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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF SAN MATEO

STACEY SERNA, individually and on behalf of
all others similarly situated,

Plaintiff,

vs.

**GURNICK ACADEMY OF MEDICAL
ARTS, LLC**, a California Limited Liability
Company,

Defendant.

CASE NO. 22-CIV-01185

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

- (1) **Sexual Harassment in Violation of FEHA** (Cal. Gov. Code §§ 12900 et seq.);
- (2) **Failure to Prevent Harassment in Violation of FEHA** (Cal. Gov. Code § 12940);
- (3) **Failure to Pay Wages for All Hours Worked** (Cal. Labor Code §§ 1194, 1194.2; IWC Wage Order No. 4-2001, § 4);
- (4) **Failure to Pay Overtime** (Cal. Labor Code §§ 510, 1194; IWC Wage Order No. 4-2001, § 3);
- (5) **Failure to Authorize and Permit Rest Breaks and Pay Premium Pay** (Cal. Labor Code § 226.7; IWC Wage Order No. 4-2001, § 12);
- (6) **Failure to Provide Off-duty Meal Periods and Pay Premium Pay** (Cal. Labor Code § 512 and Wage Order No. 4, § 11);
- (7) **Failure to Issue Accurate Itemized Wage Statements** (Cal. Labor Code § 226(a), (e));
- (8) **Failure to Reimburse Business-Related Expenses** (Cal. Labor Code § 2802);
- (9) **UCL Violations** (Business & Professions Code §§ 17200 et seq.); and
- (10) **Civil Penalties under Private Attorneys General Act** (Cal. Labor Code § 2699)

1 Stacey Serna, on behalf of herself and all others similarly situated, complains and alleges the
2 following:

3 **INTRODUCTION**

4 1. Plaintiff brings this action on behalf of herself seeking damages, and attorneys' fees and
5 costs, from Gurnick Academy of Medical Arts, LLC ("Gurnick" or "Defendant") for sexual harassment
6 and failure to prevent harassment, in violation of California Government Code §§ 12900 *et seq.*

7 2. Plaintiff also brings this action as a class action under California Code of Civil Procedure
8 § 382 seeking damages, statutory penalties, interest, injunctive and other equitable relief, and reasonable
9 attorneys' fees and costs, from Defendant for its violations of Cal. Labor Code ("Labor Code") §§ 1194,
10 1194.2, 226.7, 510 512, 226(a), (e), and IWC Wage Order ("Wage Order") No. 4-2001 §§ 3, 4, 11 and
11 12, Cal. Civ. Proc. Code § 1021.5, and the Business and Professions Code §§ 17200, *et seq.*

12 3. Plaintiff brings this action on behalf of herself and all other similarly situated individuals
13 employed in California by Defendant as part-time instructors ("Class Members") from four years prior to
14 the filing of this action to the present ("Class Period"). Defendant's violations of California's wage and
15 hour laws, as described more fully below, have been ongoing for at least the past four years, and are
16 continuing at present.

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

27 5. However, Defendant failed to pay Class Members at least minimum wage for all hours
28 worked; failed to authorize and permit Class Members to take off-duty rest breaks and failed to pay
premium pay for missed rest breaks; maintained policies and/or practices that impeded Class Members'
abilities to take an unpaid 30-minute meal period on days on which Class Members worked 5 hours or
longer in a row, and failed to pay premium pay for missed meal breaks; and knowingly and intentionally
failed to provide Plaintiff and Class Members with accurate itemized wage statements.

6. Plaintiff also brings this action for unreimbursed expenses on behalf of herself and all other similarly situated individuals employed in California by Defendant and who were required to work remotely (“Expense Reimbursement Class Members” or “ER Class Members”) from March 18, 2020 to the present (“Expense Reimbursement Class Period”). During the Expense Reimbursement Class Period, Plaintiff and ER Class Members incurred business expenses in direct consequence of the discharge of their duties, including but not limited to home internet, home or cellular phone expenses, ink toner/cartridges and paper and other expenses associated with working from home, for which Defendant did not reimburse them, in violation of Labor Code § 2802.

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

8. Plaintiff also brings this action as a representative action under the California Labor Code's Private Attorneys General Act ("PAGA"), Cal. Labor Code §§ 2698 *et seq.*, for (a) civil penalties on behalf of herself and part-time instructors ("Instructor Aggrieved Employees") employed from March 2, 2021 to the present ("PAGA Period") for Defendant's violations of Labor Code §§ 1194, 226.7, 510, 512, and 226(a); and (b) for civil penalties on behalf of herself and all other individuals employed by Defendant in California during the PAGA Period ("Aggrieved Employees") for Defendant's violation of Labor Code § 2802.

