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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

CHRISTOPHER BRANDMEIR, individually
and on behalf of all others similarly situated,

Plaintiff,

v.

**COLUMBIA SOUTHERN UNIVERSITY,
INC.**, an Alabama Corporation

Defendant.

CASE NO. 22CV013638

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

- (1) Failure to Pay Wages Separately from the Piece and Hourly for Nonproductive Time and/or Failure to Pay Wages for All Hours Worked (Cal. Lab. Code §§ 226.2, 1194, 1194.2; IWC Wage Order No. 4-2001, § 4);
- (2) Failure to Pay Overtime Wages (Cal. Labor Code §§ 510, 1194; IWC Wage Order No. 4-2001, § 3);
- (3) Failure to Pay Separately from the Piece and Hourly for Rest Breaks and/or Failure to Authorize and Permit Paid Rest Breaks, and Failure to Pay Premium Pay (Cal. Lab. Code §§ 226.2, 226.7, 1194; IWC Wage Order No. 4-2001, §§ 4, 12);
- (4) Failure to Issue Accurate Itemized Wage Statements and Failure to Issue Wage Statements for All Pay Periods Worked (Cal. Lab. Code §§ 226(a), (e), 226.2(a));
- (5) Failure to Reimburse Business Expenses (Cal. Lab. Code § 2802); and
- (6) Unfair, Unlawful, or Fraudulent Business Practices (Cal. Bus. & Prof. Code §§ 17200 *et seq.*).

DEMAND FOR JURY TRIAL

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

3 **INTRODUCTION**

4 1. This is a class action under California Code of Civil Procedure § 382 seeking damages for
5 unpaid wages, unpaid overtime, unpaid premium pay, and unreimbursed expenses, statutory penalties,
6 interest, injunctive relief, restitution, and reasonable attorneys’ fees and costs under California Labor Code
7 (“Labor Code”) §§ 226, 226.2, 226.7, 510, 1194, 1194.2, 2802, Industrial Welfare Commission Wage
8 Order (“Wage Order”) No. 4-2001, §§ 4, 12, California Civil Procedure Code § 1021.5, and California’s
9 Unfair Competition Law (“UCL”), Business & Professions Code §§ 17200 *et seq.* on behalf of Plaintiff
10 and all similarly situated individuals currently and formerly employed as Instructors by Columbia
11 Southern University, Inc. (“CSU” or “Defendant”) in California (“Class Members”) from four years prior
12 to the filing of this Complaint through to the trial date (“Class Period”).

13 2. Defendant’s violations of California’s wage-and-hour and unfair competition laws, as
14 described below, have been ongoing for at least the past four years and are continuing at present.

15 3. During the Class Period, Class Members were “non-exempt” employees for at least two
16 reasons: first, Class Members are not paid a monthly salary equivalent to at least two times the state
17 minimum wage for full-time employment, as is required to be exempt under Wage Order No. 4-2001.
18 Second, those Class Members who are paid a set amount per course taught or per assignment are not paid
19 a “salary,” as is required to be exempt; rather, they are piece-rate workers paid a set/ascertainable amount
20 per course taught or similar tasks paid by the piece. These Class Members are also piece-rate workers
21 and are not salaried because Defendant reserves the right to cancel their courses due to low enrollment,
22 and thus reduce their compensation.

23 4. Because at least some Class Members are non-exempt, piece-rate workers, pursuant to
24 Labor Code §§ 226.2, 1194, 1194.2 and Wage Order No. 4-2001, § 4, Defendant was required to pay
25 them separately from the piece and hourly at least at the minimum wage for their nonproductive time.
26 Defendant, however, did not pay them separately and hourly for their nonproductive time (*i.e.*, time
27 separate from delivery of a course/assignment), including but not limited to time spent on mandatory
28 trainings such as FERPA, ADA, Family Education Right to Privacy Act, Harassment, Faculty

1 Communication Standards, as well as the spent completing a Professional Development Plan. As a result,
2 Defendant is liable for unpaid wages.

3 5. Additionally, because all Class Members are non-exempt employees, they are entitled to
4 be paid for all hours worked, pursuant to Labor Code §§ 1194, 1194.2 and Wage Order No. 4-2001, § 4.
5 Defendant, however, does not pay them for all hours worked, including but not limited to time spent on
6 trainings and completing their Professional Development Plans, a described above.

7 6. In addition, whether or not Class Members' compensation is considered a piece rate,
8 Defendant also failed to pay Class Members for time spent preparing for courses that were ultimately
9 canceled due to low enrollment, in violation of Labor Code §§ 1194, 1194.2 and Wage Order No. 4-2001,
10 § 4.

11 7. Defendant was also required to pay Class Members overtime for all hours worked over 8
12 in a day and/or over 40 in a week. Class Members routinely worked over 8 hours in a day and/or over 40
13 hours in a week, particular during the time they graded exams, papers and other assignments. Defendant,
14 however, did not pay them overtime wages in violation of Labor Code § 510 and IWC Wage Order No.
15 4-2001, § 3.

