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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

**STACEY SERNA and LOURDES DE
GUZMAN ANGEL**, on behalf of the State
of California, as private attorneys general,

Plaintiffs,

vs.

**GURNICK ACADEMY OF MEDICAL
ARTS, LLC**, a California Limited Liability
Company, and DOES 1 through 50, inclusive,

Defendants.

CASE NO. 22-CIV-01185

**SECOND AMENDED
REPRESENTATIVE ACTION
COMPLAINT FOR:**

- (1) Civil Penalties Pursuant to Labor Code § 2699, *et seq.* for violations of Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 246, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 11070(14) (Failure to Provide Seating), and Violation of Applicable Industrial Welfare Commission Wage Order(s).

1 Stacey Serna and Lourdes De Guzman Angel, on behalf of the people of the State of California
2 and as “aggrieved employees” acting as private attorneys general under the Labor Code Private
3 Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, allege on information and belief, except
4 for their own acts and knowledge which are based on personal knowledge, the following:

5 **INTRODUCTION**

6 1. Plaintiffs bring this action against Defendant Gurnick Academy of Medical Arts, LLC
7 (referred to as “Gurnick” or “Defendant”) seeking only to recover PAGA civil penalties for themselves,
8 and on behalf of all current and former aggrieved employees that worked for Defendant. Plaintiffs do **not**
9 **seek to recover anything other than penalties as permitted by California Labor Code § 2699.** To
10 the extent that statutory violations are mentioned for wage violations, Plaintiffs do not seek underlying
11 general and/or special damages for those violations, but simply the civil penalties permitted by California
12 Labor Code § 2699.

13 2. California has enacted the PAGA to permit individuals to bring an action on
14 behalf of themselves and on behalf of others for PAGA penalties only, which is the precise and sole nature
15 of this action.

16 3. Accordingly, Plaintiffs seek to obtain all applicable relief for Defendant’s violations under
17 PAGA and solely for the relief as permitted by PAGA – that is, penalties and any other relief the Court
18 deems proper pursuant to the PAGA. Nothing in this complaint should be construed as attempting to
19 obtain any relief that would not be available in a PAGA-only action.

20 4. During the PAGA Period and/or Remote PAGA Period, Plaintiffs and the Aggrieved
21 Employees were non-exempt because they were hourly employees, and not salaried, as required under
22 Wage Order No. 4-2001 § 1. Thus, the Aggrieved Employees were entitled to certain protections under
23 the Labor Code and Wage Order including being paid at least minimum wage for all hours worked, under
24 Labor Code §§ 1194, 1194.2 and Wage Order No. 4-2001, § 4; being paid overtime under Labor Code §§
25 1194, 510, and Wage Order No. 4-2001, § 3; being authorized and permitted to take paid off-duty rest
26 breaks and paid premium pay for missed rest breaks under Labor Code § 226.7 and Wage Order No. 4-
27 2001 § 12; being provided off-duty meal periods and being paid premium pay for missed meal periods
28 under Labor Code § 512, 226.7 and Wage Order No. 4, § 11; and being issued itemized wage statements
that contained accurate entries for total hours worked, all applicable hourly rates, gross wages, and net
wages earned under Labor Code § 226(a), (e).

5. However, Defendant failed to pay Aggrieved Employees at least minimum wage for all
hours worked; failed to authorize and permit Aggrieved Employees to take off-duty rest breaks and failed

1 to pay premium pay for missed rest breaks; maintained policies and/or practices that impeded Aggrieved
2 Employees' abilities to take an unpaid 30-minute meal period on days on which Aggrieved Employees
3 worked 5 hours or longer in a row, and failed to pay premium pay for missed meal breaks; and knowingly
4 and intentionally failed to provide Plaintiffs and Aggrieved Employees with accurate itemized wage
5 statements.

6 6. Plaintiffs and other Aggrieved Employees employed in California by Defendant were
7 required to work remotely and incurred business expenses in direct consequence of the discharge of their
8 duties, including but not limited to home internet, home or cellular phone expenses, ink toner/cartridges
9 and paper and other expenses associated with working from home, for which Defendant did not reimburse
10 them, in violation of Labor Code § 2802.

11 7. Plaintiffs, and such persons that may be added from time to time who satisfy the
12 requirements and exhaust the administrative procedures under the Private Attorney General Act, bring
13 this Representative Action on behalf of the State of California with respect to themselves and all
14 individuals who are or previously were employed by Defendant in California and classified as a non-
15 exempt employee ("Aggrieved Employees") during the time period from August 23, 2020 to June 25,
16 2023 ("PAGA Period") and all current and former employees of Defendant in California who were
17 required to work remotely ("Aggrieved Employees") during the time period from March 18, 2020 to June
18 25, 2023 ("Remote PAGA Period").

