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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

TIKOA CARTER, an individual, on behalf of
herself and others similarly situated

PLAINTIFF,

v.

SPEECH AND LANGUAGE PATHOLOGY
ASSOCIATES, INC.; and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO. 21STCV44618

[Case Assigned for All Purposes to Hon.
Kenneth R. Freeman in Dept. 14]

**[Amended as a matter of right, pursuant to
Labor Code § 2699.3(a)(2)(C)]**

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Provide Rest Breaks Pursuant to Labor Code §§ 226.7
2. Failure to Reimburse Expenses Pursuant to Labor Code § 2802
3. Violation of Labor Code § 226(a)
4. Penalties Pursuant to Labor Code § 203
5. Violation of Business & Professions Code § 17200
6. Penalties Pursuant to Labor Code §2699, et seq.

1 Plaintiff TIKOA CARTER¹, an individual, on behalf of herself, all others similarly
2 situated, and on behalf of the people of the State of California and as an “aggrieved employee”
3 under Labor Code Private Attorneys General Act of 2004, §2699, *et seq.* (hereafter “PAGA”),
4 complains of Defendant SPEECH AND LANGUAGE PATHOLOGY ASSOCIATES, INC.
5 (“Defendant”) and each of them, as follows:

6 **I.**

7 **INTRODUCTION**

8 1. This is a Class and Representative Action, pursuant to Code of Civil Procedure §
9 382, and Labor Code §2699, *et seq.*, on behalf of Plaintiff and a Proposed Class defined as:

10 All persons who are employed or have been employed as an
11 employee excluding the executive team by SPEECH AND
12 LANGUAGE PATHOLOGY ASSOCIATES, INC., in the State of
13 California since four (4) years prior to the filing of this action to the
14 present plus any additional time during which the statutes of
limitation for the causes of action herein were tolled pursuant to
Emergency Rule 9 of the California Rules of Court, the ‘Emergency
Rules Related to COVID-19’. (“Proposed Class”)

15 2. Any limitations period referenced in this complaint is extended pursuant to
16 Emergency Rule 9 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the
17 California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of
18 limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020
19 [“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action
20 that exceed 180 days are tolled from April 6, 2020 until October 1, 2020.”] Any reference to the
21 relevant time period or statute of limitations referenced in this complaint is extended into the past
22 by the number of days in which this tolling was in effect.

23 3. From at least four (4) years prior to the filing of this action and continuing to the
24 present, Defendant failed to apprise Plaintiff and the Proposed Class of their rights associated with
25 rest periods and failed to provide compliant rest periods. Defendant maintained a consistent policy
26 of failing to provide Plaintiff and the Proposed Class with rest breaks of not less than ten (10)

27 ¹ Plaintiff sent a notice letter to the Labor and Workforce Development Agency (“LWDA”) and
28 Defendant Speech and Language Pathology Associates, Inc. on December 8, 2021, which
incorrectly stated Ms. Carter’s last name as “Cater” instead of “Carter”.

1 minutes per four (4) hour work period or major fraction thereof. Plaintiff and the Proposed Class
2 are required to work four-hour increments (or major fractions thereof) without being provided with
3 a ten (10) minute rest period. Further, Plaintiff and the Proposed Class were not compensated with
4 one (1) hour of wages at the regular rate of compensation for each missed rest period in violation
5 of *Ferra and* as required by Labor Code § 226.7. Very recently, on July 15, 2021, in *Ferra v.*
6 *Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for calculating
7 the one extra hour of premium pay that employees are owed if an employer fails to provide a
8 compliant meal period or rest break. Specifically, the Court held that those premium payments
9 must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary
10 bonuses), and cannot simply be paid at an employee's base hourly rate. Defendant has had a
11 consistent policy of paying rest period premiums at the base rate and not the blended rate when
12 they are provided in violation of Labor Code §§ 226.7.

13 4. For at least four (4) years prior to the filing of this action and continuing to the
14 present, Defendant has failed to reimburse Plaintiff and the Proposed Class for business-related
15 expenses. Defendant has failed to reimburse Plaintiff and the Proposed Class for their mileage.
16 Defendant has also failed to reimburse Plaintiff and the Proposed Class the cost of using their
17 personal cell phones and internet at home. In addition, the work performed by Plaintiff and the
18 Proposed Class necessitated the use of educational materials for students necessary to perform
19 their job duties. These are all necessary business expenditures under California law and Defendant
20 failed to reimburse the Proposed Class.

21 5. For at least one (1) year prior to the filing of this action and continuing to the
22 present, Defendant has failed to comply with Industrial Welfare Commission ("IWC") Wage Order
23 4-2001 and Labor Code § 226(a) by failing to furnish Plaintiff and the Proposed Class accurate
24 itemized wage statements that show total hours worked and all applicable hourly rates in effect
25 during the pay period and the corresponding number of hours worked at each hourly rate by the
26 employee. In addition, Plaintiff and the Proposed Class are issued wage statements that do not
27 include rest premiums as a result of the claims alleged above.