16 8. In addition, pursuant to Labor Code § 226.2 and Wage Order No. 4-2001, § 12, Defendant
17 was required to pay those Class Members who were paid by the piece separately and at their average
18 hourly rate for their time spent on rest breaks. Defendant, however, did not pay them separately and
19 hourly for their rest break time, and as a result Defendant is liable for either missed rest break premium
20 pay under Labor Code § 226.7(b) and Wage Order No. 4-2001, § 12 or, at the Class's option, unpaid
21 wages under Labor Code § 1194.

22 9. In the alternative, even if Class Members' compensation is not considered a piece rate,
23 Class Members are non-exempt employees entitled to timely off-duty paid rest breaks. However, as a
24 matter of policy and/or practice, Defendant failed to authorize and permit Class Members to take paid off-
25 duty rest breaks and failed to pay premium pay for missed rest breaks, in violation of Labor Code § 226.7
26 and Wage Order No. 4-2001, § 12.

27 10. This action is also brought on behalf of a subclass comprised of Plaintiff and Class
28 Members who are or have been employed by Defendant during the one year prior to the filing of this

1 Complaint through to the trial date (“Wage Statement Subclass Period”) for statutory penalties, injunctive
2 relief, and reasonable attorneys’ fees and costs pursuant to Labor Code §§ 226(a), (e), and (h) and 226.2
3 (“Wage Statement Subclass”). During the Wage Statement Subclass Period, Defendant knowingly and
4 intentionally failed to furnish Wage Statement Subclass Members with accurate itemized wage statements
5 by failing to include on their wage statements accurate information including but not limited to: the total
6 number of hours worked; all applicable hourly rates and the corresponding number of hours worked at
7 each rate; the number of piece-rate units earned and applicable piece rate; compensable rest periods, rate
8 of compensation and gross wages earned for the rest periods; and compensable other nonproductive time,
9 rate of compensation, and gross wages earned for that time, in violation of Labor Code §§ 226(a) and
10 226.2(a). Wage Statement Subclass Members suffered injury as a result of Defendant’s violations of
11 Labor Code §§ 226(a) and 226.2(a) for purposes of Labor Code § 226(e). Thus, Wage Statement Subclass
12 Members are entitled to statutory penalties under Labor Code § 226(e), injunctive relief under Labor Code
13 § 226(h) to enjoin Defendant from issuing inaccurate wage statements, and reasonable attorneys’ fees and
14 costs.

15 11. Defendant employs Class Members to teach exclusively online, remotely from home.
16 Defendant requires Class Members to use their personal home internet, mobile/home phone service,
17 computers, web cameras, microphones or headsets with microphones, electricity, printers, ink
18 toner/cartridges and paper, and other expenses associated with working from a home office. However,
19 Defendant does not reimburse Class Members for these necessarily incurred business expenses, in
20 violation of Labor Code § 2802.

21 12. As a result of the above Labor Code violations, Defendant committed unfair, unlawful,
22 and/or fraudulent business practices, in violation of the UCL.

23 13. Plaintiff also brings this action as a representative action under the California Labor Code’s
24 Private Attorneys General Act (“PAGA”), Cal. Labor Code §§ 2698 *et seq.*, for civil penalties on behalf
25 of herself and herself and all current and former part-time adjunct instructors/faculty employed by
26 Defendant in California (“Aggrieved Employees”) from June 28, 2021 through to trial (“PAGA Period”) for Defendant’s violations of Labor Code §§ 201-203, 204, 226(a), 226.2, 226.2(a), 226.7, 510, 1194,
27 1194.2, 1197(a), 246, 2802, and IWC Wage Order No. 4-2001 §§ 3, 4, and 12.
28

1 **PARTIES**

2 14. Plaintiff Brandmeir is a resident of Village Valley, California who has been employed by
3 Defendant in California beginning in or about 2016, teaching online courses at CSU and/or completing
4 other assignments. Plaintiff has been employed both as a part-time adjunct instructor and as a full-time
5 instructor during the relevant period. Given that CSU's course offerings are completely online, Mr.
6 Brandmeir worked remotely and not at any of Defendant's physical locations. Throughout his
7 employment, Mr. Brandmeir was subject to Defendant's unlawful conduct described herein.

8 15. Columbia Southern University, Inc. is a private for-profit university formed in Alabama.
9 All degree programs are offered completely online and enrolls over 20,000 students. Its principal place
10 of business is located at 21982 University Lane Orange Beach, AL 36561. CSU is not registered with the
11 California Secretary of State.

12 16. All claims stated herein are asserted against Defendant and any of its predecessors,
13 successors, and/or assigns.

14 **JURISDICTION**

15 17. This Court has jurisdiction over Class Members' claims for failure to pay separately and
16 hourly for nonproductive time and failure to pay wages for all hours worked pursuant to Labor Code
17 §§ 226.2, 1194, 1194.2 and Wage Order No. 4-2001, § 4.

