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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

MARISOL HERNANDEZ, an individual, on
behalf of herself and others similarly situated

PLAINTIFF,

v.

THE BOARD OF TRUSTEES OF THE
LELAND STANFORD JUNIOR
UNIVERSITY; and DOES 1 thru 50,
inclusive,

DEFENDANTS.

CASE NO. 22CV397042

[Case Assigned for All Purposes to Hon.
Patricia M. Lucas in Dept. 3]

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

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Pay Wages and/or Overtime Pursuant to Labor Code §§ 510, 1194, 1194.2, and 1199
2. Failure to Provide Meal Breaks Pursuant to Labor Code §§ 226.7 and 512
3. Failure to Provide Rest Breaks Pursuant to Labor Code § 226.7
4. Failure to Provide Accurate Itemized Wage Statements Pursuant to - Labor Code § 226(a)
5. Waiting Time Penalties Pursuant to Labor Code § 203
6. Unfair Competition and Unlawful Business Practices Pursuant to Business & Professions Code § 17200, et seq.
7. Penalties Pursuant to Labor Code § 2699, et seq.

1 Plaintiff MARISOL HERNANDEZ, an individual, on behalf of herself and all others
2 similarly, and as an “aggrieved employee” under Labor Code Private Attorneys General Act of
3 2004, §2699, *et seq.* (hereafter “PAGA”), situated complains of Defendant THE BOARD OF
4 TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY (“Defendant”) as follows:

5 **I.**

6 **INTRODUCTION**

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

- 9 a. All public safety officers who are employed or have been employed
10 by THE BOARD OF TRUSTEES OF THE LELAND STANFORD
11 JUNIOR UNIVERSITY in the State of California who worked one
12 or more pay periods since four (4) years prior to the filing of this
13 action to the present plus any additional time during which the
14 statutes of limitation for the causes of action herein were tolled
15 pursuant to Emergency Rule 9 of the California Rules of Court, the
16 ‘Emergency Rules Related to COVID-19’. (“Proposed Public
17 Safety Officer Class”)
- 18 b. All non-exempt employees who are employed or have been
19 employed by THE BOARD OF TRUSTEES OF THE LELAND
20 STANFORD JUNIOR UNIVERSITY in the State of California who
21 worked one or more pay periods since four (4) years prior to the
22 filing of this action to the present plus any additional time during
23 which the statutes of limitation for the causes of action herein were
24 tolled pursuant to Emergency Rule 9 of the California Rules of
25 Court, the ‘Emergency Rules Related to COVID-19’. (“Proposed
26 Non-Exempt Employee Class”)(collectively, the “Proposed
27 Classes”)

28 2. From at least four (4) years¹ prior to the filing of this action continuing to the
present, Defendant has had a consistent policy of failing to pay wages and/or overtime at the
appropriate rate of pay and for all hours worked.

a. Plaintiff and all members of the Proposed Non-Exempt Employee Class were

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

not properly compensated at the appropriate rate of pay because Defendant failed to properly include all non-discretionary compensation when calculating their regular rate for the purpose of determining the correct overtime rate in pay periods where they were paid additional non-discretionary compensation and were also paid overtime. As such, Plaintiff and all members of the Proposed Classes were paid at a regular rate less than the rate required under California law.

- b. Plaintiff and all members of the Proposed Non-Exempt Employee Class were not properly compensated for all hours worked at the appropriate rate of pay. Defendant required Plaintiff and all members of the Proposed Classes to handwash, conduct temperature checks, and undergo Covid screening prior to clocking in. This time spent was “off the clock” and thus the Proposed Classes performed compensable activities before each working shift for which no pay was provided.
- c. Plaintiff and all members of the Proposed Public Safety Officer Class were not properly compensated for all hours worked because Defendant required Plaintiff and all members of the Proposed Public Safety Officer Class to routinely don and doff their uniforms and necessary equipment “off the clock”. Since they were required to don and doff before clocking in at the beginning of each shift and after clocking out at the end of each shift, they were required to perform compensable activities before and after each working shift for which no pay was provided.

3. From at least four (4) years prior to the filing of this action and continuing to the present, Defendant has had a consistent policy of: failing to inform members of the Proposed Public Safety Officer Class of their right to take meal periods by way of a lawful policy; failing to provide compliant meal periods; and failing to pay such employees one (1) hour of pay at the employees’ regular rate of compensation for each workday that the compliant meal period was not provided as required by California state wage and hour laws. Defendant also had a consistent

1 policy of paying meal period premiums at the base rate and not the blended rate, when meal period
2 premiums are provided, in violation of *Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal. 5th
3 858, 863 (“*Ferra*”) and Labor Code §§ 226.7, 512.

4 4. From at least four (4) years prior to the filing of this action and continuing to the
5 present, Defendant failed to apprise Plaintiff and all members of the Proposed Public Safety
6 Officer Class of their rights associated with rest periods and failed to provide compliant rest
7 periods. Defendant has had a consistent policy of failing to provide all required, uninterrupted rest
8 periods of at least ten (10) minutes per four (4) hours worked or major fraction thereof and failing
9 to pay such employees one (1) hour of pay at the employee’s regular rate of compensation for each
10 workday that the compliant rest period was not provided, as required by California state wage and
11 hour laws. As discussed above, *Ferra* requires the rest period premium payments to include the
12 hourly value of any nondiscretionary earnings (such as nondiscretionary bonuses), and cannot
13 simply be paid at an employee’s base hourly rate. Defendant has had a consistent policy of paying
14 rest period premiums at the base rate and not the blended rate when rest premiums are provided,
15 in violation of *Ferra* and Labor Code § 226.7.