28 6. For at least three (3) years prior to the filing of this action continuing to the present,

1 Defendant has failed to pay all wages due at the time of termination or resignation to Plaintiff and
2 the Proposed Class.

3 7. Plaintiff, on behalf of herself and all Proposed Class Members brings this action
4 pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, and 2802; Wage Order 4-2001; and
5 California Code of Regulations, Title 8, Section 11040, seeking rest period penalties,
6 unreimbursed expenses, accurate itemized wage statements, other penalties, injunctive and other
7 equitable relief, and reasonable attorneys' fees and costs.

8 8. Plaintiff, on behalf of herself and all Proposed Class Members, pursuant to Business
9 & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and disgorgement of
10 all benefits Defendant enjoyed from its unlawful conduct as described herein.

11 9. For at least one (1) year prior to the date of the letter sent to the LWDA and
12 Defendant giving notice of the claims pursuant to PAGA and continuing to the present and as
13 extended by Emergency Rule 9 referenced in paragraph 2 above, Defendant has violated Labor
14 Code provisions, as detailed below, giving rise to a claim pursuant to PAGA. Plaintiff, on behalf
15 of himself and all aggrieved employees presently or formerly employed by Defendant during the
16 liability period as defined in his PAGA notice letter (*see* Exhibit "1"), brings this representative
17 action pursuant to Labor Code §2699, et seq. seeking penalties for Defendant's failure to comply
18 with Labor Code §§ 201, 202, 203, 226(a), 226.7, and 2802.

19 II.

20 JURISDICTION AND VENUE

21 10. This Court has subject matter jurisdiction over all causes of action asserted herein
22 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure
23 § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive
24 of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the
25 State of California or is subject to adjudication in the courts of the State of California.

26 11. This Court has personal jurisdiction over Defendant because Defendant has caused
27 injuries in the County of Los Angeles and the State of California through their acts, and by their
28 violation of the California Labor Code, California state common law, and California Business &

Professions Code § 17200, *et seq.*

12. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil Procedure § 395. Defendant operates within California and does business within Los Angeles County. The unlawful acts alleged herein have a direct effect on Plaintiff and all Proposed Class Members within the State of California and the county of Los Angeles.

13. This case should be classified as complex according to Rule 3.400 of the California Rules of Court, and assigned to a complex litigation judge and department, as it will involve substantial documentary evidence, a large number of witnesses, and is likely to involve extensive motion practice raising difficult or novel issues that will be time-consuming to resolve and would require substantial post judgment judicial supervision.

14. Plaintiff files this amended complaint adding a claim for penalties under Labor Code §2699, *et seq.* as a matter of right. (*see* Labor Code § 2699.3(a)(2)(C)).

III.

PARTIES

A. PLAINTIFF

15. Plaintiff TIKOA CARTER is a resident of California.

16. Plaintiff and all Proposed Class Members, were regularly required to:

a. Work without being provided rest periods;

b. Work without being reimbursed for necessary business-related expenses;

and,

c. Work without being provided accurate itemized wage statements.

17. Defendant willfully failed to compensate Plaintiff and all Proposed Class Members for wages at the termination of their employment with Defendant.

18. As a result of this conduct, Defendant has engaged in unfair competition and unlawful business practices.

B. DEFENDANTS

19. Defendant SPEECH AND LANGUAGE PATHOLOGY ASSOCIATES, INC. is believed to be a California corporation operating within the State of California. Defendant's

1 corporate address is believed to be 4420 Carpenter Ave, Studio City, CA 91607. Upon information
2 and belief, Defendant employed Plaintiff and similarly situated persons as hourly employees
3 within California. Defendant has done and does business throughout the State of California.

4 20. The true names and capacities, whether individual, corporate, associate, or
5 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to
6 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
7 § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
8 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
9 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
10 capacities of the Defendants designated hereinafter as DOES when such identities become known.

11 21. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
12 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
13 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
14 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
15 employer and/or joint employer of Plaintiff and the Proposed Class Members.

16 22. Furthermore, Defendants acted in all respects as the employers or joint employers
17 of the Proposed Class. Defendants, and each of them, exercised control over the wages, hours or
18 working conditions of the Proposed Class, or suffered or permitted the Proposed Class to work, or
19 engaged, thereby creating a common law employment relationship, with the Proposed Class.
20 Therefore, Defendants, and each of them, employed or jointly employed the Proposed Class.

21 23. Plaintiff and all aggrieved employees, as defined in his notice letter to the LWDA,
22 are “aggrieved employees” within the meaning of Labor Code § 2699, *et seq.* (see Labor Code
23 §2699(c).)

24 **IV.**

25 **FACTUAL BACKGROUND**

26 24. Plaintiff and the Proposed Class are, and at all times pertinent hereto, have been
27 classified as non-exempt employees by Defendant. Defendant hires employees who work as
28 employees who are paid on an hourly basis.

