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County of San Diego
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Clerk of the Superior Court
By G. Lopez ,Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

JONATHAN ARIAS, on behalf of other similarly situated and the State of California under the Private Attorneys General Act,

Plaintiff,

vs.

THE INSTITUTE FOR EFFECTIVE EDUCATION and DOES 1 through 50, inclusive,

Defendants.

Case No. 25CU021078C

Hon. Richard S. Whitney
Dept. 68

CLASS ACTION

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT

1. Failure to Pay All Wages Owed
2. Failure to Pay All Overtime Wages
3. Meal Period Violations
4. Untimely Payment of Wages
5. Wage Statement Violations
6. Waiting Time Penalties
7. Unfair Competition
8. Civil Penalties under the Private Attorneys General Act (Labor Code §§ 2698 *et seq.*)

Action Filed: April 23, 2025

Plaintiff JONATHAN ARIAS, on behalf of all other similarly situated and aggrieved employees and the State of California under the Private Attorneys General Act ("Plaintiff") brings this FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT against Defendants THE INSTITUTE FOR EFFECTIVE EDUCATION and DOES 1 through 50, inclusive (collectively "Defendants"), alleging as follows:

INTRODUCTION

1. Plaintiff brings the instant class action on behalf of himself and similarly situated current and former employees of Defendants for a series of systemic violations of the California Labor Code and IWC Wage Orders.

2. Defendants failed to pay Plaintiff and the class members for all regular and overtime hours due to their policy and practice and requiring Plaintiff and the class members to work through their meal periods.

3. Defendants' employment policies, practices, and payroll administration systems enabled and facilitated these violations on a company-wide basis with respect to the class members. Plaintiff seeks to recover damages, wages, interest, and penalties, in addition to attorneys' fees and costs, according to proof.

JURISDICTION & VENUE

4. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the California Constitution as the causes of action are premised upon violations of California law.

5. The monetary damages and restitution sought exceed the minimal jurisdiction limits of the Superior Court.

6. This Court has jurisdiction over Defendants because, upon information and belief, Defendants have sufficient minimum contacts in California, or otherwise intentionally avail themselves to the California economy so as to render the exercise of jurisdiction over them by the California courts consistent with traditional notions of fair play and substantial justice.

7. Venue is proper in this Court under Code of Civil Procedure sections 393(a), 395, and/or 395.5 because, upon information and belief, Defendants conducted business and committed some of the alleged violations in this County.

PARTIES

A. Plaintiff Jonathan Arias

8. Plaintiff Arias is an individual over 18 years of age who worked for Defendants in California as a non-exempt employee from about March 2024 to December 2024. Plaintiff worked as a Paraprofessional Teacher.

9. The State of California, via the Labor and Workforce Development Agency ("LWDA"), is the real party in interest in this action. (*Kim v. Reins Int'l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The "government entity on whose behalf the plaintiff files suit is always the real party in interest."]). To the extent permitted by law, including pursuant *Balderas v. Fresh Start Harvesting, Inc.* (2024) 101 Cal. App. 5th 533 and *Rodriguez v. Packers Sanitation Services Ltd*. (Feb. 26, 2025, D083400) ___ Cal.Rptr.3d ___ [2025 WL 615064], the PAGA claim is brought exclusively as a representative action and does not include arbitrable claims.

B. Defendants

10. Defendant The Institute for Effective Education is a California corporation that maintains operations and conducts business throughout the State of California, including in this county.

11. The true names and capacities, whether individual, corporate, or otherwise, of the parties sued as DOES 1 through 50, are presently unknown, unascertainable, or uncertain, and are sued by such fictitious names under Code of Civil Procedure section 474. Upon information and belief, each of DOES 1 through 50 constitutes a legal employer or is otherwise legally responsible in some manner for the acts and omissions alleged herein. This Complaint may be amended to reflect their true names and capacities once ascertained.

12. Upon information and belief, Defendants in this action are employers, co-employers, joint employers, and/or part of an integrated employer enterprise, as each of the Defendants exercised control over the wages, hours, and working conditions of the employees, suffered and permitted them to work, and otherwise engaged them as employees under California law.

13. Upon information and belief, at least some of the Defendants have common ownership, common management, interrelationship of operations, and centralized control over labor relations and

are therefore part of an integrated enterprise and thus jointly and severally responsible for the acts and omissions alleged herein, including pursuant to Labor Code sections 558, 558.1, and 1197.1.

14. Upon information and belief, Defendants acted in all respects pertinent to this action as an alter-ego, agent, servant, joint employer, joint venturer, co-conspirator, partner, in an integrated enterprise, or in some other capacity on behalf of all other co-defendants, such that the acts and omissions of each defendant may be legally attributable to all others.

CLASS ALLEGATIONS

15. This action is brought individually and on behalf of the following class pursuant to Code of Civil Procedure section 382:

a. All current and former non-exempt employees who worked for Defendants in California at any time from four years (plus the additional 178-day statutory tolling period under Emergency Rule 9) prior to the filing of this action through date of class certification.

16. Plaintiff reserves the right to establish various subclass definitions as appropriate at the class certification stage, according to proof.