19 8. Plaintiffs, on behalf of themselves and all Aggrieved Employees presently or formerly
20 employed by Defendant during the PAGA Period and/or Remote PAGA Period, bring this representative
21 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for Defendant's violation of
22 California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 221, 226(a), 226.7, 227.3, 246, 351, 510, 512,
23 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040,
24 Subdivision 5(A)-(B), California Code of Regulations, Title 8, Section 1 1070(14) (Failure to Provide
25 Seating), and the applicable Wage Order(s). Based upon the foregoing, Plaintiffs and all Aggrieved
26 Employees are aggrieved employees within the meaning of Labor Code § 2699, *et seq.*

27 9. The true names and capacities, whether individual, corporate, subsidiary, partnership,
28 associate or otherwise of defendants DOES 1 through 50, inclusive, are presently unknown to Plaintiffs
who therefore sues these Defendants by such fictitious names pursuant to Cal. Civ. Proc. Code § 474.
Plaintiffs will seek leave to amend this Complaint to allege the true names and capacities of Does 1
through 50, inclusive, when they are ascertained. Plaintiffs are informed and believe, and based upon that
information and belief allege, that the Defendants named in this Complaint, including DOES 1 through

1 50, inclusive, are responsible in some manner for one or more of the events and happenings that
2 proximately caused the injuries and damages hereinafter alleged.

3 10. The agents, servants and/or employees of the Defendants and each of them acting on behalf of
4 the Defendants acted within the course and scope of his, her or its authority as the agent, servant and/or
5 employee of the Defendants, and personally participated in the conduct alleged herein on behalf of the
6 Defendants with respect to the conduct alleged herein. Consequently, the acts of each Defendant are
7 legally attributable to the other Defendants and all Defendants are jointly and severally liable to Plaintiffs
8 and the other Aggrieved Employees, for the loss sustained as a proximate result of the conduct of the
9 Defendants' agents, servants and/or employees.

10 **PARTIES**

11 11. Plaintiff Serna is a resident of Clovis, California who has been employed by Defendant as
12 a part-time instructor at its Fresno campus since March 2018. During this time period Plaintiff Serna has
13 been classified by Defendant as a non-exempt employee, paid on an hourly basis, and entitled to the
14 legally required meal and rest periods and payment of minimum and overtime wages due for all time
15 worked.

16 12. Plaintiff Lourdez De Guzman Angel was employed by Defendant in California from
17 August of 2019 to December of 2022 and was at all times classified by Defendant as a non-exempt
18 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and payment
19 of minimum and overtime wages due for all time worked.

20 13. Defendant is a California Limited Liability Company, with principal place of business is
21 in San Mateo. Defendant is a for-profit education provider that offers certification training programs in
22 the area of allied health, including for medical assistants, dental assistants, medical administrative and
23 financial assistants, pharmacy assistants, ultrasound technicians, and vocational nursing.

24 **JURISDICTION**

25 14. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure,
26 Section 410.10. This Court also has jurisdiction over Plaintiffs' claims for civil penalties under Labor
27 Code § 2699. On July 9, 2021, Plaintiff De Guzman Angel provided PAGA Notice pursuant to Labor
28 Code § 2699.3 to the California Labor & Workforce Development Agency ("LWDA") and Defendant.
On March 2, 2022 Plaintiff Serna 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 Plaintiffs within the period specified in Labor Code § 2699.3 regarding its intention

1 to investigate or not investigate any other claims alleged in the PAGA Notices. Plaintiffs have therefore
2 fully complied with the PAGA procedural requirements and may commence this representative action
3 pursuant to Labor Code § 2699.

4 VENUE

5 15. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395
6 and 395.5, because one or more of the Plaintiffs worked in this County for DEFENDANT and
7 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities in this
8 County and/or conducts substantial business in this County, and (ii) committed the wrongful conduct
herein alleged in this County against AGGRIEVED EMPLOYEES.

