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

11 33. Thus, Defendant failed to pay Class Members at least minimum wage for all hours worked.

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

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

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

23 36. Defendant knew or should have known that Class Members were impeded from taking off-
24 duty rest breaks. Defendant was required but failed, as alleged above, to permit and authorize them to take
25 off-duty rest breaks for shifts of 3.5 hours or longer, pursuant to Labor Code § 226.7 and Wage Order No.
26 4-2001, § 12, thereby triggering an obligation to make premium payments under Labor Code § 226.7 and
27 Wage Order No. 4-2001, § 12(B), which it also did not pay.

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

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

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

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

11 40. As the total hours worked entry contained in wage statements issued to Wage Statement
12 Class Members was inaccurate, Plaintiff Fligsten and Class Members could not readily ascertain the
13 number of total hours they worked in any given pay period. As a result, Plaintiff Fligsten and Class
14 Members suffered injury.

15 ***Defendant Failed to Reimburse Unreimbursed Expense Class Members for their Necessarily***
16 ***Incurred Business Expenses***

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

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

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

 44. Plaintiff Fligsten and Unreimbursed Expense Class Members have been harmed by
Defendant's unlawful business expense policies and/or practice and/or lack of such policies and/or

1 practices in that they have not been paid for certain business expenses incurred while employed by
2 Defendant, thereby diminishing their agreed-upon compensation, in substantial amounts to be proved at
3 trial.

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

5 45. From at least four years prior to filing this Action, through the present, Defendant has
6 adopted and used unfair business practices to reduce Plaintiffs', Class Members' and Unreimbursed
7 Expense Class Members' compensation and increase profits. These unfair business practices include
8 failing to pay members of the Classes, as applicable, failing to authorize and permit timely off-duty rest
9 periods; failing to pay premium pay for missed rest breaks; and failing to reimburse necessarily incurred
business expenses.

10 **CLASS ACTION ALLEGATIONS**

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

14 37. Plaintiffs' claims are typical of the claims of the members of each Class because Plaintiffs
15 were instructors who were not paid for all hours spent working for Defendant, not authorized and
16 permitted to take paid off-duty rest periods, and not paid premium pay for missed rest breaks. Plaintiff
17 Fligsten's claims are also typical of the claims of the Wage Statement Class because he was not provided
18 with an accurate and itemized wage statement each pay period, and are typical of the Unreimbursed
19 Expense Class claims because he was not reimbursed for business expenses incurred in the discharge of
his duties for Defendant.

20 38. Plaintiffs will fairly and adequately represent the interests of the Classes. Plaintiffs have
21 no conflict of interest with any member of the Classes. Plaintiffs have retained competent and experienced
22 counsel in complex class action litigation. Plaintiffs' counsel have the expertise and financial resources
23 to adequately represent the interests of the Classes.

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

- 26 a. Whether Defendant suffered, permitted and/or required Plaintiffs and Class Members
27 to work off-the-clock;
28

- b. Whether Defendant violated Labor Code § 1194 and IWC Wage Order No. 4-2001 § 4 by failing to pay Plaintiffs and Class Members at least minimum wage for all hours spent performing work;
- c. Whether Defendant violated Wage Order No. 4-2001 § 12 by maintaining policies and practices that prevented or impeded Plaintiffs and Class Members from taking off-duty rest periods;
- d. Whether Defendant violated Labor Code § 226(a) by failing to issue itemized wage statements to Plaintiff Fligsten and Wage Statement Class Members;
- e. Whether Defendant's violation of Labor Code § 226(a) was knowing and intentional;
- f. Whether Wage Statement Class Members suffered injury for the purposes of Labor Code § 226(e);
- g. Whether Plaintiff Fligsten, Class Members, and Unreimbursed Expense Class Members, incurred internet service expenses in order to perform their duties for Defendant;
- h. Whether Defendant violated Labor Code § 2802 by failing to reimburse Plaintiff Fligsten and Unreimbursed Expense Class Members for their necessarily incurred business expenses;
- i. Whether these violations constitute unfair, unlawful, and fraudulent business practices, in violation of UCL;
- j. Whether the Classes are entitled to restitution under Bus. & Prof. Code §§ 17200 *et seq.* for uncompensated wages and unpaid premium pay; and
- k. The proper formula(s) for calculating damages, interest, and restitution owed to Plaintiffs and the Classes;
- l. Whether the Classes are entitled to declaratory and injunctive relief.

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

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

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

FIRST CAUSE OF ACTION
Failure to Pay Minimum Wage
[Cal. Labor Code §§ 1194, 1194.2, IWC Wage Order No. 4-2001 § 4]

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

44. 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, ...”

45. 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.

