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County of Alameda

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IN THE SUPERIOR COURT IN THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA
(UNLIMITED JURISDICTION)

**NICHOLAS MCAVOY and MELODY
MCAVOY-MORRISON**, on behalf of
themselves and all others similarly situated,

Plaintiffs,

vs.

**REGENTS OF THE UNIVERSITY OF
CALIFORNIA**, a public corporation, and
DOES 1 through 30,

Defendants.

Case No. **22CV019870**

CLASS ACTION

**COMPLAINT FOR DAMAGES AND
INJUNCTIVE RELIEF**

1. Failure to Timely Pay Wages (Cal. Labor Code §204(e))
2. Failure to Pay Minimum Wage (Cal. Labor Code §§1182.12, 1197)
3. Failure to Provide Paid Sick Leave (Cal. Labor Code §§246, 247, 247.5)
4. Recovery under Private Attorneys General Act (PAGA) (Cal. Labor Code §§2698-2699 *et seq.*)

DEMAND FOR JURY TRIAL

Representative Plaintiffs **NICHOLAS MCAVOY** and **MELODY MCAVOY-MORRISON** complain and allege as follows:

GENERAL ALLEGATIONS

1. This is a class action, brought on behalf of the Representative Plaintiffs **NICHOLAS MCAVOY** and **MELODY MCAVOY-MORRISON** (collectively referred to as “Representative Plaintiffs”) and all other persons similarly situated (collectively referred to as “Class Members” or “Plaintiff Class” or “Plaintiffs”) who are or have been employed in California by Defendants

1 **REGENTS OF THE UNIVERSITY OF CALIFORNIA** and/or **DOES 1 through 30**, inclusive
2 (collectively referred to as “Defendants”), as former or current fitness trainers and/or instructors
3 for the University of California, within the applicable Class Period defined herein.

4 2. The Representative Plaintiffs allege that Defendants have had a consistent policy
5 and practice of:

- 6 • Failing to pay Plaintiffs their wages in a timely manner as statutorily required;
- 7 • Unlawfully paying Plaintiffs a wage rate below the statutory minimum wage for
8 all hours worked; and
- 9 • Failing to provide Plaintiffs with paid sick leave, information about paid sick
10 leave, and/or keep records about paid sick leave.

11 3. Despite Defendants’ knowledge of Plaintiffs’ entitlement to the timely payment of
12 wages, the payment of minimum wage for all hours worked, and the provision of paid sick leave,
13 Defendants failed to provide the same to Plaintiffs, in violation of California state statutes, the
14 applicable Industrial Welfare Commission (“IWC”) Wage Orders, applicable local ordinances, and
15 Title 8 of the California Code of Regulations. This action is brought to redress and end this long-
16 time pattern of unlawful conduct from Defendants.

17 4. The Representative Plaintiffs, on behalf of themselves and the Class Members, seek
18 unpaid wages, penalties, interest, liquidated damages, and reasonable attorneys’ fees and costs
19 under, *inter alia*, various provisions of the California Labor Code, Title 8 of the California Code of
20 Regulations, and other applicable laws.

21 **PARTIES**

22 5. Representative Plaintiff **NICHOLAS MCAVOY** (“MCAVOY”) is a natural person
23 who resides in Alameda, California. Starting from approximately November 3, 2015 to July 2022,
24 MCAVOY was employed by Defendants in Berkeley, California as an hourly, non-exempt
25 employee as a fitness trainer and/or instructor for the University of California. At all times
26 relevant to this action, MCAVOY was an employee of Defendants within the meaning of
27 applicable California laws.

1 6. Representative Plaintiff **MELODY MCAVOY-MORRISON** (“MORRISON”) is a
2 natural person who resides in Alameda, California. Starting from approximately February 4, 2018
3 to September 2022, MCAVOY-MORRISON was employed by Defendants in Berkeley, California
4 as an hourly, non-exempt employee as a fitness trainer and/or instructor for the University of
5 California. At all times relevant to this action, MCAVOY-MORRISON was an employee of
6 Defendants within the meaning of applicable California laws.

7 7. As used in this Complaint, the terms “Class Members” or “Plaintiffs” refer to the
8 Representative Plaintiffs as well as each and every person eligible for membership in the Class as
9 described and defined herein.

10 8. At all times relevant to this action, the Representative Plaintiffs were and are
11 persons within the Class as further described and defined herein.

12 9. The Representative Plaintiffs are informed and believe, and on that basis allege, that
13 Defendant **REGENTS OF THE UNIVERSITY OF CALIFORNIA** (“REGENTS”) is, and was
14 at all relevant times, a California public corporation that administers the University of California,
15 which constitutes a public trust under the California Constitution, Article IX, Section 9. At all
16 times relevant to this action, Defendant REGENTS was an employer of the Representative
17 Plaintiffs and Class Members within the meaning of applicable California laws.

18 10. The true and correct names and capacities of **DOES 1 through 30**, inclusive, are
19 unknown to the Representative Plaintiffs, who therefore sue said Defendants by such fictitious
20 names pursuant to §474 of the California Code of Civil Procedure. The Representative Plaintiffs
21 are informed and believe, and thereon allege, that each of said fictitious Defendants caused injury
22 and damage to the Representative Plaintiffs and Class Members. The Representative Plaintiffs
23 will seek leave of the Court to amend this Complaint to allege the true names and capacities of the
24 DOE Defendants when the same are ascertained, as well as the manner in which each fictitious
25 Defendant is responsible for the damages sustained by the Representative Plaintiffs and Class
26 Members.