16 5. For at least one (1) year prior to the filing of this action continuing to the present,
17 Defendant has failed to comply with Industrial Welfare Commission (“IWC”) Wage Order 4-2001
18 and Labor Code § 226(a) by failing to provide accurate itemized wage statements in writing
19 showing the number of total hours worked at each applicable hourly rate in effect during the pay
20 period and the corresponding number of hours worked at each hourly rate by Plaintiff and members
21 of the Proposed Classes. Further, Plaintiff and members of the Proposed Classes are issued wage
22 statements that do not include meal and rest premiums as a result of the claims alleged above and
23 when they do, they are not paid at the accurate rate.

24 6. For at least three (3) years prior to the filing of this action continuing to the present,
25 Defendant has failed to pay all wages due at the time of termination or resignation to Plaintiff and
26 the Proposed Non-Exempt Employee Class.

27 7. Plaintiff brings this action on behalf of herself and all members of the Proposed
28 Classes pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, and 1199;

1 Wage Order 4-2001; and California Code of Regulations, Title 8, Section 11040, seeking unpaid
2 wages/overtime, meal and rest period penalties, wage statements penalties, all wages due upon
3 termination, other penalties as appropriate, injunctive and other equitable relief, and reasonable
4 attorneys' fees and costs.

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

8 9. For at least one (1) year prior to the date of the letter sent to the Labor Workforce
9 and Development Agency ("LWDA") and Defendant giving notice of the claims pursuant to
10 PAGA and continuing to the present, and as extended by Emergency Rule 9 referenced in
11 paragraph 2 above, Defendant has violated Labor Code provisions, as detailed below, giving rise
12 to a claim pursuant to PAGA. Plaintiff, on behalf of herself and all aggrieved employees presently
13 or formerly employed by Defendant during the liability period as defined in her PAGA notice
14 letter, brings this representative action pursuant to Labor Code §2699, et seq. seeking penalties for
15 Defendant's violation of Labor Code Sections 201, 202, 203, 226(a), 226.7, 510, 512, 1194,
16 1194.2, and 1199. A true and correct copy of Plaintiff's notice letter is attached hereto as Exhibit
17 "1".

18 **II.**

19 **JURISDICTION AND VENUE**

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

25 11. This Court has personal jurisdiction over Defendant because Defendant has caused
26 injuries in the County of Santa Clara and the State of California through their acts, and by their
27 violation of the California Labor Code, California state common law, and California Business &
28 Professions Code § 17200, *et seq.*

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

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

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

III.

PARTIES

A. PLAINTIFF

15. Plaintiff MARISOL HERNANDEZ is a resident of California.

16. As specifically pled herein, Plaintiff and all members of the Proposed Classes, were regularly required to:

- a. Work without being paid for all hours at the appropriate rate;
- b. Work without being provided compliant meal periods or correctly-calculated premiums in lieu thereof;
- c. Work without being provided compliant rest periods or correctly-calculated premiums in lieu thereof;
- d. Work without being provided accurate itemized wage statements.

17. Defendant willfully failed to compensate Plaintiff and all members of the Proposed Non-Exempt Employee Class for wages at the termination of their employment with Defendant.

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

19. Plaintiff and all aggrieved employees, as defined in her notice letter to the LWDA,

are “aggrieved employees” within the meaning of Labor Code § 2699, *et seq.* (see Labor Code §2699(c).)

B. DEFENDANTS

20. Defendant THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY is believed to be a California corporation operating within the State of California. Defendant’s corporate address is believed to be 3145 Porter Drive, Palo Alto, CA 94304. Upon information and belief, Defendant employed Plaintiff and similarly situated persons as hourly employees within California. Defendant has done and does business throughout the State of California.

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

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

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

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1 **IV.**

2 **FACTUAL BACKGROUND**

3 24. Plaintiff and members of the Proposed Classes are, and at all times pertinent hereto,
4 have been classified as non-exempt employees by Defendant. Defendant hires employees who
5 work as hourly employees who are paid on an hourly basis.

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

9 26. On a regular and consistent basis, Defendant has failed to pay wages and/or
10 overtime to the Proposed Non-Exempt Employee Class as follows:

11 a. Plaintiff and members of the Proposed Non-Exempt Employee Class were
12 not paid at the proper rate of compensation because Defendant failed to include Plaintiff's and all
13 members of the Proposed Classes' full compensation when calculating their regular rate for the
14 purpose of determining the correct overtime rate in pay periods where they were paid additional
15 non-discretionary "bonus" compensation and were also paid overtime. As such, Plaintiff and all
16 the Proposed Classes were paid at a regular rate less than the rate required under California law.

17 b. Plaintiff and members of the Proposed Non-Exempt Employee Class were
18 not properly compensated for all hours worked because Defendant failed to pay them for each and
19 every hour worked. Plaintiff and members of the Proposed Non-Exempt Employee Class were
20 required to routinely work "off the clock" and performed compensable activities before and after
21 each working shift for which no pay was provided. Specifically, Plaintiff and members of the
22 Proposed Classes are required to arrive approximately 15-20 minutes before their scheduled start
23 time for handwashing, temperature checks, and COVID screenings but are not compensated for
24 this time.