9 THE CONDUCT

10 16. Pursuant to the Industrial Welfare Commission Wage Orders, Defendant was required to pay
11 Plaintiffs and other Aggrieved Employees for all their time worked, meaning the time during which an
12 employee is subject to the control of an employer, including all the time the employee is suffered or
13 permitted to work. Defendant required Plaintiffs and other Aggrieved Employees to work without
14 paying them for all the time they are under Defendant's control. Among other things, Defendant
15 required Plaintiffs to work while clocked out during what was supposed to be Plaintiffs' off-duty meal
16 break. Plaintiffs were from time to time interrupted by work assignments while clocked out for what
17 should be Plaintiffs' off-duty meal break. Defendant, as a matter of established company policy and
18 procedure, administered a uniform practice of rounding the actual time worked and recorded by
19 Plaintiffs and other Aggrieved Employees, always to the benefit of Defendant, so that during the course
20 of their employment, Plaintiffs and other Aggrieved Employees were paid less than they would have
21 been paid had they been paid for actual recorded time rather than "rounded" time. Additionally,
22 Defendant engaged in the practice of requiring Plaintiffs and Aggrieved Employees to perform work off
23 the clock in that Defendant, as a condition of employment, required these employees to submit to
24 mandatory temperature checks for COVID-19 screening prior to clocking into Defendant's timekeeping
25 system for the workday and also required these employees to grade student examinations and answer
26 student questions while off the clock. As a result, Plaintiffs and other Aggrieved Employees forfeited
27 minimum wage, overtime wage compensation, and off-duty meal breaks by working without their time
being correctly recorded and without compensation at the applicable rates. Defendant's policy and
practice not to pay Plaintiffs and other Aggrieved Employees for all time worked, is evidenced by
Defendant's business records.

28 17. State law provides that employees must be paid overtime and meal and rest break premiums

1 at one-and-one-half times their “regular rate of pay.” Plaintiffs and other Aggrieved Employees were
2 compensated at an hourly rate plus incentive pay that is tied to specific elements of an employee’s
3 performance.

4 18. The second component of Plaintiffs’ and other Aggrieved Employees’ compensation is
5 Defendant’s non-discretionary incentive program that paid Plaintiffs and other Aggrieved Employees
6 incentive wages based on their performance for Defendant. The non-discretionary incentive program
7 provided all employees paid on an hourly basis with incentive compensation when the employees met
8 the various performance goals set by Defendant. However, when calculating the regular rate of pay in
9 order to pay overtime and meal and rest break premiums to Plaintiffs and other Aggrieved Employees,
10 Defendant failed to include the incentive compensation as part of the employees’ “regular rate of pay”
11 for purposes of calculating overtime pay and meal and rest break premium pay. Management and
12 supervisors described the incentive program to potential and new employees as part of the compensation
13 package. As a matter of law, the incentive compensation received by Plaintiffs and other Aggrieved
14 Employees must be included in the “regular rate of pay.” The failure to do so has resulted in an
underpayment of overtime compensation and meal and rest break premiums to Plaintiffs and other
Aggrieved Employees by Defendant.

15 19. As a result of their rigorous work schedules, Plaintiffs and other Aggrieved Employees were
16 from time to time unable to take thirty (30) minute off duty meal breaks and were not fully relieved of
17 duty for their meal periods. Plaintiffs and other Aggrieved Employees were required from time to time
18 to perform work as ordered by Defendant for more than five (5) hours during some shifts without
19 receiving a meal break. Further, Defendant from time to time failed to provide Plaintiffs and other
20 Aggrieved Employees with a second off-duty meal period for some workdays in which these employees
21 are required by Defendant to work ten (10) hours of work. Plaintiffs and other Aggrieved Employees
22 therefore forfeit meal breaks without additional compensation and in accordance with Defendant’s
corporate policy and practice.

23 20. Plaintiffs and other Aggrieved Employees were also required from time to time to work in
24 excess of four (4) hours without being provided ten (10) minute rest periods. Further, these employees
25 were denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2)
26 to four (4) hours from time to time, a first and second rest period of at least ten (10) minutes for some
27 shifts worked of between six (6) and eight (8) hours from time to time, and a first, second and third rest
28 period of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
Plaintiffs and other Aggrieved Employees were also not provided with one hour wages in lieu thereof.

1 In addition, DEFENDANT failed to compensate Plaintiffs and other Aggrieved Employees for their rest
2 periods as required by the applicable Wage Order and Labor Code. Defendant did not have a policy or
3 practice which paid for off-duty rest periods to Plaintiffs and the other Aggrieved Employees. As a
4 result, Defendant's failure to provide Plaintiffs and the Aggrieved Employees with all the legally
5 required paid rest periods is evidenced by Defendant's business records. Additionally, the applicable
6 California Wage Order requires employers to provide employees with off-duty rest periods, which the
7 California Supreme Court defined as time during which an employee is relieved from all work related
8 duties and free from employer control. In so doing, the Court held that the requirement under California
9 law that employers authorize and permit all employees to take rest period means that employers must
10 relieve employees of all duties and relinquish control over how employees spend their time which
11 includes control over the locations where employees may take their rest period. Employers cannot
12 impose controls that prohibit an employee from taking a brief walk - five minutes out, five minutes
13 back. Here, Defendant's policy restricts Plaintiffs and other Aggrieved Employees from unconstrained
walks and is unlawful based on Defendant's rule which states Plaintiffs and other Aggrieved Employees
cannot leave the work premises during their rest period.