1 25. Upon information and belief, Plaintiff and the Proposed Class are covered by
2 California Industrial Welfare Commission Occupational Wage Order No. 4-2001 (Title 8 Cal.
3 Code of Regs. § 11040).

4 26. Defendant failed to provide Plaintiff and the Proposed Class members with
5 compliant rest breaks of not less than ten (10) minutes per four (4) hour work period or major
6 fraction thereof. Defendant failed to maintain a policy informing Plaintiff and the Proposed Class
7 of this right. Plaintiff and the Proposed Class have been required to work four-hour increments
8 (or major fractions thereof) without being provided with compliant ten (10) minute rest periods.
9 Further, Plaintiff and the Proposed Class were not compensated with one (1) hour of wages at the
10 regular rate of compensation for each missed rest period as required.

11 27. On a regular and consistent basis, Plaintiff and the Proposed Class have not been
12 properly reimbursed for business expenses and supplies necessary for the completion of their job
13 duties. Defendant has failed to reimburse Plaintiff and the Proposed Class for their mileage.
14 Defendant has also failed to reimburse Plaintiff and the Proposed Class the cost of using their
15 personal cell phones and internet at home. In addition, the work performed by Plaintiff and the
16 Proposed Class necessitated the use of educational materials for students necessary to perform
17 their job duties. These are all necessary business expenditures under California law and Defendant
18 failed to reimburse the Proposed Class.

19 28. Defendant has failed to comply with Industrial Welfare Commission (“IWC”)
20 Wage Order 4-2001(7) and Labor Code § 226(a) by failing to furnish Plaintiff and the Proposed
21 Class accurate itemized wage statements that show total hours worked and all applicable hourly
22 rates in effect during the pay period and the corresponding number of hours worked at each hourly
23 rate by the employee. In addition, Plaintiff and the Proposed Class are issued wage statements that
24 do not include rest premiums as a result of the claims alleged above.

25 29. Defendant willfully failed to pay wages and compensation when Plaintiff and all
26 Proposed Class Members quit or were discharged. This failure was willful, without legal
27 justification, and interfered with Plaintiff’s and Class Members’ rights.

28 30. As a result of the acts alleged herein, Defendant violated Labor Code §2699, *et seq.*

1 V.

2 CLASS ACTION ALLEGATIONS

3 31. Plaintiff brings this action on behalf of herself, and all others similarly situated as
4 a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent a
5 proposed class composed of and defined as follows:

6 All persons who are employed or have been employed as an
7 employee excluding the executive team by SPEECH AND
8 LANGUAGE PATHOLOGY ASSOCIATES, INC., in the State of
9 California since four (4) years prior to the filing of this action to the
10 present plus any additional time during which the statutes of
limitation for the causes of action herein were tolled pursuant to
Emergency Rule 9 of the California Rules of Court, the ‘Emergency
Rules Related to COVID-19’. (“Proposed Class”)

11 32. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to
12 amend or modify the class description with greater specificity, by division into subclasses, or by
13 limitation to particular issues.

14 33. This action has been brought and may properly be maintained as a class action
15 under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined
16 community of interest in the litigation and the Proposed Classes are easily ascertainable.

17 **A. NUMEROSITY**

18 34. The potential members of the Proposed Class as defined are so numerous that
19 joinder of all the members of the Proposed Class is impracticable. While the precise number of
20 proposed Class Members has not been determined at this time, Plaintiff is informed and believes
21 that Defendant currently employ, and during the relevant time periods employed over 50 members
22 of the Proposed Class.

23 35. Plaintiff alleges that Defendant’s employment records would provide information
24 as to the number and location of all Proposed Class Members. Joinder of all members of the
25 Proposed Class is not practicable.

26 **B. COMMONALITY**

27 36. There are questions of law and fact common to the Proposed Class that predominate
28 over any questions affecting only individual Proposed Class Members. These common questions

of law and fact include, without limitation:

a. Whether Defendant violated Labor Code § 226.7 and IWC Wage Order 4-2001 or other applicable IWC Wage Orders by failing to provide required rest periods throughout the term of employment and/or failing to compensate said employees one (1) hour of wages at their regular rate of compensation in lieu of rest periods;

b. Whether Defendants violated Labor Code § 2802 and/or Wage Order 4-2001 or other applicable IWC Wage Orders by failing to reimburse out of pocket expenses for the cost of using their personal cell phones, materials for students, and mileage;

c. Whether Defendant violated Labor Code § 226(a) and Wage Order 4-2001 or other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11040 by failing to furnish accurate itemized wage statements to Plaintiff and the members of the Proposed Class;

d. Whether Defendant violated §§ 201-203 of the Labor Code by failing to pay compensation due and owing at the time that any Proposed Class Member's employment with Defendant terminated;

e. Whether Defendant violated § 17200, *et seq.* of the Business & Professions Code by engaging in the acts previously alleged; and

f. Whether Plaintiff and the members of the Proposed Class are entitled to equitable relief pursuant to Business & Professions Code § 17200, *et seq.*

g. Whether Defendant violated Labor Code § 2699, *et seq.* by engaging in the acts alleged herein.

