

1 JULIAN HAMMOND (SBN 268489)
jhammond@hammondlawpc.com
2 POLINA BRANDLER (SBN 269086)
pbrandler@hammondlawpc.com
3 ARI CHERNIAK (SBN 290071)
acherniak@hammondlaw.com
4 HAMMONDLAW, P.C.
1201 Pacific Ave suite 600
5 Tacoma WA 98402
(310) 601-6766
6 (310) 295-2385 (Fax)

7 *Attorneys for Plaintiff and the Putative Class*

FILED
Superior Court of California
County of Los Angeles

04/05/2023

David W. Slayton, Executive Officer / Clerk of Court

By: K. Martinez Deputy

10 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

11 **COUNTY OF LOS ANGELES**

13 **CADYN CATHERS**, individually and on behalf
of himself all others similarly situated,

14 Plaintiff,

15 vs.

17 **MOUNT SAINT MARY'S UNIVERSITY**, a
18 California Non-Profit Corporation,

19 Defendant.

CASE NO. 22STCV02941

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT
FOR:**

- (1) Failure to Pay Wages for All Hours Worked (Cal. Labor Code §§ 226.2, 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 §§ 226.2, 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); 226.2);
- (4) Failure to Pay Compensation Due Upon Discharge From Employment (Cal. Labor Code §§ 201-203);
- (5) Failure to Reimburse Business Expenses (Cal. Bus. & Prof. Code §§ 17200 et seq.);
- (6) Unfair, Unlawful, and/or Fraudulent Business Practices (Cal. Bus. & Prof. Code § 17200 et seq.); and
- (7) Civil Penalties under Private Attorneys General Act (Cal. Labor Code § 2699).

DEMAND FOR JURY TRIAL

Electronically Received 04/05/2023 10:43 AM

1 Plaintiff Cadyn Cathers (the “Plaintiff”), on behalf of himself and all others similarly situated,
2 complains and alleges the following:

3 **INTRODUCTION**

4 1. This is a class action under California Code of Civil Procedure § 382 seeking damages for
5 unpaid wages, unpaid premium pay, unreimbursed business expenses, statutory penalties, interest,
6 injunctive and other equitable relief, and reasonable attorneys’ fees and costs under California Labor Code
7 (“Labor Code”) §§ 226.2, 1194, 1194.2, 226.7, 226(e), 201-203, 2802, and IWC Wage Order (“Wage
8 Order”) No. 4-2001 §§ 4, and 12, Cal. Civ. Proc. Code § 1021.5, and restitution under California’s Unfair
9 Competition Law (“UCL”), Business & Professions Code §§ 17200 *et seq.*

10 2. Plaintiff brings this action on behalf of himself and all other similarly situated individuals
11 currently and formerly employed in California by Mount Saint Mary’s University (“Defendant” or
12 “MSMU”) as part-time adjunct instructors or in a similar capacity (“Class Members”) from four years
13 prior to the filing of this Complaint through to the trial date (“Class Period”). Defendant’s violations of
14 California’s wage and hour laws, as described more fully below, have been ongoing for at least the past
15 four years, and are continuing at present.

16 3. During the Class Period, Plaintiff and Class Members were non-exempt employees under
17 Labor Code § 515.7, effective September 9, 2020, and under IWC Wage Order No. 4-2001, § 4 for two
18 separate reasons. First, they were paid a piece-rate, i.e. a flat amount per course taught (“Course Rate”).
19 Second, they did not earn enough to be exempt under either provision. As a result, they were entitled to
20 certain protections under the Labor Code, including being paid at least the minimum wage for all hours
21 worked, rest breaks, and itemized wage statements.

22 4. During the Class Period, Defendant failed to pay Class Members for each hour worked in
23 violation of Labor Code §§ 1194, 1194.2 and Wage Order No. 4, § 4 in three separate ways. First, whether
24 exempt or non-exempt, Defendant was required, yet failed to pay Class Members anything for course
25 preparation work performed outside their contracts. Second, even if Plaintiff and Class Members were
26 exempt under Labor Code § 515.7, Defendant also failed to pay them for the time they spent completing
27 various trainings, such FERPA, sexual harassment training, and attending faculty meetings. Third,
28

1 Defendant was required to pay Plaintiff and Class Members separately from the Course Rate, and hourly
2 for rest break time on each day that they worked 3.5 in a row or more, yet failed to do so, resulting in
3 unpaid wages.

4 5. Defendant also failed to permit and authorize Plaintiff and Class Members to take
5 compliant rest breaks as required by Labor Code §§ 226.2, 226.7 and Wage Order No. 4, § 12 by failing
6 to pay Plaintiff and Class Members separately from the piece for their rest break time, and, in the
7 alternative, by impeding Class Members' ability to take off-duty rest breaks by imposing job requirements
8 and/or expectations that resulted in Class Members working 3.5 hours or more in a row without a 10-
9 minute off-duty rest breaks. Defendant's failure triggered premium pay for missed/unpaid rest breaks,
10 which Defendant also did not pay in violation of Labor Code § 226.7 and Wage Order No. 4, § 12.