14 21. Defendant failed to accurately record and pay Plaintiffs and other Aggrieved Employees for
15 the actual amount of time these employees work. Pursuant to the Industrial Welfare Commission Wage
16 Orders, Defendant was required to pay Plaintiffs and other Aggrieved Employees for all time worked,
17 meaning the time during which an employee was subject to the control of an employer, including all the
18 time the employee was permitted or suffered to permit this work. Defendant required these employees
19 to work off the clock without paying them for all the time they are under Defendant's control. As such,
20 Defendant knew or should have known that Plaintiffs and other Aggrieved Employees were under
21 compensated for all time worked. As a result, Plaintiffs and other Aggrieved Employees forfeited time
22 worked by working without their time being accurately recorded and without compensation at the
23 applicable minimum wage and overtime wage rates. To the extent that the time worked off the clock
does not qualify for overtime premium payment, Defendant failed to pay minimum wages for the time
worked off-the-clock in violation of Cal. Lab. Code §§ 1194, 1197, and 1197.1.

24 22. From time to time, Defendant also failed to provide Plaintiffs and other Aggrieved
25 Employees with complete and accurate wage statements which failed to show, among other things, the
26 correct gross and net wages earned. Cal. Lab. Code § 226 provides that every employer shall furnish
27 each of his or her employees with an accurate itemized wage statement in writing showing, among other
28 things, gross wages earned and all applicable hourly rates in effect during the pay period and the

1 corresponding amount of time worked at each hourly rate. Plaintiffs and other Aggrieved Employees
2 were from time to time paid on an hourly basis. As such, the wage statements should reflect all
3 applicable hourly rates during the pay period and the total hours worked, and the applicable pay period
4 in which the wages were earned pursuant to California Labor Code Section 226(a)(2). The wage
5 statements Defendant provided to Plaintiffs and other Aggrieved Employees failed to identify such
6 information. More specifically, the wage statements failed to identify the accurate total hours worked
7 each pay period. When the hours shown on the wage statements were added up, they did not equal the
8 actual total hours worked during the pay period. Additionally, Defendant violated Section 226(a)(9) by
9 failing to identify the correct rates of pay and number of hours worked, including for the “Fixed Fees”
10 item of pay, which is a wage payment. Further, Defendant violated Cal. Lab. Code Section 226(a)(8) by
11 failing to list the correct legal entity that is the employer of Plaintiffs. Aside, from the violations listed
12 above in this paragraph, Defendant failed to issue to Plaintiffs an itemized wage statement that lists all
13 the requirements under California Labor Code 226 *et seq.* As a result, Defendant from time to time
14 provided Plaintiffs and the other Aggrieved Employees with wage statements which violated Cal. Lab.
15 Code § 226.

16 23. Cal. Lab. Code § 204(d) provides, the requirements of this section shall be deemed satisfied
17 by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid
18 not more than seven calendar days following the close of the payroll period. Cal. Lab. Code
19 § 210 provides:

20 [I]n addition to, and entirely independent and apart from, any other penalty
21 provided in this article, every person who fails to pay the wages of each employee
22 as provided in Sections. . . .204. . .shall be subject to a civil penalty as follows:
23 (1) For any initial violation, one hundred dollars (\$100) for each failure to pay
24 each employee; (2) For each subsequent violation, or any willful or intentional
25 violation, two hundred dollars (\$200) for each failure to pay each employee, plus
26 25 percent of the amount unlawfully withheld.

27 24. Defendant from time to time failed to pay Plaintiffs and other Aggrieved Employees
28 within seven (7) days of the close of the payroll period in accordance with Cal. Lab. Code § 204(d).

29 25. Defendant underpaid sick pay wages to Plaintiffs and other Aggrieved Employees by
30 failing to pay such wages at the regular rate of pay in violation of Cal. Lab. Code Section 246.
31 Specifically, Plaintiffs and other non-exempt employees earn non-discretionary remuneration, including
32 but not limited to, incentives, shift differential pay, and bonuses. Rather than pay sick pay at the regular
33 rate of pay, Defendant underpaid sick pay to Plaintiffs and other Aggrieved Employees at their base
34 rates of pay.