PARTIES

9. Plaintiff Serna is a resident of Clovis, California who has been employed by Defendant as a part-time instructor at its in its Fresno campus since March 2018.

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

JURISDICTION

11. This Court has jurisdiction over Plaintiff's claims for sexual harassment and failure to prevent harassment pursuant to California Government Code §§ 12900 *et seq.* and California Code Regulations, tit. 2 § 10005. Prior to the filing of this action, Plaintiff filed her complaint with the California Department of Fair Employment and Housing ("DFEH") alleging violations of California's Fair Employment and Housing Act ("FEHA"). On March 14, 2022, Plaintiff received her "right to sue" letter from the DFEH against Defendant, and subsequently brought this action in a timely manner.

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

13. This Court has jurisdiction over Plaintiff and Class Members' claims for failure to pay overtime pursuant to Labor Code § 510 and 1194, and Wage Order No. 4-2001 § 3.

14. This Court has jurisdiction over Plaintiff and Class Members' claims for failure to authorize and permit Class Members to take off-duty rest breaks, and failure to pay premium pay for missed rest breaks, under Labor Code § 226.7 and Wage Order No. 4-2001 §§ 4, 12.

15. This Court has jurisdiction over Plaintiff and Class Members' claims for failure to provide off-duty meal breaks and failure to pay premium pay for missed meal breaks under Labor Code §§ 226.7, 512 and Wage Order No. 4-2001 § 11.

16. This Court has jurisdiction over Plaintiff and Class Members' claims for statutory penalties under Labor Code §§ 226(a), (e).

17. This Court has jurisdiction over Plaintiff and Expense Reimbursement Class Members' claims for reimbursement of business expenses under Labor Code § 2802.

18. 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.

19. This Court has jurisdiction over Plaintiff's claims for civil penalties under Labor Code § 2699. On March 2, 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

20. Venue is proper in the San Mateo County pursuant to Cal. Civ. Proc. Code §§ 395(a) and 395.5. Defendant's headquarters are located in San Mateo.

FACTUAL ALLEGATIONS

21. Defendant is a private for-profit institution providing certificates, diplomas, and degrees in nursing, imaging and allied health programs. Defendant's headquarters are located in San Mateo, and its campuses are located in Concord, Fresno, Modesto, Sacramento, San Mateo, and Van Nuys. During the Class Period, Defendant has employed Class Members as part-time instructors to teach courses at its various campuses. Class Members did not fall under any exemption under Wage Order No. 4-2001

1 because they were hourly employees and not salaried, and therefore entitled to certain protections under
2 the labor code, including to be paid for all hours worked, to be paid overtime, to be permitted and
3 authorized to take compliant rest breaks, and to receive accurate itemized wage statements, pursuant to
4 Labor Code §§ 1194, 1194.2, 510, 512, 226.7, 226(a) and (e) and Wage Order No. 4-2001, §§ 3, 4, 12.

5 ***Plaintiff Suffered Harassment and A Hostile and Abusive Work Environment, Which***
6 ***Defendant Failed to Prevent***

7 22. During her employment, Plaintiff suffered severe and pervasive harassment that created an
8 intimidating and abusive work environment on two occasions. In September 2020, Plaintiff was verbally
9 accosted in a vulgar, abusive and highly offensive e-mail from a student, Gerardo Orozco, who accused
10 her of treating him unfairly for marking him up for absences. Mr. Orozco had a reputation as a troublesome
11 student and Defendant told Plaintiff to forward any communications from Mr. Orozco to Defendant. On
12 September 4, 2020, Mr. Orozco sent the following email to Plaintiff:

13 *Good Afternoon, Why did you lie? You told administration that I was absent when I was not. I*
14 *have text messages I sent the class asking them to please let you know that I was trying to log on*
15 *but couldn't because I didn't have my laptop on me and the signal was bad to use my cell phone*
16 *WiFi. I ultimately logged on via phone call, something you yourself suggested. Fuck you and fuck*
17 *everyone at that school. God damn bitch, thanks to your fucken lie I am not able to continue. Go*
18 *fuck yourself whore.*

19 23. Plaintiff was extremely shaken up after reading this e-mail and she suffered a panic attack,
20 including extreme anxiety and tightness in her chest. Plaintiff knew she would be unable to lecture without
21 experiencing anxiety and was forced to cancel her scheduled classes for the day. Plaintiff promptly
22 forwarded Mr. Orozco's email to Toni Cabrera, the Licensed Vocational Nurse ("LVN") program director
23 but Defendant failed to take any action in response to the harassment.