C. TYPICALITY

37. The claims of Plaintiff are typical of the claims of the Proposed Class. Plaintiff and all members of the Proposed Class sustained injuries and damages arising out of and caused by Defendant's common course of conduct in violation of laws, regulations that have the force and effect of law, and statutes as alleged herein.

D. ADEQUACY OF REPRESENTATION

38. Plaintiff will fairly and adequately represent and protect the interests of the members of the Proposed Class.

39. Counsel who represent Plaintiff and the Proposed Class are competent and experienced in litigating large employment class actions.

E. SUPERIORITY OF CLASS ACTION

40. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Proposed Class Members is not practicable, and questions of law and fact common to the Proposed Class predominate over any questions affecting only individual members of the Proposed Class. Each member of the Proposed Class has been damaged and is entitled to recovery by reason of Defendant's illegal policy and/or practice of failing to provide rest periods, failing to reimburse expenses, failing to provide accurate itemized wage statements, and failing to pay all wages upon resignation or termination.

41. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

VI.

FIRST CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS

FAILURE TO PROVIDE REST PERIODS PURSUANT TO

LABOR CODE § 226.7

42. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by reference all previous paragraphs.

43. Labor Code § 226.7 and IWC Wage Order 4 require an employer to provide rest periods or to pay an additional one (1) hour of wages for each rest period the employer fails to provide. Employees are entitled to a ten (10) minute rest break for every four (4) hours worked or major fraction thereof.

44. Defendant failed to maintain a policy informing Plaintiff and the Proposed Class of this right.

45. Defendant maintained a consistent policy of failing to provide Plaintiff and the

1 Proposed Class with rest breaks of not less than ten (10) minutes per four (4) hour work period or
2 major fraction thereof. Plaintiff and the Proposed Class have been required to work four-hour
3 increments (or major fractions thereof) without being provided with compliant ten (10) minute rest
4 periods.

5 46. Plaintiff and the Proposed Class were not compensated with one (1) hour of wages
6 at the regular rate of compensation for each missed rest period as required by Labor Code § 226.7.
7 *Ferra v. Loews Hollywood Hotel, LLC* requires the rest period premium payments must include the
8 hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be
9 paid at an employee's base hourly rate.

10 47. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Class are entitled to
11 damages in an amount equal to one (1) hour of wages at the regular rate of compensation per
12 missed rest break, per day in a sum to be proven at trial.

13 **VII.**

14 **SECOND CAUSE OF ACTION**

15 **PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS**

16 **FAILURE TO REIMBURSE EXPENSES PURSUANT TO**

17 **LABOR CODE § 2802**

18 52. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by
19 reference all previous paragraphs.

20 53. Labor Code § 2802 requires employers to indemnify employees for all necessary
21 expenditures incurred by employees in the discharge of their duties.

22 54. Plaintiff and the Proposed Class used their own vehicles to travel from house to
23 house. Defendant has failed to reimburse Plaintiff and the Proposed Class for the cost of mileage
24 necessary for the performance of Plaintiff and the Proposed Class's job duties.

25 55. Plaintiff and the Proposed Class used their personal cell phones as a necessary part
26 of their jobs. Defendant has failed to reimburse Plaintiff and the Proposed Class for the cost of
27 using their personal cell phones necessary for the performance of Plaintiff and the Proposed
28 Class's job duties.

56. Plaintiff and the Proposed Class used their home internet as a necessary part of their jobs. Defendant has failed to reimburse Plaintiff and the Proposed Class for the cost of using their personal cell phones necessary for the performance of Plaintiff and the Proposed Class's job duties

57. Plaintiff and the Proposed Class purchased materials for students such as learning flash cards, activity cards and supplies, crayons, among other items, that were not provided by Defendant but were necessary for the performance of Plaintiff and the Proposed Class's job duties. Defendant has failed to reimburse Plaintiff and the Proposed Class for the cost of necessary materials for the performance of Plaintiff and the Proposed Class's job duties.

58. As a result of the unlawful acts of Defendants, Plaintiff and the Proposed Class have been deprived of reimbursement in the amounts to be determined at trial, and are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

VIII.

THIRD CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS

VIOLATION OF LABOR CODE § 226(A)

54. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by reference all previous paragraphs.

55. Labor Code § 226(a)(2) and (9) requires that every employer shall semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing total hours worked and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Defendant issues Plaintiff and the Proposed Class wage statements that do not properly indicate total hours worked and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee in violation of Labor Code § 226(a)(2) and (9) respectively.

56. As a result of Defendant's failure to provide rest periods as described above, Defendant has failed to properly include rest premiums for Plaintiff and the Proposed Class.

57. Defendant's failure to provide accurate itemized wages statements according to

1 Labor Code § 226(a) was all done on a regular and consistent basis.

2 63. An employee suffering injury as a result of a knowing and intentional failure by an
3 employer to comply with Labor Code § 226(a) is entitled to recover the greater of all actual
4 damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred
5 dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an
6 aggregate penalty of four thousand dollars (\$4,000) and is entitled to an award of costs and
7 reasonable attorneys' fees.