1 26. Cal. Lab. Code Section 246(1)(2) requires that paid sick time for non-exempt
2 employees be calculated by dividing the employee's total wages, not including overtime premium pay,
3 by the employee's total hours worked in the full pay periods of the prior 90 days of employment.

4 27. Defendant violated Cal. Lab. Code Section 246 by failing to pay sick pay at
5 the regular rate of pay. Plaintiffs and other Aggrieved Employees routinely earned non-discretionary
6 incentive wages including but not limited to, incentives, shift differential pay, and bonuses which
7 increased their regular rate of pay. However, when sick pay was paid, it was paid at the base rate of pay
8 for Plaintiffs and other Aggrieved Employees, as opposed to the correct, higher regular rate of pay, as
9 required under Cal. Lab. Code Section 246.

10 28. As a pattern and practice, Defendant regularly failed to pay Plaintiffs and other Aggrieved
11 Employees their correct wages and accordingly owe waiting time penalties pursuant to Cal. Lab. Code
12 Section 203. Further, Plaintiffs are informed and believe and based thereon allege that such failure to
13 pay sick pay at the regular rate was willful, such that Plaintiffs and other Aggrieved Employees whose
14 employment has separated are entitled to waiting time penalties pursuant to Cal. Lab. Code Sections
15 201-203.

16 29. Pursuant to Cal. Lab. Code Section 221, "It shall be unlawful for any employer to
17 collect or receive from an employee any part of wages theretofore paid by said employer to said
18 employee." Defendant failed to pay all compensation due to Plaintiffs and other Aggrieved Employees,
19 made unlawful deductions from compensation payable to Plaintiffs and other Aggrieved Employees,
20 failed to disclose all aspects of the deductions from compensation payable to Plaintiffs and other
21 Aggrieved Employees, and thereby failed to pay these employees all wages due at each applicable pay
22 period and upon termination.

23 30. Defendant intentionally and knowingly failed to reimburse and indemnify Plaintiffs
24 and other Aggrieved Employees for required business expenses incurred by the Plaintiffs and other
25 Aggrieved Employees in direct consequence of discharging their duties on behalf of Defendant. Under
26 California Labor Code Section 2802, employers are required to indemnify employees for all expenses
27 incurred in the course and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an
28 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."

 31. In the course of their employment Plaintiffs and other Aggrieved Employees as a

1 business expense, were required by Defendant to use their own personal cellular phones as a result of
2 and in furtherance of their job duties as employees for Defendant but were not reimbursed or
3 indemnified by Defendant for the cost associated with the use of their personal cellular phones for
4 Defendant's benefit. Specifically, Plaintiffs and other Aggrieved Employees were required by
5 Defendant to use their personal cellular phones and home offices for work related issues. As a result, in
6 the course of their employment with Defendant, Plaintiffs and other Aggrieved Employees incurred
7 unreimbursed business expenses which included, but were not limited to, costs related to the use of their
8 personal cellular phones and home offices all on behalf of and for the benefit of Defendant.

9 32. All of the conduct and violations alleged herein occurred during the PAGA Period and/or
10 Remote PAGA Period. To the extent that any of the conduct and violations alleged herein did not affect
11 Plaintiffs during the PAGA Period and/or Remote PAGA Period, Plaintiffs seek penalties for those
12 violations that affected other Aggrieved Employees pursuant to *Carrington v. Starbucks Corp.* 2018
13 AJDAR 12157 (Certified for Publication 12/19/18).

14 **FACTUAL ALLEGATIONS**

15 33. Defendant is a private for-profit institution providing certificates, diplomas, and degrees
16 in nursing, imaging and allied health programs. Defendant's headquarters are located in San Mateo, and
17 its campuses are located in Concord, Fresno, Modesto, Sacramento, San Mateo, and Van Nuys. During
18 the PAGA Period and/or Remote PAGA Period, Defendant has employed Aggrieved Employees as part-
19 time instructors to teach courses at its various campuses. Aggrieved Employees did not fall under any
20 exemption under Wage Order No. 4-2001 because they were hourly employees and not salaried, and
21 therefore entitled to certain protections under the labor code, including to be paid for all hours worked, to
22 be paid overtime, to be permitted and authorized to take compliant rest breaks, and to receive accurate
23 itemized wage statements, pursuant to Labor Code §§ 1194, 510, 512, 226.7, 226(a) and (e) and Wage
24 Order No. 4-2001, §§ 3, 4, 12.