17. The class is ascertainable and shares a well-defined community of interest in this litigation:

a. Numerosity: The class is estimated to exceed 50 individuals, although the precise membership of the entire class is unknown at this time. The class is so numerous that joinder of all class members is impracticable. The identities of class members are ascertainable by inspection of Defendants' employment and payroll records.

b. Typicality: Plaintiff's claims are typical of the claims of the other class members. They were subject to the same policies and practices of Defendants, which resulted in losses to the class. Proof of common unlawful business practices, which Plaintiff experienced, will establish the right of the class to recover on the causes of action alleged herein.

c. Adequacy: Plaintiff is an adequate class representative; will take all necessary steps to protect the class members' interests adequately and fairly; has no interest antagonistic to other class members; and is represented by attorneys who have substantial experience prosecuting, defending, resolving, and litigating wage and hour class, collective, and representative actions in California state and federal courts.

d. Superiority: A class action is superior to other means for adjudicating this dispute. Individual joinder is impractical. Class treatment will allow for common issues to be resolved in a single forum, simultaneously, and without duplication of effort and expense.

e. Public Policy Considerations: Certification of this lawsuit as a class action advances the State of California's strong public interest in ensuring its approximately millions of employed residents are properly paid the wages they earned for the hours they worked. Class actions provide a mechanism for enforcement of labor laws and allow for vindication of employee rights by unnamed class members.

18. Common questions of law and fact as to the class members predominate over questions affecting only individual members. The common questions of law and fact exist as to whether the employment policies and practices formulated by Defendants and applied to the class members constitute violations of California law.

GENERAL ALLEGATIONS

19. Defendants engaged in an unlawful policy and practice of requiring off-the-clock work. Specifically, Plaintiff and the class members were required to work through their meal periods. Defendants required Plaintiff and the class members to sign an On-Duty Meal Period Agreements that compelled Plaintiff and other similarly-situated employees to supervise their students at all times. As result, Plaintiff and other similarly-situated employees were unable to take complaint, off-duty 30 minute-long meal breaks as required under the California law. Rather, they spent their meal breaks supervising their students and assisting them with any needs and issues that arose during that time. In

addition, at all relevant times, Plaintiff and other putative class member were required to remain in close proximity to the students during their lunch breaks in order to assist them as quickly as possible, if needed.

20. Defendants' On-Duty Meal Period Agreement is invalid as to Plaintiff and the putative class members because the nature of their work did not prevent the class members from taking a duty-free meal period. Defendants could have hired additional staff to relieve Plaintiff and other class members from their duties during their meal breaks but it failed to do so. As a result, while Plaintiff and the class members clocked out and in for their meal periods, they were required to eat lunch while supervising the students assigned to them.

21. Defendants failed to pay Plaintiff and the class members' overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages.

22. As stated above, Defendants' failure to pay Plaintiff and the class members for the "minimum wages", Defendants engaged in an unlawful policy and practice of requiring off-the-clock work. Specifically, Defendants required Plaintiff and other class members to work through their lunches while deducting the lunchtime from their daily hours worked. To the extent that these unlawful practices resulted in unpaid hours worked over 8 hours in a day or 40 hours in a week, this resulted in unpaid overtime.

23. Defendants failed to provide complaint meal periods to Plaintiff and the class members. The class members' time records establish meal period liability on their face. Plaintiff's time records show that he often experienced late meal periods. When Defendants did not provide compliant meal periods, Defendants failed to pay Plaintiff and other class members a meal period premium in violation of Labor Code section 226.7. Furthermore, Defendants required Plaintiff and the class members to sign an On-Duty Meal Period Agreements that compelled Plaintiff and other similarly-situated employees to supervise their students at all times. As result, Plaintiff and other similarly-situated employees were unable to take complaint, off-duty 30 minute-long meal breaks as required under the California law. Rather, they spent their meal breaks supervising their students and assisting them with any needs and issues that arose during that time. In addition, at all relevant times, Plaintiff and other

putative class member were required to remain in close proximity to the students during their lunch breaks in order to assist them as quickly as possible, if needed.

24. Defendants' On-Duty Meal Period Agreement is invalid as to Plaintiff and the putative class members because the nature of their work did not prevent the class members from taking a duty-free meal period. Defendants could have hired additional staff to relieve Plaintiff and other class members from their duties during their meal breaks but it failed to do so. As a result, while Plaintiff and the class members clocked out and in for their meal periods, they were required to eat lunch while supervising the students assigned to them.

25. Because Defendants failed to pay all wages in each pay period in which such wages were earned at the lawful rate for overtime, meal premiums and other forms of remuneration, Defendants violated Labor Code section 204 and/or 204b (for weekly employees), which requires timely payment of wages of wages each regular scheduled pay period. Labor Code section 204 requires payment of "all wages" for non-exempt employees at least twice each calendar month. Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides that, "every person who fails to pay the wages of an employee as provided in Section…204…shall be subject to a civil penalty" of $100 for an initial violation and $200 plus 25% of the amount unlawfully withheld for a subsequent violation.

26. As explained above, Defendants underpaid Plaintiff and other class members' regular, overtime, and premium pay. Defendants are separately liable for not paying the full amount owed to Plaintiff and other class members each payday in violation of Labor Code sections 204 and/or 204b.

27. Additionally, because Defendants failed to pay all wages owed to the class members during their employment and meal premiums for missed, short, and late meal breaks as required under the relevant California law, Defendants failed to timely pay all wages owed upon separation of employment in violation of Labor Code sections 201, 202 and 203.