27 11. The Representative Plaintiffs are informed and believe and, on that basis, allege that
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1 at all times relevant hereto, each of the Defendants, including DOES 1 through 30, were the
2 agents, employees, supervisors, employers, alter egos, and/or joint venturers of the remaining
3 Defendants, and were acting both individually and in the course and scope of such relationship,
4 and/or as an integrated enterprise, and/or as joint employers, with the knowledge and/or consent of
5 the remaining Defendants.

6 **JURISDICTION AND VENUE**

7 12. This Court has jurisdiction over this action because the amount in controversy
8 exceeds \$25,000.

9 13. Pursuant to California Code of Civil Procedure §395(a), venue is proper in the
10 County of Alameda because Defendants are located in the County of Alameda; Defendants
11 employed the Representative Plaintiffs and other Class Members in the County of Alameda;
12 Defendants' obligations and liability arose in the County of Alameda; and/or because the alleged
13 injuries sustained by the Representative Plaintiffs and Class Members occurred in the County of
14 Alameda.

15 **COMMON FACTUAL ALLEGATIONS**

16 14. Representative Plaintiffs MCAVOY and MCAVOY-MORRISON, and the Class
17 Members, are employed, or were employed, as former or current fitness trainers and/or instructors
18 for the University of California. Plaintiffs worked in fitness programs at various campuses in the
19 University of California system, including, but not limited to, Group X, Workfit, Workfit U,
20 Workstrong, Worksmart, and No Limits.

21 15. Plaintiffs were or are non-exempt employees who were paid a flat fee for each class
22 that they worked at the University of California.

23 16. The University of California currently has 10 campuses: UC Berkeley, UC Davis,
24 UC Irvine, UCLA, UC Merced, UC Riverside, UC San Diego, UC Santa Barbara, UC Santa Cruz,
25 and UC San Francisco.

26 17. Based on information and belief, at all times relevant to this action, all the
27 University of California campuses used "UCPath," which is a single, unified, system-wide
28

1 platform to manage payroll, benefits, human resources, and personnel functions across all
2 campuses.

3 18. As described herein, Defendants knowingly and willfully failed to pay wages to
4 Plaintiffs on a timely basis, in violation of the California Labor Code.

5 19. For example, Defendants failed to pay Plaintiff MCAVOY on his regular pay date
6 of November 10, 2021. Plaintiff MCAVOY earned approximately \$630.00 during that pay period,
7 but Defendants did not pay Plaintiff MCAVOY on time and made only a partial payment of the
8 amount owed on or about November 26, 2021. Defendants failed to pay Plaintiff MCAVOY all
9 amounts owed on a timely basis on numerous occasions dating back to at least 2020.

10 20. As another example, Defendants failed to pay Plaintiff MCAVOY-MORRISON on
11 her regular pay date of January 5, 2022. Plaintiff MCAVOY-MORRISON earned approximately
12 \$1,418.00 during that pay period, but Defendants did not pay Plaintiff MCAVOY-MORRISON on
13 time and made only a partial payment of the amount owed on or about January 12, 2022.
14 Defendants failed to pay Plaintiff MCAVOY-MORRISON all amounts owed on a timely basis on
15 numerous occasions dating back to at least 2020.

16 21. Representative Plaintiffs MCAVOY and MCAVOY-MORRISON raised concerns
17 to one of their supervisors, Jaime Lozano, about Defendants' unlawful withholding of Plaintiffs'
18 wages. However, Defendants did not remedy the issue and continued to fail to pay Plaintiffs their
19 full wages on time. Mr. Lozano also became increasingly hostile towards MCAVOY and
20 MCAVOY-MORRISON and provided inaccurate payroll information to them after they raised
21 concerns about timely payment of wages.

22 22. As described herein, Defendants knowingly and willfully failed to adequately pay
23 Plaintiffs at least the minimum wage for all hours worked, in violation of the California Labor
24 Code, the applicable IWC Wage Orders, and local minimum wage ordinances. Defendants
25 knowingly and willfully forced Plaintiffs to work "off the clock" and did not compensate them for
26 all hours worked, thus setting their hourly pay below the required minimum wage.

27 23. As described herein, Defendants knowingly and willfully failed to provide paid sick
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1 leave to Plaintiffs, in violation of the California Labor Code and the applicable IWC Wage Orders.
2 Defendants knowingly and willfully prevented Plaintiffs from accruing paid sick leave.
3 Defendants also knowingly and willfully withheld information regarding paid sick leave, issued
4 inaccurate job descriptions and appointments, and discouraged Plaintiffs from using paid sick
5 leave.

6 24. As a direct and proximate result of Defendants' unlawful conduct, as set forth
7 herein, Plaintiffs have sustained damages, as described herein, including loss of wages for hours
8 worked and the loss of paid sick leave, in an amount to be established at trial.

9 25. The Representative Plaintiffs seek injunctive relief prohibiting Defendants from
10 engaging in the complained-of illegal practices in the future. Unless enjoined, Defendants'
11 unlawful conduct will continue unchecked, while the Class Members bear the financial brunt of
12 Defendants' unlawful conduct.

13 CLASS ACTION ALLEGATIONS

14 26. The Representative Plaintiffs bring this action individually and as a class action on
15 behalf of all persons similarly situated and harmed by Defendants' conduct, including but not
16 limited to the following Class:

17 **All persons employed by Defendants as hourly fitness trainers and/or**
18 **instructors at any University of California campus, at any time from**
19 **three years preceding the initial filing of this Complaint to the**
20 **present.**

21 27. Defendant REGENTS' officers and directors are excluded from the Class.