8 **IX.**

9 **FOURTH CAUSE OF ACTION**

10 **PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS**

11 **WAITING TIME PENALTIES UNDER LABOR CODE § 203**

12 64. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by
13 reference all previous paragraphs.

14 65. Numerous members of the Proposed Class including the Plaintiff are no longer
15 employed by Defendant. They were either fired or quit Defendant's employ.

16 66. Defendant's failure to pay wages, as alleged above was willful in that Defendant
17 knew wages to be due but failed to pay them, thus entitling Plaintiff and the Proposed Class to
18 penalties under Labor Code § 203, which provides that an employee's wages shall continue as a
19 penalty until paid for a period of up to thirty (30) days from the time they were due.

20 67. Defendant has failed to pay Plaintiff and others a sum certain at the time of
21 termination or within seventy-two (72) hours of their resignation, and have failed to pay those
22 sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code § 203, Plaintiff and
23 the Proposed Class are entitled to a penalty in the amount of Plaintiff's and the Proposed Class
24 Members' daily wage multiplied by thirty (30) days.

25 **X.**

26 **FIFTH CAUSE OF ACTION**

27 **PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASS**

28 **UNFAIR COMPETITION PURSUANT TO BUSINESS & PROFESSIONS CODE § 17200**

1 68. Plaintiff, on behalf of herself and the Proposed Class, realleges and incorporates by
2 reference all previous paragraphs.

3 69. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of herself,
4 on behalf of the general public, and on behalf of the Proposed Class, bring this claim pursuant to
5 Business & Professions Code § 17200, *et seq.* The conduct of Defendant as alleged in this
6 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general
7 public, and the Proposed Class. Plaintiff seeks to enforce important rights affecting the public
8 interest within the meaning of Code of Civil Procedure § 1021.5.

9 70. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204,
10 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other
11 appropriate equitable relief.

12 71. Business & Profession Code § 17200, *et seq.* prohibits unlawful and unfair business
13 practices.

14 72. California’s wage and hour laws express fundamental public policies. Providing
15 employees with proper wages and compensation are fundamental public policies of this State and
16 of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce
17 vigorously minimum labor standards, to ensure that employees are not required or permitted to
18 work under substandard and unlawful conditions, and to protect law-abiding employers and their
19 employees from competitors who lower their costs by failing to comply with minimum labor
20 standards.

21 73. Defendant has violated statutes and public policies as alleged herein. Through the
22 conduct alleged in this Complaint, Defendant has acted contrary to these public policies, have
23 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
24 business practices in violation of Business & Profession Code § 17200, *et seq.*, depriving Plaintiff,
25 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
26 guaranteed to all employees under law.

27 74. Defendant’s conduct, as alleged hereinabove, constitutes unfair competition in
28 violation of § 17200, *et seq.* of the Business & Professions Code.

75. Defendant, by engaging in the conduct herein alleged, either knew or in the exercise of reasonable care, should have known that the conduct was unlawful. As such it is a violation of § 17200, *et seq.* of the Business & Professions Code.

76. As a proximate result of the above-mentioned acts of Defendant, Plaintiff and others similarly situated have been damaged in a sum as may be proven.

77. Unless restrained, Defendant will continue to engage in the unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this court should make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by Defendant, its agents, or employees, of any unlawful or deceptive practices prohibited by the Business & Professions Code, and/or, including but not limited to, restitution and disgorgement of profits which may be necessary to restore Plaintiff and members of the proposed Class the money Defendant has unlawfully failed to pay.

XI.

SIXTH CAUSE OF ACTION

PENALTIES PURSUANT TO LABOR CODE §2699, ET SEQ.

58. Plaintiff, on behalf of himself and all aggrieved employees, realleges and incorporates by reference all previous paragraphs.

59. As a result of the acts alleged above and specifically incorporated herein, Plaintiff seeks penalties under Labor Code §2699, *et seq.* because of Defendant's violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, 2802; Wage Order 4-2001; and California Code of Regulations, Title 8, Section 11040, which call for civil penalties.

60. For each such penalty, Plaintiff and the aggrieved employees are entitled to penalties in an amount to be shown at trial, subject to the following formula:

a. \$100 for the initial violation per employee per pay period.

b. \$200 for each subsequent violation per employee per pay period.

61. These penalties shall be allocated seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to the affected employees.

62. Pursuant to Labor Code § 2699.3(a)(1), Plaintiff uploaded a notice letter to the

1 LWDA² and mailed a letter by certified mail to Defendant's entity address, which is 4420
2 Carpenter Ave Studio City, CA 91607, as proscribed by the Code on December 8, 2021, describing
3 Defendant's conduct in violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, and 2802. (*see*
4 Exhibit "1.") Plaintiff obtained a green return receipt from Defendant, indicating that it received
5 Plaintiff's notice letter (*see* Exhibit "2"). Plaintiff also obtained an e-filing confirmation from the
6 LWDA confirming receipt of the notice (*see* Exhibit "3").