28. Lastly, Plaintiff and other class members cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sowed confusion

among Plaintiff and other class members with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments throughout the relevant period.

FIRST CAUSE OF ACTION

FAILURE TO PAY ALL WAGES OWED

Violation of Labor Code §§ 200, 218, 1194, 1194.2 and 1197

(All Claims Alleged by Plaintiff and Class Members Against All Defendants)

29. All outside paragraphs of this Complaint are incorporated into this section.

30. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§ 200, 218, 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the "Hours and Days of Work" and "Minimum Wages" sections of the applicable orders), which require non-exempt employees be timely paid at least the state or local minimum wage (if higher) for each hour of work, and further provide a private right of action for an employer's failure to pay all minimum wages (plus liquidated damages). In addition to minimum wages, Labor Code § 200 states that "'wages' includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation."

31. Defendants willfully failed in their affirmative obligation to pay Plaintiff and class members at least the lawful minimum wage for each hour worked in violation of Labor Code sections 1182.12, 1194, 1194.2, 1197, 1197.1 and 1198 and the IWC Wage Orders (the "Hours and Days of Work" and "Minimum Wages" sections of the applicable orders), including payment at the lawful local and county minimum wage ordinances in effect. As a result, Defendants are liable for all associated damages, including liquidated damages for the minimum wage violations pursuant to Labor Code § 1194.2.

32. Defendants' unlawful acts and omissions deprived Plaintiff and class members of minimum, regular and overtime wages in amounts to be determined at trial. Plaintiff and class members are entitled to recover the full amount of the unpaid wages, plus liquidated damages in an

amount equal to the wages unlawfully unpaid (and interest thereon), in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code sections 1194 and 1194.2, 218.6 and any other applicable statutes.

<u>SECOND CAUSE OF ACTION</u>

FAILURE TO PAY ALL OVERTIME WAGES

Violation of Labor Code §§ 510 and 1194

33. All outside paragraphs of this Complaint are incorporated into this section.

34. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§ 204, 510, 558, 1194, and 1198, which require non-exempt employees be timely paid overtime wages all overtime hours worked, and which further provide a private right of action for an employer's failure to pay all overtime compensation for overtime hours worked.

35. Defendants failed in their affirmative obligation to pay Plaintiff and class members no less than one and one-half times their respective "regular rate of pay" for all hours worked in excess of eight hours in one day, 40 hours in one week, or the first eight hours worked on the seventh day of work in any one workweek, and no less than twice their respective "regular rate of pay" for all hours over 12 hours in one day and any work in excess of eight hours on any seventh day of a workweek for such hours worked, in violation of Labor Code sections 204, 510, 558, 1194, and 1198 and the IWC Wage Orders (the "Hours and Days of Work" sections of the applicable orders).

36. Plaintiff and class members are entitled to recover the full amount of the unpaid overtime, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to the extent permitted by law.

<u>THIRD CAUSE OF ACTION</u>

MEAL PERIOD VIOLATIONS

Violation of Labor Code §§ 226.7 and 512

37. All outside paragraphs of this Complaint are incorporated into this section.

38. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§ 226.7, 558 and 512, which require non-exempt employees be provided complaint meal periods (or meal period premiums in lieu thereof), and which further provide a private right of action for an

employer's failure to lawfully provide all meal periods and/or pay meal period premiums at the lawful regular rate of compensation.

39. Defendants willfully failed in their affirmative obligation to consistently provide Plaintiff and class members compliant, duty-free meal periods of not less than 30 minutes beginning before the fifth hour of hour for each work period of more than five hours per day and a second duty-free meal period of not less than 30 minutes beginning before the tenth hour of hour of work in violation of Labor Code sections 226.7, 512, 558, 1198 and the IWC Wage Orders (the "Meal Periods" sections of the applicable orders).

40. Further, Defendants willfully failed in their affirmative obligation to consistently pay Plaintiff and class members one additional hour of pay at the respective regular rate of compensation for each workday that a fully compliant meal period was not provided, in violation of Labor Code sections 226.7, 512, 558, and 1198 and the IWC Wage Orders (the "Meal Periods" sections of the applicable orders).

41. Plaintiff and class members are entitled to recover the full amount of the meal period premiums owed, in addition to interest, statutory and civil penalties, and attorneys' fees, and costs to the extent permitted by law.

FOURTH CAUSE OF ACTION

UNTIMELY PAYMENT OF WAGES

Violation of Labor Code §§ 204, 210, 218

42. All outside paragraphs of this Complaint are incorporated into this section.

43. This cause of action is brought pursuant to the IWC Wage Orders and Labor Code §§ 204, 204b, and 210 which require non-exempt employees be timely paid all wages owed each pay period, and which further provide a private right of action for an employer's failure to comply with this obligation. Labor Code § 218 authorizes individuals to sue directly for wages and penalties due under these sections, including Labor Code § 210(c)'s statutory late payment penalties.

44. Defendants willfully failed in their affirmative obligation to timely pay all wages, including paid sick leave and meal and rest premiums, earned by Plaintiff and class members twice during each calendar month on days designated in advance by the employer as regular paydays (for

employees paid on a non-weekly basis) and on the regularly-scheduled weekly payday for weekly employees, if any, in violation of Labor Code sections 204 and 204b and the IWC Wage Orders (the "Minimum Wages" sections of the applicable orders).