22 28. This action has been brought and may be properly maintained as a class action
23 under California Code of Civil Procedure §382 because there is a well-defined community of
24 interest in the litigation, and the proposed Class is easily ascertainable.

25 29. **Numerosity:** A class action is the only available method for the fair adjudication
26 of this controversy. The members of the Plaintiff Class are so numerous that joinder of all
27 members is impractical, if not impossible, insofar as the Representative Plaintiffs are informed and
28 believe and, on that basis, allege that there are sufficient Class Members to meet the numerosity
requirement. Membership in the Plaintiff Class will be determined upon analysis of employee and

1 payroll records, among other records, maintained by Defendants.

2 30. **Commonality:** The Representative Plaintiffs and members of the Plaintiff Class
3 share a community of interest in that there are numerous common questions and issues of fact and
4 law which predominate over any questions and issues solely affecting individual members,
5 including, but not necessarily limited to, whether Defendants:

6 a. Failed to timely pay wages to employees in violation of California Labor
7 Code §204(e);

8 b. Failed to pay employees at least minimum wage for all hours worked in
9 violation of California Labor Code §§1197 and 1182.12, IWC Wage Orders, and applicable
10 minimum wage ordinances; and

11 c. Failed to provide to employees paid sick leave, information about paid sick
12 leave, or keep records about paid sick leave, in violation of California Labor Code §§246, 247,
13 and/or 247.5.

14 31. **Typicality:** The Representative Plaintiffs' claims are typical of the claims of the
15 members of the Plaintiff Class. Plaintiffs sustained damages arising out of and caused by
16 Defendants' common course of conduct in violation of the law, as alleged herein.

17 32. **Superiority of Class Action:** Since the damages suffered by individual members
18 of the Plaintiff Class, while not inconsequential, may be relatively small, the expense and burden
19 of individual litigation by each member make or may make it impractical for Class Members to
20 seek redress individually for the wrongful conduct alleged herein. Should separate actions be
21 brought, or be required to be brought, by each individual Class Member, the resulting multiplicity
22 of lawsuits would cause undue hardship and expense for the Court and the litigants. The
23 prosecution of separate actions would also create a risk of inconsistent rulings which might be
24 dispositive of the interests of other Class Members who are not parties to the adjudications and/or
25 may substantially impede their ability to adequately protect their interests.

26 33. **Adequacy of Representation:** The Representative Plaintiffs in this class action are
27 adequate representatives of the Plaintiff Class. The Representative Plaintiffs' claims are typical of
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1 those of the Class Members, and the Representative Plaintiffs have the same interest in the
2 litigation of this case as the Class Members. The Representative Plaintiffs are committed to
3 vigorous prosecution of this case and have retained competent counsel who are experienced in
4 conducting litigation of this nature. The Representative Plaintiffs are not subject to any individual
5 defenses unique from those conceivably applicable to the Class Members as a whole.

6 34. The “**Class Period**” is designated as three years prior to the date on which this
7 Complaint was initially filed, based upon the allegation that the violations of California law, as
8 described herein, have been ongoing throughout that time.

9
10 **First Cause of Action**
11 **Failure to Timely Pay Wages**
12 **Cal. Labor Code § 204(e)**
(Against All Defendants)

13 35. The Representative Plaintiffs re-allege and incorporate each and every allegation of
14 the preceding paragraphs with the same force and effect as though fully set forth herein.

15 36. In 2019, Governor Gavin Newsom signed Senate Bill 698 (“SB 698”) into law,
16 which amended California Labor Code §204 to add subsection (e) to that statute. SB 698 became
17 effective as of January 1, 2020.

18 37. California Labor Code §204(e) provides: “Notwithstanding subdivision (a) of
19 Section 220 [of the Labor Code], all wages earned by employees directly employed by the Regents
20 of the University of California shall be paid on a regular payday. For the employees on a monthly
21 payment schedule, payment is due no later than five days after the close of the monthly payroll
22 period. For employees on a more frequent payment schedule, payment is due according to the pay
23 schedule announced by the University of California in advance.”

24 38. In enacting SB 698, the California Legislature made the following findings and
25 declarations¹ that reflect the public policy purpose for adding California Labor Code §204(e):
26

27
28 ¹ Senate Bill No. 698, Legislative Counsel’s Digest, *available at*
https://leginfo.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB698.

- “The failure to pay employees their agreed-upon wages on time and on a regular payday can be detrimental to maintenance of the minimum standard of living necessary for health, efficiency, and general well-being of workers.”
- “The University of California has experienced errors in its new Payroll, Academic Personnel, Timekeeping and Human Resources (UCPath) system, which has led to delayed, missed, or smaller-than-expected paychecks for its employees.”
- “The Regents of the University of California will continue to implement the UCPath system at additional University of California campuses over the next several years.”
- “The employees of the Regents of the University of California currently have no protection under the labor code to ensure they are paid on time and on a regular payday during the rollout of the new UCPath system.”
- “This bill ensures that these employees may file a claim in state court or with the Labor Commissioner if the university fails to issue payment on time and on a regular payday.” (Emphasis supplied.)