11 6. During the one year prior to the filing of the Complaint through to the trial date ("Wage
12 Statement Subclass Period"), as a result of the above violations, Defendant knowingly and intentionally
13 failed to provide Plaintiff and Class Members with accurate itemized wage statements in violation of
14 Labor Code §§ 226(a), (e) and 226.2. Plaintiff and Class Members suffered injury as a result of
15 Defendant's violation of Labor Code § 226(a). As a result, Class Members are entitled to statutory
16 penalties as provided for under Labor Code § 226(e) and injunctive relief under Labor Code § 226(h), as
17 well as reasonable attorneys' fees and cost.

18 7. During the three-year period prior to the filing of the Complaint through the trial date
19 ("Waiting Time Subclass Period"), as a result for failing to pay wages for work outside the contract, for
20 training time and time spent attending faculty meetings, and for rest break time, Defendant failed to pay
21 Class Members who were discharged from employment all wages due upon separation from employment
22 in violation of Labor Code §§ 201-203. Defendant employed Class Members on a semester-by-semester
23 basis and their employment terminated at the end of each semester. As a result, Defendant is liable for
24 waiting time penalties pursuant to Labor Code § 203.

25 8. Plaintiff also brings this action on behalf of himself and all other Class Members who
26 worked remotely during the Class Period. As a result of working remotely from home, Class Members
27 incurred business expenses in carrying out their job duties such as the cost of home internet service, cell
28

1 phone service, and office supplies such as printer, ink, and other office supplies (“Home Office
2 Expenses”). Defendant, however, did not reimburse them for these expenses in violation of Labor Code
3 § 2802.

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

6 10. Plaintiff also brings this action as a representative action under the California Labor Code’s
7 Private Attorneys General Act (“PAGA”), Cal. Labor Code §§ 2698 *et seq.*, for (a) civil penalties on
8 behalf of herself and part-time adjunct instructors (“Aggrieved Employees”) employed between October
9 26, 2020 through to trial (“PAGA Period”) for Defendant’s violations of Labor Code §§ 201-203, 204
10 226(a), 226.2, 226.7, and 2802; and IWC Wage Order No. 4-2001 § 12; 1194, 1194.2, 1197.1(a), and
11 IWC Wage Order No. 4-2001 § 4.

12 **PARTIES**

13 11. Plaintiff Cadyn Cathers is a resident of Los Angeles, California who has been employed
14 by MSMU as an adjunct instructor from August 2016 through to the end of 2021. During his employment,
15 Plaintiff Cathers was subject to Defendant’s unlawful conduct described herein.

16 12. Mount Saint Mary’s University is a private non-profit Catholic university located in Los
17 Angeles California.

18 **JURISDICTION**

19 13. This Court has jurisdiction over Plaintiff and Class Members’ claims for failure to pay for
20 all hours worked pursuant to Labor Code §§ 226.2, 1194, 1194.2 and Wage Order No. 4-2001 § 4.

21 14. This Court has jurisdiction over Plaintiff and Class Members’ claims for failure to pay
22 Class Members for their rest breaks separately and apart from the piece, failure to authorize and permit
23 Class Members to take off-duty rest breaks, and failure to pay premium pay for missed rest breaks, under
24 Labor Code §§ 226.2 and 226.7 and Wage Order No. 4-2001 §§ 4, 12.

25 15. This Court has jurisdiction over Plaintiff’s and Class Members’ claims for penalties and
26 injunctive relief under Labor Code §§ 226(a), (e) and 226.2.
27
28

16. This Court has jurisdiction over Plaintiff's and formerly employed Class Members' claims for compensation due upon discharge from employment under Labor Code § 203.

17. This Court has jurisdiction over Plaintiff's and Class Members' claims for unreimbursed expenses under Labor Code § 2802.

18. This Court has jurisdiction over Plaintiff's claims for reasonable attorneys' fees pursuant to Labor Code §§ 226(e), 218.5, 2802(c).

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

20. This Court has jurisdiction over Plaintiff's claims for civil penalties under Labor Code § 2699. On January 10, 2022, Plaintiff provided PAGA Notice pursuant to Labor Code § 2699.3 to the California Labor & Workforce Development Agency ("LWDA") and Defendant. The LWDA has provided no notice to Plaintiff within the period specified in Labor Code § 2699.3 regarding its intention to investigate or not investigate any other claims alleged in the PAGA Notice. Plaintiff has therefore fully complied with the PAGA procedural requirements and may commence this representative action pursuant to Labor Code § 2699.

VENUE

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

FACTUAL ALLEGATIONS COMMON TO ALL CLAIMS

A. Defendant's Business and Class Members' Role in Defendant's Business Operations

22. Defendant is a private Catholic university that offers bachelors and masters programs at its Campus locations and online.

23. The programs and courses are scheduled based on four academic terms (fall, winter, spring, summer). Undergraduate courses are offered in 16-week sessions during the fall and spring terms, and in shorter winter and summer sessions.

1 24. Defendant employs Class Members as adjunct instructors to teach courses on campus and
2 online.

3 ***B. Defendant Compensated Class Members Based on a Flat Court Rate Per Course Taught***

4 25. Class Members are employed pursuant to uniform employment contracts that set out the
5 beginning and end dates of their assignment, which correspond to the first and last day of classes on the
6 academic calendar, the amount paid for the assignment, and the number of monthly installments over
7 which their compensation would be paid. Unlike a typical employment relationship where employment
8 is continuous, the uniform employment contracts Defendant issued to Class Members are for one term at
9 a time.

10 26. The compensation set out in the contracts was a flat Course Rate for each Course taught.
11 The more courses an instructor teaches, the more s/he is paid.

