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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF RIVERSIDE

MACKENNA CUMMINGS, individually and
on behalf of all others similarly situated,

Plaintiff,

vs.

PLATT COLLEGE LOS ANGELES LLC, a
Limited Liability Company,

Defendant.

CASE NO. **CVRI2200578**

LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT REPRESENTATIVE ACTION

**COMPLAINT FOR CIVIL PENALTIES
PURSUANT TO LABOR CODE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE § 2698 ET SEQ**

1 Plaintiffs Mackenna Cummings (“Plaintiffs”), on behalf of the State of California, herself and
2 other aggrieved employees, complains and alleges the following:

3 **INTRODUCTION**

4 1. This is a representative action under the Private Attorneys General Act of 2004, codified
5 at California Labor Code (“Labor Code”) §§ 2698 *et seq.* (“PAGA”) for civil penalties, attorneys’ fees,
6 and costs on behalf of Plaintiff and all other part-time adjunct instructors (“Adjunct Aggrieved
7 Employees”) employed by Platt College Los Angeles, LLC (“Platt” or “Defendant”) in California from
8 July 23, 2020 to the trial date (“PAGA Period”) for Defendant’s failure to pay wages for all hours worked,
9 failure to permit and authorize rest breaks and provide meal periods, and failure to pay premium pay for
10 missed rest and meal breaks, failure to issue accurate itemized wage statements, failure to provide
11 sufficient paid sick leave, and failure to pay all wages due at the time of discharge from employment, in
12 violation of Labor Code §§ 223, 1194, 1194.2, 226.7, 512, 201-203, 246, *et seq.* and Wage Order No. 4-
13 2001 §§ 4, 11 and 12.

14 2. This is also a representative action under PAGA for civil penalties, attorneys’ fees, and
15 costs on behalf of Plaintiff and all other individuals (including Adjunct Aggrieved Employees) employed
16 by Defendant in California (“Aggrieved Employees”) during the PAGA Period for failure to reimburse
17 necessarily incurred business expenses, in violation of Labor Code § 2802.

18 **PARTIES**

19 3. Plaintiff Cummings is a resident of Riverside, California who was employed by Platt as an
20 adjunct instructor from approximately 2019 until August 2021. During her employment, Plaintiff was
21 subject to Defendant’s unlawful conduct described herein.

22 4. Defendant is a limited liability company, with its principal place of business in Alhambra,
23 California.

24 **JURISDICTION**

5. This Court has jurisdiction over Plaintiff’s claim for PAGA penalties pursuant to Labor
Code § 2699.

6. This Court has jurisdiction over Plaintiff’s claim for attorneys fees and costs pursuant to
Labor Code § 2699(g)(1).

7. On November 24, 2021, Plaintiff provided Notice and Amended Notice pursuant to Labor
Code § 2699.3 to the LWDA (via its website) and to Defendant . The LWDA has not provided notice to
Plaintiff regarding its intention to investigate or not investigate Plaintiff’s claims.

1 8. The amount in controversy for Plaintiff, including claims for civil penalties and pro rata
2 share of attorneys' fees, is less than seventy-five thousand dollars (\$75,000).

3 **VENUE**

4 9. Venue is proper in the County of Riverside pursuant to Cal. Civ. Proc. Code §§ 395(a) and
5 395.5. Defendant maintains a campus location in Riverside. Plaintiff performed her work for Defendant
6 in Riverside, and she resides in Riverside. She incurred unpaid wages and unreimbursed expenses, and
7 was injured by Defendant's other wrongful conduct there, and thus the obligation to pay wages for all
8 hours worked, to reimburse expenses, and to comply with other labor laws arose in Riverside, as did
9 liability.

10 **FACTUAL ALLEGATIONS**

11 10. Defendant is a limited liability company that operates four on-ground campuses in
12 Southern California in Riverside, Ontario, Anaheim, and Alhambra, and offers online courses as part of
13 its Distance Education Programs. Platt offers undergraduate degrees in the areas of allied health,
14 vocational nursing, graphic design, business, criminal justice, information technology, as well as
15 certificate programs. These programs are offered throughout the year, during 5-week modules. In order
16 to teach these programs, Defendant employs full-time and part-time faculty.

17 11. During the PAGA Period, Adjunct Aggrieved Employees were non-exempt hourly
18 employees, and Defendant correctly classified them as such.