39. When SB 698 was signed by Governor Newsom, Senator Connie M. Leyva (D-Chino), who authored the legislation, made the following public statement: “Workers everywhere – including at the University of California – deserve to always get paid correctly and on time. There is absolutely no reason why a public employer, especially since private employers are already required to do so, should be exempt from timely pay requirements. SB 698 will ensure that primarily low-wage workers at the UC are paid promptly so that they do not have to wonder how they will pay their bills, keep a roof over their head or food on the table because their paychecks are late. With Governor Newsom’s signature of SB 698, California stands firmly on the side of workers and will continue to fight wage theft whenever and wherever it occurs.”²

40. Based on information and belief, the University of California advised its

² “SB 698 Supported by Education and Labor Organizations,” Oct. 4, 2019, *available at* <https://sd20.senate.ca.gov/news/2019-10-04-bill-ensuring-timely-pay-uc-workers-approved-governor>.

1 supervisors, managers, and administration about the importance of complying with the provisions
2 of SB 698. For example, as of about September 22, 2022, the Human Resources website for UC
3 Berkeley had a specific webpage dedicated to SB 698, which is attached hereto as **Exhibit A**.³
4 Among other statements, that webpage advised: “In addition to managing the transition to UCPath,
5 we need to ensure we are mindful of the new state law, Senate Bill 698, which allows employees
6 to file a claim with the Labor Commissioner if the University fails to issue wage payments on
7 time. Beginning on January 1, 2020, late wage payments may have financial penalties for
8 Berkeley and other UC locations.”

9 41. As another example, the Berkeley Business Process Management Office has a
10 webpage entitled “SB 698 Wage Claims Response,” which is attached hereto as **Exhibit B**.⁴ That
11 webpage advises on SB 698 going into effect on January 1, 2020, that “UC Berkeley stands to
12 incur significant fines and penalties with its current missing, incorrect and late pay issues,” and
13 that “[c]ommunication and protocols must be established to handle and reduce Senate Bill 698
14 wage claims, and prevent fines and penalties.” The webpage lists objectives, success metrics, and
15 project team members for the SB 698 compliance project. The webpage also has a list of “Prior
16 Accomplishments” completed for the project, which identifies communications with university
17 management and administration about SB 698, the creation of SB 698 wage claim response
18 processes and intake forms, and the creation of an “accountability model” when penalties are owed
19 under SB 698.

20 42. Representative Plaintiffs MCAVOY and MCAVOY-MORRISON also informed
21 one of their supervisors about Defendants’ unlawful withholding of Plaintiffs’ wages. However,
22

23 ³ As of September 22, 2022, this referenced webpage was entitled “SB 698,” was part of the Berkeley People &
24 Culture website, and was available at <https://hr.berkeley.edu/compensation-benefits/compensation/salary-and-pay/sb-698#:~:text=Effective%20January%201%2C%202020%2C%20SB,claim%20or%20settle%20the%20matter>. Exhibit
25 A is a true and correct copy of a screenshot of this webpage taken on September 20, 2022. On September 22, 2022,
26 Plaintiffs’ counsel informed attorneys for the University of California about this webpage in conjunction with
Plaintiffs’ concerns about Labor Code violations. Based on information and belief, the University of California
thereafter removed this “SB 698” webpage, and the URL now redirects to a webpage entitled “Paying Employees”
which no longer has information about SB 698.

27 ⁴ “SB 698 Wage Claims Response,” Berkeley Business Process Management Office, *available at*
28 <https://bpm.berkeley.edu/sb-698-wage-claims-response> as of September 30, 2022. Exhibit B is a true and correct copy
of a screenshot of this webpage taken on September 30, 2022.

1 Defendants did not remedy the issue and continued to fail to pay Plaintiffs their full wages on time.

2 43. During the Class Period, despite the clear language of SB 698 and California Labor
3 Code §204(e), and Defendants' knowledge of the compliance requirements, Defendants willfully
4 and knowingly failed to pay Plaintiffs their wages on a timely basis.

5 44. As a direct and proximate result of Defendants' failure to timely pay Plaintiffs their
6 wages as required, Plaintiffs have suffered damages and hardship.

7 45. Pursuant to California Labor Code §210, every person who fails to pay the wages of
8 each employee as provided in Labor Code §204 shall be subject to a penalty as follows: (a) for any
9 initial violation, \$100 for each failure to pay each employee; and (b) for each subsequent violation,
10 or any willful or intentional violation, \$200 for each failure to pay each employee, plus 25 percent
11 of the amount unlawfully withheld.

12 46. Pursuant to the California Labor Code, Plaintiffs are entitled to recover penalties for
13 Defendants' failure to timely pay Plaintiffs their wages, in an amount to be established at trial.

14 Wherefore, the Representative Plaintiffs pray for judgment as set forth below.

15
16 **Second Cause of Action**
17 **Failure to Pay Minimum Wage**
Cal. Labor Code §§ 1182.12, 1197
(Against All Defendants)

18 47. The Representative Plaintiffs re-allege and incorporate each and every allegation of
19 the preceding paragraphs with the same force and effect as though fully set forth herein.

20 48. Our courts have recognized that our state wage and hour laws "reflect the strong
21 public policy favoring protection of workers' general welfare and society's interest in a stable job
22 market." *Flowers v. Los Angeles County Metropolitan Transportation Authority* (2015) 243
23 Cal.App.4th 66, 82 (internal citations omitted).