25 ***Defendant Failed to Pay Aggrieved Employees for All Hours Worked***

26 34. During the PAGA Period and/or Remote PAGA Period, in addition to teaching classes,
27 Aggrieved Employees' job duties included arriving prior to class to prepare; reviewing and editing the
28 course curriculum and course syllabus prior to the start of each course; setting up online classrooms on
Moodle prior to each course; grading student papers; and communicating with students outside of class
during office hours, or via e-mail or Zoom. However, Defendant did not pay Aggrieved Employees for
all of these hours spent working. Rather, Defendant provided one additional paid hour per class to perform
all of these tasks, which took much more than one hour to complete.

1 ***Defendant Failed to Pay Aggrieved Employees Overtime***

2 35. During the PAGA Period and/or Remote PAGA Period, Aggrieved Employees routinely
3 worked more than 8 hours in a day and 40 hours per week. Defendant was required to pay Aggrieved
4 Employees overtime for the hours worked in excess of 8 hours and 40 hours per week. However,
5 Defendant failed to pay overtime, in violation of Labor Code §§ 510, 1194 and Wage Order No. 4-2001,
6 § 3.

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

8 36. During the PAGA Period and/or Remote PAGA Period, Aggrieved Employees worked at
9 least 3.5 hours or more on any given day. Defendant was therefore required to permit and authorize
10 Aggrieved Employees to take off-duty rest breaks, and pay premium pay for missed rest breaks. However,
11 Defendant had policies and/or practices in place which impeded Aggrieved Employees' ability to take
12 off-duty rest breaks during classroom break time, including the policy and/or practice of requiring
13 Aggrieved Employees to be available to students during class, as well as before and after class. Thus,
14 Defendant failed to authorize and permit compliant rest breaks in accordance with Wage Order No. 4-
15 2001, § 12(A).

16 37. Defendant knew or should have known that Aggrieved Employees were impeded from
17 taking off-duty rest breaks on days they worked 3.5 hours or more, thereby triggering an obligation to
18 make premium payments to Aggrieved Employees under Labor Code § 226.7 and Wage Order No. 4-
19 2001, § 12, which Defendant did not pay.

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

21 38. During the PAGA Period and/or Remote PAGA Period, Aggrieved Employees worked at
22 least 5 hours or longer on any given day, including classes that were scheduled to meet for 5 hours, or
23 classes that were scheduled for less than 5 hours but that resulted in working for 5 hours or more when
24 including the required preparation time before each class, and time spent after class talking with students.
25 Defendant did not maintain a compliant meal break policy applicable to Aggrieved Employees. As a
26 result, Aggrieved Employees were not relieved of all duties for at least 30 minutes before the end of their
27 fifth hour of work, as required under Labor Code § 512(a) and Wage Order No. 4-2001, § 11. Defendant
28 also failed to pay premium pay for missed meal breaks in violation of Labor Code § 226.7.

Defendant Failed to Issue Accurate Itemized Wage Statements

 39. During the one year prior to the filing of this action and through to the present Defendant
was required to issue accurate itemized wage statements to Aggrieved Employees semimonthly or at the
time of each payment of wages containing (1) gross wages earned pursuant to subdivision (a)(1) of Labor

Code § 226(a); (2) total number of hours worked during each period, pursuant to subdivision (a)(2) of § 226(a); (3) net wages earned pursuant to subdivision (a)(5) of Labor Code § 226(a); (4) all applicable hourly rates in effect during the pay period and corresponding number of hours worked pursuant to subdivision (a)(9) of Labor Code § 226(a). However, as a consequence of Defendant's failure to pay Plaintiffs for all of their hours worked, overtime, and premium pay, Plaintiffs did not receive accurate itemized wage statements that included accurate entries for their hours worked, all applicable hourly rates, net wages, and gross wages earned.

Defendant Failed to Reimburse Expense Reimbursement to Aggrieved Employees

40. Starting March 4, 2020, as a result of the COVID-19 pandemic, Defendant required and/or expected all non-essential workers of Defendant including Plaintiffs and other Aggrieved Employees to work from home. In working remotely, Plaintiffs incurred necessary expenditures or losses, including but not limited to, internet, phone service and/or equipment, printing equipment and supplies. As a result, Plaintiffs and other Aggrieved Employees incurred home office expenses including but not limited home internet cost, ink toner/cartridges and paper, and other expenses associated with working from home, in order to carry out their job duties.