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

20 19. This Court has jurisdiction over Class Members' claims for failure to pay separately and
21 hourly for rest break time and/or failure to permit and authorize timely paid off-duty rest breaks, and
22 failure to pay premium pay for missed rest breaks pursuant to Labor Code §§ 226.2, 226.7, 1194 and
23 Wage Order No. 4-2001, §§ 4, 12.

24 20. This Court has jurisdiction over Wage Statement Subclass Members' claims for failure to
25 issue accurate itemized wage statements under Labor Code §§ 226(a), (e), and 226.2(a).

26 21. This Court has jurisdiction over Class Members' claims for reimbursement of necessary
27 business expenses under Labor Code § 2802.
28

22. This Court has jurisdiction over the claims for restitution arising from Defendant's violations of Labor Code §§ 226.2, 226.7, 510, 1194, 1194.2, 2802 and Wage Order No. 4-2001, §§ 3, 4, 12, and under the UCL, Bus. & Prof. Code §§ 17203 and 17204.

23. This Court has jurisdiction over the claims for attorney's fees and costs, including pursuant to Labor Code §§ 226(e), 1194, 2802, 2699, and Cal. Civ. Proc. Code § 1021.5.

24. This Court has jurisdiction over the claims for declaratory relief under the UCL, Bus. & Prof. Code §§ 17200 *et seq.*

25. The amount in controversy for Plaintiff, including pro rata share of attorney's fees, is less than seventy-five thousand dollars (\$75,000).

26. This Court has jurisdiction over Plaintiff's claims for civil penalties under Labor Code § 2699. On June 28, 2022, Plaintiff provided PAGA Notice pursuant to Labor Code § 2699.3 to the California Labor & Workforce Development Agency ("LWDA") and Defendant. The LWDA has provided no notice to Plaintiff within the period specified in Labor Code § 2699.3 regarding its intention to investigate or not investigate any other claims alleged in the PAGA Notice. Plaintiff has therefore fully complied with the PAGA procedural requirements and may commence this representative action pursuant to Labor Code § 2699.

VENUE

27. Venue is proper in the County of Alameda pursuant to Cal. Civ. Proc. Code §§ 395(a) and 395.5. Defendant Columbia Southern University, Inc. is an Alabama corporation with its principal place of business in Orange Beach, Alabama. Defendant has not designated a principal place of business in California pursuant to Cal. Corp. Code § 2105(a)(3). Venue is therefore proper in Alameda County.

28. Defendant employs Class Members throughout the state of California to teach online and/or work online, remotely from their home offices. The unlawful acts alleged herein had a direct effect on Plaintiff and other Class Members within the State of California, some of whom incurred unpaid wages, unreimbursed expenses, and inaccurate wage statements while conducting Defendant's business within Alameda County.

FACTUAL ALLEGATIONS COMMON TO ALL CLASS MEMBERS

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

1 29. CSU is a private, for-profit online university that offers courses to students pursuing
2 undergraduate, graduate degrees, and doctoral degrees and certificates. These programs are offered
3 throughout the year on a semester basis, on a two-track schedule (Track A and Track B). Each quarter
4 consists of 8 weeks of class time. Defendant employs part-time adjunct and full-time instructors,
5 including Class Members, to teach online courses remotely.

6 30. Upon information and belief, Defendant has employed approximately fifty Class Members
7 during the Class Period.

8 ***B. Class Members Are Non-Exempt Piece-Rate Employees***

9 31. During the Class Period, Class Members were non-exempt employees because Class
10 Members' pay was too low to qualify for the exemption under Wage Order No. 4-2001, § 1(A) which
11 requires a monthly salary equivalent of two times the California minimum wage for full-time
12 employment.¹

13 32. At least some of the Class Members were also paid a set sum per course or per assignment,
14 which constitutes pay on a piece-rate basis. The more courses (or other tasks, such as service on the
15 doctoral dissertation committee) these Class Member taught or completed, the more she or he was paid.

16 33. Class Members' compensation was not a salary because Defendant reserved the right to
17 cancel a course for low enrollment, including after the course began, thus reducing Class Members'
18 compensation.

19 ***C. Defendant's Compensation Practices Applicable to Class Members Violated California's***
20 ***Minimum Wage and Rest Break Laws***

21 34. Because at least some Class Members are piece-rate workers, pursuant to Labor Code
22 §§ 226.2, 1194, 1194.2 and Wage Order No. 4-2001, § 4, Defendant was required, but failed, to pay those
23 Class Members separately from the piece and hourly at least at the minimum wage for their nonproductive
24 time, including but not limited to time spent on mandatory trainings, such as FERPA, ADA, Family

25
26 ¹ Labor Code § 515.7, which permitted non-profit universities based in California to begin paying adjunct
27 instructors a salary that is less than the minimum earnings requirement (provided certain other
28 requirements are met) while classifying them as exempt starting September 9, 2020, is inapplicable
because Defendant is not formed in California. See Labor Code § 515.7(a) incorporating Education Code
§ 66010(b).

1 Education Right to Privacy Act, Harassment, Faculty Communication Standards, as well as the time spent
2 completing a Professional Development Plan.