12 ***C. Class Members Are Non-Exempt Employees under IWC Wage Order No. 4-2001 or Labor Code***
13 ***§ 515.7***

14 27. During the Class Period, Plaintiff and Class Members did not fall within the professional
15 exemption (the only potentially applicable exemption) set forth in Wage Order No. 4-2001, § 1(A) as
16 Class Members were not paid a salary, but rather by the piece (i.e., by the Course). In any event, Plaintiff
17 and other Class Members were also paid less than the monthly salary equivalent of two times the
18 California minimum wage for full-time employment.

19 28. Even after Labor Code § 515.7 went into effect on September 9, 2020, Plaintiff and Class
20 Members remained non-exempt because they were paid on a piece rate basis, and not a salary as required
21 by Labor Code § 515.7(a)(2). In any event, Plaintiff and Class Members were also paid less than the
22 minimum per classroom hour pay required under Labor Code § 515(b).

23 29. As a result, during the Class Period Defendant was required to comply with the wage and
24 hour obligations to Class Members, including but not limited to, the obligation to pay wages for all hours
25 worked, including rest break time with constitutes hours worked, to authorize and permit paid rest periods,
26 and to pay for time spent on rest periods separate and apart from piece, pursuant to Labor Code §§ 1194,
27 226.2, 226.7, and Wage Order No. 4-2001 §§ 4 and 12.
28

1 ***D. Defendant's Compensation Practices for Class Members Violated California's Minimum Wage***
2 ***Laws***

3 30. During the Class Period, Defendant failed to pay Plaintiff and Class Members for all hours
4 worked.

5 31. First, Defendant failed to pay Class Members for all hours worked because, whether Class
6 Members are exempt or non-exempt, piece-rate or salaried, they were entitled to be paid at least at the
7 minimum wage for each hour worked pursuant to §§ 1194, 1194.2 and IWC Wage Order No. 4-2001,
8 § 4. As set forth above, Class Members' contracts provided that their assignments began and ended on
9 specified dates, corresponding to the first and last day of classes. However, Defendant required Class
10 Members to prepare course materials and syllabi prior to the start of classes. Since this work was
11 performed outside the contract period it was not covered by the Course Rate set out in the contract.
12 However, as a matter of policies or practice, Defendant did not pay separately from the Course Pay for
13 this work, in violation of Labor Code §§ 1194, 1194.2 and Wage Order No. 4, § 4.

14 32. Second, Defendant required and/or expected Class Members to complete certain tasks in
15 addition to teaching, including trainings e.g. FERPA, sexual harassment training, and attend faculty
16 meetings. The time spent on these tasks was not covered by the Class Members' Course compensation,
17 yet, as a matter of policy and/or practice Defendant did not pay Class Members for these activities in
18 violation of Labor Code §§ 1194, 1197.1 and Wage Order No. 4, § 4.

19 33. Defendant violated Labor Code §§ 1194, 1194.2 even assuming Class Members were
20 exempt under Labor Code § 515.7. That is so because a salary calculated using the minimum per
21 classroom hour rates set out in § 515.7 only covers "all classroom or laboratory time, preparation, grading,
22 office hours, and other course- or laboratory-related work for that course or laboratory" (Lab. Code §
23 515.7(b)(1)). Such a salary does not cover trainings and/or meetings.

24 34. Third, because Class Members are paid on a piece-rate basis, Defendant was legally
25 required under Labor Code § 226.2 to pay them hourly and separately from the Course Rate for their time
26 spent on rest breaks, which is counted as hours worked. *See* IWC Wage Order No. 4-2001, § 12(A)
27 ("Authorized rest period time shall be counted as hours worked). As a matter of policy and/or practice,
28

1 however, Defendant did not pay Class Members for rest break time separately from the Course Rate or at
2 all, which resulted in Defendant violating Labor Code §§ 226.2, 1194 and Wage Order No. 4, § 4.

3
4 ***E. Defendant's Compensation Practices for Class Members Violated California's Rest Period Laws***

5 35. During the Class Period, Defendant also violated California's rest breaks laws.

6 36. As non-exempt employees, Plaintiff and Class Members were entitled to be provided with
7 a paid off-duty rest breaks when they worked 3.5 hours or more continuously on any given day pursuant
8 to Labor Code § 226.7 and Wage Order No. 4, § 12. Because Plaintiff and Class Members were piece-
9 rate workers, as discussed above, they were entitled to be paid separately and hourly for rest breaks
10 pursuant to Labor Code § 226.2.

11 37. Defendant routinely scheduled Class Members to teach 3.5 or more and/or even when
12 Defendant scheduled Class Members to teach 3 hours they were required and/or expected to maintain
13 office hours and to be generally available to students for questions, including immediately before and
14 after their classes. Defendant knew or should have known that Class Members worked shifts that were
15 3.5 hours or more. Defendant, however, maintained policies and/or practices of requiring Class Members
16 to be generally available to students which impeded Class Members from taking off-duty rest break. As
17 alleged above, Defendant also did not pay separately from the Court Rate and hourly for rest breaks.

18 38. As a result of failing to authorize and permit compliant rest breaks in accordance with
19 Wage Order No. 4-2001, § 12(A), Defendant was also required, yet failed to make premium payments to
20 Plaintiff and Class Members for missed rest breaks under Labor Code § 226.7 and Wage Order No.-2001,
21 § 12(B).