24 24. Furthermore, over the Summer 2021, Plaintiff suffered pervasive, unwanted, and offensive
25 sexual advances from her co-worker Joshua Dockery. Mr. Dockery obtained Plaintiff's personal cell
26 phone number from an instructor group chat and used this number to find Plaintiff's anonymous Facebook
27 profile. Mr. Dockery then initiated aggressive and unwanted contact with Plaintiff via Facebook
28 Messenger. Mr. Dockery started by asking Plaintiff about her online classes but quickly transitioned to
sexual advances such as "I always thought you were beautiful" and "I remember the first time i saw you,
you were walking down the hallway at school." These comments from a co-worker made Plaintiff very
uncomfortable in her work environment. Mr. Dockery proceeded to ask the Plaintiff out for dinner but
Plaintiff refused. Mr. Dockery responded by asking if Plaintiff "would ever want to come over to my
house and spend the night." Plaintiff was very taken aback by the extreme inappropriateness of this

1 request. Plaintiff responded, "No, this is not appropriate, we are co-workers, and I would never date people
2 that I work with." Plaintiff promptly blocked Mr. Dockery on her Facebook page to prevent any further
3 hostile and grossly inappropriate sexual advances.

4 25. Defendant knew or should have known of these occurrences yet failed to take immediate
5 and appropriate corrective action. As a result, Plaintiff suffered a hostile work environment where the
6 harassment was so pervasive and severe so as to alter the conditions of her employment and create an
7 abusive work environment.

8 ***Defendant Failed to Pay Class Members for All Hours Worked***

9 26. During the Class Period, in addition to teaching classes, Class Members job duties included
10 arriving prior to class to prepare; reviewing and editing the course curriculum and course syllabus prior
11 to the start of each course; setting up online classrooms on Moodle prior to each course; grading student
12 papers; and communicating with students outside of class during office hours, or via e-mail or Zoom.
13 However, Defendant did not pay Class Members for all of these hours spent working. Rather, Defendant
14 provided one additional paid hour per class to perform all of these tasks, which took much more than one
15 hour to complete. As result, Defendant is liable for unpaid wages, liquidated damages, and interest, under
16 Labor Code §§ 1194, 1194.2 and Wage Order No. 4, § 4.

17 ***Defendant Failed to Pay Class Members Overtime***

18 27. During the Class Period, Class Members routinely worked more than 8 hours in day and
19 40 hours per week. Defendant was required to pay Class Members overtime for the hours worked in excess
20 of 8 hours and 40 hours per week. However, Defendant failed to pay overtime, in violation of Labor Code
21 §§ 510, 1194 and Wage Order No. 4-2001, § 3.

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

23 28. During the Class Period, Class Members worked at least 3.5 hours or more on any given
24 day. Defendant was therefore required to permit and authorize Class Members to take off-duty rest breaks,
25 and pay premium pay for missed rest breaks. However, Defendant had policies and/or practices in place
26 which impeded Class Members' ability to take off-duty rest breaks during classroom break time, including
27 the policy and/or practice of requiring Class Members to be available to students during class, as well as
28 before and after class. Thus, Defendant failed to authorize and permit compliant rest breaks in accordance
with Wage Order No. 4-2001, § 12(A).

29 29. Defendant knew or should have known that Class Members were impeded from taking off-
duty rest breaks on days they worked 3.5 hours or more, thereby triggering an obligation to make premium

1 payments to Class Members under Labor Code § 226.7 and Wage Order No. 4-2001, § 12, which
2 Defendant did not pay.

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

4 30. During the Class Period, Class Members worked at least 5 hours or longer on any given
5 day, including classes that were scheduled to meet for 5 hours, or classes that were scheduled for less than
6 5 hours but that resulted in working for 5 hours or more when including the required preparation time
7 before each class, and time spent after class talking with students. Defendant did not maintain a compliant
8 meal break policy applicable to Class Members. As a result, Class Members were not relieved of all duties
9 for at least 30 minutes before the end of their fifth hour of work, as required under Labor Code § 512(a)
10 and Wage Order No. 4-2001, § 11. Defendant also failed to pay premium pay for missed meal breaks in
11 violation of Labor Code § 226.7.

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

13 31. During the one year prior to the filing of this action and through to the present ("Wage
14 Statement Class Period") Defendant was required to issue accurate itemized wage statements to Class
15 Members semimonthly or at the time of each payment of wages containing (1) gross wages earned
16 pursuant to subdivision (a)(1) of Labor Code § 226(a); (2) total number of hours worked during each
17 period, pursuant to subdivision (a)(2) of § 226(a); (3) net wages earned pursuant to subdivision (a)(5) of
18 Labor Code § 226(a); (4) all applicable hourly rates in effect during the pay period and corresponding
19 number of hours worked pursuant to subdivision (a)(9) of Labor Code § 226(a). However, as a
20 consequence of Defendant's failure to pay Plaintiff for all of her hours worked, overtime, and premium
21 pay, Plaintiff did not receive accurate itemized wage statements that included accurate entries for their
22 hours worked, all applicable hourly rates, net wages, and gross wages earned.