45. Plaintiff and class members are entitled to recover the full amount of the unpaid wages, in addition to a statutory penalty in the amount of $100 for the initial violation for each failure to pay each employee and $200 for all subsequent violations and for all willful or intentional violations for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld under provided in Labor Code § 210, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

FIFTH CAUSE OF ACTION

WAGE STATEMENT VIOLATIONS

Violation of Labor Code § 226

46. All outside paragraphs of this Complaint are incorporated into this section.

47. This cause of action is brought by a wage statement subclass pursuant to Labor Code § 226(a) which requires non-exempt employees be provided accurate itemized wage statements each pay period, and which further provide a private right of action for an employer's failure to comply with this obligation.

48. Defendants knowingly and intentionally failed in their affirmative obligation to provide accurate itemized wage statements to Plaintiff and class members resulting in injury to Plaintiff and class members. Specifically, the wage statements issued to Plaintiff and class members did not accurately state each pay period all of the information required by Labor Code § 226(a)(1)-(9).

49. Defendants' unlawful acts and omissions deprived Plaintiff and class members of accurate itemized wage statements, causing confusion and concealing wage and premium underpayments.

50. As a result, Plaintiff and class members are entitled to recover the statutory penalty of $50 per employee for the initial pay period in which a violation occurred and $100 per employee for each violation in a subsequent pay period, up to an aggregate penalty of $4,000 per employee, in addition to interest, attorneys' fees, and costs to the extent permitted by law, including under Labor Code section 226(e).

SIXTH CAUSE OF ACTION

WAITING TIME PENALTIES

Violation of Labor Code §§ 201 *et seq*.

51. All outside paragraphs of this Complaint are incorporated into this section.

52. This cause of action is brought by a waiting time subclass pursuant to Labor Code §§ 201 through 203, which require an employer to timely pay all wages earned upon termination of employment, and which further provide a private right of action to recover statutory waiting time penalties each day an employer fails to comply with this obligation, up to a maximum of 30 days wages.

53. Defendants willfully failed and continue to fail in their affirmative obligation to pay all wages earned and unpaid to Plaintiff and class members immediately upon termination of employment or within 72 hours thereafter for employees who did not provide at least 72 hours prior notice of his or her intention to quit, and further failed to pay those sums for 30 days thereafter in violation of Labor Code sections 201 through 203 and the IWC Wage Orders.

54. Plaintiff and class members are entitled to recover a waiting time penalty for a period of up to 30 days, in addition to interest, attorneys' fees, and costs to the extent permitted by law.

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

Violation of Business and Professions Code §§ 17200 *et seq.*

55. All outside paragraphs of this Complaint are incorporated into this section.

56. Defendants have engaged and continue to engage in unfair and/or unlawful business practices in the State of California in violation of California Business and Professions Code § 17200 by committing the foregoing wage and hour violations alleged throughout this Complaint.

57. Defendants' dependence on these unfair and/or unlawful business practices deprived Plaintiff and continue to deprive other class members of compensation to which they are legally entitled, constitutes unfair and/or unlawful competition, and provides an unfair advantage to Defendants over competitors who have been and/or are currently employing workers in compliance

with California's wage and hour laws. These failures constitute unlawful, deceptive, and unfair business acts and practices in violation of Business and Professions Code section 17200 *et seq.*

58. Plaintiff is a victim of Defendants' unfair and/or unlawful conduct alleged in this Complaint, and Plaintiff, as an individual and on behalf of others similarly situated, seeks full restitution of the moneys as necessary and according to proof to restore all monies withheld, acquired, and/or converted by Defendants pursuant to Business and Professions Code §§ 17203 and 17208.

59. Plaintiff does not have an adequate remedy at law for past or future violations, to the extent the statute of limitations on each of the alleged causes of action do not extend to the four year limitation provided under the UCL or to the extent the underlying Labor Code and IWC Wage Order violations do not provide a private right of action.

60. Plaintiff and class members are entitled to injunctive relief against Defendants, restitution, and other equitable relief to return all funds over which Plaintiff and class members have an ownership interest and to prevent future damage and the public interest under Business and Professions Code § 17200 *et seq.* Plaintiff and class members are further entitled to recover interest, attorneys' fees, and costs to the extent permitted by law, including under Code of Civil Procedure § 1021.5.

EIGHTH CAUSE OF ACTION

CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT

Violation of Labor Code §§ 2698 *et seq.*

(By Plaintiff on Behalf of the State and the Aggrieved Employees Against All Defendants)

61. All outside paragraphs of this Complaint are incorporated into this section.

62. Plaintiff brings this cause of action as a proxy for the State of California on behalf of the following "aggrieved employees" pursuant to the Private Attorneys General Act ("PAGA"), codified as Labor Code section 2698 *et seq.*:

a. All current and former non-exempt employees who worked for Defendants in California at any time from one year prior to the postmark date of the initial PAGA notice through date of trial.

63. Plaintiff reserves the right to amend, supplement, or add to this description of the aggrieved employees, according to proof.