25 c. Plaintiff and members of the Proposed Public Safety Officer Class were not
26 paid for all hours worked at the appropriate rate of pay. Defendant requires Plaintiff and members
27 of the Proposed Public Safety Officer Class to wear uniforms and equipment for work. Plaintiff
28 and members of the Proposed Public Safety Officer Class are required to put this uniform and

1 equipment on before clocking in for each shift and to take this uniform and equipment off after
2 clocking out at the end of each shift. As a result, Plaintiff and the Proposed Public Safety Officer
3 Class were not paid for all hours worked because they were required to don and doff uniforms and
4 equipment off the clock before and after each scheduled shift.

5 27. On a regular and consistent basis, Plaintiff and members of the Proposed Public
6 Safety Officer Class have been forced by Defendant to work over five (5) hours in one day without
7 being provided a thirty (30) minute uninterrupted meal break and not being compensated one (1)
8 hour of pay at their regular rate of compensation for each workday that a compliant meal period
9 was not provided or provided after five (5) hours, all in violation of California labor laws,
10 regulations, and Industrial Welfare Commission Wage Orders. Defendant has had a consistent
11 policy of paying meal period premiums at the base rate and not the blended rate when meal period
12 premiums are provided, in violation of *Ferra* and Labor Code §§ 226.7 and 512. Defendant also
13 failed to inform Plaintiff and the Proposed Public Safety Officer Class of their right to take
14 compliant meal periods by way of a lawful policy.

15 28. On a regular and consistent basis, Defendant has failed to provide Plaintiff and
16 members of the Proposed Public Safety Officer Class all required uninterrupted rest periods of at
17 least ten (10) minutes per four (4) hours worked or major fraction thereof and of failing to pay
18 such employees one (1) hour of pay at the employee's regular rate of compensation for each
19 workday that the compliant rest period was not provided, as required by California state wage and
20 hour laws. Defendant has had a consistent policy of paying rest period premiums at the base rate
21 and not the blended rate, when rest break premiums are provided, as required. Defendant also
22 failed to inform Plaintiff and the Proposed Public Safety Officer Class of their right to take
23 compliant rest periods by way of a lawful policy.

24 29. For at least one (1) year prior to the filing of this action continuing to the present,
25 Defendant has failed to comply with Labor Code § 226(a). Plaintiff and members of the Proposed
26 Non-Exempt Employee Class are furnished wage statements in violation of Labor Code §226(a)
27 that do not accurately show total hours worked and all applicable hourly rates in effect during the
28 pay period and the corresponding number of hours worked at each hourly rate by Plaintiff and

1 members of the Proposed Non-Exempt Employee Class in violation of Labor Code §226(a)(2) and
2 (9). Further, Plaintiff and members of the Proposed Public Safety Officer are issued wage
3 statements that do not include accurate meal and rest period premiums as a result of the claims
4 alleged above.

5 30. Defendant willfully failed to pay wages and compensation when Plaintiff and
6 members of the Proposed Classes quit or were discharged. This failure was willful, without legal
7 justification, and interfered with Plaintiff's and members of the Proposed Classes' rights.

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

9 **V.**

10 **CLASS ACTION ALLEGATIONS**

11 32. Plaintiff brings this action on behalf of herself and all others similarly situated as a
12 Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent two
13 proposed classes composed of and defined as follows:

- 14 a. All public safety officers who are employed or have been employed
15 by THE BOARD OF TRUSTEES OF THE LELAND STANFORD
16 JUNIOR UNIVERSITY in the State of California who worked one
17 or more pay periods since four (4) years prior to the filing of this
18 action to the present plus any additional time during which the
19 statutes of limitation for the causes of action herein were tolled
20 pursuant to Emergency Rule 9 of the California Rules of Court, the
21 'Emergency Rules Related to COVID-19'. ("Proposed Public
22 Safety Officer Class")
23 b. All non-exempt employees who are employed or have been
24 employed by THE BOARD OF TRUSTEES OF THE LELAND
25 STANFORD JUNIOR UNIVERSITY in the State of California who
26 worked one or more pay periods since four (4) years prior to the
27 filing of this action to the present plus any additional time during
28 which the statutes of limitation for the causes of action herein were
tolled pursuant to Emergency Rule 9 of the California Rules of
Court, the 'Emergency Rules Related to COVID-19'. ("Proposed
Non-Exempt Employee Class")(collectively, the "Proposed
Classes")

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

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

4 **A. NUMEROSITY**

5 35. The potential members of the Proposed Classes as defined are so numerous that
6 joinder of all the members of the Proposed Classes is impracticable. While the precise number of
7 proposed class members has not been determined at this time, Plaintiff is informed and believes
8 that Defendant currently employs, and during the relevant time periods employed, over 50 to 100
9 members of the Proposed Classes.

10 36. Plaintiff alleges that Defendant's employment records would provide information
11 as to the number and location of all members of the Proposed Classes. Joinder of all members of
12 the Proposed Classes is not practicable.