23 ***Defendant Failed to Reimburse Expense Reimbursement Class Members***

24 32. Starting March 4, 2020, as a result of the COVID-19 pandemic, Defendant required and/or
25 expected all non-essential workers of Defendant including Expense Reimbursement Class Members to
26 work from home. In working remotely, Plaintiff incurred necessary expenditures or losses, including but
27 not limited to, internet, phone service and/or equipment, printing equipment and supplies. As a result,
28 Expense Reimbursement Class Members 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.

33. Defendant was aware, or should have been aware, that Expense Reimbursement Class
Members incurred these expenses in direct consequence of the discharge of their job duties because

1 Defendant required Expense Reimbursement Class Members to work from home. Throughout the
2 Expense Reimbursement Class Period, Defendant, however, did not maintain policies or practices of
3 reimbursing Expense Reimbursement Class Members for their business expenses fully or at all for any
4 such expenses incurred throughout the Expense Reimbursement Class Period as required under Labor
5 Code § 2802.

6 34. As a result, Defendant knowingly permitted Plaintiff and Expense Reimbursement Class
7 Members to pay for expenses incurred in direct consequence of discharging their duties for Defendant,
8 without any reimbursement or reimbursement in full by Defendant for such expenses.

9 35. Plaintiff and Expense Reimbursement Class Members have been harmed by Defendant's
10 unlawful business expense policies and/or practice and/or lack of such policies and/or practices in that
11 they have not been paid for certain business expenses incurred while employed by Defendant, thereby
12 diminishing their agreed-upon compensation, in substantial amounts to be proved at trial.

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

14 36. Defendant has adopted and used unfair business practices to reduce Plaintiff's
15 compensation and increase profits including failing to pay her for all of her hours worked; failing to pay
16 her overtime; failing to authorize and permit timely off-duty rest periods; failing to provide odd-duty meal
17 breaks; failing to pay premium pay for missed breaks; and failing to pay for her necessarily incurred
18 business expenses.

19 **CLASS ACTION ALLEGATIONS**

20 37. Plaintiff brings this class action pursuant to Cal. Civ. Pro. Code. § 382 on behalf of the
21 Class and the Expense Reimbursement Class. Upon information and belief, there are more than 100
22 Members in each Class. The members of the Classes are so numerous that joinder of all members is
23 impractical.

24 38. Plaintiff's claims are typical of the claims of the members of each Class because she was
25 a part-time instructor who was (a) not paid for all hours worked; (b) not paid overtime; (c) subject to
26 Defendant's policies and practices that prevented and/or impeded her ability to take paid off-duty rest
27 periods and meal periods, and was not paid premium pay for missed or unpaid rest and meal breaks; (c)
28 not provided with an accurate and itemized wage statement for each pay period; and (d) not reimbursed
for business expenses incurred in the discharge of her duties for Defendant.

39. Plaintiff will fairly and adequately represent the interests of the Classes. Plaintiff has no
conflict of interest with any member of the Classes. Plaintiff has retained competent and experienced

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

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

- 6 a. Whether Class Members are non-exempt employees;
- 7 b. Whether Defendant violated Labor Code §§ 1194 and Wage Order No. 4-2001, § 4 by
8 failing to pay Plaintiff and Class Members for all hours worked;
- 9 c. Whether Defendant is liable for liquidated damages to Plaintiff and the Class under Labor
10 Code § 1194.2;
- 11 d. Whether Defendant violated Labor Code §§ 510 and 1194 and Wage Order No. 4-2001, §
12 3 by failing to pay Plaintiff and Class Members overtime;
- 13 e. Whether Defendant violated Wage Order No. 4-2001 §§ 11 and 12 by maintaining policies
14 and practices that prevented or impeded Class Members from taking off-duty rest periods and meal breaks;
- 15 f. Whether Defendant violated Labor Code §§ 226.7 and 512 and Wage Order No. 4-2001 §
16 11 and 12 by failing to pay one hour of premium pay for each day that a paid rest period or unpaid meal
17 period was not provided during the Class Period;
- 18 g. Whether Defendant violated Labor Code §§ 226(a) by failing to issue itemized wage
19 statements to Plaintiff and Class Members;
- 20 h. Whether Defendant's violation of Labor Code § 226(a) was knowing and intentional;
- 21 i. Whether Plaintiff and Class Members suffered injury for the purposes of Labor Code §
22 226(e);
- 23 j. Whether Plaintiff and Expense Reimbursement Class Members, incurred business
24 expenses in order to perform their duties for Defendant remotely from home;
- 25 k. Whether Defendant violated Labor Code § 2802 by failing to reimburse Plaintiff and
26 Expense Reimbursement Class Members, for their necessarily incurred business expenses;
- 27 l. Whether these violations constitute unfair, unlawful, and fraudulent business practices, in
28 violation of UCL;
- m. Whether Plaintiff and members of the Classes are entitled to restitution under Bus. & Prof.
Code § 17200 *et seq.* for uncompensated wages and unpaid premium pay; and
- n. The proper formula(s) for calculating damages, interest, and restitution owed to Plaintiff
and the Classes;