64. The State of California, via the Labor and Workforce Development Agency ("LWDA"), is the real party in interest in this action with respect to this cause of action. (*Kim v. Reins Int'l California, Inc.* (2020) 9 Cal. 5th 73, 81 [The "government entity on whose behalf the plaintiff files suit is always the real party in interest."])

65. Labor Code section 2699(a) provides: "Notwithstanding any other provision of law,, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of the employee and other current or former employees against whom a violation of the same provision was committed pursuant to the procedures specified in Section 2699.3. "

66. Any allegations regarding violations of the IWC Wage Orders are enforceable as violations of Labor Code section 1198, which states: "[t]he employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

67. Labor Code section 2699.3 sets forth the procedure for commencing an action for civil penalties under the PAGA.

68. On or about **April 7, 2025**, Plaintiff paid the requisite PAGA filing fee and provided written notice (by online electronic filing with the LWDA and by certified mail to Defendants) of Defendants' alleged Labor Code violations, including the facts and theories to support the alleged violations.

69. A true and correct copy of Plaintiff's written PAGA notice, entitled "Notice of Labor Code Violations" is attached hereto as Exhibit 1 and incorporated by reference as though fully set forth herein (the "PAGA notice").

70. To date, neither Plaintiff nor Plaintiff's counsel has received a response to Plaintiff's written PAGA notice from the LWDA.

71. Within 33 calendar days of the postmark date of the notice sent by Plaintiff, neither Plaintiff nor Plaintiff's counsel has received written notice by certified mail from any defendant providing a description of any actions taken to cure the alleged violations.

72. Now that at least 65 days have passed from Plaintiff notifying Defendants of these violations, without notice of cure from Defendants or notice from the LWDA of its intent to investigate the alleged allegations and issue the appropriate citations to Defendants, Plaintiff exhausted all prerequisites and commenced this civil action under Labor Code section 2699 *et seq.*

73. As set forth in the PAGA notice attached as Exhibit 1 and incorporated into this Complaint, Defendants committed the following violations and are liable for all corresponding civil penalties:

a. ***Unpaid Hours Worked/Minimum Wage.*** Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders.

b. ***Unpaid Overtime***. Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders.

c. ***Unpaid Meal Period Premium Wages.*** Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders.

d. ***Untimely Payment of Wages During Employment.*** Violation of Labor Code §§ 204, 204b, 210.

e. ***Untimely Payment of Wages Upon Separation of Employment.*** Violation of Labor Code §§ 201, 202, 203, 256.

f. ***Non-Compliant Wage Statements.*** Violation of Labor Code §§ 226, 226.3.

g. ***Failure to Maintain Accurate Records.*** Violation of Labor Code § 1174; IWC Wage Orders.

74. Plaintiff seeks to collect all recoverable civil penalties for the Labor Code violations alleged in this Complaint and the PAGA notice (including amendments thereto) against Defendants pursuant to Labor Code section 2699(a) and (f), in addition to attorneys' fees, costs, and interest to the extent permitted by law, including under Labor Code section 2699(k).

PRAYER

Plaintiff prays for judgment as follows:

a. For certification of this action as a class action;

b. For appointment of Plaintiff as the class representative;

c. For appointment of above-captioned counsel for Plaintiff as Class Counsel;

d. For division of class members into appropriate classes and/or subclasses according to proof;

e. For recovery of all statutory penalties and liquidated damages;

f. For disgorgement of all amounts wrongfully obtained to the extent permitted by law;

g. For restitution and injunctive relief;

h. For attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, including (without limitation) under Labor Code §§ 218.5, 226, 1194, 2802 and Code of Civil Procedure § 1021.5.

i. For recovery of damages in amount according to proof;

j. For all recoverable pre- and post-judgment interest;

k. For this action to be maintained as a representative action under the PAGA;

l. For Plaintiff and counsel of record to be provided with all enforcement capability as if the action were brought by the State of California or the California Division of Labor Enforcement;

m. For recovery of all civil penalties and other recoverable amounts under the PAGA;

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n. For reasonable attorneys' fees and costs of suit, including expert fees, to the extent permitted by law, associated with the PAGA claims pursuant to Labor Code § 2699, and Code of Civil Procedure section 1021.5 and any other applicable sections; and

o. For such other relief the Court deems just and proper.

Dated: June 13, 2025

Ferraro Vega Employment Lawyers, Inc.

Nicholas J. Ferraro

Nicholas J. Ferraro
Lauren N. Vega
Dorota A. James
Attorneys for Plaintiff Jonathan Arias

<u>EXHIBIT 1</u>

Notice of Labor Code Violations

FERRARO VEGA
SAN DIEGO EMPLOYMENT LAWYERS

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April 7, 2025

NOTICE OF LABOR CODE VIOLATIONS
CALIFORNIA LABOR CODE SECTIONS 2698 *et seq*.

VIA EMAIL & CERTIFIED U.S. MAIL
- Electronic Return Receipt -

The Institute for Effective Education
2255 Camino Del Rio South
San Diego, CA 92108

- PAGA Notice & Filing Fee -
Submitted electronically to the California
Labor and Workforce Development Agency
on **12/10/2021**

Dear Labor Enforcement Officer and Company Representatives:

This letter serves as written notice on behalf of Jonathan B. Arias ("Claimant") and other aggrieved employees under California Labor Code section 2699.3 against **The Institute for Effective Education ("TIEE")** ("TIEE" an/or "TIEE.")