24 49. "The minimum wage represents the Legislature's and the [IWC's] best estimate of
25 the minimum an employee working a full-time job must be paid to sustain such employee as a
26 resident of this state and pay for the necessities of life." *Marquez v. City of Long Beach* (2019) 32
27 Cal.App.5th 552, 570-571 (internal citations omitted). The constitutional amendment to confirm
28

1 the Legislature’s authority to regulate the minimum wage in the State of California “reflected the
2 concern that workers ‘should be certain of a living wage – a wage that insures for them the
3 necessary shelter, wholesome food and sufficient clothing,’ and ‘that substandard wages frequently
4 led to ill health and moral degeneracy.’” *Id.* at 571 (internal citations omitted).

5 50. Pursuant to California Labor Code §1197, payment of less than the minimum wage
6 fixed by law is unlawful. An employer violates the minimum wage statute even if the average rate
7 for paid and unpaid hours exceeded the minimum wage.

8 51. Pursuant to California state law and the applicable IWC Wage Orders, employees
9 must be paid for all hours worked. “Hours worked” means the time during which an employee is
10 subject to the control of an employer, and includes all the time the employee is suffered or
11 permitted to work, whether or not required to do so. *See, e.g.,* Cal. Code Regs., tit. 8, §11090.

12 52. During the Class Period, Defendants failed to compensate Plaintiffs at the legally
13 mandated minimum wage rate set forth in the applicable IWC Wage Orders, California state law,
14 and the applicable minimum wage ordinances. Plaintiffs seek payment of all unpaid minimum
15 wages owed.

16 53. During the Class Period, Defendants knowingly and willfully forced Plaintiffs to
17 work “off the clock,” thus setting their hourly pay below the required minimum wage. Plaintiffs
18 were forced to spend numerous hours on a weekly basis performing unpaid work, including, but
19 not limited to, preparing for training and instruction classes, preparing music for classes, and
20 cleaning fitness studios before and after classes. Plaintiff were also not paid for their time spent
21 traveling between different sites during the work day. Thus, Defendants set Plaintiffs’ hourly pay
22 at below the required minimum wage.

23 54. During the Class Period, Defendants knowingly and willfully failed to pay Plaintiffs
24 for all hours worked for at least the minimum wage, as required under California Labor Code
25 §1182.12, the applicable IWC Wage Orders, and the applicable minimum wage ordinances. Under
26 Labor Code §1182.12(b)(1), Defendants were required to pay Plaintiffs a minimum wage for all
27 hours worked according to the following schedule:
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- Not less than \$12.00 per hour from January 1, 2019, to December 31, 2019, inclusive
- Not less than \$13.00 per hour from January 1, 2020, to December 31, 2020, inclusive
- Not less than \$14.00 per hour from January 1, 2021, to December 31, 2021, inclusive
- Not less than \$15.00 per hour from January 1, 2022 until adjusted pursuant to Labor Code §1182.12(c)

55. As a direct and proximate result of Defendants' failure to pay Plaintiffs for all hours worked for at least the minimum wage, Plaintiffs have been damaged in the amount of unpaid minimum wages owed.

56. Pursuant to California Labor Code §1194(a), any employee receiving less than the legal minimum wage is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage, including interest thereon, reasonable attorneys' fees, and costs of suit.

57. Plaintiffs are entitled to prejudgment interest on the unpaid wages at the legal rate pursuant to California Civil Code §3287.

58. Plaintiffs are entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid, and interest thereon, pursuant to California Labor Code §1194.2.

59. Pursuant to California Labor Code §1197.1, an employer who pays an employee less than the established minimum wage shall be subject to a civil penalty, restitution of wages, and liquidated damages payable to the employee. The applicable penalties include the following: (a) for any initial violation that is intentionally committed, \$100 for each underpaid employee for each pay period for which the employee is underpaid; and (b) for each subsequent violation for the same specific offense, \$250 for each underpaid employee for each pay period for which the employee is underpaid, regardless of whether the initial violation is intentionally committed. These penalty amounts are in addition to the amounts sufficient to recover underpaid wages, liquidated damages, and other penalties as specified under the Labor Code.

1 60. Pursuant to the California Labor Code, the applicable IWC Wage Orders, and the
2 applicable local minimum wage ordinances, Plaintiffs are entitled to recover the full amount of
3 unpaid minimum wages owed, liquidated damages in an equal amount, penalties, interest, and
4 attorneys' fees and costs, all in an amount to be established at trial.

5 Wherefore, the Representative Plaintiffs pray for judgment as set forth below.

6
7 **Third Cause of Action**
8 **Failure to Provide Paid Sick Leave**
 Cal. Labor Code §§ 246, 247, 247.5
 (Against All Defendants)

9 61. The Representative Plaintiffs re-allege and incorporate each and every allegation of
10 the preceding paragraphs with the same force and effect as though fully set forth herein.

11 62. Pursuant to California Labor Code §246, after July 1, 2015, an employee who
12 works in California for the same employer for 30 or more days within a year from the
13 commencement of employment is entitled to accrue paid sick days at the rate of not less than one
14 hour per every 30 hours worked. An employer may use a different accrual method, provided that
15 the accrual is on a regular basis so that an employee has no less than 24 hours of accrued sick leave
16 or paid time off by the 120th calendar day of employment or each calendar year, or in each twelve-
17 month period. An employee shall be entitled to use accrued paid sick days starting on the 90th
18 day of their employment.

19 63. During the Class Period, Defendants knowingly and willfully prevented Plaintiffs
20 from accruing paid sick leave, and discouraged Plaintiffs from using paid sick leave.