1 o. Whether the Classes are entitled to declaratory and injunctive relief.

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

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

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

18 **FIRST CAUSE OF ACTION**
19 **Sexual Harassment in Violation of FEHA**
20 **[Cal. Gov. Code § 12940]**

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

23 45. At all times herein mentioned, FEHA, Cal. Gov't Code § 12900, *et seq.*, was in full force
24 and effect and was fully binding upon Defendant. Pursuant to Cal. Gov't Code § 12940(j)(1) it is unlawful
25 for an employer to sexually harass an employee. The employer is responsible for the harassment of an
26 employee if the employer knows or should have known of this conduct and fails to take immediate and
27 appropriate corrective action. Further, an employer may be responsible for the acts of nonemployees, with
28 respect to harassment of employees, if the employer, knows or should have known of the conduct and
fails to take immediate and appropriate corrective action.

46. During her employment, Mr. Orozco was a non-employee of Defendant, and his sexual
comments towards Plaintiff, described above, were based on the fact that Plaintiff is female. Mr. Orozco's
comments were so severe and pervasive that it materially altered the conditions of Plaintiff's employment
and created an abusive and hostile working environment in violation of Cal. Gov't Code § 12940.

1 Defendant knew or should have known of Mr. Orozco's conduct and failed to take immediate and
2 appropriate corrective action. Defendant is therefore responsible for this conduct.

3 47. During her employment, Defendant was Mr. Dockery's employer, and his sexual advances,
4 conduct and comments towards Plaintiff, described above, were unwelcomed, unwanted and uninvited.
5 Mr. Dockery's conduct toward Plaintiff was based on the fact that Plaintiff is female, and were so severe
6 and pervasive that it materially altered the conditions of Plaintiff's employment and created an abusive
7 and hostile working environment in violation of Cal. Gov't Code § 12940. Defendant knew or should
8 have known of Mr. Dockery's conduct and failed to take immediate and appropriate corrective action.
9 Defendant is therefore responsible for this conduct.

10 48. As a direct and proximate cause of the conduct alleged herein, Plaintiff has suffered and
11 continues to suffer economic damages, including lost earnings, noneconomic damages, including, without
12 limitation, humiliation, embarrassment and discomfort, physical and mental emotional distress and
13 anguish, in an amount to be proven at trial.

14 49. As a result of Defendant's acts as alleged herein, Plaintiff is entitled to reasonable
15 attorneys' fees and costs under Cal. Gov't. Code § 12965(c)(6).

16 **SECOND CAUSE OF ACTION**
17 **Failure to Prevent Harassment in Violation of FEHA**
18 **[Cal. Gov. Code § 12940]**

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

21 51. At all times herein mentioned, FEHA, Cal. Gov't Code § 12900, *et seq.*, was in full force
22 and effect and was fully binding upon Defendant. Cal. Gov't Code § 12940(k) states that it is an unlawful
23 employment practice in California for an employer "to fail to take all reasonable steps necessary to prevent
24 discrimination and harassment from occurring."

25 52. During the course of Plaintiff's employment, Defendant failed to prevent its non-
26 employees and employees from engaging in unjustified harassment against employees in protected classes
27 (i.e., Plaintiff is protected due to her sex). During the course of Plaintiff's employment, Defendant failed
28 to prevent and pattern of practice of harassment on the basis of sex.

53. Plaintiff believes and, on that basis, alleges that her sex and/or other protected status and/or
protected activity were substantial motivating factors in Defendant's harassment of her.

54. As a direct and proximate cause of the conduct alleged herein, Plaintiff has suffered and
continues to suffer economic damages, including lost earnings, noneconomic damages, including, without
limitation, humiliation, embarrassment and discomfort, physical and mental emotional distress and

1 anguish, in an amount to be proven at trial.