7 63. As no letter evidencing the LWDA's intention to investigate was received by
8 Plaintiff's Counsel within sixty-five (65) calendar days, Plaintiff is entitled to commence a civil
9 action as though the LWDA had not chosen to investigate pursuant to Labor Code
10 §2699.3(a)(2)(A).

11 64. Plaintiff will also provide the LWDA with a filed-stamped copy of the First
12 Amended Class and Representative Action Complaint immediately.

13 **RELIEF REQUESTED**

14 **WHEREFORE**, Plaintiff prays for the following relief:

15 1. For compensatory damages in the amount of Plaintiff's and each Proposed Class
16 Members' hourly wage for each rest period missed or taken late from at least four (4) years prior
17 to the filing of this action to the present as may be proven;

18 2. For compensatory damages in the amount of Plaintiff's and each Proposed Class
19 Members' unreimbursed out of pocket expenses as a requirement of employment;

20 3. For penalties pursuant to Labor Code § 226(e) for violation of Labor Code § 226(a)
21 in the amount of fifty dollars (\$50) for the initial pay period in which a violation occurs and one
22 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding
23 an aggregate penalty of four thousand dollars (\$4,000);

24 4. For penalties pursuant to Labor Code § 203 for all employees who were terminated
25 or resigned equal to their daily wage times thirty (30) days;

26 5. An award of prejudgment and post judgment interest;

27 ² Plaintiff electronically filed a PAGA Claim Notice to the LWDA, via the State of California
28 Labor and Workforce Development Agency / Department of Industrial Relations website
(<https://dir.tfaforms.net/308>).

1 6. An order enjoining Defendant and its agents, servants, and employees, and all
2 persons acting under, in concert with, or for it from providing Plaintiff with proper rest periods,
3 reimbursement of expenses, accurate itemized wage statements, and wages upon
4 termination/resignation pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 2802, and IWC
5 4-2001;

6 7. For restitution for unfair competition pursuant to Business & Professions Code
7 § 17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;

8 8. For penalties under Labor Code §2699, *et seq.* for Defendant's violation of Labor
9 Code §§ 201, 202, 203, 226(a), 226.7, 2802, and IWC Wage Order 4-2001;

10 9. An award providing for payment of costs of suit;

11 10. An award of attorneys' fees; and

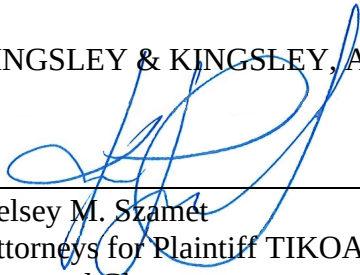
12 11. Such other and further relief as this Court may deem proper and just.

13 **DEMAND FOR JURY TRIAL**

14 Plaintiff hereby demands a trial of her claims by jury to the extent authorized by law.

15 DATED: May 19, 2022

16 KINGSLEY & KINGSLEY, APC

17 By: 

18 Kelsey M. Szamet
19 Attorneys for Plaintiff TIKOA CARTER and the
20 Proposed Class

EXHIBIT "1"



December 8, 2021

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

SPEECH AND LANGUAGE PATHOLOGY ASSOCIATES, INC.
4420 Carpenter Ave
Studio City, CA 91607

Re: TIKOA CARTER v. SPEECH AND LANGUAGE PATHOLOGY
ASSOCIATES, INC.
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents TIKOA CARTER (“Plaintiff”) and a proposed group of current and former employees working for SPEECH AND LANGUAGE PATHOLOGY ASSOCIATES, INC. (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of herself and the State of California as well as on behalf of a group of aggrieved employees defined as: All persons who are employed or have been employed as an employee excluding the executive team by SPEECH AND LANGUAGE PATHOLOGY ASSOCIATES, INC., in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present plus any additional time during which the statutes of limitation for the causes of action herein were tolled pursuant to Emergency Rule 9 of the California Rules of Court, the ‘Emergency Rules Related to COVID-19’. (“aggrieved employees”).

Any limitations period referenced in this letter is extended pursuant to Emergency Rule 9 (a) of the “Emergency Rules Related to COVID-19,” Appendix I to the California Rules of Court, adopted effective April 6, 2020, which provides that the statutes of limitation that exceed 180 days for civil actions are tolled from April 6, 2020 until October 1, 2020 [“Notwithstanding any other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are tolled from April 6, 2020, until October 1, 2020.”] Any reference to the relevant time period or statute of limitations referenced in this letter is extended into the past by the number of days in which this tolling was in effect.

Pursuant to Labor Code § 226.7 and Wage Order 4-2001, Defendant failed to provide Plaintiff and the aggrieved employees with rest breaks of not less than ten (10) minutes per four (4) hour work

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

December 8, 2021

Page 2 of 3

period or major fraction thereof. Defendant failed to maintain a policy informing Plaintiff and the aggrieved employees of this right. Plaintiff and all aggrieved employees have been required to work four-hour increments (or major fractions thereof) without being provided with a ten (10) minute rest period. As such, Defendant failed to provide Plaintiff and the Proposed Class with compliant rest periods.