21 64. Pursuant to California Labor Code §247, each employer is required to display a
22 poster in a conspicuous place containing specified information, including that: (1) an employee is
23 entitled to accrue, request, and use paid sick days; (2) the amount of sick days provided for by the
24 Labor Code; (3) the terms of use of paid sick days; and (4) that retaliation or discrimination is
25 prohibited against an employee who requests or uses paid sick days, and that an employee has the
26 right to file a complaint with the Labor Commissioner for such retaliation or discrimination. An
27 employer who willfully violates the posting requirements of this section is subject to a civil penalty
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1 of not more than \$100 per offense.

2 65. Based on information and belief, during the Class Period, Defendants knowingly
3 and willfully failed to comply with the posting requirements of California Labor Code §247.

4 66. During the Class Period, Defendants also knowingly and willfully withheld
5 information regarding paid sick leave from Plaintiffs, and issued inaccurate job descriptions and
6 appointments to Plaintiffs.

7 67. Pursuant to California Labor Code §247.5, an employer is required to keep, for at
8 least three years, records documenting the hours worked and paid sick days accrued and used by an
9 employee. An employer shall make these records available to an employee.

10 68. During the Class Period, Defendants knowingly and willfully prevented Plaintiffs
11 from accruing paid sick leave, failed to keep accurate records documenting hours worked and paid
12 sick days accrued and used by Plaintiffs, withheld information regarding paid sick leave from
13 Plaintiffs, and issued inaccurate job descriptions and appointments to Plaintiffs.

14 69. As a direct and proximate result of Defendants' failure to provide paid sick leave,
15 Plaintiffs have suffered damages and hardship, including but not limited to the accrual and use of
16 paid sick leave to which they were entitled.

17 70. Pursuant to California Labor Code §248.5, Plaintiffs are entitled to recover
18 penalties in the dollar amount of paid sick days withheld from the employee multiplied by three, or
19 \$250, whichever amount is greater, but not to exceed an aggregate penalty of \$4,000.

20 71. Pursuant to California Labor Code §248.5, Plaintiffs are entitled to recover the
21 payment of sick days unlawfully withheld, penalties, interest, liquidated damages, and attorneys'
22 fees and costs, all in an amount to be established at trial.

23 72. Plaintiffs also seek equitable, injunctive, and/or restitutionary relief as allowed
24 under Labor Code §248.5. Unless enjoined, Defendants' unlawful conduct will continue
25 unchecked, while the Class Members bear the financial brunt of Defendants' unlawful conduct.

26 Wherefore, the Representative Plaintiffs pray for judgment as set forth below.

27 ///

Fourth Cause of Action
Recovery under Private Attorneys General Act (PAGA)
Cal. Labor Code §§2698-2699 *et seq.*
(Against All Defendants)

73. The Representative Plaintiffs re-allege and incorporate each and every allegation of the preceding paragraphs with the same force and effect as though fully set forth herein.

74. Representative Plaintiffs, as aggrieved employees, bring this claim under California Labor Code §§2698-2699 *et seq.* (“PAGA”) on behalf of themselves and all other former or current workers employed as fitness trainers and/or instructors for the University of California, for which recovery is authorized under California Labor Code §§2698-2699 *et seq.*

75. Pursuant to California Labor Code §2699.3, on or about April 20, 2022, Representative Plaintiffs filed notice (“PAGA Notice”) electronically with the Labor and Workforce Development Agency (“LWDA”), and sent the PAGA Notice to Defendants by certified mail. The PAGA Notice informed the LWDA and Defendants of the specific provisions of the Labor Code that had been violated, including the facts and theories to support the violations.

76. On or about June 29, 2022, Representative Plaintiffs filed an Amended PAGA Notice electronically with the LWDA, and sent the Amended PAGA Notice to Defendants by certified mail. The Amended PAGA Notice informed the LWDA and Defendants of the specific provisions of the Labor Code that had been violated, including the facts and theories to support the violations. These provisions of the Labor Code included Labor Code §204(e) (failure to timely pay wages), Labor Code §1182.12 (failure to pay minimum wage for all hours worked), and Labor Code §§246, 247, and 247.5 (failure to provide paid sick leave).

77. On or about October 10, 2022, Representative Plaintiffs filed a Second Amended PAGA Notice electronically with the LWDA, and sent the Second Amended PAGA Notice to Defendants by certified mail. The Second Amended PAGA Notice informed the LWDA and Defendants of the specific provisions of the Labor Code that had been violated, including the facts and theories to support the violations. These provisions of the Labor Code included Labor Code §204(e) (failure to timely pay wages), Labor Code §1182.12 and §1197 (failure to pay minimum

1 wage for all hours worked), and Labor Code §§246, 247, and 247.5 (failure to provide paid sick
2 leave).

3 78. Representative Plaintiffs thus will have complied with the Private Attorneys
4 General Act notice requirement when and if the Labor and Workforce Development Agency
5 notifies Representative Plaintiffs that the agency will not investigate the claim, or if the 33-day
6 time limit for such response passes with no response.

7 79. As alleged herein, Defendants have violated the provisions of the California Labor
8 Code, including failing to pay at least minimum wage to Plaintiffs for all hours worked, failing to
9 pay wages owed in a timely manner, and failing to provide paid sick leave. Representative
10 Plaintiffs seek recovery of all unpaid wages resulting from the violations alleged herein on behalf
11 of themselves and all other applicable employees under PAGA.

12 80. Pursuant to California Labor Code §2699, Representative Plaintiffs also seek
13 recovery of all applicable payments and penalties for Defendants' violations of the California
14 Labor Code and the IWC Wage Orders that are available under PAGA. Such payments and
15 penalties include, but are not limited to, those set forth in Labor Code §§210, 248.5, and 1197.1.