3 35. Even if Class Members were not piece-rate workers, Defendant did not pay Class Members
4 for the nonproductive time mentioned above, in violation of Labor Code §§ 1194, 1194.2 and Wage Order
5 No. 4-2001, § 4.

6 36. During the Class Period, Class Members worked at least 3.5 hours or more in a day, and
7 were entitled to a 10-minute paid rest break for every day on which they worked for 3.5 hours, pursuant
8 to Wage Order No. 4-2001, § 12 (entitlement to rest break is based on “the total hours worked daily” not
9 consecutive time worked). Defendant knew or should have known that Class Members worked 3.5 hours
10 in a day.

11 37. Because at least some of the Class Members are piece-rate workers, pursuant to Labor
12 Code §§ 226.2, 1194 and Wage Order No. 4-2001, §§ 4, 12, Defendant was required, but failed, to pay
13 those Class Members for their time spent on rest breaks separately and apart from the piece.

14 38. In the alternative, if Class Members’ compensation is not considered a piece rate, as non-
15 exempt employees Class Members were entitled to off-duty paid rest breaks for 3.5 hours or more of
16 work, pursuant to Labor Code § 226.7 and Wage Order No. 4-2001, § 12. However, as a matter of policy
17 and/or practice, Defendant failed to authorize and permit Class Members to take off-duty rest breaks and
18 failed to pay premium pay for missed rest breaks, in violation of Labor Code § 226.7 and Wage Order
19 No. 4-2001, § 12.

20 ***D. Defendant’s Compensation Practices Violated California Overtime Laws***

21 39. During the Class Period, Class Members worked more than 8 hours in a day when, for
22 example, they were required to turn around term-end grades within three days after students submitted
23 final exams/papers. However, in such instances, Defendant did not pay Class Members overtime wages,
24 in violation of Labor Code §§ 510, 1194 and Wage Order No. 4-2001, § 3(A).

25 ***E. Defendant’s Compensation Practices Resulted in Failure to Issue Accurate Itemized Wage***
26 ***Statements***

27 40. During the Wage Statement Subclass Period, Defendant failed to issue accurate itemized
28 wage statements to Wage Statement Subclass Members. Under Labor Code § 226(a)(2) and (a)(9)

1 Defendant was required, but failed, to furnish them with wage statements containing accurate entries for
2 the total hours worked by the employee, all applicable hourly rates in effect during the pay period, and
3 the corresponding number of hours worked by the employee at each hourly rate.

4 41. Defendant did not require Wage Statement Subclass Members to track their hours worked
5 and therefore could not list the actual number of hours worked.

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

12 43. The wage statements Defendant issued to the Wage Statement Subclass Members
13 contained columns for “Hours,” “Units,” and “Rate.” However, Defendant left the space under those
14 headings blank.

15 44. Defendant’s practice of furnishing Wage Statement Subclass Members incomplete and/or
16 inaccurate wage statements was not an isolated and unintentional payroll error due to a clerical or
17 inadvertent mistake, but rather was willful and intentional and the result of Defendant’s regular
18 compensation policies.

19 45. Wage Statement Subclass Members could not promptly and easily determine from the
20 wage statements alone, without reference to other documents, their regular hourly rate, the total hours
21 worked during a pay period, and number of pieces worked. As a result, Wage Statement Subclass
22 Members suffered injury for the purposes of Labor Code § 226(e).

23 ***F. Defendant Failed to Pay Class Members Timely***

24 46. In addition, Class Members were entitled to be paid twice per month under Labor Code §
25 204(a) which requires that “[l]abor performed between the 1st and 15th days, inclusive, of any calendar
26 month ... paid for between the 16th and the 26th day of the month during which the labor was performed,
27 and labor performed between the 16th and the last day, inclusive, of any calendar month, ...paid for
28 between the 1st and 10th day of the following month.” Defendant, however, did not pay wages to Class

1 Members semi-monthly and did not pay for work performed between the 1st and the 15th of the month
2 before the 26th day of the month. For example, Defendant paid Aggrieved Employees for work performed
3 between the first and the last day of January 2022, on February 7, 2022.

4 ***G. Defendant Failed to Pay All Wages Owed Upon Discharge From Employment***

5 47. As a consequence of Defendant's failure to pay wages for all hours worked and/or failure
6 to pay separately and apart from the piece-rate for nonproductive time, Class Members did not receive all
7 compensation due to them upon discharge or separation from employment. In addition, when a Class
8 Member completed an assignment without being issued another assignment, the final pay was not paid
9 upon discharge or separation, but rather on the next regularly scheduled payroll date. As a result,
10 Defendant violated Labor Code §§ 201-202 by not paying, and/or not timely paying, Class Members all
11 wages due to them upon discharge or separation from employment.

12 ***H. Defendant Failed to Provide Paid Sick Leave***

13 48. Plaintiff and Class Members who worked for Defendants for 30 or more days within a year
14 from commencement of their employment, were entitled to receive paid sick leave pursuant to Labor Code
15 §§ 246, et seq. On information and belief, CSU, however, failed to provide Plaintiff and Class Members
16 with paid sick leave during the CLASS Period. CSU's Faculty Handbook provides that "sick time is not
17 available to part-time faculty except where required by applicable state law." Plaintiff and Class
18 Members' wage statements, however, do not list any available sick leave, nor is Plaintiff aware of any
19 sick leave being available him or to other Class Members.