2 55. As a result of Defendant's acts as alleged herein, Plaintiff is entitled to reasonable
3 attorneys' fees and costs under Cal. Gov't. Code § 12965(c)(6).

4 **THIRD CAUSE OF ACTION**
5 **Failure to Pay for All Hours Worked**
6 **[Cal. Labor Code § 1194, 1194.2; Wage Order No. 4-2001, § 4]**

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

9 57. Labor Code § 1194 provides, in relevant part:

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

14 58. Labor Code § 1194.2 provides, in relevant part:

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

18 59. Wage Order No. 4, § 4(B) provides, in relevant part:

19 "Every employer shall pay to each employee, on the established payday for the period involved,
20 not less than the applicable minimum wage for all hours worked in the payroll period..."

21 60. As set forth above, during the Class Period, Plaintiff and Class Members were non-exempt
22 employees, yet Defendant did not compensate them for their time spent working. Accordingly, pursuant
23 to Labor Code §§ 1194 and 1194.2 and Wage Order No. 4-2001, § 4, Class Members are entitled to
24 recover, at a minimum, unpaid wages, plus liquidated damages in an additional amount equal to the total
25 wages unlawfully withheld, and interest.

26 61. As a result of Defendant's violations of Labor Code § 1194, Defendant is also liable for
27 attorneys' fees and costs.

28 62. Plaintiff, on behalf of herself and all other Class Members, requests relief as described
below.

///

1 **FOURTH CAUSE OF ACTION**

2 **Failure to Pay Overtime**

3 **[Cal. Labor Code §§ 510, 1194 and Wage Order No. 4-2001, § 3]**

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

5 64. Labor Code § 510 and the applicable Wage Order require that an employer compensate all work performed by an employee in excess of either (8) hours per workday and forty (40) hours per workweek, at one and one-half times the employee's regular rate.

6 65. Labor Code § 1194 states that any employee receiving less than the legal overtime compensation applicable is entitled to recover in a civil action the unpaid balance of the full amount of his or her overtime compensation, including interest thereon, and reasonable attorneys' fees and costs.

7 66. Class Members routinely worked more than eight (8) hours per workday and more than forty (40) hours per workweek. However, Defendant knowingly and willfully failed to pay overtime pay, in violation of the Labor Code and applicable Wage Order.

8 67. Accordingly, pursuant to § 3 of the Wage Order and Labor Code §§ 510, 1194, Plaintiff is entitled to recover, at a minimum, an amount equal to the total amount of unpaid overtime wages unlawfully withheld.

9 68. Plaintiff, on behalf of herself and all other Class Members, requests relief as described below.

10 **FIFTH CAUSE OF ACTION**

11 **Failure to Authorize and Permit Off-Duty Rest Breaks or Pay Missed Rest Period**

12 **Premiums**

13 **[Cal. Labor Code § 226.7; IWC Wage Order No. 4-2001 § 12]**

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

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

16 “(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.”

17 71. 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.”

72. As set forth above, Defendant maintained policies and/or practices that impeded Class Members from taking off-duty rest breaks by requiring them to work during the only times (e.g. student breaks) available for rest breaks and requiring them to remain available to students for questions before and after class.

73. As a result, Plaintiff is 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 Plaintiff to take a rest break as required under Labor Code § 226.7 and Wage Order No. 4-2001 § 12.

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

SIXTH CAUSE OF ACTION
Failure to Provide Compliant Meal Periods and Pay Missed Meal Period Premiums
[Cal. Labor Code § 226.7 and 512; Wage Order No. 4-2001, § 11]

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

76. California Labor Code § 512(a) provides: “An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes...”

77. 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.”

78. Wage Order No. 4-2001 § 11(A) provides: “(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes...”

79. As alleged herein, Class Members regularly worked five (5) hours or more without being provided a 30-minute meal period in which she was relieved of all duties, in violation of Labor Code § 512 and Wage Order No. 4-2001, § 11(A).

80. As a result, Class Members are entitled under Labor Code § 226.7 and Wage Order No. 4-2001 § 11 to one additional hour of pay at the employee's regular rate of compensation for each day in which Defendant failed to provide an off-duty meal period as required by California law.

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

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SEVENTH CAUSE OF ACTION
Failure to Issue Accurate Itemized Wage Statements
[Cal. Labor Code § 226(a), (e)]

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

83. Labor Code § 226(a) requires employers to furnish their employees with wage statements containing accurate entries for “(1) gross wage earned, (2) total hour worked by the employee, ... (5) net wages earned, ... (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.”