19 **A. Defendant Failed to Pay Adjunct Aggrieved Employees for All Hours Worked**

20 12. During the PAGA Period, Defendant compensated Adjunct Aggrieved Employees for the
21 hours of scheduled classroom instruction, and sometimes for the hours spent at faculty meetings.

22 13. However, in addition to teaching courses and attending faculty meetings, Defendant
23 required and/or expected, Adjunct Aggrieved Employees to perform, and Adjunct Aggrieved Employees
24 did perform, numerous job duties, including but not limited to preparing course syllabi and other course
materials, grading assignments and exams, submitting grades, holding office hours, advising and
mentoring students before and after each class and throughout the module, meeting to discuss and evaluate
their performance with their supervisors, and performing various administrative tasks, for which
Defendant did not pay them, in violation of Labor Code §§ 223, 1194 and Wage Order No. 4, § 4.

 14. While Defendant maintained a policy whereby Adjunct Aggrieved Employees could seek
preapproval of extra hours worked, entitled "Instructor Preparation Time", Defendant strongly
discouraged any requests for extra hours and the policy itself was unworkable.

1 15. The Instructor Preparation Time policy provided “that all teachers are expected to prepare
2 for future classes during class hours when active instruction is not being delivered. This includes, but is
3 not limited to times when students are performing independent activities (such as reading, group projects,
4 etc.), watching videos or taking examinations.” However, Adjunct Aggrieved Employees could not
5 possibly complete all their work duties during the scheduled classroom hours because they spent much of
6 the classroom breaks answering students’ questions, and spent the time during which students were
7 working on independent assignments answering students’ questions and assisting individual students or
8 groups of students with their assignments.

9 16. During the portion of the PAGA Period when Adjunct Aggrieved Employees taught
10 remotely due to the Covid-19 pandemic, Defendant also failed to pay them for all hours worked because
11 the scheduled class hours were also insufficient for Adjunct Aggrieved Employees to complete all their
12 tasks, including because they had to perform tasks unique to remote instruction (such as converting course
13 content to an online format and adjusting assignments to fit remote learning) which required many
14 additional hours of work. Defendant also imposed additional duties on the Adjunct Aggrieved Employees
15 during the period of remote instruction, including the requirement that they track grades in an excel
16 spreadsheet and submit grades on a weekly basis, and contact students who were absent from remote
17 classes, by calling or text messaging, to encourage attendance. In fact, during the portion of the pandemic
18 when classes were remote, Adjunct Aggrieved Employees routinely worked more hours than they did
19 teaching in person classes to meet all their remote instruction related duties.

20 17. To seek approval of compensation for extra time, Defendant required Adjunct Aggrieved
21 Employees to provide a detailed explanation as to how much extra time was needed and why. The policy
22 provided that supervisors needed to know about all the extra time worked for “tracking and performance
23 evaluation purposes”, which suggested that Adjunct Aggrieved Employees could receive poorer
24 evaluations if they made requests to be work and be paid for extra time.

 18. Defendant’s policy also provided that working additional time without preapproval could
result in disciplinary action, including termination, yet the policy also provided that requests for additional
time would not be automatically approved. At the same time, Adjunct Aggrieved Employees were at-will
employees and Defendant stated in the Employee Handbook that Adjunct Aggrieved Employees’ jobs
depended on satisfactory performance of their duties, such that they needed to complete their job duties
without or without approval of compensation if they wanted to achieve satisfactory performance reviews.

 19. Additionally, approval to work additional time had to be obtained prior to the task being
performed. However, Adjunct Aggrieved Employees could not always anticipate what tasks they would

1 have to perform and how long they would take. For example, Adjunct Aggrieved Employees could not
2 anticipate how many students would approach them with questions before and/or after class. At the same
3 time, Platt provided that working additional time without preapproval could result in disciplinary action,
4 including termination. Thus, to avoid conflict and potential disciplinary action, Adjunct Aggrieved

5 20. Finally, Platt's Instruction Preparation Time policy provided that "[a]ll work performed in
6 relation to your job duties must be performed on campus. Instructors are not permitted to do any work,
7 including preparation work, at home or anywhere else off campus." However, Defendant did not maintain
8 sufficient offices/cubicle or computers for Adjunct Aggrieved Employees to use in order to complete their
9 duties. As a result, if Adjunct Aggrieved Employees sought approval of additional hours outside the
10 classroom hours for work completed from their homes, they would be in violation of Defendant's policy.