41. Defendant was aware, or should have been aware, that Plaintiffs and other Aggrieved Employees incurred these expenses in direct consequence of the discharge of their job duties because Defendant required Plaintiffs and other Aggrieved Employees to work from home. Throughout the Remote PAGA Period, Defendant, however, did not maintain policies or practices of reimbursing Plaintiffs and other Aggrieved Employees for their business expenses fully or at all for any such expenses incurred throughout the Remote PAGA Period as required under Labor Code § 2802.

42. As a result, Defendant knowingly permitted Plaintiffs and other Aggrieved Employees to pay for expenses incurred in direct consequent of discharging their duties for Defendant, without any reimbursement or reimbursement in full by Defendant for such expenses.

43. Plaintiffs and other Aggrieved Employees have been harmed by Defendant's unlawful business expense policies and/or practice and/or lack of such policies and/or practices in that they have not been paid for certain business expenses incurred while employed by Defendant, thereby diminishing their agreed-upon compensation in substantial amounts.

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1 **FIRST CAUSE OF ACTION**

2 **For Violation of the Private Attorneys General Act**

3 **[Cal. Lab. Code §§ 2698, *et seq.*]**

4 **(By Plaintiffs and Against All Defendants)**

5 44. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the
6 preceding paragraphs.

7 45. PAGA is a mechanism by which the State of California itself can enforce state labor laws
8 through the employee suing under the PAGA who do so as the proxy or agent of the state's labor law
9 enforcement agencies. An action to recover civil penalties under PAGA is fundamentally a law
10 enforcement action designed to protect the public and not to benefit private parties. The purpose of the
11 PAGA is not to recover damages or restitution, but to create a means of "deputizing" citizens as private
12 attorneys general to enforce the Labor Code. In enacting PAGA, the California Legislature specified that
13 "it was ... in the public interest to allow aggrieved employees, acting as private attorneys general to recover
14 civil penalties for Labor Code violations ..." Stats. 2003, ch. 906, § 1.

15 46. Plaintiffs, and such persons that may be added from time to time who satisfy the requirements
16 and exhaust the administrative procedures under the Private Attorney General Act, bring this
17 Representative Action on behalf of the State of California with respect to themselves and all individuals
18 who are or previously were employed by Defendant in California and classified as a non-exempt employee
19 ("Aggrieved Employees") during the time period from August 23, 2020 to June 25, 2023 ("PAGA
20 Period") and all current and former employees of Defendant in California who were required to work
21 remotely ("Aggrieved Employees") during the time period from March 18, 2020 to June 25, 2023
22 ("Remote PAGA Period").

23 47. On July 9, 2021, Plaintiff De Guzman Angel gave written notice by electronic mail to the
24 Labor and Workforce Development Agency (the "Agency") and by certified mail to the employer of the
25 specific provisions of this code alleged to have been violated as required by Labor Code § 2699.3. On
26 March 2, 2022, Plaintiff Serna gave written notice by electronic mail to the Labor and Workforce
27 Development Agency (the "Agency") and by certified mail to the employer of the specific provisions of
28 this code alleged to have been violated as required by Labor Code § 2699.3. The statutory waiting period
for Plaintiffs to add these allegations to the Complaint has expired. As a result, pursuant to Section 2699.3,
Plaintiffs may now commence a representative civil action under PAGA pursuant to Section 2699 as the
proxies of the State of California with respect to all Aggrieved Employees as herein defined.

1 48. Plaintiffs hereby seek recovery of only civil penalties as prescribed by the Labor Code
2 Private Attorney General Act of 2004 as the representatives of the State of California for the illegal
3 conduct perpetrated on Plaintiffs and the other Aggrieved Employees, for the following violations:¹

4 ***Violation of Labor Code § 1194***

5 49. During the PAGA Period and/or Remote PAGA Period, Defendant did not compensate
6 Aggrieved Employees for all of the time spent completing required tasks outside of the classroom, in
7 violation of Labor Code § 1194.

8 50. Pursuant to Labor Code § 2699(f)(2), Plaintiffs and other Aggrieved Employees are
9 entitled to one hundred dollars (\$100) per pay period for each initial violation of Labor Code § 1194, and
10 two hundred dollars (\$200) per pay period for each subsequent violation.

11 ***Violation of Labor Code § 226.7***

12 51. During the PAGA Period and/or Remote PAGA Period, Defendant failed to authorize and
13 permit Aggrieved Employees to take paid rest breaks and failed to pay missed rest break premiums in
14 violation of Labor Code § 226.7.