Further, Plaintiff and the aggrieved employees were not compensated with one (1) hour of wages at the regular rate of compensation for each missed rest period in violation of *Ferra*. Very recently, on July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. Here, Defendant has had a consistent policy of paying rest period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7.

Labor Code § 2802 provides that an 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, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful. Defendant required Plaintiff and all aggrieved employees to travel between clients' houses to perform work tasks. Because Defendant did not provide buses or other transportation to workers so that they could travel from house to house in the middle of their shifts, Plaintiff and the aggrieved employees used their own vehicles to travel from house to house. Defendant did not fully cover the costs for mileage in violation of California law. Defendant has failed to reimburse Plaintiff and aggrieved employees the cost of using their personal cell phones for business related purposes. Defendant required that Plaintiff and the aggrieved employees be available by cell phone and answer/use their cell phones while working. These cell phones were not provided by Defendant and Defendant failed to reimburse Plaintiff and the aggrieved employees for the costs associated with using these personal cell phones. Defendant required Plaintiff and all aggrieved employees to use their at home internet for business purposes. Defendant failed to reimburse Plaintiff and the aggrieved employees for the costs associated with using their personal internet for work purposes. Defendant required aggrieved employees to purchase and use educational materials for the students such as learning flash cards, activity cards and supplies, crayons, among other items, as a necessary component to perform their job duties. Defendant failed to reimburse Plaintiff and the aggrieved employees for the costs associated with purchasing these materials.

Defendant also engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code § 226(a), which requires that every employer shall semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing total hours worked and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

December 8, 2021

Page 3 of 3

Defendant furnishes Plaintiff and all aggrieved employees wage statements that do accurately show total hours worked and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. In addition, Plaintiff and the aggrieved employees are issued wage statements that do not include rest premiums as a result of the claims alleged above and they are not paid premiums at the appropriate rate of pay. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code §226(a) with respect to Plaintiff and all aggrieved employees.

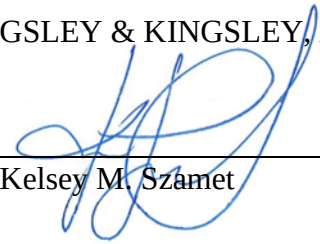
Labor Code § 203 provides that if “an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

Here, Plaintiff and all aggrieved employees were not paid all wages due upon their separation from Defendant’s employ. As such, Plaintiff is an aggrieved employee and Defendant failed to pay Plaintiff and all aggrieved employees all wages due at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, and 2802 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet

KMS/jl

- Cc:
1. LWDA Letter filed via Electronic Submission: <https://dir.tfaforms.net/308>
 2. SPEECH AND LANGUAGE PATHOLOGY ASSOCIATES, INC. via USPS Certified Mail # 7020 0640 0002 1439 7984

EXHIBIT "2"

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you
- This card to the addressee or on the front if space permits.

1. Article Addressed to:
**SPEECH AND LANGUAGE PATHOLOGY
ASSOCIATES, INC.**
4420 Carpenter Ave
Studio City, CA 91607



9590 9402 7019 1225 1721 40

2. Article Number (Transfer from service label)

7020 0640 0002 1439 7984

COMPLETE THIS SECTION ON DELIVERY

A. Signature

- ☐ Agent
☐ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☒ No



3. Service Type

- | | |
|--|---|
| ☐ Adult Signature | ☐ Priority Mail Express® |
| ☐ Adult Signature Restricted Delivery | ☐ Registered Mail™ |
| ☒ Certified Mail® | ☐ Registered Mail Restricted Delivery |
| ☐ Certified Mail Restricted Delivery | ☐ Signature Confirmation™ |
| ☐ Collect on Delivery | ☐ Signature Confirmation Restricted Delivery |
| ☐ Collect on Delivery Restricted Delivery | |
| ☐ Insured Mail | |
| ☐ Insured Mail Restricted Delivery (over \$500) | |

USPS TRACKING#



9590 9402 7019 1225 1721 40

First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

United States
Postal Service

• Sender: Please print your name, address, and ZIP+4® in this box•

KINGSLEY & KINGSLEY
A PROFESSIONAL CORPORATION
CITY NATIONAL BANK BUILDING
16133 VENTURA BOULEVARD, SUITE 1200
ENCINO, CALIFORNIA 91436

PAGA LETTER
SPEECH AND LANGUAGE PATHOLOGY ASSOCIATES, INC.