11 21. Accordingly, Defendant knew or should have known that Adjunct Aggrieved Employees
12 worked many hours outside the hours of scheduled classroom hours, yet failed to compensate them for
13 those hours at their contractual hourly rate, in violation of Labor Code §§ 223, 1194, 1194.2 and Wage
14 Order No. 4.

15 **B. Defendant Violated California's Rest Break Laws**

16 22. During the PAGA Period, Adjunct Aggrieved Employees routinely worked at least 3.5
17 hours or more on any given day because Defendant scheduled them to teach classes that were 5 or 6 hours
18 long. Additionally, when teaching on campus, Adjunct Aggrieved Employees also routinely arrived early
19 to class in order to set up the classroom and answer students' questions and stayed late after class to
20 respond to students' questions.

21 23. Pursuant to Wage Order No. 4, § 12, Defendant was therefore required to permit and
22 authorize Adjunct Aggrieved Employees to take off-duty 10-minute rest breaks for shifts of 3.5 hours or
23 longer.

24 24. However, upon information and belief, Defendant did not communicate a rest break policy
to the Adjunct Aggrieved Employees and maintained policies and/or practices that impeded their ability
to take off-duty rest periods. These policies and/or practices included, but were not limited to, Defendant's
written policy that Adjunct Aggrieved Employees "are expected to prepare for future classes during class
hours when active instruction is not being delivered" and expectation and/or requirement that Adjunct
Aggrieved Employees advise students and respond to students' questions during class break times and
not ignore them.

1 25. The nature of Adjunct Aggrieved Employees' job duties was also such that students
2 routinely approached with questions during classroom breaks, and as their jobs depend on satisfactory
3 performance of their job duties (as stated in Platt's Employee Handbook) they could not ignore students.

4 26. As a result, Defendant failed to provide compliant rest breaks in accordance with Wage
5 Order No. 4-2001, § 12(A) and also did not make premium payments under Labor Code § 226.7 and
6 Wage Order No. 4-2001, § 12(B).

7 **C. Defendant Violated California's Meal Break Laws**

8 27. During the PAGA Period, Adjunct Aggrieved Employees routinely worked 5 hours or
9 more on any given day because Defendant scheduled them to teach classes that were 5 or 6 hours long.
10 Additionally, when teaching on campus, Adjunct Aggrieved Employees also routinely arrived early to
11 class in order to set up the classroom and answer students' questions and stayed late after class to respond
12 to students' questions.

13 28. Pursuant to Labor Code § 512 and Wage Order No. 4, § 11, Defendant was therefore
14 required to permit and authorize Adjunct Aggrieved Employees to take off-duty 30-minute rest breaks for
15 shifts of 5 hours or longer.

16 29. However, the same policies and/or practice and the same nature of Adjunct Aggrieved
17 Employees' job duties that impeded Adjunct Aggrieved Employees' ability to take rest breaks, also
18 impeded their ability to take off-duty meal breaks.

19 30. As a result, Defendant failed to provide compliant meals breaks in accordance with Wage
20 Order No. 4-2001, § 11(A), and also did not make premium payments under Labor Code § 226.7 and
21 Wage Order No. 4-2001, § 11(B).

22 **D. Defendant Failed to Pay All Wages Upon Termination**

23 31. As a consequence of Defendant's failure to pay wages owed for all hours worked and
24 premium pay for unpaid or missed rest breaks, Adjunct Aggrieved Employees did not receive all
compensation due to them when their employment terminated in violation of Labor Code § 201-202.

E. Defendant Failed to Issue Accurate Itemized Wage Statements

 32. Because Adjunct Aggrieved Employees were non-exempt, Defendant was required under
Labor Code § 226(a) to furnish them with accurate itemized wage statements that included entries for
their total hours worked, and gross and net wages earned. *See* Lab. Code § 226(a)(1), (a)(2), and (a)(5).

 33. However, during the PAGA Period, as a result of failing to track all their hours worked
and to pay for all hours worked, Defendant included on Adjunct Aggrieved Employees' wage statements

1 only the hours spent on scheduled classroom instruction, and failed to include accurate entries for gross
2 and net wages earned, in violation of Labor Code § 226(a).

3 **F. Defendant Violated Sick Leave Laws**

4 34. During the PAGA Period, pursuant to Labor Code § 246(a), Defendant maintained a sick
5 leave policy applicable to Adjunct Aggrieved Employees that provided them with one hour of paid sick
6 leave for every 30 hours worked.