20 ***I. Defendant Failed to Fully Reimburse Class Members for Necessary Business Expenses***

21 49. Defendant did not fully reimburse Class Member for necessary business expenses they
22 incurred, including but not limited to the cost of internet, mobile/home phone service, computers, web
23 cameras, microphones or headsets with microphones, electricity, printers, ink toner/cartridges and paper,
24 and other expenses associated with working from a home office, in violation of Labor Code § 2802.

25 50. Class Members taught exclusively online for Defendant from their home offices.
26 Defendant was and is well aware that Class Members incur expenses such as those listed in the above
27 paragraph to perform their job duties for Defendant. Defendant, however, does not reimburse, and
28

1 throughout the Class Period has not reimbursed, Class Members for the expenses they incurred in the
2 discharge of their duties for Defendant.

3 ***J. Defendant's Labor Code Violations Were Unfair Business Practices***

4 51. From at least four years prior to filing this complaint, through the present, Defendant has
5 adopted and used unfair and/or unlawful business practices to reduce Class Members' compensation and
6 increase profits. These practices include failing to pay Class Members separately from the piece and
7 hourly for nonproductive time, failing to pay wages for all hours worked, failing to pay overtime wages,
8 failing to pay separately from the piece and hourly for rest breaks and/or failing to authorize and permit
9 off-duty paid rest breaks, failing to pay premium pay for missed breaks, and failing to fully reimburse
10 Class Members' necessary business expenses.

11 **CLASS ACTION ALLEGATIONS**

12 52. Plaintiff brings this class action pursuant to Cal. Civ. Proc. Code § 382 on behalf of the
13 Class, and the Wage Statement Subclass. Upon information and belief, there are approximately fifty
14 Class Members. The members of the Class are so numerous that joinder of all members is impractical.

15 53. Plaintiff's claims are typical of the claims of the members of the Class and the Wage
16 Statement Subclass because he was employed both as a part-time and as a full-time instructor during the
17 Class Period, and was employed pursuant to standardized contracts, worked remotely from his home
18 office, and was (a) not paid separately and hourly for nonproductive time, (b) not paid for all hours
19 worked, (c) not paid overtime wages, (d) not paid separately and hourly for rest breaks and/or not
20 permitted off-duty paid rest breaks and premium pay for missed rest breaks, (e) subject to Defendant's
21 policies and/or practices of not tracking hours worked, (f) not provided an accurate and itemized wage
22 statement for each pay period, (g) not reimbursed for necessary business expenses.

23 54. Plaintiff will fairly and adequately represent the interests of the Class and the Wage
24 Statement Subclass. Plaintiff has no conflict of interest with any member of the Class or Wage
25 Statement Subclass. Plaintiff has retained competent and experienced counsel in complex class action
26 litigation. Plaintiff's counsel have the expertise and financial resources to adequately represent the
27 interests of the Class and Wage Statement Subclass.
28

1 55. Common questions of law and fact exist as to all members of the Class and the Wage
2 Statement Subclass and predominate over any questions solely affecting individual members of the
3 Class and Wage Statement Subclass. Among the questions of law and fact common to Plaintiff, the
4 Class, and the Wage Statement Subclass are the following:

- 5 a. Whether Class Members employed as part-time adjunct instructors are paid on a piece-
6 rate basis;
- 7 b. Whether Class Members are non-exempt;
- 8 c. Whether Class Members are entitled to separate and hourly pay for nonproductive time
9 under Labor Code §§ 226.2, 1194 and Wage Order No. 4-2001, § 4;
- 10 d. Whether Class Members are entitled to at least minimum wage for all hours worked
11 under Labor Code § 1194 and Wage Order No. 4-2001, § 4;
- 12 e. Whether Class Members are entitled to overtime pay under Labor Code §§ 510, 1194 and
13 Wage Order No. 4-2001, § 3;
- 14 f. Whether Defendant is liable for liquidated damages to Class Members under Labor Code
15 § 1194.2 for failure to pay for nonproductive time and for all hours worked;
- 16 g. Whether Class Members are entitled to separate and hourly pay for rest breaks under
17 Labor Code §§ 226.2, 1194 and Wage Order No. 4-2001, §§ 4, 12;
- 18 h. Whether Class Members are entitled to timely paid off-duty rest breaks under Labor
19 Code § 226.7 and Wage Order No. 4-2001, § 12;
- 20 i. Whether Defendant violated Labor Code § 226.7 and Wage Order No. 4-2001, § 12 by
21 failing to pay one hour of premium pay to each Class Member for each day that a compliant
22 rest period was not provided;
- 23 j. Whether Defendant failed to establish and/or implement policies applicable to Class
24 Members regarding tracking hours worked and rest breaks;
- 25 k. Whether Defendant violated Labor Code §§ 226(a) and 226.2(a) by failing to issue
26 accurate itemized wage statements to Wage Statement Subclass Members;
- 27 l. Whether Defendant's violation of Labor Code §§ 226(a) and 226.2(a) was knowing and
28 intentional;