22 ***F. Defendants' Compensation Practices Also Resulted in Failure to Issue Accurate Itemized Wage***
23 ***Statements, Failure to Pay Wages Twice Per month, and Failure to Pay All Compensation Due***
24 ***Upon Discharge or Separation from Employment***

25 39. During the Wage Statement Subclass Period, Defendants failed to issue accurate itemized
26 wage statements to Plaintiff and Class Members. Because Plaintiff and Class Members were non-exempt
27 employees, under Labor Code § 226(a)(2) and (a)(9) Defendant was required but failed to furnish them
28 with wage statements containing entries for the total hours worked by the employee, and all applicable

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

3 40. Additionally, because Plaintiff and Class Members are piece-rate workers, under Labor
4 Code § 226(a)(3) Defendant was required but failed to furnish Plaintiff and Class Members with wage
5 statements that included the number of piece-rate units earned and any applicable piece rate, and under
6 Labor Code § 226.2(a) to furnish them with wage statements that itemized total hours of compensable rest
7 and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay
8 period.

9 41. However, during the Wage Statement Subclass Period Defendant issued wage statements
10 to Class Members that contained only a lump sum earned during a particular period, with no hours, pieces,
11 or hourly rates.

12 42. The wage statements included the headings “rate” and “salary/hours,” but under these
13 headings Defendant left blanks.

14 43. In addition, Defendant issued only one wage statement per month, whereas Class Members
15 were entitled to be paid twice per month under Labor Code § 204(a), so no wage statement was provided
16 for required pay periods.

17 44. Finally, Defendant failed to issue wage statements for the pay period immediately
18 preceding the beginning of the contract during which Class Members worked to prepare course materials.

19 45. Defendant’s practice of furnishing Class Members with incomplete and/or inaccurate wage
20 statements in violation of Labor Code § 226(a) was not an isolated and unintentional payroll error due to
21 a clerical or inadvertent mistake, but rather the result of Defendant’s regular compensation policies.

22 46. Class Members could not readily ascertain their applicable regular hourly rates, and the
23 total hours worked at each rate, their total number of pieces earned and applicable piece-rate, from the
24 wage statements alone, without reference to other document or information, including wage statements
25 from previous pay periods. Class Members have therefore suffered injury for the purposes of Labor Code
26 § 226(e).
27
28

1 47. As a further consequence of Defendant's failure to pay wages twice per month, Defendant
2 violated Labor Code §204(a) which requires wages to be paid "twice during each calendar month" with
3 "[l]abor performed between the 1st and 15th days, inclusive, of any calendar month ... paid for between
4 the 16th and the 26th day of the month during which the labor was performed, and labor performed
5 between the 16th and the last day, inclusive, of any calendar month, ...paid for between the 1st and 10th
6 day of the following month." Throughout the Class Period, Defendant paid Class Members only once per
7 month, on or about the 19th or the 20th of the month following the month in which work was performed,
8 in violation of Labor Code § 204(a)

9 48. As a further consequence of Defendant's failure to pay wages for each hour worked outside
10 the contract, to complete trainings and attend meetings, and rest break time, and to pay premium pay for
11 missed and/or unpaid rest breaks, Plaintiff and formerly employed Class Members did not receive all
12 compensation due to when their employment terminated at the end of each semester. As a result, Plaintiff
13 and formerly employed Class Members did not receive all wages due upon termination; nor did they
14 receive these wages due within 30 days of the separation of their employment from Defendant.

15 ***G. Defendants Failed to Reimburse Class Members for Necessary Business Expenses***

16 49. In or about mid-March 2020, Defendant directed all Class Members to work remotely from
17 home. This directive continued through 2020, and much of 2021 for many of MSMU's staff and faculty.

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

23 51. Defendant knew that Class Members incurred these expenses because Class Members
24 could not carry out their job duties remotely without the use of the internet, phone, and office supplies.
25 However, Defendant did not reimburse Class Members for these necessary business expenses, in violation
26 of Labor Code § 2802.

1 52. In addition, Defendant offered online courses throughout the entire Class Period and
2 employed Class Members to deliver those courses online. As a result, Class Members who taught these
3 online courses incurred Home Office Expenses throughout the entire Class Period.

4 53. Class Members have been harmed by Defendant's unlawful reimbursement policy and/or
5 lack of a lawful reimbursement policy in that they have not been paid fully or at all for their expenses in
6 carrying out their job duties for Defendant, thereby diminishing their agreed-upon compensation, in
7 substantial amounts to be proved at trial.

8 54. As a result, Defendant violated Labor Code § 2802, Class Members are entitled to
9 reimbursement for these expenses, and their reasonable attorneys' fees and costs.

10 ***H. Defendant's Labor Code Violations Were Unfair Business Practices***

11 55. From at least four years prior to filing this complaint, through the present, Defendant has
12 adopted and used unfair business practices to reduce Class Members' compensation and increase profits.
13 These unfair business practices include failing to pay Class Members for all hours worked, failing to
14 authorize and permit timely off-duty rest periods; failing to pay premium pay for missed rest breaks; and
15 failing to reimburse Class Members for their necessarily incurred business expenses.

16 **CLASS ACTION ALLEGATIONS**

17 56. Plaintiff brings this class action pursuant to Cal. Civ. Pro. Code. § 382 on behalf of the
18 Class. Upon information and belief, there are more than 100 members in the Class. The members of the
19 Class are so numerous that joinder of all members is impractical.