84. During the Wage Statement Class Period, Defendant issued wage statements that lacked accurate entries for total hours worked, applicable hourly rates in effect during the pay period, net wages, and gross wages earned in violation of Labor Code § 226(a)(1), (a)(2), (a)(5), and (a)(9).

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

86. As a result, Defendant is liable for statutory penalties under Labor Code § 226(e), in the amount of dollars (\$50) for the initial pay period in which a violation occurred and one hundred dollars (\$100) for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and an award of costs and reasonable attorney’s fees.

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

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

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

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

90. In order to discharge their job duties for Defendant, Expense Reimbursement Class Members was required and/or expected by Defendant to work remotely. In working remotely, Expense Reimbursement Class Members incurred necessary expenditures or losses, including but not limited to, internet, phone service and/or equipment, printing equipment and supplies. Defendant knew or should

1 have known that Expense Reimbursement Class Members incurred these expenses, yet failed to reimburse
2 her for these expenditures or losses fully or at all, in violation of Labor Code § 2802 Code.

3 91. Defendant's failure to reimburse the work-related expenses of Expense Reimbursement
4 Class Members violated non-waivable rights secured to her by Labor Code § 2802.

5 92. Plaintiff and Expense Reimbursement Class Members are entitled to reimbursement for
6 these necessary expenditures, plus interest, and attorneys' fees and costs, under Labor Code § 2802.

7 93. Plaintiff, on behalf of herself and all other Expense Reimbursement Class Members,
8 requests relief as described below.

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

10 94. The UCL prohibits any unlawful, unfair, or fraudulent business practices. Labor Code
11 § 90.5(a) states that it is the public policy of California to vigorously enforce minimum labor standards in
12 order to ensure employees are not required to work under substandard and unlawful conditions, and to
13 protect employers who comply with the law from those who attempt to gain competitive advantage at the
14 expense of their workers by failing to comply minimum labor standards. Through its actions alleged
15 herein, Defendant has engaged in unfair competition within the meaning of the UCL, because Defendant's
16 conduct has violated state wage with and hour laws as herein described.

17 95. Defendant committed, and continues to commit, acts of unfair competition, as defined in
18 the UCL by wrongfully denying Class Members payment in the amount of at least minimum wages for
19 all her hours worked in violation of Labor Code § 1194 and Wage Order No. 4-2001 § 4; by failing to pay
20 overtime in violation of Labor Code § 510 and Wage Order No. 4-2001 § 3; by failing to authorize and
21 permit rest breaks and pay premium pay for missed rest breaks in violation of Labor Code § 226.7 and
22 Wage Order No. 4-2001 § 12 by failing to provide meal breaks and pay premium pay for missed meal
23 breaks in violation of Labor Code § 226.7, 512 and Wage Order No. 4-2001 § 11; and by failing to
24 reimburse business expenses in violation of Labor Code § 2802.

25 96. By its actions and omissions, Defendant has substantially injured and damaged Class
26 Members and Expense Reimbursement Class Members.

27 97. The harm to Plaintiff resulting from Defendant's labor code violations outweighs the
28 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.

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1 **TENTH CAUSE OF ACTION**

2 **PAGA Civil Penalties**

3 **[Labor Code §§ 2698 et seq.]**

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

5 99. Plaintiff seeks PAGA penalties on behalf of herself, Instructor Aggrieved Employees, and Aggrieved Employees, for the following violations:

6 ***Violation of Labor Code § 1194***

7 100. During the PAGA Period, Defendant did not compensate Instructor Aggrieved Employees for all of the time spent completing required tasks outside of the classroom, in violation of Labor Code § 1194.

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

9 ***Violation of Labor Code § 226.7***

10 102. During the PAGA Period, Defendant failed to authorize and permit Instructor Aggrieved Employees to take paid rest breaks and failed to pay missed rest break premiums in violation of Labor Code § 226.7.

11 103. Pursuant to Labor Code § 2699(f)(2), Plaintiff and Instructor Aggrieved Employees are entitled to one hundred dollars (\$100) per pay period for each initial violation of Labor Code § 226.7 and two hundred dollars (\$200) per pay period for each subsequent violation.

12 ***Violation of Labor Code § 510***

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

14 105. Pursuant to Labor Code § 2699(f)(2), Plaintiff and Instructor Aggrieved Employees are entitled to one hundred dollars (\$100) per pay period for each initial violation of Labor Code § 510 and two hundred dollars (\$200) per pay period for each subsequent violation.

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

16 106. During the PAGA Period, Defendant failed to provide Instructor Aggrieved Employees with off-duty meal breaks in violation of Labor Code § 512, and failed to pay missed meal break premiums in violation of Labor Code § 226.7.