13 **B. COMMONALITY**

14 37. There are questions of law and fact common to the Proposed Classes that
15 predominate over any questions affecting only individual members of the Proposed Classes. These
16 common questions of law and fact include, without limitation:

17 a. Whether Defendant failed to pay wages and/or overtime compensation at
18 the appropriate rate for all hours worked as required by the Labor Code and Wage Orders under
19 Labor Code §§ 510, 1194, 1194.2, and 1199;

20 b. Whether Defendant violated Labor Code § 226.7, 512 and IWC Wage Order
21 4-2001 or other applicable IWC Wage Orders by failing to provide required uninterrupted meal
22 periods throughout the term of employment and/or failing to compensate said employees one (1)
23 hour of wages at their regular rate of compensation in lieu of meal periods;

24 c. Whether Defendant violated Labor Code § 226.7 and IWC Wage Order 4 -
25 2001 or other applicable IWC Wage Orders by failing to provide all required uninterrupted rest
26 periods throughout the term of employment and failing to compensate said employees one (1)
27 hours wages in lieu of rest periods;

28 d. Whether Defendant violated Labor Code § 226(a) and Wage Order 4-2001

1 or other applicable IWC Wage Orders, and Cal. Code Regs., Title 8, Section 11040 by failing to
2 furnish accurate itemized wage statements that accurately show total hours worked and all
3 applicable hourly rates in effect during the pay period and the corresponding number of hours
4 worked at each hourly rate by Plaintiff and the members of the Proposed Classes;

5 e. Whether Defendant violated §§ 201-203 of the Labor Code by failing to pay
6 compensation due and owing at the time that any member of the Proposed Classes' employment
7 with Defendant terminated;

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

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

12 **C. TYPICALITY**

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

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

19 **D. ADEQUACY OF REPRESENTATION**

20 40. Plaintiff will fairly and adequately represent and protect the interests of the
21 members of the Proposed Classes.

22 41. Counsel who represent Plaintiff and the Proposed Classes are competent and
23 experienced in litigating large employment class actions.

24 **E. SUPERIORITY OF CLASS ACTION**

25 42. A class action is superior to other available means for the fair and efficient
26 adjudication of this controversy. Individual joinder of all members of the Proposed Classes is not
27 practicable, and questions of law and fact common to the Proposed Classes predominate over any
28 questions affecting only individual members of the Proposed Classes. Each member of the

Proposed Classes has been damaged and is entitled to recovery by reason of Defendant's illegal policy and/or practice of failing to pay all wages due, failing to provide compliant meal and rest periods, failing to provide accurate itemized wage statements, and failing to pay all wages upon resignation or termination.

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

VI.

FIRST CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASSES

FAILURE TO PAY WAGES AND/OR OVERTIME PURSUANT TO

LABOR CODE §§ 510, 1194, 1194.2, AND 1199

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

45. Labor Code §§ 510, 1194, 1194.2, and 1199 require an employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the *regular rate of pay* for any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the *regular rate of pay*. California law also requires that any compensation for employment must be included in the regular rate of pay for the purpose of determining the correct overtime rate.

46. Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiff and all members of the Proposed Classes at the proper rate.

47. On a regular and consistent basis, Plaintiff and all members of the Proposed Classes were not properly compensated at the appropriate rate of pay because Defendant failed to include all non-discretionary "bonus" compensation when calculating their regular rate for the purpose of determining the correct overtime rate in pay periods in which they were paid non-discretionary

1 “bonus” compensation and were also paid overtime. As such, Plaintiff and the Proposed Classes
2 were paid at a regular rate less than the rate required under California law.

3 48. On a regular and consistent basis, Plaintiff and the Proposed Classes were not
4 properly compensated for all hours worked because Defendant consistently failed to pay Plaintiff
5 and the Proposed Classes for each and every hour worked. Plaintiff and members of the Proposed
6 Classes were required to routinely work “off the clock” and performed compensable activities
7 before and after each working shift for which no pay was provided. Plaintiff and members of the
8 Proposed Classes are required to arrive approximately 15-20 minutes before their scheduled shift
9 start time for handwashing, temperature checks, and COVID screenings. Plaintiff and members
10 of the Proposed Classes cannot start their scheduled shifts until the required handwashing and
11 screenings are completed. This time spent was “clocked out” and as such, Plaintiff and the
12 Proposed Classes are not compensated for this time worked even though these activities and time
13 are compensable.

14 49. On a regular and consistent basis, Plaintiff and members of the Proposed Public
15 Safety Officer Class were required to wear uniforms and equipment for work. Plaintiff and
16 members of the Proposed Public Safety Officer Class are required to put this uniform and
17 equipment on and take this uniform and equipment off before and after every shift while clocked
18 out. As a result, Plaintiff and members of the Proposed Public Safety Officer Class were not paid
19 for all hours worked because they were required to don and doff uniforms and equipment “off the
20 clock” before and after each scheduled shift.

21 50. By their policy of requiring Plaintiff and members of the Proposed Classes to work
22 without being paid all wages at their appropriate regular rate of pay and to work in excess of eight
23 (8) hours in a workday and/or forty (40) hours in a workweek without compensating them at the
24 rate of one-half (1 ½) their regular rate of pay, Defendant willfully violated the provisions of Labor
25 Code §§ 510, 1194, 1194.2, and 1199.

26 51. As a result of the unlawful acts of Defendant, Plaintiff and the Proposed Classes
27 have been deprived of wages and/or overtime in amounts to be determined at trial, and are entitled
28 to recovery of such amounts, plus interest and penalties thereon, attorneys’ fees, and costs.