20 57. Plaintiff's claims are typical of the claims of the members of the Class because he was an
21 adjunct instructor who was (a) not paid for all hours worked, (b) not permitted and authorized paid off-
22 duty rest breaks, (c) not paid premium pay; (d) not issued accurate itemized wage statements semimonthly,
23 (e) not issued wage statements for all pay periods during which they worked, (f) not paid all wages due at
24 termination; and (g) not reimbursed for all necessarily incurred Home Office Expenses incurred when
25 required to work remotely from home.

26 58. Plaintiff will fairly and adequately represent the interests of the Class. Plaintiff has no
27 conflict of interest with any member of the Class. Plaintiff has retained competent and experienced counsel
28

1 in complex class action litigation. Plaintiff's counsel has the expertise and financial resources to
2 adequately represent the interests of the Class.

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

- 6 a. Whether Class Members are non-exempt employees;
- 7 b. Whether Class Members are entitled to be paid for the time spent on preparing course
8 materials;
- 9 c. Whether Class Members are entitled to be paid for the time spent on trainings and faculty
10 meetings;
- 11 d. Whether Class Members' Course Rate is a piece rate;
- 12 e. Whether Defendant violated Labor Code §§ 1194, 1194.2 and Wage Order No. 4-2001, §
13 4 by failing to pay Plaintiff and the Class at least minimum wage for all hours worked,
14 including hours worked outside the contract to prepare course materials, and trainings and
15 faculty meetings;
- 16 f. Whether Defendant violated Labor Code §§ 226.2, 1194, 1194.2 and Wage Order No. 4-
17 2001, § 4 by failing to pay Plaintiff and the Class separately from the Course Rate and
18 hourly for the time spent on rest breaks;
- 19 g. Whether Defendant is liable for liquidated damages to Plaintiff and the Class under Labor
20 Code § 1194.2 for its failure to pay them for all hours worked during the Class Period;
- 21 h. Whether Defendant violated Labor Code § 226.2 and Wage Order No. 4-2001 § 12 by
22 maintaining policies and practices that prevented or impeded Class Members from being
23 authorized and permitted paid off-duty rest periods during the Class Period;
- 24 i. Whether Defendant violated Labor Code § 226.7 and Wage Order No. 4-2001 § 12 by
25 failing to pay one hour of premium pay to each member of the Class for each day that a paid
26 rest period was not provided during the Class Period;
- 27
- 28

- j. Whether Defendant violated Labor Code § 226(a) and 226.2 by failing to issue itemized wage statements to Plaintiff and Class Members;
- k. Whether Defendant violated Labor Code § 226(a) by failing to issue itemized wage statements for each pay period during which Class Members performed work;
- l. Whether Defendant violated Labor Code § 226(a) by failing to issue itemized wage statements semimonthly;
- m. Whether Defendant's violation of Labor Code § 226(a) was knowing and intentional;
- n. Whether Plaintiff and Class Members suffered injury for the purposes of Labor Code § 226(e);
- o. Whether Defendant violated Labor Code § 203 by failing to pay formerly employed Class Members during the relevant statutory period for all of their wages due to them upon separation of their employment;
- p. Whether Plaintiff and Class Members incurred business expenses as a result of working remotely from home;
- q. Whether Defendant violated Labor Code § 2802 by failing to reimburse Plaintiff and Class Members for a reasonable portion of their business expenses as a result of working from home;
- r. Whether these violations constitute unfair, unlawful, and fraudulent business practices, in violation of UCL;
- s. Whether Plaintiff and Class Members are entitled to restitution under Bus. & Prof. Code § 17200 *et seq.* for uncompensated wages and unpaid premium pay; and
- t. The proper formula(s) for calculating damages, interest, and restitution owed to Plaintiff, and the Class Members;
- u. Whether the Class is entitled to declaratory relief.
- v. Whether the Class is entitled to injunctive relief.

60. 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

1 situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and
2 without duplication of effort and expense that numerous individual actions would entail. No difficulties
3 are likely to be encountered in the management of this class action that would preclude its maintenance
4 as a class action, and no superior alternative exists for the fair and efficient adjudication of this
5 controversy. Class Members are readily identifiable from Defendant's employee rosters and/or payroll
6 records.

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

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

15 **FIRST CAUSE OF ACTION**

16 **Failure to Pay for All Hours Worked**

17 **[Cal. Labor Code §§ 226.2, 1194, 1194.2; Wage Order No. 4-2001, § 4]**

18 63. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the
19 preceding paragraphs.

20 64. Labor Code § 1194 provides, in relevant part:

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

25 65. Labor Code § 1194.2 provides, in relevant part:

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

66. Labor Code § 226.2(a)(1) states that employers are required to compensate piece-rate
workers "for rest and recover periods . . . separate from any piece-rate compensation."

67. As set forth above, during the Class Period, Plaintiff and Class Members were paid a Course Rate for the time spent on teaching courses during the contract period, which is a piece-rate, but Defendant did not compensate them for their time spent on course preparation prior to the beginning of their contracts, separately from the Course Rate or at all.

68. Additionally, as set forth above, Defendant required Plaintiff and Class Members to complete various trainings and to attend faculty meetings. However, Defendant did not compensate them for these hours worked.

69. Finally, as set forth above, Class Members' compensation constituted a piece-rate, but Defendant did not pay them separately and hourly for the time spent on rest breaks.