16 81. Representative Plaintiffs request an award of attorneys' fees and costs, including as
17 authorized under California Labor Code §2699 and other applicable law.

18 Wherefore, the Representative Plaintiffs pray for judgment as set forth below.

19 **RELIEF SOUGHT**

20 WHEREFORE, the Representative Plaintiffs, on behalf of themselves individually and the
21 proposed Plaintiff Class, pray for judgment and the following specific relief against Defendants,
22 and each of them, jointly and separately, as follows:

23 1. That the Court declare, adjudge, and decree that this action is a proper class action,
24 and certify the proposed Class and/or any other appropriate subclasses under California Code of
25 Civil Procedure §382;

26 2. That the Court declare, adjudge, and decree that Defendants violated the provisions
27 of the California Labor Code, the applicable IWC Wage Orders, and/or the applicable local
28

ordinances with respect to Plaintiffs, as alleged herein;

3. That the Court make an award to Plaintiffs for Defendants' failure to pay Plaintiffs for all hours worked for at least the minimum wage, in an amount subject to proof at trial;

4. That the Court make an award to Plaintiffs for Defendants' failure to timely pay Plaintiffs their wages, in an amount subject to proof at trial;

5. That the Court make an award to Plaintiffs for Defendants' failure to provide paid sick leave, in an amount subject to proof at trial;

6. That the Court make an award to Plaintiffs for all unpaid wages, in an amount subject to proof at trial;

7. That the Court make an award to Plaintiffs for liquidated damages as allowed under applicable law, in an amount subject to proof at trial;

8. That the Court make an award to Plaintiffs for any and all applicable penalties pursuant to the California Labor Code, as alleged herein, in an amount subject to proof at trial;

9. That the Court order Defendants to make any and all applicable payments and penalties pursuant to the Private Attorneys General Act, California Labor Code §§2698-2699 *et seq.*, in an amount subject to proof at trial;

10. For interest on the amount of any and all economic losses, at the prevailing legal rate, as allowed under applicable law;

11. For injunctive or equitable relief as the Court deems just and proper;

12. For reasonable attorneys' fees pursuant to applicable law, including, but not limited to, California Labor Code §§1194 and 2699 and/or California Code of Civil Procedure §1021.5;

13. For costs of suit;

14. For any and all other orders, findings, and determinations identified and sought in this Complaint; and

15. For any and all such other relief as the Court deems just and proper.

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1 Dated: October 17, 2022

Respectfully submitted,

2 **MINAMI TAMAKI LLP**

3 By:



4 Sean Tamura-Sato

Lisa P. Mak

5 *Attorneys for the Representative Plaintiffs*
and the Plaintiff Class

6 **JURY TRIAL DEMAND**

7
8 The Representative Plaintiffs hereby demand a jury trial for each cause of action for which
9 they are entitled to a jury trial.

10
11 Dated: October 17, 2022

Respectfully submitted,

12 **MINAMI TAMAKI LLP**

13 By:



14 Sean Tamura-Sato

Lisa P. Mak

15 *Attorneys for the Representative Plaintiffs*
and the Plaintiff Class

EXHIBIT A

People & Culture (/)

Home (/home) » Compensation & Benefits (/compensation-benefits)

» Compensation (/compensation-benefits/compensation)

» Salary and Pay (/compensation-benefits/compensation/salary-and-pay) » SB 698

SB 698

While nearly all of UC Berkeley's employees are paid on time, there are a small number of employees who have not been paid on time. Late wage payments are a hardship for employees. Supervisors and Managers' cooperation are necessary, particularly with respect to following established processes and timelines, to make sure that employees receive compensation on time. As explained below, the failure to pay employees on time will subject the University to fines imposed by the California Labor Commissioner.

In addition to managing the transition to UCPath, we need to ensure we are mindful of the new state law, Senate Bill 698 (http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB698), which allows employees to file a claim with the Labor Commissioner if the University fails to issue wage payments on time. Beginning on **January 1, 2020**, late wage payments may have financial penalties for Berkeley and other UC locations.

Unlike many employers, the university hires Lecturers, Graduate Student Instructors (GSIs), and other Academic Student Employees (ASEs), sometimes with little lead time. Where advanced planning can occur, every effort should be made to ensure that these employees are hired and onboarded in a timely manner, as the new law does not provide academic institutions any exceptions on this front.

Please make sure to note the key information below about **SB 698** (http://leginfo.legislature.ca.gov/faces/billTextClient.xhtml?bill_id=201920200SB698) and steps managers can take to ensure pay for their employees is not delayed.

- Effective January 1, 2020, SB 698 allows employees to file a wage claim with the Labor Commissioner (or state court) if the University fails to pay an employee's wages on time.
- The University will receive the employee's wage claim and have an opportunity to dispute the claim or settle the matter. If the Labor Commissioner (or state court) finds in the employee's favor, the University will be liable for any unpaid wages plus penalties.
- Campus administration is currently evaluating how the payment of fines will be assessed should there be a finding by the Labor Commissioner or state court.

Steps managers can take to ensure pay is not interrupted for employees:



If you receive a formal wage claim directly from the Labor Commissioner's Office filed by one of your employees:

Use the [Labor Commission Wage Claim Submission Form](#)

(<https://app.smartsheet.com/b/form/a1a1f75a9bf4494e98fdb206b8e1aaa8>) and attach a scanned copy of the claim. It will go to a central team for investigation and response.