1 **VII.**

2 **SECOND CAUSE OF ACTION**

3 **PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED PUBLIC SAFETY**

4 **OFFICER CLASS**

5 **FAILURE TO PROVIDE COMPLIANT MEAL PERIODS PURSUANT TO**

6 **LABOR CODE § 226.7 AND LABOR CODE § 512**

7 52. Plaintiff, on behalf of herself and the Proposed Public Safety Officer Class,
8 realleges and incorporates by reference all previous paragraphs.

9 53. Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of
10 compensation for each meal period the employer fails to provide. Employees are entitled to a first
11 meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the
12 first five (5) hours of the shift.

13 54. Defendant failed to maintain a policy informing Plaintiff and the Proposed Public
14 Safety Officer Class of these rights.

15 55. Plaintiff and the Proposed Public Safety Officer Class consistently worked shifts
16 over five (5) hours. Defendant failed to provide Plaintiff and the Proposed Public Safety Officer
17 Class with uninterrupted meal periods of not less than thirty (30) minutes as required by the Labor
18 Code during the relevant time period.

19 56. On a regular and consistent basis, meal periods were interrupted because Defendant
20 required Plaintiff and the Proposed Public Safety Officer Class to keep their radios on during
21 breaks, especially during Defendant's sporting and/or other on-campus events. As a result,
22 Defendant failed to provide Plaintiff and the Proposed Public Safety Officer Class compliant meal
23 periods.

24 57. Additionally, Defendant has had a consistent policy of failing to pay Plaintiff and
25 the Proposed Public Safety Officer one (1) hour of pay at the employees' regular rate of
26 compensation for each workday that the compliant meal period was not provided. Very recently,
27 on July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, (2021) 11 Cal. 5th 858, 863, the
28 California Supreme Court set forth the formula for calculating the one extra hour of premium pay

1 that employees are owed if an employer fails to provide a compliant meal period or rest break.
2 Specifically, the Court held that those premium payments must include the hourly value of any
3 nondiscretionary earnings (such as nondiscretionary bonuses, commissions, etc.), and cannot
4 simply be paid at an employee's base hourly rate. Here, when meal periods are provided,
5 Defendant has had a consistent policy of paying meal period premiums at the base rate and not the
6 appropriate blended rate in violation of Labor Code §§ 226.7 and 512.

7 58. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Public Safety Officer
8 Class are entitled to damages in an amount equal to one (1) hour of wages at the regular rate of
9 compensation for each day a compliant meal period was not provided, in a sum to be proven at
10 trial.

11 **VIII.**

12 **THIRD CAUSE OF ACTION**

13 **PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED PUBLIC SAFETY**

14 **OFFICER CLASS**

15 **FAILURE TO PROVIDE COMPLIANT REST PERIODS PURSUANT TO**

16 **LABOR CODE § 226.7**

17 59. Plaintiff, on behalf of herself and the Proposed Public Safety Officer Class,
18 realleges and incorporates by reference all previous paragraphs.

19 60. Labor Code § 226.7 requires an employer to pay an additional hour (1) of
20 compensation for each rest period the employer fails to provide. Employees are entitled to a paid
21 ten (10) minute rest break for every four (4) hours worked (or major fraction thereof).

22 61. Defendant failed to maintain an accurate policy informing Plaintiff and the
23 Proposed Public Safety Officer Class of their rights with respect to rest periods.

24 62. Defendant failed to provide Plaintiff and members of the Proposed Public Safety
25 Officer Class with uninterrupted rest breaks of not less than ten (10) minutes as required by the
26 Labor Code during the relevant time period.

27 63. On a regular and consistent basis, rest periods were interrupted because Defendant
28 required Plaintiff and the Proposed Public Safety Officer Class to keep their radios on during

breaks, especially during Defendant's sporting and/or other on campus events. As a result, Defendant failed to provide Plaintiff and the Proposed Public Safety Officer Class compliant rest periods.

64. Further, Plaintiff and the Proposed Public Safety Officer Class were not compensated with one (1) hour of wages for each day an uninterrupted rest period was not authorized and permitted as required by Labor Code § 226.7 and *Ferra v. Loews Hollywood Hotel, LLC*. Here, when rest period premiums are provided, Defendant has had a consistent policy of paying rest period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7.

65. Pursuant to Labor Code § 226.7, Plaintiff and the Proposed Public Safety Officer are entitled to damages in an amount equal to one (1) hour of wages for each day a rest period was not authorized and permitted in a sum to be proven at trial.

IX.

FOURTH CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASSES

FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

PURSUANT TO LABOR CODE § 226(A)

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

67. Labor Code §226(a)(2) requires employers to furnish accurate itemized wage statements in writing that show total hours worked by the employee. Defendant furnishes Plaintiff and members of the Proposed Classes with itemized wage statements that do not accurately show total hours worked.

68. Labor Code §226(a)(9) requires employers to furnish accurate itemized wage statements in writing that show all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Defendant furnishes Plaintiff and members of the Proposed Classes with itemized wage statements that do not accurately show all applicable hourly rates in effect during the pay period and the corresponding

1 number of hours worked at each hourly rate. In fact, Defendant issues Plaintiff and members of
2 the Proposed Classes with itemized wage statements that do not list applicable rates at all.

3 69. Further, Plaintiff and the Public Safety Officer Class are issued wage statements
4 that do not include accurate meal and rest premiums as a result of the claims alleged above.

5 70. Defendant's failure to provide accurate itemized wages statements according to
6 Labor Code § 226(a) was all done on a regular and consistent basis.