1 107. Pursuant to Labor Code § 2699(f)(2), Plaintiff and Instructor 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)***

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

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

12 110. Alternatively, pursuant Labor Code § 2699(f)(2), Plaintiff and Instructor 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),
15 and two hundred dollars (\$200) per pay period for each subsequent violation.

16 ***Violation of Labor Code § 201***

17 111. During the PAGA Period, Defendant failed to pay Instructor Aggrieved Employees their
18 final wages on their discharge from employment, in violation of Labor Code § 201.

19 112. Pursuant to Labor Code § 256, Plaintiff and Instructor Aggrieved Employees are entitled
20 to penalties not exceeding 30 days' pay.

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

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

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

 115. Pursuant to Labor Code § 2699(f)(2), Plaintiff and Aggrieved 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.

1 116. Plaintiff, on behalf of herself and all other Aggrieved Employees, including Instructor
2 Aggrieved Employees, requests relief as described below.

3 **PRAYER FOR RELIEF**

4 **WHEREFORE**, Plaintiff demands the following relief:

5 A. An Order that this action may proceed and be maintained as a class action, with the Classes
6 as designated and defined in this Complaint, and that the Plaintiff and her counsel be certified as
7 representatives and Counsel for the Classes, respectively.

8 B. On the First and Second Causes of Action: That the Court find and declare that Defendant
9 violated Cal. Gov't Code § 12940, and award Plaintiff her economic damages and noneconomic damages,
10 in an amount to be proven at trial.

11 C. On the Third Cause of Action: That the Court find and declare that Defendant violated
12 Labor Code §§ 1194, and 1194.2 and Wage Order No. 4-2001, § 4 by failing to pay Plaintiff and Class
13 Members for all hours worked, and award Plaintiff and the Class the amount of their unpaid wages owed
14 to them for that work, plus liquidated damages in an additional amount equal to the amount of wages
15 unlawfully withheld during the Class Period.

16 D. On the Fourth Cause of Action: That the Court find and declare that Defendant violated
17 California Labor Code §§ 510, 1194 and IWC Wage Order No. 4-2001, § 3, and award Plaintiff and Class
18 Members, at a minimum, an amount equal to the total amount of unpaid overtime wages unlawfully
19 withheld from her, and interest thereon, and reasonable attorneys' fees and costs.

20 E. On the Fifth Cause of Action: That the Court find and declare that Defendant violated
21 Labor Code § 226.7 and Wage Order No. 4-2001, § 12 by failing to authorize and permit timely off-duty
22 rest breaks, and failing to pay premium pay for rest breaks; and award Plaintiff and the Class unpaid
23 wages for rest break time and unpaid premium pay for missed rest breaks.

24 F. On the Sixth Cause of Action: That the Court find and declare that Defendant violated
25 Labor Code §§ 226.7 and 512 and Wage Order No. 4-3002, § 11 by failing to authorize and permit timely
26 off-duty meal breaks, and award Plaintiff and the Class unpaid premium pay for missed meal breaks.

27 G. On the Seventh Cause of Action: That the Court find and declare that Defendant violated
28 Labor Code §§ 226(a), and award Plaintiff and Class Members who worked for Defendant during the
Wage Statement Class Period, statutory penalties under Labor Code § 226(e);

H. On the Eighth Cause of Action: That the Court find and declare that Defendant's business
expense policies and/or practices violate Labor Code § 2802, by refusing and/or failing to reimburse
business expenses incurred by Plaintiff and Expense Reimbursement Class Members, and that the Court

1 award to Plaintiff and Expense Reimbursement Class Members all business expenses, and interest
2 thereon, that they are owed, pursuant to Labor Code § 2802.

3 I. On the Ninth Cause of Action: That the Court find and declare Defendant has violated the
4 UCL, and award restitution to the Classes, including, but not limited to, unpaid wages, unpaid premium
5 pay, and reimbursement of business expenses in the amount to be proved at trial.

6 J. On the Tenth Cause of Action: That the Court award PAGA Civil Penalties, and attorneys'
7 fees and costs, as provided under Labor Code § 2699.

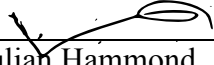
8 K. That the Court award attorneys' fees and costs of suit to the extent permitted by law,
9 including, but not limited to, Labor Code §§ 1194, 226(e) and (h), 2802(c), 2699, Cal. Govt Code §
10 12965(c)(6), and Cal. Civil Procedure Code § 1021.5.

11 L. All other relief as this Court deems proper.

12 Dated: May 9, 2022

Respectfully submitted,

13 HAMMONDLAW, P.C.

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16 By: Julian Hammond
17 *Attorneys for Plaintiff*
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