- 1 m. Whether Wage Statement Subclass Members suffered injury for the purposes of Labor
2 Code § 226(e);
- 3 n. Whether Defendant violated Labor Code § 2802 by failing to reimburse Class Members
4 for necessary business expenses;
- 5 o. Whether these violations constitute unfair, unlawful, and fraudulent business practices, in
6 violation of the UCL, Bus. & Prof. Code §§ 17200 *et seq.*;
- 7 p. Whether Class Members are entitled to restitution under Bus. & Prof. Code §§ 17200 *et*
8 *seq.* for uncompensated hours worked, uncompensated rest periods, unpaid premium pay,
9 and whether Class Members are entitled to restitution for unreimbursed business
10 expenses and;
- 11 q. The proper formula(s) for calculating damages, interest, and restitution owed to Plaintiff
12 and the Class;
- 13 r. Whether the Class is entitled to declaratory relief; and
- 14 s. Whether the Class is entitled to injunctive relief.

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

23 57. Defendant's actions are generally applicable to the entire Class. Prosecution of separate
24 actions by individual members of each Class creates the risk of inconsistent or varying adjudications of
25 the issues presented herein, which, in turn, would establish incompatible standards of conduct for
26 Defendant.

27 58. Because joinder of all Class Members is impractical, a class action is superior to other
28 available methods for the fair and efficient adjudication of this controversy. Furthermore, the amounts

1 at stake for many members of each Class, while substantial, may not be sufficient to enable them to
2 maintain separate suits against Defendant.

3 **FIRST CAUSE OF ACTION**

4 **Failure to Pay Separately and Hourly for Nonproductive Time and/or**
5 **Failure to Pay Wages for All Hours Worked**
6 **[Labor Code §§ 226.2, 1194, 1194.2; Wage Order No. 4-2001, § 4]**

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

9 60. Labor Code § 1194(a) provides, in relevant part:

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

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

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

19 62. Labor Code § 226.2(a)(1) states that “[e]mployees shall be compensated for . . . other
20 nonproductive time separate and apart from any piece-rate compensation.”

21 63. As set forth above, during the Class Period, Class Members who were paid a set amount
22 per course taught or per assignment were paid a piece-rate, but Defendant did not compensate them
23 separately and apart from the piece for time spent on nonproductive tasks separate from delivery of the
24 assignment, including but not limited to time spent completing mandatory trainings and their
25 Professional Development Plans.

26 64. Accordingly, pursuant to Labor Code §§ 226.2, 1194, 1194.2, and Wage Order No. 4-
27 2001, § 4, Class Members are entitled to recover, at a minimum, their unpaid hourly wages, plus
28 liquidated damages in an additional amount equal to the total amount of applicable minimum wages
unlawfully withheld during the Class Period for Class Members’ nonproductive time.

65. Alternatively, under the theory that Class Members were paid on a salary basis, pursuant
to Labor Code §§ 1194, 1194.2 and Wage Order No. 4-2001, § 4, Defendant was required, but failed, to
compensate Class Members for all hours worked because they are non-exempt employees. Thus, Class

Members are entitled to recover, at a minimum, their unpaid hourly wages, plus liquidated damages in an additional amount equal to the total amount of applicable minimum wages unlawfully withheld during the Class Period for Class Members' unpaid hours worked.

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

SECOND CAUSE OF ACTION

Failure to Pay Overtime [Labor Code §§ 510, 1194; Wage Order No. 4-2001, § 3]

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

68. Labor Code § 510 and the applicable Wage Order require that employers compensate all work performed by an employee in excess of either 8 hours per day or 40 hours per week, at one and one-half times the employee's regular rate.

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

70. During the Class Period, Class Members worked more than 8 hours in a day, entitling them to overtime pay as alleged herein. However, Defendant knowingly and willfully failed to pay overtime wages to Class Members, in violation of Labor Code §§ 510, 1194 and Wage Order No. 4-2001, § 3(A).

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

THIRD CAUSE OF ACTION

Failure to Pay Separately and Hourly for Rest Breaks and/or Failure to Authorize and Permit Paid Rest Breaks and Failure to Pay Missed Rest Break Premiums [Labor Code §§ 226.2, 226.7, 1194; Wage Order No. 4-2001, §§ 4, 12]

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

73. Labor Code § 226.2(a)(1) states that "[e]mployees shall be compensated for rest and recovery periods . . . separate from any piece-rate compensation."

1 employee, and all applicable hourly rates in effect during the pay period and the corresponding number
2 of hours worked at each hourly rate by the employee, in violation of Labor Code § 226(a).

3 82. Additionally, Defendant failed to furnish Wage Statement Subclass Members who were
4 paid by the piece, with accurate wage statements itemizing the number of piece-rate units earned and
5 any applicable piece rate; total hours of compensable rest and recovery periods, the rate of
6 compensation, and the gross wages paid for those periods during the pay period, in violation of Labor
7 Code §§ 226(a) and 226.2(a).