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

13 **X.**

14 **FIFTH CAUSE OF ACTION**

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

16 **WAITING TIME PENALTIES PURSUANT TO LABOR CODE § 203**

17 72. Plaintiff, on behalf of herself and the Proposed Classes, realleges and incorporates
18 by reference all previous paragraphs.

19 73. Numerous members of the Proposed Classes including the Plaintiff are no longer
20 employed by Defendant. They were either fired or quit Defendant's employ.

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

25 75. Defendant has failed to pay Plaintiff and others a sum certain at the time of
26 termination or within seventy-two (72) hours of their resignation, and have failed to pay those
27 sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code § 203, Plaintiff and
28 the Proposed Classes are entitled to a penalty in the amount of Plaintiff's and members of the

Proposed Classes' daily wage multiplied by thirty (30) days.

XI.

SIXTH CAUSE OF ACTION

PLAINTIFF ON BEHALF OF HERSELF AND THE PROPOSED CLASSES
UNFAIR COMPETITION AND UNLAWFUL BUSINESS PRACTICES PURSUANT TO
BUSINESS & PROFESSIONS CODE § 17200, ET SEQ.

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

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

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

79. Business & Profession Code § 17200, *et seq.* prohibit unlawful and unfair business practices.

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

81. Defendant has violated statutes and public policies as alleged herein. Through the conduct alleged in this Complaint, Defendant has acted contrary to these public policies, has

1 violated specific provisions of the Labor Code, and has engaged in other unlawful and unfair
2 business practices in violation of Business & Profession Code § 17200, *et seq.*, depriving Plaintiff,
3 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
4 guaranteed to all employees under law.

5 82. Defendant's conduct, as alleged hereinabove, constitutes unfair competition in
6 violation of § 17200, *et seq.* of the Business & Professions Code.

7 83. Defendant, by engaging in the conduct herein alleged, either knew or in the exercise
8 of reasonable care, should have known that the conduct was unlawful. As such it is a violation of
9 § 17200, *et seq.* of the Business & Professions Code.

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

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

19 **XII.**

20 **SEVENTH CAUSE OF ACTION**

21 **PENALTIES PURSUANT TO LABOR CODE §2699, ET SEQ.**

22 86. Plaintiff, on behalf of herself and all aggrieved employees, realleges and
23 incorporates by reference all previous paragraphs.

24 87. As a result of the acts alleged above and specifically incorporated herein, Plaintiff
25 seeks penalties under Labor Code §2699, *et seq.* use of Defendant's violation of Labor Code §§
26 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, and 1199; Wage Order 4-2001; and
27 California Code of Regulations, Title 8, Section 11040, which call for civil penalties.

28 88. For each such penalty, Plaintiff and the aggrieved employees are entitled to

penalties in an amount to be shown at trial, subject to the following formula:

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

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

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

90. Pursuant to Labor Code § 2699.3(a)(1), Plaintiff uploaded a notice letter to the LWDA² and mailed a letter by certified mail to Defendant's entity address, which is 3145 Porter Drive Palo Alto, CA 94304, as prescribed by the Code on April 19, 2022, describing Defendant's conduct in violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, and 1199. (see Exhibit "1".) Plaintiff also obtained an e-filing confirmation from the LWDA confirming receipt of the notice, a true and correct copy of which is attached hereto as Exhibit "2".

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

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

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For compensatory damages in the amount of unpaid wages and/or overtime not paid to Plaintiff and each member of the Proposed Classes from at least four (4) years prior to the filing of this action to the present as may be proven;

2. For liquidated damages in the amount of unpaid minimum wages not paid to Plaintiff and each member of the Proposed Classes from at least four (4) years prior to the filing of this action to the present as may be proven;

3. For compensatory damages in the amount of Plaintiff's and each member of the

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

Proposed Safety Officer Class' hourly wage at the appropriate regular rate of compensation for each day a compliant meal period was not provided from at least four (4) years prior to the filing of this action to the present as may be proven;

4. For compensatory damages in the amount of Plaintiff's and each member of the Proposed Safety Officer Class' hourly wage for each day a compliant rest period was not authorized and permitted from at least four (4) years prior to the filing of this action to the present as may be proven;

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

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

7. An award of prejudgment and post judgment interest;

8. An order enjoining Defendant and its agents, servants, and employees, and all persons acting under, in concert with, or for it from providing Plaintiff with proper wages and/or overtime, meal periods, rest periods, accurate itemized wage statements, and wages upon termination/resignation pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, 1199, and IWC 4-2001;

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

10. For penalties under Labor Code § 2699, *et seq.* for Defendant's violation of Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, 1199, and Wage Order 4-2001;

11. An award providing for payment of costs of suit;

12. An award of attorneys' fees; and

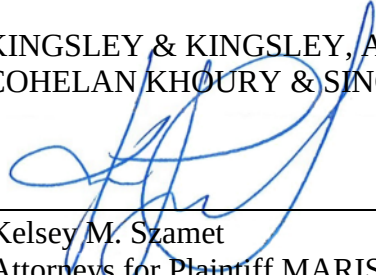
13. Such other and further relief as this Court may deem proper and just.