If the California Labor and Workforce Development Agency ("LWDA") does not investigate the facts, allegations, and violations set forth in this notice within the statutorily prescribed period under Labor Code section 2699.3, Claimant shall seek and recover civil penalties as a proxy and agent of the State of California on behalf of other aggrieved employees under the California Private Attorneys General Act ("PAGA").

"PAGA allows an 'aggrieved employee'—a person affected by at least one Labor Code violation committed by an employer—to pursue penalties for all the Labor Code violations committed by that employer." *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745, 751; *see also Kim v. Reins International California, Inc.* (2020) 9 Cal.5th73, 79.

FACTUAL STATEMENT

TIEE currently operates five schools in San Diego, California, which serve approximately 400 students from 3.5 to 22 with unique learning needs. TIEE employed individuals like Claimant in the State of California (including San Diego County) in hourly, non-exempt positions where employees are entitled to wage and hour protections under the California Labor Code and IWC Wage Orders.

TIEE engaged, suffered and permitted Claimant and the other "aggrieved employees," as defined below, to work, exercised control over their respective wages, hours, and working conditions, and at all times was an agent and/or ostensible agent of any other employers, and the joint employer of Claimant and other aggrieved employees. TIEE legally employed Claimant and the other aggrieved employees under California law.

Additionally, TIEE and their agents remain liable under Labor Code sections 558, 558.1, 1197.1 and 2699 *et seq.* based on the acts and omissions set forth herein.

Claimant worked for TIEE from March 2024 through December 20, 2024. During that time, Claimant held a position of a paraprofessional teacher. He was classified as a non-exempt employee and was paid an hourly rate of $21.50.

Through this notice, Claimant informs the LWDA of the Labor Code violations set forth herein. The aggrieved employees who Claimant seeks to represent include the following individuals:

> All current and former non-exempt hourly employees who worked for TIEE in the State of California during one-year period preceding the date of this notice through the current date and the date of final judgment in any pending action (the "aggrieved employees" and the "PAGA Period").

Claimant seeks all recoverable civil penalties for TIEE' violations and reserves the right to supplement this notice as further investigation is completed and further facts, witnesses, and violations are uncovered. Claimant reserves the right to narrow the definition of the "aggrieved employees" in the forthcoming civil action.

Unpaid Hours Worked/Minimum Wage
Violation of Labor Code §§ 1194, 1197, 1198; IWC Wage Orders

TIEE violated Labor Code sections 1194, 1197, and 1198, along with the California Minimum Wage Order, the applicable local minimum wage ordinances, and the "Hours and Days of Work" and "Minimum Wages" sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 1194 renders it unlawful for an employee to receive less than the legal minimum wage for hours worked in California. Labor Code section 1197 further mandates that "[t]he minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a lower wage than the minimum so fixed is unlawful." Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The California Minimum Wage Order and the applicable sections of the IWC Wage Orders further require payment of minimum wages for all hours worked. The "Minimum Wages" sections of the applicable IWC Wage Order provide that "[e]very employer shall pay to each employee, on the established payday for the period involved, not less than the applicable minimum wage for all hours worked in the payroll period, whether the remuneration is measured by time, piece, commission, or otherwise." The foregoing California wage laws require payment of "not less than the applicable minimum wage *for all hours worked* in the payroll period" and California law does not allow averaging of pay over the hours worked in the pay period, even if the total pay results in an average above the minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal. App. 3d 314, 324.

TIEE engaged in an unlawful policy and practice of requiring off-the-clock work. Specifically, Claimant and the aggrieved employees were required to work through their meal periods. TIEE required Claimant and the aggrieved employees to sign an On-Duty Meal Period Agreement that erroneously stated that because the students with whom Claimant was scheduled to work require intense supervision and instructions throughout the school day. Pursuant to the On-Duty Meal Period Agreement, Claimant was required to take on-duty meals. TIEE' On-Duty Meal Period Agreement is invalid as to Claimant and the aggrieved employees because the nature of the work did not prevent the aggrieved employees from taking a duty-free meal period. TIEE could have hired additional staff to relieve Claimant and other aggrieved employees during their meal breaks but it failed to do so. As a result, Claimant and the aggrieved employees clocked out for their meal periods, they were required to eat lunch while supervising the students assigned to them.

As a result, Claimant may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

Unpaid Overtime
Violation of Labor Code §§ 510, 1194, 1198; IWC Wage Orders

TIEE violated Labor Code sections 510, 1194, and 1198, along with the "Hours and Days of Work" sections of the applicable IWC Wage Orders with respect to the aggrieved employees.

Labor Code section 510 requires "[a]ny work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee;" and "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 for an employee;" and "any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee." Labor Code section 1194 renders it unlawful for an employee to receive less than the legal overtime rate for overtime hours worked in California. Labor Code section 1198 renders "employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the [IWC Wage Orders]" unlawful. The IWC Wage Orders further require payment of overtime wages for all overtime hours worked, including the "Hours and Days of Work" sections.

TIEE failed to pay Claimant and the aggrieved employees overtime wages and the lawful rate of pay for overtime hours worked, resulting in unpaid overtime wages.