70. Accordingly, pursuant to § 4 of the Wage Order and Labor Code §§ 226.2, 1194 and 1194.2, Plaintiff and the Class are entitled to recover, at a minimum, their unpaid hourly wages, plus liquidated damages in an additional amount equal to the total amount of applicable wages unlawfully withheld during the Class Period for Class Members' time spent on preparing course materials, completing required and/or expected trainings, and rest breaks.

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

SECOND CAUSE OF ACTION

Failure to Authorize and Permit Paid Rest Periods or Pay Missed Rest Period Premiums
[Cal. Labor Code §§ 226.2 and 226.7; IWC Wage Order No. 4-2001 § 12]

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

73. Labor Code § 226.2(a)(1) states that “employees shall be compensated for rest and recovery periods.... separate from any piece-rate compensation.”

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

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

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

76. As set forth above, during the Class Period, Plaintiff and Class Members regularly worked more than 3.5 consecutive hours in a workday. However, Defendant did not compensate them for their time spent on rest breaks separately and apart from the Course Rate, as required under Labor Code § 226.2.

77. Defendant was also required, but failed, to authorize and permit Plaintiff and Class Members to take paid off-duty rest breaks because Defendant required them to generally remain available to students for questions, including before, during and after class, in violation of Wage Order No. 4-2001 § 12.

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

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

THIRD CAUSE OF ACTION
Failure to Issue Accurate Itemized Wage Statements
[Labor Code §§ 226(a), (e); 226.2]

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

81. During the Wage Statement Subclass Period, Defendant failed to furnish Plaintiff and Class Members with accurate itemized wage statements in violation of Labor Code § 226(a) by failing to list on the wage statements (1) total hours worked, (2) 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).

1 82. Additionally, Defendant failed to furnish Plaintiff and Class Members with accurate wage
2 statements itemizing the number of piece-rate units earned and any applicable piece rate; total hours of
3 compensable rest and recovery periods, the rate of compensation, in violation of Labor Code §§ 226(a)
4 and 226.2(a).

5 83. Defendants also failed to issue wage statements twice per month despite being required to
6 pay Class Members twice per month under Labor Code § 204(a).

7 84. Defendant's failure to furnish accurate itemized wage statements to Plaintiff and Class
8 Members was knowing and intentional.

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

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

15 87. Plaintiff, on behalf of himself and all other Class Members, requests relief as described
16 below.

17 **FOURTH CAUSE OF ACTION**

18 **Failure to Pay Compensation Due Upon Termination**
19 **[Cal. Labor Code §§ 201-203]**

20 88. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the
21 preceding paragraphs.

22 89. Labor Code §§ 201 and 202 require Defendant to pay all compensation due and owing to
23 Class Members promptly after their employment was terminated. Labor Code § 203 provides that if an
24 employer willfully fails to pay compensation promptly upon discharge or resignation, as required by
25 §§ 201 and 202, then the employer is liable for penalties in the form of continued compensation up to 30
26 work days.

27 90. As alleged herein, Defendant willfully failed to pay Plaintiff and formerly employed Class
28 Members for their time spent on course preparation, completing trainings and attending faculty meetings,

1 and for their rest break time during their employment, or upon their termination or separation from
2 employment with Defendant, as required by Labor Code §§ 201 and 202.

3 91. In light of the clear law requiring that Defendant pay for all hours worked, including
4 separately from the piece-rate for rest breaks time, and the clear law requiring Defendant to pay premium
5 pay for missed breaks, Defendant's failure to pay wages for such time was willful.

6 92. As a result, Defendant is liable to Plaintiff and the Class for waiting time penalties
7 amounting to thirty (30) days wages for each formerly employed Class Member pursuant to Labor Code
8 § 203.

9 93. Plaintiff, on behalf of himself and all other formerly employed Class Members, requests
10 relief as described below.

11 **FIFTH CAUSE OF ACTION**
12 **Failure to Reimburse Business Expenses**
13 **[Cal. Labor Code § 2802]**

14 94. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the
15 preceding paragraphs.

16 95. Under Labor Code § 2802, "[a]n employer shall indemnify his or her employee for all
17 necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his
18 or her duties."

19 96. Defendant required Class Members to work remotely from home during the Class Period
20 when teaching classes online.

21 97. Defendant also required Class Members to work remotely from home during the Class
22 Period due to Covid-19.

23 98. As a result of working from home, Plaintiff and Class Members incurred necessary
24 business expenses, including but not limited to home internet service, cell phone service, and office
25 supplies such as printer, ink, and other office supplies associated with working from home.

26 99. Defendant knew or should have known that Plaintiff and Class Members incurred these
27 expenses as a result of working from home, yet did not reimburse them for these expenses in violation of
28 Labor Code § 2802.

100. Defendant's failure to fully reimburse the business expenses of Plaintiff and Class Members violated non-waivable rights secured to them by Labor Code § 2802. As a result, Plaintiff and Class Members are entitled to recover all unreimbursed business expenses, and interest thereon, and reasonable attorneys' fees and costs.

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

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

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

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

104. Beginning at least four years prior to the filing of this Complaint, Defendant committed, and continues to commit, acts of unfair competition, as defined in the UCL by wrongfully denying Class Members payment in the amount of at least minimum wages for all their hours worked and denying them separate and hourly pay for rest break time, in violation of Labor Code §§ 226.2 and 1194 and Wage Order No. 4-2001 § 4; by failing to authorize and permit paid rest breaks and pay premium pay for missed rest breaks in violation of Labor Code § 226.7 and Wage Order No. 4-2001 § 12; and by failing to reimburse necessarily incurred business expenses, in violation of Labor Code § 2802 .