DEMAND FOR JURY TRIAL

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

1 DATED: June 24, 2022

KINGSLEY & KINGSLEY, APC
COHELAN/KHOURY & SINGER

3
4 By: 

Kelsey M. Szamet
Attorneys for Plaintiff MARISOL HERNANDEZ,
Proposed Classes, and aggrieved employees

EXHIBIT "1"

KINGSLEY & KINGSLEY

| L A W Y E R S |

April 19, 2022

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

THE BOARD OF TRUSTEES OF
THE LELAND STANFORD JUNIOR UNIVERSITY
3145 Porter Drive
Palo Alto, CA 94304

Re: MARISOL HERNANDEZ v. THE BOARD OF TRUSTEES OF THE LELAND
STANFORD JUNIOR UNIVERSITY
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents MARISOL HERNANDEZ (“Plaintiff”) and two proposed groups of current and former employees working for THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of herself and the State of California as well as on behalf of the following two groups of aggrieved employees defined as:

- 1) All public safety officers who are employed or have been employed by THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY, in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present plus any additional time during which the statutes of limitation for the causes of action herein were tolled pursuant to Emergency Rule 9 of the California Rules of Court, the ‘Emergency Rules Related to COVID-19’. (“Public Safety Officer Aggrieved Employees”); and,
- 2) All non-exempt employees who are employed or have been employed by THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY, in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present plus any additional time during which the statutes of limitation for the causes of action herein were tolled pursuant to Emergency Rule 9 of the California Rules of Court, the ‘Emergency Rules Related to COVID-19’. (“Non-Exempt Aggrieved Employees”) (collectively, “Aggrieved Employees”)

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

April 19, 2022

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

Defendant has violated Labor Code §§ 510, 1194, 1194.2 and 1199. These statutes require an employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the *regular rate of pay* for any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the *regular rate of pay*. California law also requires that any compensation must be included in the regular rate of pay for the purpose of determining the correct overtime rate.

Defendant has had a consistent policy of failing to pay wages and/or overtime to Plaintiff and all Aggrieved Employees. On a regular and consistent basis, Plaintiff and all Aggrieved Employees were not properly compensated at the appropriate rate of pay because Defendant failed to include all non-discretionary “bonus” compensation when calculating their regular rate for the purpose of determining the correct overtime rate in pay periods in which they were paid non-discretionary “bonus” compensation and were also paid overtime. As such, Plaintiff and all Aggrieved Employees were paid at a regular rate less than the rate required under California law.

In addition, Plaintiff and all Aggrieved Employees were not properly compensated for all hours worked because Defendant failed to pay Plaintiff and all Aggrieved Employees for each and every hour worked. Plaintiff and all Aggrieved Employees were required to routinely work “off the clock” and performed compensable activities before and after each working shift for which no pay was provided. Specifically, Plaintiff and all Aggrieved Employees are required to arrive approximately 15-20 minutes before their scheduled start time for handwashing, temperature checks, and COVID screenings. Plaintiff and all Aggrieved Employees cannot start their scheduled shifts until the required handwashing and screenings are completed. This time spent was “clocked out” and as such, Plaintiff and all Aggrieved Employees are not compensated for this time worked even though these activities and time are compensable.

Further, Plaintiff and the Public Safety Officer Aggrieved Employees were required to wear uniforms and equipment for work. Plaintiff and the Public Safety Officer Aggrieved Employees are required to put this uniform and equipment on and take this uniform and equipment off before and after every shift while clocked out. As a result, Plaintiff and the Public Safety Officer Aggrieved Employees were not paid for all hours worked because they were required to don and doff uniforms and equipment “off the clock” before and after each scheduled shift.

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

April 19, 2022

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By their policy of requiring Plaintiff and all Aggrieved Employees to work without being paid all wages at their appropriate regular rate of pay and to work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating them at the rate of one-half (1 ½) their regular rate of pay, Defendant willfully violated the provisions of Labor Code §§ 510, 1194, 1194.2, and 1199.

Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts over ten (10) hours. Likewise, the Wage Orders (4-2001) state that: An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that a thirty (30) minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a timely manner.

Defendant failed to maintain a policy informing Plaintiff and all Public Safety Officer Aggrieved Employees of their rights associated with meal periods. In addition, Defendant has had a consistent policy of: (1) failing to provide Plaintiff Public Safety Officer Aggrieved Employees uninterrupted meal periods; and (2) failing to pay such employees one (1) hour of pay at the employees' regular rate of compensation for each workday that the compliant meal period was not provided. Meal periods were frequently interrupted because Defendant required Plaintiff and all Aggrieved Employees to keep their radios on during breaks, especially during Defendant's sporting and/or other on-campus events. Very recently, on July 15, 2021, in *Ferra v. Loews Hollywood Hotel, LLC*, (2021) 11 Cal. 5th 858, 863, the California Supreme Court set forth the formula for calculating the one extra hour of premium pay that employees are owed if an employer fails to provide a compliant meal period or rest break. Specifically, the Court held that those premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. Here, when meal period premiums are provided, Defendant has had a consistent policy of paying meal period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7 and 512.