1 46. Accordingly, pursuant to Labor Code §§ 1194 and 1194.2 and Wage Order No. 4-2001, §
2 4 Class Members are entitled to recover, at a minimum, their unpaid wages, plus liquidated damages in
3 an additional amount equal to the total wages unlawfully withheld during the Class Period.

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

SECOND 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]**

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

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

11 “(A) Every employer shall authorize and permit all employees to take rest periods, which insofar
12 as practicable shall be in the middle of each work period. The authorized rest period time shall be
13 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.”

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

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

21 52. As a result of Defendant’s policies and practices, Plaintiffs and Class Members were not
22 authorized and permitted to take compliant rest breaks, and are entitled to recover one additional hour of
23 pay at the employee’s regular rate of compensation for each day in which Defendant failed to authorize
24 and permit Class Members to take paid rest periods as required under Labor Code § 226.7 and Wage
Order No. 4-2001 § 12.

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

27 ///

THIRD 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.

FOURTH CAUSE OF ACTION
Failure to Reimburse Cell Phone Business Expenses
[Cal. Labor Code § 2802]

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

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

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

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

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

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

7 **FIFTH CAUSE OF ACTION**
8 **Violation of Unfair Competition Laws**
9 **[Cal. Bus. & Prof. Code § 17200 *et seq.*]**

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

12 48. The UCL prohibits any unlawful, unfair, or fraudulent business practices. Labor Code
13 § 90.5(a) states that it is the public policy of California to vigorously enforce minimum labor standards in
14 order to ensure employees are not required to work under substandard and unlawful conditions, and to
15 protect employers who comply with the law from those who attempt to gain competitive advantage at the
16 expense of their workers by failing to comply with minimum labor standards. Through its actions alleged
17 herein, Defendant has engaged in unfair competition within the meaning of the UCL, because Defendant's
18 conduct has violated state wage and hour laws as herein described.

19 49. Beginning at least four years prior to the filing of this Action, Defendant committed, and
20 continues to commit, acts of unfair competition, as defined in the UCL by wrongfully denying Class
21 Members payment in the amount of at least minimum wages for all their hours worked in violation of
22 Labor Code § 1194 and IWC Wage Order No. 4-2001, § 4 failing to authorize and permit paid rest breaks
23 and pay premium pay for missed rest breaks in violation of Labor Code § 226.7 and Wage Order No. 4-
24 2001 § 12; and by failing to reimburse Unreimbursed Expense Class Members business expenses in
25 violation of Code § 2802.

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

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

1 **SIXTH CAUSE OF ACTION**

2 **Civil Penalties**

3 **[Cal. Labor Code § 2698 *et seq.*]**

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

5 53. Plaintiff Fligsten is an “aggrieved employee” under PAGA as he was employed by Defendant during the applicable statutory period and suffered onr 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:

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

7 54. Defendant failed to issue accurate itemized wage statements to Adjunct 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 Adjunct Aggrieved Employees as a result of not tracking hours worked by Adjunct Aggrieved Employees.

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

9 56. Alternatively, pursuant to Labor Code § 2699(f)(2), Adjunct 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.

10 ***Violation of Labor Code § 2802***

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

12 58. Pursuant to Labor Code § 2699(f)(2), Adjunct 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.

13 **PRAYER FOR RELIEF**

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

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

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

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

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

13 E. On the Fourth Cause of Action: That the Court find and declare that Defendant's business
14 expense policies and/or practices violate California law, including Labor Code § 2802, and award Plaintiff
15 Fligsten and Unreimbursed Expense Class Members all business expenses, and interest thereon, that they
16 are owed, pursuant to Labor Code § 2802, in an amount to be proved at trial.

17 F. On the Fifth Cause of Action: That the Court find and declare Defendant has violated the
18 UCL and award restitution to the Plaintiffs and the Classes, including, but not limited to, unpaid wages,
19 an additional hour of pay at the employee's regular rate of compensation for each day that a rest break
20 was not provided during the Class Period, and reimbursement of business expenses in the amount to be
proved at trial.

21 G. On the Sixth Cause of Action: Civil penalties pursuant to PAGA.

22 H. That the Court award attorneys' fees and costs of suit to the extent permitted by law,
23 including, but not limited to, Labor Code §§ 226(e) and (h), 2802(c), 2699(g)(1), and Cal. Civil Procedure
24 Code § 1021.5.

25 I. All other relief as this Court deems proper.

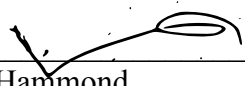
26 ///

JURY DEMAND

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

Dated: November 5, 2021

HammondLaw, P.C.



Julian Hammond
Counsel for Plaintiffs