7 35. However, as a result of failing to pay Adjunct Aggrieved Employees for all hours worked
8 and strongly discouraging them from seeking extra hours, Defendant failed to provide Adjunct Aggrieved
9 Employees with sufficient sick leave, i.e. sick leave calculated based on *all* hours worked by Adjunct
10 Aggrieved Employees, in violation of Labor Code § 246 et seq.

11 **G. Defendant Failed to Reimburse Aggrieved Employees' Business Expenses**

12 36. In or about mid-March 2020, Defendant directed all staff and faculty, other than essential
13 employees, to work from home due to the government stay at home orders in response to the Covid-19
14 pandemic. This directive continued through much of 2021 for many of Defendant's staff and faculty. In
15 November 2020, Platt began offering in-person specific lab classes only, while all other classes remained
16 remote.

17 37. In carrying out their work duties from home, Aggrieved Employees incurred necessary
18 expenses and/or losses in the direct consequence of the discharge of their duties. These expenses and/or
19 losses include, but are not limited to home internet and cellular phone charges, software, ink
20 toner/cartridge and paper, and other expenses associated with working from home ("Home Office
21 Expenses").

22 38. Defendant knew that Aggrieved Employees incurred these expenses because common
23 sense dictates they could not conduct their work duties remotely without incurring such expenses.

24 39. In addition, during the PAGA Period, Defendant offered online courses to students as part
of its Distance Education Programs, which are taught remotely by instructors. To teach these courses,
Aggrieved Employees must incur Home Office Expenses in order to carry out their job duties for
Defendant. Defendant knew that Aggrieved Employees incurred these expenses, yet failed to reimburse
them.

40. Defendant was aware that Aggrieved Employees incurred these expenses in direct
consequence of the discharge of their job duties because Defendant required and/or expected Aggrieved
Employees to perform their work duties from home which required incurring Home Office Expenses.

1 Defendant, however, did not reimburse Aggrieved Employees for such expenses incurred throughout the
2 PAGA Period, as required under Labor Code § 2802.

3 **H. Defendant Imposed Unlawful Terms of Employment**

4 41. During the PAGA Period, Defendant required Aggrieved Employees, as a condition of
5 their employment, to agree to a non-solicitation agreement, in violation of Labor Code § 432.5.

6 42. Aggrieved Employees' employment agreements contained a non-solicitation clause, that
7 provides as follows:

8 "[Y]ou agree that during your employment and for a period of twelve (12) months following your
9 termination from the Company, for any reason, whether initiated by you or the Company, you will
10 not solicit, induce, or encourage any employee or contractor of the Company to leave the employ
11 of or engagement by the Company, or otherwise interfere with the relationship between the
12 company and its employees or contractors."

13 43. Defendant's non-solicitation clause is prohibited by Business & Professions Code § 16600,
14 which provides that "every contract by which anyone is restrained from engaging in a lawful profession,
15 trade, or business of any kind is to that extent void."

16 44. As a result, Defendant's non-solicitation clause violates Labor Code § 432.5, which
17 prohibits an employer from "requir[ing] any employee or applicant for employment to agree, in writing,
18 to any term or condition which is known by such employer, or agent, manager, superintendent, or officer
19 thereof to be prohibited by law."

20 **CAUSE OF ACTION FOR PAGA CIVIL PENALTIES**

21 45. Plaintiff incorporates the foregoing paragraphs as fully set forth herein. Plaintiff seeks
22 PAGA penalties on behalf of herself, Adjunct Aggrieved Employees, Aggrieved Employees and the State
23 of California for the following:

24 **A. Violation of Labor Code §§ 223, 1194**

46. During the PAGA Period, Defendant did not compensate Adjunct Aggrieved Employees
for all hours worked, as required under Labor Code §§ 223, 1194 and Wage Order No. 4-2001, § 4.

47. As a result of Defendant's violation of Labor Code §§ 223, 1194, Plaintiff and Adjunct
Aggrieved Employees are entitled to one hundred dollars (\$100) for each initial violation and two hundred
dollars (\$200) for each subsequent violation.

B. Violation of Labor Code § 226.7

48. During the PAGA Period, Defendant failed to permit and authorized Adjunct Aggrieved
Employees off-duty rest breaks and failed to pay premium pay for missed rest breaks, as required under
Labor Code § 226.7 and Wage Order No. 4-2001, § 12.