8 83. Defendant's failure to furnish accurate itemized wage statements to Wage Statement
9 Subclass Members was knowing and intentional.

10 84. Wage Statement Subclass Members suffered injury as a result of Defendant's knowing
11 and intentional failure to comply with Labor Code §§ 226(a) and 226.2(a).

12 85. As a result, pursuant to Labor Code § 226(e) Wage Statement Subclass Members are
13 entitled to recover \$50 for each initial pay period with a violation and \$100 for each subsequent pay
14 period with a violation, up to an amount not exceeding an aggregate penalty of \$4,000, for each Wage
15 Statement Subclass Member.

16 86. Plaintiff, on behalf of himself and all other Wage Statement Subclass Members, requests
17 relief as described below.

18 **FIFTH CAUSE OF ACTION**
19 **Failure to Reimburse Business Expenses**
20 **[Labor Code § 2802]**

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

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

26 89. Defendant did not fully reimburse Class Members for necessary business expenses,
27 including but not limited to the cost of home internet, mobile/home phone service, computers, web
28 cameras, microphones or headsets with microphones, electricity, printers, ink toner/cartridges and paper,

1 and other expenses associated with working from a home, in violation of Labor Code § 2802.
2 Defendant required and/or expected Class Members to incur these expenses to perform their job duties.

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

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

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

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

17 93. Beginning at least four years prior to the filing of this Complaint, Defendant committed,
18 and continues to commit, acts of unfair competition as defined in the UCL by failing to pay Class
19 Members separately and hourly for nonproductive time, failing to pay for all hours worked, failing to
20 pay overtime wages, failing to pay separately and hourly for rest breaks and/or failing to authorize and
21 permit off-duty paid rest breaks, and failing to fully reimburse Class Members' necessary business
22 expenses, in violation of Labor Code §§ 226.2, 226.7, 1194, 2802 and Wage Order No. 4-2001, §§ 4,
23 12.

24 94. Defendant's conduct as herein alleged has damaged Class Members and was
25 substantially injurious to them.

26 95. The harm to Class Members resulting from Defendant's Labor Code violations
27 outweighs the utility, if any, of Defendant's policies and practices. Therefore, Defendant's actions
28 described herein constitute an unfair business practice or act within the meaning of the UCL.

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

3 **SEVENTH CAUSE OF ACTION**

4 **Civil Penalties**

5 **[Labor Code §§ 2698 *et seq.*]**

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

8 98. Plaintiff seeks PAGA penalties on behalf of himself and Aggrieved Employees, as follows:

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

10 99. During the PAGA Period, Defendants failed to issue accurate itemized wage statements
11 by failing to list on the wage statements total hours worked, all applicable hourly rates in effect during
12 the pay period, and the corresponding number of hours worked at each hourly rate, in violation of Labor
13 Code § 226(a)(2) and (9).

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

18 101. Therefore, throughout the PAGA Period, Defendant failed to issue accurate itemized wage
19 statements, in violation of Labor Code §§ 226(a) and 226.2(a), and failed to keep the records required in
20 Section 226(a).

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

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

27 ***Violation of Labor Code §§ 204 and 226(a)***

104. During the PAGA Period, Defendant did not pay wages to Aggrieved Employees semi-monthly and did not pay for work performed between the 1st and the 15th of the month before the 26th day of the month, as required under Labor Code § 204.

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

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

Violation of Labor Code §§ 226.2, 1194, 1194.2, 1197.1

107. During the PAGA Period, Defendants did not compensate Aggrieved Employees for their time non-productive time, and/or all hours worked, including but not limited to the time spent on mandatory trainings, such as FERPA, ADA, Family Education Right to Privacy Act, Harassment, Faculty Communication Standards, as well as the time spent completing a Professional Development Plan, in violation of Labor Code §§ 226.2, 1194, 1194.2, 1197.1, and Wage Order No. 4-2001, § 4.

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

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

Violation of Labor Code § 1194 and 510

110. During the PAGA Period, Aggrieved Employees worked more than 8 hours in a day when, for example, they were required to turn around term-end grades within three days after students submitted

1 final exams/papers. However, in such instances, Defendant did not pay Aggrieved Employees overtime
2 wages, in violation of Labor Code §§ 510, 1194 and Wage Order No. 4-2001, § 3(A).

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

6 ***Violation of Labor Code §§ 226.2 and 226.7***

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

11 113. Pursuant to Labor Code § 2699(f)(2), Plaintiff and Adjunct Aggrieved Employees are
12 entitled to one hundred dollars (\$100) per pay period for each initial violation of Labor Code §§ 226.2
13 and 226.7, and two hundred dollars (\$200) per pay period for each subsequent violation.