As stated in the section addressing TIEE's failure to pay Claimant and the aggrieved employees for the minimum wages", TIEE engaged in an unlawful policy and practice of requiring off-the-clock work. Specifically, TIEE required Claimant and other aggrieved employees to work through their lunches while deducting the lunchtime from their daily hours worked. To the extent that these unlawful practices resulted in unpaid hours worked over 8 hours in a day or 40 hours in a week, this resulted in unpaid overtime.

Accordingly, Claimant may recover civil penalties as an individual and on behalf of the State of California and the aggrieved employees, up to the maximum amount allowed as set forth under the Labor Code.

<u>Failure to Provide Compliant Meal Periods</u>
Violation of Labor Code §§ 226.7, 512, 1198; IWC Wage Orders

Labor Code section 512 requires that employers provide a 30-minute, uninterrupted meal period after no more than five hours of work and a second meal period after no more than 10 hours of work. *See Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal. 4th 1004, 1049.

Furthermore, Section 11(A) of the IWC wage orders permit on-duty meal periods under certain limited circumstances. The California Supreme Court has held that the on-duty meal period exception is "exceedingly narrow" and applies only when (1) "the nature of the work prevents the employee from being relieved of all duty" and (2) *both* "the employer and employee have agreed, in writing, to the on-duty meal period." *Augustus v. AMB Security Services, Inc*. (2016) 2 Cal. 5th 257, 266-276 (emphasis added). If these two requirements are not met, then the employer owes the employee one hour of premium pay for each non-compliant meal period taken under the purported on-duty meal arrangement. *Naranjo v. Spectrum Security Services, Inc.* (2019) 40 Cal. 5th 444, 459.

TIEE failed to provide compliant meal periods to Claimant and the aggrieved employees. The aggrieved employees' time records establish meal period liability on their face. Claimant's time records show that he often experienced late meal periods. When TIEE did not provide compliant meal periods, TIEE failed to pay Claimant and other aggrieved employees a meal period premium in violation of Labor Code section 226.7. Furthermore, TIEE required Claimant and the aggrieved employees to sign an On-Duty Meal Period Agreement that erroneously stated that because the students with whom Claimant was scheduled to work require intense supervision and instructions throughout the school day. Accordingly, he was required to take on-duty meals. TIEE' On-Duty Meal Period Agreement is invalid as to Claimant and the aggrieved employees because the nature of the work did not prevent the aggrieved employees from taking a duty-free meal period. TIEE could have hired additional staff to release Claimant and other aggrieved employees during their meal and rest breaks but it failed to do so. As such, TIEE are liable for both wages and meal period premiums for any on-duty meal period taken by an aggrieved employee.

As a result, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code § 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

Untimely Payment of Wages During Employment
Violation of Labor Code §§ 204, 204b, 210

TIEE violated Labor Code sections 204 and 204b requiring payment of all wages on regularly scheduled paydays with respect to Claimant and other aggrieved employees by failing to pay all wages owed on the regular pay days scheduled each pay period. To the extent that TIEE made or make any retroactive payments to Claimant or other aggrieved employees, such amounts are untimely in violation of these payday statutes.

Because TIEE failed to pay all wages in each pay period in which such wages were earned at the lawful rate for overtime, meal premiums and other forms of remuneration, TIEE violated Labor Code section 204 and/or 204b (for weekly employees), which requires timely payment of wages of wages each regular scheduled pay period. Labor Code section 204 requires payment of "all wages" for non-exempt employees at least twice each calendar month. Labor Code section 204b applies to employees paid on a weekly basis and also requires the payment for all labor within the required pay periods. Labor Code section 210 provides that, "every person who fails to pay the wages of an employee as provided in Section…204…shall be subject to a civil penalty" of $100 for an initial violation and $200 plus 25% of the amount unlawfully withheld for a subsequent violation.

As explained above, TIEE underpaid Claimant and other aggrieved employees' regular, overtime, and premium pay. TIEE are separately liable for not paying the full amount owed to Claimant and other aggrieved employees each payday in violation of Labor Code sections 204 and/or 204b.

As a result, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code section 2699 ($100/$200) per violation per pay period per employee, Labor Code section 210 ($100/$200) per violation per pay period, along with all other civil penalties permitted by law.

Untimely Payment of Wages Upon Separation of Employment
Violation of Labor Code §§ 201, 202, 203

TIEE violated Labor Code sections 201, 202 and 203 requiring timely payment of all wages upon separation and waiting time penalties in lieu thereof with respect to aggrieved employees by failing to pay all wages and premiums owed upon termination of employment.

Labor Code section 201 requires that if an employer fires an employee, the wages must be paid immediately. Labor Code section 202 requires that if an employee quits without providing 72 hours' notice, his or her wages must be paid no later than 72 hours thereafter. Labor Code section 202 states that if an employee provides 72 hours' notice, the final wages are payable upon his or her final day of employment. Labor Code section 203 requires an employer who fails to comply with Labor Code sections 201 or 202 to pay a waiting time penalty for each employee, up to a period of 30 days.

Because TIEE failed to pay all wages owed to the aggrieved employees during their employment and meal premiums for missed, short, and late meal breaks as required under the relevant California law, TIEE failed to timely pay all wages owed upon separation of employment in violation of Labor Code sections 201, 202 and 203.