15 52. Pursuant to Labor Code § 2699(f)(2), Plaintiffs and other Aggrieved Employees are
16 entitled to one hundred dollars (\$100) per pay period for each initial violation of Labor Code § 226.7 and
17 two hundred dollars (\$200) per pay period for each subsequent violation.

18 ***Violation of Labor Code § 510***

19 53. During the PAGA Period, Defendant routinely failed to pay Aggrieved Employees for all
20 of the hours worked in excess of 8 hours a day at the legally required overtime rate, in violation of Labor
21 Code § 510.

22 54. Pursuant to Labor Code § 2699(f)(2), Plaintiffs and other Aggrieved Employees are
23 entitled to one hundred dollars (\$100) per pay period for each initial violation of Labor Code § 510 and
24 two hundred dollars (\$200) per pay period for each subsequent violation.

25 ***Violation of Labor Code §§ 226.7 and 512***

26 55. During the PAGA Period and/or Remote PAGA Period, Defendant failed to provide
27 Aggrieved Employees with off-duty meal breaks in violation of Labor Code § 512, and failed to pay
28 missed meal break premiums in violation of Labor Code § 226.7.

¹ Plaintiffs specifically exclude and/or do not allege any claims under California Labor Code §558(a)(3).

1 56. Pursuant to Labor Code § 2699(f)(2), Plaintiffs and other Aggrieved Employees are
2 entitled to one hundred dollars (\$100) per pay period for each initial violation of Labor Code § 512 and
3 226.7 and two hundred dollars (\$200) per pay period for each subsequent violation.

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

5 57. During the PAGA Period and/or Remote PAGA Period, Defendant failed to issue accurate
6 itemized wage statements by failing to list on the wage statements (1) gross wages earned, (2) total hours
7 worked, (3) net wages earned, and (4) all applicable hourly rates in effect during the pay period, and the
8 corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226(a)(1), (2),
(5), and (9).

9 58. Pursuant to Labor Code § 226.3, Plaintiffs and other Aggrieved Employees are entitled to
10 \$250 for each initial pay period with a violation and \$1,000 for each subsequent pay period with a
11 violation.

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

15 ***Violation of Labor Code § 201***

16 60. During the PAGA Period and/or Remote PAGA Period, Defendant failed to pay Aggrieved
17 Employees their final wages on their discharge from employment, in violation of Labor Code § 201.

18 61. Pursuant to Labor Code § 256, Plaintiffs and other Aggrieved Employees are entitled to
19 penalties not exceeding 30 days' pay.

20 62. Alternatively, pursuant to Labor Code § 2699(f)(2), Plaintiffs and other Aggrieved
21 Employees are entitled to one hundred dollars (\$100) per pay period for each initial violation and two
hundred dollars (\$200) per pay period for each subsequent violation.

22 ***Violation of Labor Code § 2802 on behalf of Aggrieved Employees***

23 63. During the PAGA Period and/or Remote PAGA Period, Aggrieved Employees incurred
24 expenses using their personal cell phones for work-related purposes and also working remotely including
25 but not limited home internet cost, home or mobile telephone expenses, ink toner/cartridges and paper,
26 and other expenses associated with working from home, in order to carry out their job duties for
27 Defendant. However, Defendant did not reimburse them for these expenses fully or at all in violation of
§ 2802 of the California Labor Code.

28 64. Pursuant to Labor Code § 2699(f)(2), Plaintiffs and other Aggrieved Employees are

1 entitled to one hundred dollars (\$100) per pay period for each initial violation and two hundred dollars
2 (\$200) per pay period for each subsequent violation.

3 65. Plaintiffs, on behalf of themselves and all other Aggrieved Employees, request relief as
4 described below.

5 **PRAYER FOR RELIEF**

6 66. WHEREFORE, Plaintiffs pray for judgment against each Defendant, jointly and
7 severally, as follows:

8 1. On behalf of the State of California and with respect to all Aggrieved Employees:

9 A) Recovery of civil penalties as prescribed by the Labor Code Private
10 Attorneys General Act of 2004; and,

11 B) An award of attorneys' fees and cost of suit, as allowable under the
12 law, including, but not limited to, pursuant to Labor Code §2699.
13

14 Dated: November 27, 2023

Respectfully submitted,

15 HAMMONDLAW, P.C.
16

17 /s/ Julian Hammond

18 By: Julian Hammond

19 BLUMENTHAL NORDREHAUG BHOWMIK
20 DE BLOUW LLP

21 *Attorneys for Plaintiffs*
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