SB 698 FAQs

[expand all](#)

How are the fines calculated? Is there a maximum fine owed to the employee?



What constitutes late pay?



If the supervisor did not provide the required information for the UCPath cut-off date to issue pay for the next paycheck - is this still considered late pay?



If an employee is asked to start on a specific date and the employee agrees it is ok that their paycheck will be late, is this acceptable/legal?



If an employee does not turn in their timesheet, is the expectation the manager should submit the request for the employee?



If an employee communicates to Berkeley (WhistleBlower unit, their supervisor, HR etc.) they would like to file claim/ take legal action, what information should be provided to them?



Are pending academic merit cases subject to SB 698 if the effective date has passed and a decision has not yet been made?



Please contact your [Berkeley Regional Services \(BRS\)](#)

(<https://regionalservices.berkeley.edu/home>) staff or department HR staff should you have additional questions regarding the above.

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EXHIBIT B

Business Process Management Office (/)

Home (/home) » SB 698 Wage Claims Response

SB 698 Wage Claims Response

PROJECTS (/PROGRAM-PROJECT-PORTFOLIO-BUSINESS-PROCESS-MANAGEMENT-OFFICE)

- › Active Projects ▾ (/program-project-portfolio-business-process-management-office)
 - › Reimagining UC Berkeley Campus and Community Safety Program ▾ (/projects/active-projects/reimagining-uc-berkeley-campus-and-community-safety-program)
 - › Campus Mobile Crisis Response Project (/projects/active-projects/reimagining-uc-berkeley-campus-and-community-safety-program/campus-mobile)
 - › Clery Act Office (/projects/active-projects/reimagining-uc-berkeley-campus-and-community-safety-program/clery-act)
 - › Fingerprinting (/projects/active-projects/reimagining-uc-berkeley-campus-and-community-safety-program/fingerprinting)
 - › Office of Emergency Management (/projects/active-projects/reimagining-uc-berkeley-campus-and-community-safety-program/office)
 - › Relocation (/projects/active-projects/reimagining-uc-berkeley-campus-and-community-safety-program/ucpd-relocation)
 - › Security Technology (/projects/active-projects/reimagining-uc-berkeley-campus-and-community-safety-program/security)
 - › BPH Staff Changemakers Project (/projects/active-projects/bph-staff-changemakers-project)
 - › UC Community Safety Plan ▾ (/projects/active-projects/uc-community-safety-plan)
 - › Campus Ambassador Safety Role Project (/projects/active-projects/uc-community-safety-plan/campus-ambassador-safety-role-project)
 - › UCOP VUE Uniform Recommendation Project (/projects/active-projects/uc-community-safety-plan/ucop-vue-uniform-recommendation-project)
 - › Emergency Response End-to-End Program (/projects/active-projects/emergency-response-end-end-program)
 - › Fourth Street 3rd Floor Conference Room A/V Upgrades Project (/projects/active-projects/fourth-street-3rd-floor-conference-room-av-upgrades-project)

- › Hiring KPI Dashboard Project (/projects/active-projects/hiring-kpi-dashboard-project)
- › Independent Advisory Board (IAB) 2022-23 Annual Recommendations Project (/projects/active-projects/independent-advisory-board-iab-2022-23-annual-recommendations-project)
- › Independent Advisory Board (IAB) Recommendations (/projects/active-projects/independent-advisory-board-iab-2021-annual-recommendations)
- › International House Strategic Plan Project (/projects/active-projects/international-house-strategic-plan-project)
- › Letters & Sciences Advising Project (/projects/active-projects/letters-sciences-advising-project)
- › University Hall Relocations Project (/projects/active-projects/university-hall-relocations-project)
- › Completed Projects (/projects/completed-projects)
- › Definitions (/projects/project-definitions)

Project Completed

Problem Statement

Senate Bill 698, an amendment to a law governing employee pay, is going into effect on 1/1/2020. UC Berkeley stands to incur significant fines and penalties with its current missing, incorrect and late pay issues.

Business Case

Communication and protocols must be established to handle and reduce Senate Bill 698 wage claims, and prevent fines and penalties.

Objectives

- Communicate SB 698 and its impacts appropriately
- Establish a short term response plan while implementing a permanent solution
- Set up a sustainable monitoring, escalation and response process for complaints related to missing, incorrect, and late pay
- Establish an accountability model for paying fines related to missing, incorrect, and late pay

Success Metrics

- Process improvement projects are implemented within the timeframes identified
- Escalation model is incorporated into the operational process

Project Team

- Sponsors: Marc Fisher & Eugene Whitlock
- Functional Lead: Rich Lau

- Project Manager: Russ Ballati
- Business Lead: Janet Speer
- Business Analyst: Isabel Nguyen
- Process Analyst: Anne Ho
- Change Manager: Jan Crosbie-Taylor

Prior Accomplishments

Project accomplishments from prior months are noted here.

Date	Accomplishments
Mar 2020	• Created accountability model (i.e. “who is responsible for payment”) when SB 698 penalties are owed.
Jan 2020	• Sent CalMessage to campus supervisors, managers, directors, deans, and chairs on what to do if a formal SB 698 wage claim is received.
Dec 2019	• Created SB 698 wage claim response process. • Created SB 698 wage claim intake form. • Prepared email communication to campus supervisors, managers, directors, deans, and chairs on what to do if a formal SB 698 wage claim is received.

Risk/Issue History

Project risks and issues that have been resolved or closed are noted here.

Date	Risk/Issue
--	--

Respectfully Illuminate

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