Pursuant to Labor Code § 226.7 and Wage Order 4-2001, Defendant failed to provide Plaintiff and all Public Safety Officer Aggrieved Employees with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof. Defendant failed to maintain a policy of informing Plaintiff and all Public Safety Officer Aggrieved Employees of this right. Plaintiff and all Aggrieved Employees have been required to work four-hour increments (or major fraction thereof) without being provided with a ten (10) minute uninterrupted rest period. Rest periods

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

April 19, 2022

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were frequently interrupted because Defendant required Plaintiff and all Aggrieved Employees to keep their radios on during breaks, especially during Defendant's sporting and/or other on campus events. As Such, Defendant failed to provide Plaintiff and all Aggrieved Employees with compliant rest periods. Further, Plaintiff and all Aggrieved Employees were not compensated with one (1) hour of wages at the regular rate of compensation for each compliant rest period that was not provided as required by Labor Code § 226.7. As discussed above, *Ferra* requires the rest period premium payments must include the hourly value of any nondiscretionary earnings (such as a nondiscretionary bonuses), and cannot simply be paid at an employee's base hourly rate. As with meal periods, when rest premiums are provided, Defendant has had a consistent policy of paying rest period premiums at the base rate and not the blended rate in violation of Labor Code §§ 226.7.

Defendant also engaged in a practice of failing to furnish accurate itemized wage statements in violation of Labor Code § 226(a) to Plaintiff and all Aggrieved Employees. Labor Code §§ 226(a)(2) and (9) require that every employer shall, semimonthly or at the time of each payment of wages, furnish each employee an accurate itemized statement in writing showing a number of specific items, including total hours worked and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Here, Defendant has failed to furnish Plaintiff and all Aggrieved Employees accurate itemized wage statements that show total hours worked by the employee and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee pursuant to Labor Code §§ 226(a)(2) and (9). Further, Plaintiff and all Aggrieved Employees are issued wage statements that do not accurately show meal and rest premiums as a result of the claims alleged above and when they are provided, they are not provided at the proper rate. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code §226(a) with respect to Plaintiff and all Aggrieved Employees.

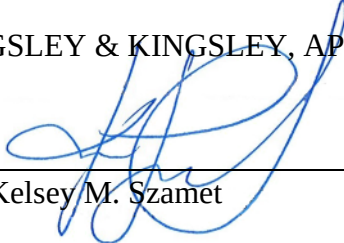
Labor Code § 203 provides that if "an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days." Here, Plaintiff and all Aggrieved Employees were not timely paid all wages due upon their separation from Defendant's employ as required. As such, Plaintiff is an aggrieved employee and Defendant failed to pay Plaintiff and all Aggrieved Employees all wages due at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter in violation of Labor Code §203.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 226(a), 226.7, 510, 512, 1194, 1194.2, and 1199 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

LABOR & WORKFORCE DEVELOPMENT AGENCY
California Labor Code §2699 Penalties
April 19, 2022
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Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet

KMS/km

- Cc:
1. LWDA Letter filed via Electronic Submission: <https://dir.tfaforms.net/308>
 2. THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY via USPS Certified Mail # 7019 2970 0001 4016 5912
 3. COHELAN KHOURY & SINGER via Electronic Mail Transmission: msinger@ckslaw.com; aworden@ckslaw.com; matlas@ckslaw.com

EXHIBIT "2"



State of California

Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

New PAGA Claim Notice

Your Information (Person Who is Filing)

Your First Name *

Kelsey

Your Last Name *

Szamet

Firm Name (if any) *

Kingsley & Kingsley, APC

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

Your Email Address *

kimberly@kingsleykingsley

Your Street Name, Number and Suite/Apt *

16133 Ventura Blvd., Suite

Your Mobile Phone Number

8189908300

Your City *

Encino

Your Work Phone Number

Your State *

California ▼

Your Zip/Postal Code *

91436

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

MARISOL HERNANDEZ

Plaintiff/Aggrieved Employee Occupation *

Public Safety Officer

[Add Additional Plaintiffs](#)

Employer Information

Employer Entity Type

Please select... ▼

Employer Name *

THE BOARD OF TRUSTEES OF THE LELAND ST

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt *

Employer City *

3145 Porter Drive	Palo Alto
Employer State * California	Employer Zip/Postal Code * 94304
Employer Industry * Other	Employer Industry for "Other" * Colleges, Universities, and

Add additional defendants

☐ Add any entity other than an individual

☐ Add an individual/sole proprietor employer

Notice General Information

Estimated Number of Employees Impacted by Violations *
50

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

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

PAGA Claim Type – Check All that Apply *

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

Filing Fee

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

IFP

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

Billing information

Billing First Name *

Eric

Billing Last Name *

Kingsley

Billing Email *

kimberly@kingsleykingsley

Billing Phone

8189908300

Billing Street Name, Number and Suite/Apt *

16133 Ventura Blvd., Ste 1200

Billing City *

Encino

Billing State *

California

Billing Zip/Postal Code *

91436

Credit Card Type *



Credit Card Number *



CVV Number *



Credit Card Expiration Month *



mm

Credit Card Expiration Year *



yyyy

Notice and Other Attachments

PAGA Claim Notice (must be a .pdf) *

 LWDA Letter - ...rd Jr Univ.pdf

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

 No file chosen[Add Another Attachment](#)

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

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

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

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

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

[Click Here](#) to Search Case

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Tuesday, April 19, 2022 8:09 AM
To: Kimberly Madrid
Subject: Thank you for submission of your PAGA Case.

External Email!

4/19/2022

LWDA Case No. LWDA-CM-879262-22

Law Firm : Kingsley & Kingsley, APC

Plaintiff Name : MARISOL HERNANDEZ

Employer: THE BOARD OF TRUSTEES OF THE LELAND STANFORD JUNIOR UNIVERSITY Filing Fee : \$75.00 IFP Claimed : No

Item submitted: Initial PAGA Notice

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

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website:

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