1
2 49. As a result of Defendant's violation of Labor Code § 226.7, Plaintiff and Adjunct
3 Aggrieved Employees are entitled to one hundred dollars (\$100) for each initial violation and two hundred
4 dollars (\$200) for each subsequent violation.

5 **C. Violation of Labor Code §§ 226.7, 512**

6 50. During the PAGA Period, Defendant failed to provide Adjunct Aggrieved Employees with
7 off-duty meal breaks and failed to pay premium pay for missed meal breaks, as required under Labor
8 Code §§ 226.7, 512 and Wage Order No. 4-2001, § 11.

9 51. As a result of Defendant's violation of Labor Code §§ 226.7, 512 Plaintiff and Adjunct
10 Aggrieved Employees are entitled to one hundred dollars (\$100) for each initial violation and two hundred
11 dollars (\$200) for each subsequent violation.

12 **D. Violation of Labor Code §§ 201-202**

13 52. During the PAGA Period, Defendant failed to pay Plaintiff and Adjunct Aggrieved
14 Employees all wages owed upon discharge, in violation of Labor Code § 201.

15 53. As a result, Plaintiff and Adjunct Aggrieved Employees are entitled to one hundred dollars
16 (\$100) for each initial violation, and two hundred dollars (\$200) for each subsequent violation.

17 **E. Violation of Labor Code § 226(a)**

18 54. During the PAGA Period, Defendant failed to provide Plaintiff and Adjunct Aggrieved
19 Employees with accurate itemized wage statements in violation of Labor Code § 226(a) by failing to list
20 on the wage statements accurate entries for all hours worked and gross and net wages earned, in violation
21 of Labor Code §§ 226(a)(1), (2), (5).

22 55. Under California Labor Code § 226.3, Plaintiff and Adjunct Aggrieved Employees are
23 entitled to a PAGA penalty equal to two hundred fifty dollars (\$250) per pay period for the initial violation
24 and one thousand dollars (\$1,000) per pay period for each subsequent violation.

56. Alternatively, under Labor Code § 2699(f)(2), Plaintiff and Adjunct Aggrieved Employees
are entitled to one hundred dollars (\$100) for each initial violation and two hundred dollars (\$200) for
each subsequent violation.

F. Violation of Labor Code §§ 246 et seq.

57. During the PAGA Period, Defendant failed to provide Plaintiff and Adjunct Aggrieved
Employees with sufficient paid sick leave time, as required by Labor Code § 246(a).

58. As a result, Plaintiff and Adjunct Aggrieved Employees are entitled to one hundred dollars
(\$100) for each initial violation, and two hundred dollars (\$200) for each subsequent violation.

1 **G. Violation of Labor Code § 2802**

2 59. During the PAGA Period, Defendant failed to reimburse Plaintiff and Aggrieved
3 Employees for necessarily incurred business expenses, including home internet costs, home or mobile
4 telephone expenses, ink toner/cartridges and paper costs, and other expenses associated with working
from home incurred in carrying out their job duties for Defendant, in violation of Labor Code § 2802.

5 60. Pursuant to Labor Code § 2699(f)(2), Plaintiff and Aggrieved Employees are entitled to
6 one hundred dollars (\$100) for each initial violation and two hundred dollars (\$200) for each subsequent
violation.

7 **H. Violation of Labor Code § 435.2**

8 61. During the PAGA Period, Defendant required Plaintiff and Aggrieved Employees to agree,
9 as a condition of their employment, to an unlawful term of employment by requiring them to agree to a
non-solicitation clause in their employment contracts, in violation of Labor Code § 432.5.

10 62. As a result, Plaintiff and Aggrieved Employees are entitled to one hundred dollars (\$100)
11 for each initial violation, and two hundred dollars (\$200) for each subsequent violation.

12 **PRAYER FOR RELIEF**

13 **WHEREFORE**, Plaintiff requests the following relief:

- 14 A. Civil penalties pursuant to PAGA;
15 B. Reasonable attorneys' fees and costs pursuant to Labor Code § 2699(g); and
16 C. All other relief as this Court deems proper.

17 Dated: February 10, 2022

Respectfully submitted,

18 

19 By: Julian Hammond
 HAMMONDLAW, P.C.

20 *Attorneys for Plaintiff*