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

15 114. During the PAGA Period, as a consequence of Defendant's failure to pay wages for all
16 hours worked and/or failure to pay separately and apart from the piece-rate for nonproductive time,
17 Aggrieved Employees did not receive all compensation due to them upon discharge or separation from
18 employment. In addition, when an Aggrieved Employee completed an assignment without being issued
19 another assignment, the final pay was not paid upon discharge or separation, but rather on the next
20 regularly scheduled payroll date. As a result, Defendant violated Labor Code §§ 201-202 by not paying,
21 and/or not timely paying, Aggrieved Employees all wages due to them upon discharge or separation from
22 employment.

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

26 ***Violation of Labor Code § 246***

27 116. During the PAGA Period, Defendants failed to provide Aggrieved Employees' with paid
28 sick time, as required under Labor Code § 246. Aggrieved Employees are entitled to one hundred dollars

1 (\$100) for each initial violation of Labor Code § 246(l), and two hundred dollars (\$200) for each
2 subsequent violation, pursuant to Labor Code § 2699(f)(2).

3 ***Violation of Labor Code § 2802***

4 117. During the PAGA Period, Defendant did not reimburse Aggrieved Employees for
5 necessary business expenses, including but not limited to the costs of internet, mobile/home phone service,
6 computers, web cameras, microphones or headsets with microphones, electricity, printers, ink
7 toner/cartridges and paper, and other expenses associated with working from a home office, in violation
8 of Labor Code § 2802. Defendant knew that Aggrieved Employees had to incur such expenses because
9 Defendant employed Aggrieved Employees to teach online from remote locations without providing any
10 equipment and without directly paying for necessary services such as internet.

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

14 **PRAYER FOR RELIEF**

15 **WHEREFORE**, Plaintiff, on behalf of himself and the Class and the Wage Statement
16 Subclass, prays for the following relief:

17 A. An Order that this action may proceed and be maintained as a class action, with the Class
18 and the Wage Statement Subclass as designated and defined in this Complaint, and that Plaintiff and his
19 counsel be certified as representatives and counsel for the Class and the Wage Statement Subclass.

20 B. On the First Cause of Action: That the Court find and declare that Defendant violated
21 Labor Code §§ 226.2, 1194, and 1194.2 and Wage Order No. 4-2001, § 4 by failing to pay Class Members
22 separately from the piece and hourly for nonproductive time and by failing to pay for all hours worked,
23 and award Class Members the amount of their unpaid minimum wages plus liquidated damages in an
24 additional amount equal to the amount of wages unlawfully withheld during the Class Period.

25 C. On the Second Cause of Action: That the Court find and declare that Defendant violated
26 Labor Code §§ 510 and 1194 and Wage Order No. 4-2001, § 3 by failing to pay Class Members overtime
27 compensation, and award Class Members the amount of their unpaid overtime wages.
28

1 D. On the Third Cause of Action: That the Court find and declare that Defendant violated
2 Labor Code §§ 226.2 and 1194 and Wage Order No. 4-2001, §§ 4, 12 by failing to pay Class Members
3 for their time spent on rest breaks hourly and separately apart from the piece rate, and/or that Defendant
4 violated Labor Code § 226.7 and Wage Order No. 4-2001, § 12 by failing to authorize and permit timely
5 off-duty paid rest breaks, and award the Class unpaid premium pay for missed rest breaks.

6 E. On the Fourth Cause of Action: That the Court find and declare that Defendant violated
7 Labor Code §§ 226(a), (e) and 226.2(a); award Wage Statement Subclass Members statutory penalties
8 under Labor Code § 226(e); enjoin Defendant under Labor Code § 226(h) from continuing to issue
9 unlawful wage statements; and award reasonable attorneys' fees and costs.

10 F. On the Fifth Cause of Action: That the Court find and declare that Defendant violated
11 Labor Code § 2802 by failing to fully reimburse Class Members for necessary business expenses, and
12 award Class Members reimbursement of such expenses.

13 G. On the Sixth Cause of Action: That the Court find and declare that Defendant violated the
14 UCL by failing to pay Class Members separately and apart from the piece rate for nonproductive time,
15 failing to pay wages for all hours worked, failing to pay overtime wages, failing to pay separately and
16 apart from the piece rate for rest breaks and/or failing to authorize and permit compliant rest breaks, and
17 failing to fully reimburse Class Members necessary business expenses; and award restitution to the Class;
18 and that the Court enjoin Defendant from continuing to enforce policies and practices that violate Labor
19 Code §§ 226.2, 226.7, 1194, and 2802 and Wage Order No. 4-2001, §§ 4, 12.

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

22 I. That the Court award attorneys' fees and costs of suit to the extent permitted by law,
23 including, but not limited to, Labor Code §§ 226(e), (h), 1194, 2802 and Cal. Civ. Proc. Code § 1021.5.

24 J. All other relief as this Court deems proper.

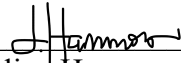
25 **JURY DEMAND**

26 Plaintiff hereby demands trial by jury of all claims against Defendant alleged herein.
27
28

1 Dated: February 2, 2023

Respectfully submitted,

2 HAMMONDLAW, P.C.

3 
4 Julian Hammond

5 *Attorneys for Plaintiff and the Putative Class*