As a result, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code § 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

<u>Non-Compliant Wage Statements</u>
Violation of Labor Code §§ 226, 226.3

TIEE violated Labor Code section 226 with respect to Claimant and other aggrieved employees by failing to furnish itemized wage statements each pay period that accurately list all information required by Labor Code section 226(a)(1) through (9).

Labor Code section 226(a) requires an employer to furnish wage statements to employees semimonthly or at the time of each payment of wages, "an accurate itemized statement in writing showing:" (1) gross wages earned, (2) total hours worked, (3) the number of piece rate units earned and applicable piece rate in effect, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the pay period, (7) the name of the employee and last four digits of SSN or an EIN, (8) the name and address of the legal name of the employer, and (9) all applicable hourly rates in effect during the pay period and the number of hours worked at each hourly rate by the employee. [1] An employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of $250 per employee per violation for the initial citation and $1,000 per employee for each violation in a subsequent citation, in addition to other penalties allowed by law.

Throughout the relevant statutory period, as a result of the foregoing violations identified in this notice—unpaid regular and overtime wages, and meal premiums—TIEE violated Labor Code section 226(a)(1) by failing to list employees' "total *hours* worked and the correct "gross wages earned," as the employees earned regular wages, overtime, and premiums, but were instead underpaid, resulting in an inaccurate reflection and recording of "gross wages earned" on those wage statements. TIEE also violated Labor Code section 226(a)(5) with respect to "net wages earned" for the same reasons, as the "net wages earned" are depreciated and underpaid resulting in an inaccurate reflection on the pay stub.

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[1] *See* generally *Lopez v. Friant & Associates, LLC* (2017) 15 Cal. App. 5th 773, 787-88 ("Consistent with the PAGA statutory framework and the plain language of section 226(e), we hold a plaintiff seeking civil penalties under PAGA for a violation of section 226(a) does not have to satisfy the "injury" and "knowing and intentional" requirements of section 226(e)(1)"); *see also See Kastler v. Oh My Green, Inc.* (N.D. Cal., Oct. 25, 2019) Case No. 19-CV-02411-HSG ("Injuries from a failure to provide an accurate pay statement include 'possibility of not being paid overtime, employee confusion over whether they received all wages owed them, difficulty and expense involved in reconstructing pay records, and forcing employees to make mathematical computations to analyze whether the wages paid in fact compensated them for all hours worked") (rejecting *Maldonado* defense for class claims).

Claimant and other aggrieved employees cannot promptly and easily determine from the wage statement alone the wages paid or earned without reference to other documents or information. Indeed, these wage statement violations are significant because they sowed confusion among Claimant and other aggrieved employees with respect to what amounts were owed and paid, at what rates, the number of hours worked, and how those amounts were calculated. The wage statements reflect a false statement of earnings and concealed the underlying problems and underpayments throughout the relevant period.

Thus, Claimant may recover civil penalties on behalf of herself, the State of California and the aggrieved employees as provided under Labor Code sections 226.3 ($250/$1,000) and/or 2699 ($100/$200) per violation per pay period per employee, along with all other civil penalties permitted by law.

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Failure to Maintain Accurate Records
Violation of Labor Code §§ 1174, 1174.5, 1198; IWC Wage Orders

Because of the violations set forth in this notice, including TIEE' failure to accurately maintain records of pay for all hours worked at the appropriate lawful rates of pay, TIEE violated Labor Code section 1174 and the IWC Wage Orders by failing to maintain accurate payroll records showing all hourly rates in effect and hours worked at those rates, and the wages paid to each employee. As a result, TIEE are liable for a civil penalty of $500 per employee to Claimant and each aggrieved employee pursuant to Labor Code section 1174.5.

Attorneys' Fees and Costs
Labor Code § 2699(g)

Claimant was compelled to retain the services of counsel to file this court action to protect her interests, the interests of other aggrieved employees, and the State of California. Claimant has thereby incurred and will continue to incur attorneys' fees and costs, which are recoverable on all PAGA causes of action under Labor Code section 2699(g).

LITIGATION HOLD NOTICE –

This letter imposes a duty upon TIEE and its respective employees, officers, directors, executives, attorneys, human resource and payroll personnel, accountants, and other agents to preserve all physical and electronic evidence, including electronically stored information and emails, which relate to the employment of Claimant and the aggrieved employees specified in this notice. Evidence includes, but is not limited to, TIEE' written employment and payroll policies and handbooks; the aggrieved employees' personnel files and payroll records, such as paystubs, time records, wage statements, compensation reports, as well as the underlying electronically data in Excel or similar format. Memoranda and internal and external correspondence relating to the subject matter of this notice shall also be maintained. Failure to preserve and retain relevant evidence may constitute spoliation of evidence and result in an adverse inference or sanctions.

If you have any questions regarding the scope of your obligations to preserve evidence, please consult your legal counsel and always err on the side of caution. Periodic or regularly scheduled purges or deletions of information covered by this hold must be suspended immediately.

CONCLUSION

If the LWDA does not pursue enforcement, Claimant will bring representative claims on behalf of the State of California and the aggrieved employees seeking all recoverable civil penalties for violations of the Labor Code and the IWC Wage Orders, along with attorneys' fees, costs, interest, and other appropriate relief.

Thank you for your attention to this matter.

Sincerely,

Dorota James

Dorota A. James

Cc Claimant

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