105. By its actions and omissions, Defendant has substantially injured Plaintiff and the Class. Defendant's conduct as herein alleged has damaged Plaintiff and the Class and was substantially injurious to them.

106. The harm to Plaintiff and the Class 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.

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

SEVENTH CAUSE OF ACTION

Civil Penalties

[Labor Code §§ 2698 *et seq.*]

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

109. Plaintiff seeks PAGA penalties on behalf of himself and Aggrieved Employees for the following violations:

Violation of Labor Code §§ 226.2, 1194, 1194.2, 1197.1 and Wage Order No. 4-2001, § 4

110. During the PAGA Period, Defendant did not compensate Aggrieved Employees for their time spent working outside of the contract, for their time spent performing certain tasks in addition to teaching, and did not pay separately from the piece for the time spent on rest breaks, which is counted as hours worked, in violation of Labor Code §§ 226.2, 1194, 1194.2, 1197.1, and Wage Order No. 4-2001, § 4.

111. Pursuant to Labor Code § 2699(f), Plaintiff and Aggrieved Employees are entitled to one hundred dollars (\$100) per employee per pay period for each initial violation and two hundred fifty dollars (\$250) per employee per pay period for each subsequent violation, in accordance with Labor Code § 1197.1(a)(1)-(2).

112. Alternatively, Plaintiff and Adjunct Aggrieved Employees are entitled to the default PAGA penalty under Labor Code § 2699(f)(2) of one hundred dollars (\$100) per pay period for each initial violation of Labor Code §§ 226.2 and 1194, and two hundred dollars (\$200) per pay period for each subsequent violation.

Violation of IWC Wage Order No. 4-2001 § 12 and Labor Code §§ 226.2, 226.7

1 113. During the PAGA Period, Defendant failed to pay Aggrieved Employees for their time
2 spent on rest breaks separately and apart from the piece, in violation of Labor Code § 226.2. Defendant
3 also failed to authorize and permit paid rest breaks and pay missed rest break premiums in violation of
4 IWC Wage Order No. 4-2001 § 12 and Labor Code § 226.7.

5 114. Pursuant to Labor Code § 2699(f)(2), Plaintiff and Aggrieved Employees are entitled to
6 one hundred dollars (\$100) per pay period for each initial violation of Labor Code §§ 226.2 and 26.7, and
7 two hundred dollars (\$200) per pay period for each subsequent violation.

8 ***Violation of Labor Code § 204***

9 115. During the PAGA Period, Defendant failed to pay Aggrieved Employees twice per month,
10 in violation of Labor Code § 204. Rather, Defendant paid Aggrieved Employees only once per month.

11 116. As a result, pursuant to Labor Code § 2699(f), Plaintiff and Aggrieved Employees are
12 entitled to two hundred fifty dollars (\$250) per employee per initial violation, and one thousand dollars
13 (\$1,000) per employee per subsequent violation, in accordance with Labor Code § 226.3.

14 117. Alternatively, Plaintiff and Aggrieved Employees are entitled to the default PAGA penalty
15 under Labor Code § 2699(f)(2) of one hundred dollars (\$100) per employee per pay period for each initial
16 violation and two hundred dollars (\$200) per employee per pay period for each subsequent violation.

17 ***Violation of Labor Code §§ 226(a) and 226.2(a)***

18 118. During the PAGA Period, Defendant failed to issue accurate itemized wage statements by
19 failing to list on the wage statements total hours worked, all applicable hourly rates in effect during the
20 pay period, and the corresponding number of hours worked at each hourly rate, in violation of Labor
21 Code § 226(a)(2) and (9).

22 119. Additionally, as piece-rate workers, Aggrieved Employees were also entitled to receive
23 wage statements that included entries for the number of pieces earned and the piece rate paid. However,
24 Defendant also violated Labor Code §§ 226(a)(3) and 226.2(a)(2) because it did not include any of this
25 required information on the wage statements issued to Aggrieved Employees.

26 120. Pursuant to Labor Code § 226.3, Plaintiff and Aggrieved Employees are entitled to \$250
27 for each initial pay period with a violation and \$1,000 for each subsequent pay period with a violation.
28

1 121. Alternatively, under Labor Code § 2699(f)(2), Plaintiff and Aggrieved Employees are
2 entitled to a PAGA penalty equal to one hundred dollars (\$100) per pay period per Aggrieved Employee
3 for each initial violation of Labor Code § 226(a)(1), (a)(2), (a)(3), (a)(5), and (a)(9), and two hundred
4 dollars (\$200) per pay period for each subsequent violation.

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

6 122. As stated above, Labor Code § 226(a) requires an employer to issue itemized wage
7 statements semimonthly or at the time of each payment of wages. In addition to failing to issue accurate
8 itemized wage statements each time it did issue wage statements, Defendant also failed to issue *any* wage
9 statements for the pay period immediately preceding the beginning date of each contract during which
10 time Aggrieved Employees worked to prepare course materials.