5-241600



EXHIBIT "3"



State of California

Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

New PAGA Claim Notice

Your Information (Person Who is Filing)

Your First Name *

Kelsey

Your Last Name *

Szamet

Firm Name (if any) *

Kingsley & Kingsley, APC

(Enter "in pro per" if you are representing yourself)

Your Email Address *

service@kingsleykingsley.c

Your Street Name, Number and Suite/Apt *

16133 Ventura Blvd., Ste 1

Your Mobile Phone Number

8189908300

Your City *

Encino

Your Work Phone Number

Your State *

California ▼

Your Zip/Postal Code *

91436

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

TIKOA CARTER

Plaintiff/Aggrieved Employee Occupation *

non-exempt employee

[Add Additional Plaintiffs](#)

Employer Information

Employer Entity Type

Please select... ▼

Employer Name *

SPEECH AND LANGUAGE PATHOLOGY ASSOC

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

Employer City *

4420 Carpenter Ave	Studio City
Employer State * California	Employer Zip/Postal Code * 91607
Employer Industry * Other	Employer Industry for "Other" * Elementary and Secondary

Add additional defendants

☐ Add any entity other than an individual

☐ Add an individual/sole proprietor employer

Notice General Information

Estimated Number of Employees Impacted by Violations *

50

Notice Violations – Check All that Apply ***Child Labor – Specify Ages**

- ☐ Child Labor
- ☐ Misclassification Employee Classified as Contractor
- ☐ Misclassification NonExempt Classified as Exempt
- ☐ Minimum Wage
- ☐ Overtime
- ☐ Not paid for all hours worked
- ☒ Not paid wages due on termination
- ☐ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☒ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☐ Kickbacks
- ☒ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030–1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☐ No Wage Statements
- ☒ Improper or Incomplete Wage Statements
- ☐ Other Notice or Posting or Recordkeeping
- ☐ Public Works (Labor Code 1720 – 1815)
- ☐ Apprenticeship (Labor Code 3070 – 3098)
- ☐ Occupational Safety and Health (Labor Code 6300 et seq)
- ☐ No Workers' Compensation
- ☐ Licensing, Registration, or Permit
- ☐ Unfair Immigration Activities
- ☐ Agricultural Labor Relations
- ☐ Industrial Homework
- ☐ Retaliation for Protected Status or Activity (Specify)
- ☐ Other

PAGA Claim Type – Check All that Apply *

- ☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5– not curable subject to 2699.3(a)
- ☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)
- ☐ Includes one or more violations not listed in Labor Code 2699.5 – curable subject to 2699.3(c)

Filing Fee

A filing fee of \$75 is required to file a new PAGA claim notice.

IFP

☐ I wish to claim In Forma Pauperis and am attaching a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form to this submission.

Billing information

Billing First Name *

Eric

Billing Last Name *

Kingsley

Billing Email *

service@kingsleykingsley.c

Billing Phone

8189908300

Billing Street Name, Number and Suite/Apt *

16133 Ventura Blvd., Ste 1200

Billing City *

Encino

Billing State *

California

Billing Zip/Postal Code *

91436

Credit Card Type *

Credit Card Number *

CVV Number *

Credit Card Expiration Month *

mm

Credit Card Expiration Year *

yyyy

Notice and Other Attachments

PAGA Claim Notice (must be a .pdf) *

Choose File LWDA Letter - ...iates, Inc.pdf

Other Attachment - (if any) (must be a .pdf)

Choose File No file chosen

[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

[Previous Page](#)[Submit](#)

Thank you. If you provided an email address with your submission, a confirmation regarding your submission will be emailed to you. Otherwise, you can search for the case to verify that your submission was properly received.

[Click Here](#) to Search Case

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Wednesday, December 8, 2021 4:13 PM
To: Service Email
Subject: Thank you for submission of your PAGA Case.

External Email!

12/8/2021

LWDA Case No. LWDA-CM-856614-21
Law Firm : Kingsley & Kingsley, APC
Plaintiff Name : TIKOA CARTER
Employer: SPEECH AND LANGUAGE PATHOLOGY ASSOCIATES, INC.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website:
https://nam10.safelinks.protection.outlook.com/?url=http%3A%2F%2Flabor.ca.gov%2FPrivate_Attorneys_General_Act.htm&data=04%7C01%7CKimberly%40kingsleykingsley.com%7C07306f23058849b189dd08d9baa8b10b%7C121a7875dbeb4c0fb25c5baf6c6ac7a5%7C0%7C0%7C637746055975643996%7CUnknown%7CTWFpbGZsb3d8eyJWljoIMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6Ikl1haWwiLCJXVCi6Mn0%3D%7C3000&data=uPOMqp5fBOIVsgwvWwHN85xm%2FrunpET5720H7CZb8CI%3D&reserved=0

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Wednesday, December 8, 2021 4:13 PM
To: Service Email
Subject: State of California - Department of Industrial Relations Customer Receipt / Purchase Confirmation

External Email!

Thank you for your payment.

Order Information

Merchant: State of California - Department of Industrial Relations

Case Number: LWDA-CM-856614-21

Order Number: ORD-000145160

Total:\$75.00

Card Type: XXXXXXXXXX

Date: 12/8/2021

Billing Information

Name: Eric Kingsley

Email: service@kingsleykingsley.com

Billing Address:

16133 Ventura Blvd., Ste 1200

Encino, California

91436