11 123. As a result, pursuant to Labor Code § 2699(f), Plaintiff and Aggrieved Employees are
12 entitled to two hundred fifty dollars (\$250) per employee per initial violation, and one thousand dollars
13 (\$1,000) per employee per subsequent violation, in accordance with Labor Code § 226.3.

14 124. Alternatively, under Labor Code § 2699(f)(2), Plaintiff and Aggrieved Employees are
15 entitled to a PAGA penalty equal to one hundred dollars (\$100) per pay period per Aggrieved Employee
16 for each initial violation of Labor Code § 226(a), and two hundred dollars (\$200) per pay period for each
17 subsequent violation.

18 ***Violation of Labor Code § 201-202***

19 125. During the PAGA Period, Defendant failed to pay Aggrieved Employees their final wages
20 on their discharge from employment, in violation of Labor Code § 201-202.

21 126. Pursuant to Labor Code § 2699(f)(2), Plaintiff and Adjunct Aggrieved Employees are
22 entitled to one hundred dollars (\$100) per pay period for each initial violation and two hundred dollars
23 (\$200) per pay period for each subsequent violation.

24 ***Violation of Labor Code § 2802***

25 127. During the PAGA Period, Aggrieved Employees incurred Home Office Expenses
26 including but not limited home internet cost, home or mobile telephone expenses, ink toner/cartridges and
27 paper, and other expenses associated with working from home, in order to carry out their job duties for
28

1 Defendant. However, Defendant did not reimburse them for these expenses fully or at all in violation of
2 § 2802 of the California Labor Code.

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

6 **PRAYER FOR RELIEF**

7 **WHEREFORE**, Plaintiff, on behalf of himself and the Class, prays for the following relief:

8 A. An Order that this action may proceed and be maintained as a class action, with the Class
9 as designated and defined in this Complaint, and that the Plaintiff and their counsel be certified as
10 representatives and Counsel for the Class.

11 B. On the First Cause of Action: That the Court find and declare that Defendant violated
12 Labor Code §§ 226.2, 1194, and 1194.2 and Wage Order No. 4-2001, § 4 by failing to pay Plaintiff and
13 Class Members for their time spent on course preparation before the beginning of their contracts, for the
14 time spent completing trainings and attending faculty meetings, and for their time spent on rest breaks,
15 and award Plaintiff and the Class the amount of their unpaid minimum wages owed to them for these
16 hours worked, plus liquidated damages in an additional amount equal to the amount of wages unlawfully
17 withheld during the Class Period.

18 C. On the Second Cause of Action: That the Court find and declare that Defendant violated
19 Labor Code §§ 226.2, 226.7 and Wage Order No. 4-2001, § 12 by failing to pay Plaintiff and Class
20 Members for their time spent on rest breaks separately and apart from the Course Rate, failing to authorize
21 and permit timely off-duty rest breaks, and failing to pay premium pay for rest breaks; and award Plaintiff
22 and the Class unpaid wages for rest break time and unpaid premium pay for missed rest breaks.

23 D. On the Third Cause of Action: That the Court find and declare that Defendant knowingly
24 and intentionally violated Labor Code §§ 226(a) and 226.2, and award Plaintiff and Class Members
25 statutory penalties under Labor Code § 226(e); enjoin Defendants under Labor Code § 226(h) from
26 continuing to issue unlawful wage statements; and award reasonable attorneys' fees and cost.
27
28

1 E. On the Fourth Cause of Action: That the Court find and declare that Defendant has violated
2 §§ 201–203 of the California Labor Code, and award Plaintiff and formerly employed Class Members
3 during the relevant statutory period penalties in the amount of 30 days’ wages per Class Member;

4 F. On the Fifth Cause of Action: That the Court find and declare that Defendants has violated
5 Labor Code § 2802 by failing to reimburse Plaintiff and Class Members for necessary business expenses,
6 and award Plaintiff and the Class reimbursement of such expenses.

7 G. On the Sixth Cause of Action: That the Court find and declare Defendant has violated the
8 UCL by failing to pay Class Members for all hours worked in violation of Labor Code §§ 226.2 and 1194
9 and Wage Order No. 4-2001, § 4; by failing to pay Class Members for their rest breaks separately and
10 apart from the Course Rate, failing to authorize and permit paid rest breaks for members of the Class and
11 by failing to pay premium pay for missed rest breaks in violation of Labor Code § 226.2, 226.7 and IWC
12 Wage Order 4-2001, § 12; and award restitution to the Class, including, but not limited to, an additional
13 hour of pay at the employee’s regular rate of compensation for each day that a paid rest break was not
14 provided during the Class Period; wages owed to them for unpaid work time, including rest break time;
15 and that the Court enjoin Defendant from continuing to enforce policies and practices that violate Labor
16 Code §§ 226.2, 226.7, and 1194.

17 H. On the Seventh Cause of Action: That the Court award PAGA Civil Penalties, and
18 attorneys’ fees and costs, as provided under Labor Code § 2699.

19 I. That the Court award attorneys’ fees and costs of suit to the extent permitted by law,
20 including, but not limited to, Labor Code §§ 1194, 218.5, 226(h), 2802(c), 2699, and Cal. Civ. Pro. Code
21 § 1021.5.

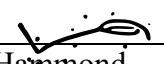
22 J. All other relief as this Court deems proper.
23
24
25
26
27
28

JURY DEMAND

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

Dated: April 5, 2023

Respectfully submitted,


By: Julian Hammond
HAMMONDLAW, P.C.

Attorneys for Plaintiff