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FILED
Superior Court of California,
County of San Francisco
07/10/2023
Clerk of the Court
BY: MARK UDAN
Deputy Clerk

Attorneys for Plaintiff RAINIE S. WOOTEN,
on behalf of herself and current and former aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN FRANCISCO**

RAINIE S. WOOTEN, on behalf of herself and
current and former aggrieved employees

Plaintiff,

vs.

FIVE KEYS SCHOOLS AND PROGRAMS;
and DOES 1 to 100, inclusive,

Defendants.

Case No.: **CGC-23-607520**

PAGA ACTION

**PLAINTIFF RAINIE S. WOOTEN'S
COMPLAINT FOR:**

- CIVIL PENALTIES PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004
("PAGA"), LABOR CODE
SECTIONS 2698, ET SEQ.**

COMES NOW Plaintiff RAINIE S. WOOTEN ("Plaintiff"), who alleges and complains
against Defendants FIVE KEYS SCHOOLS AND PROGRAMS; and DOES 1 to 100, inclusive
(collectively "Defendants") as follows:

I. INTRODUCTION

1. This is a Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*
("PAGA") representative action brought by Plaintiff on behalf of the State of California, herself
and other current and former aggrieved employees of Defendants who worked as hourly non-

1 exempt employees in California during the relevant time period seeking civil penalties associated
2 with Defendants' violation of the Labor Code based on Defendants' failure to pay wages for all
3 hours worked at minimum wage and all overtime hours worked at the overtime rate of pay; failure
4 to authorize or permit all legally required and/or compliant meal periods or pay meal period
5 premium wages; statutory penalties for failure to provide accurate wage statements; statutory
6 waiting time penalties in the form of continuation wages for failure to timely pay employees all
7 wages due upon separation of employment. Plaintiff seeks on a representative basis, following
8 notice to the Labor and Workforce Development Agency, civil penalties, reasonable attorneys'
9 fees pursuant to Labor Code section 2699(g)(1) and costs brought on behalf of Plaintiff, the State
10 of California, and others aggrieved.

11 **II. JURISDICTION AND VENUE**

12 2. This Court has jurisdiction over the claims of Plaintiff and all other current and
13 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
14 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
15 non-exempt employees, and the State of California in excess of twenty-five thousand dollars
16 (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-
17 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
18 aggrieved California-based hourly non-exempt employees occurred in locations throughout
19 California, including but not limited to San Francisco County, at 70 Oak Grove Street, San
20 Francisco, CA 94107.

21 3. In response to the COVID-19 pandemic, the Judicial Council of California enacted
22 Emergency Rule 9 to the California Rules of Court, which provided that, notwithstanding any
23 other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are
24 tolled from April 6, 2020, until October 1, 2020.

25 **III. PARTIES**

26 4. Plaintiff brings this action as a representative of the Labor and Workforce
27 Development Agency on behalf of herself and other current and former employees subject to
28 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is

1 filed include current, former and/or future employees of Defendants who work, worked, or will
2 work for Defendants as direct employees as well as temporary employees employed through temp
3 agencies as hourly non-exempt employees in California. At all times mentioned herein, the
4 currently named Plaintiff is and was domiciled and a resident and citizen of California and was
5 employed by Defendants in an hourly position at Defendants' location in San Francisco from in or
6 around July 31, 2022, until on or about January 10, 2023.

7 5. Plaintiff is informed and believes and thereon alleges that Defendant FIVE KEYS
8 SCHOOLS AND PROGRAMS is authorized to do business within the State of California and is
9 doing business in the State of California and/or that Defendants DOES 1-50 are, and at all times
10 relevant hereto were persons acting on behalf of Defendant FIVE KEYS SCHOOLS AND
11 PROGRAMS in the establishment of, or ratification of, the aforementioned illegal wage and hour
12 practices or policies. Defendant FIVE KEYS SCHOOLS AND PROGRAMS operates in San
13 Francisco County and employed Plaintiff and aggrieved employees in San Francisco County,
14 including but not limited to, at 70 Oak Grove Street, San Francisco, CA 94107.

15 6. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
16 through 50 are corporations, or are other business entities or organizations of a nature unknown to
17 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
18 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and
19 working conditions of employment of Plaintiff and aggrieved employees.

20 7. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51
21 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued
22 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
23 supervisor, independent contractor and/or employee of each defendant who violated or caused to
24 be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of
25 the Industrial Welfare Commission's wage orders regulating hours and days of work.

26 8. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff
27 sues said defendants by said fictitious names, and will amend this complaint when the true names
28 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as

1 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
2 named defendants is in some manner responsible for the events and allegations set forth in this
3 complaint.

4 9. Plaintiff makes the allegations in this complaint without any admission that, as to
5 any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and
6 Plaintiff reserves all of Plaintiff's right to plead in the alternative.

7 **FIRST CAUSE OF ACTION**

8 **CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF**
9 **2004, LABOR CODE SECTIONS 2698, ET SEQ.**

10 **(Against all Defendants by Plaintiff)**

11 10. Plaintiff incorporates all paragraphs above as though fully set forth herein.

12 11. During the period beginning one (1) year preceding Plaintiff sending the initial
13 PAGA Claim Notice to the LWDA to the present, Defendants violated Labor Code sections 201,
14 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, and the applicable Wage Orders.

15 12. Specifically, Defendants have committed the following violations of California
16 Labor Code:

17 13. **Failure to pay wages for all hours worked at the legal minimum wage:**
18 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
19 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
20 which includes all time that an employee is under control of the employer and all time the
21 employee is suffered and permitted to work. This includes the time an employee spends, either
22 directly or indirectly, performing services which inure to the benefit of the employer.

23 14. Labor Code sections 1194 and 1197 require an employer to compensate employees
24 for all "hours worked" at least at a minimum wage rate of pay as established by the IWC and the
25 Wage Orders.

26 15. In this case, Plaintiff and other current and former aggrieved California-based
27 hourly non-exempt employees worked more minutes per shift than Defendants credited them with
28 having worked. Specifically, Defendants failed to pay Plaintiff and other current and former

1 aggrieved California-based hourly non-exempt employees all wages at the applicable minimum
2 wage for all hours worked due to Defendants' policies, practices, and/or procedures including, but
3 not limited to:

4 (a) During the COVID-19 pandemic, every Wednesday, Defendant required Plaintiff
5 and other current and former aggrieved California-based hourly non-exempt employees to take
6 COVID-19 tests off-the-clock, wait for their results, and transmit their results to Defendant's
7 Human Resources Department prior to clocking-in or the start of their shift;

8 (b) Later during the COVID pandemic, Defendant required Plaintiff and other current
9 and former aggrieved California-based hourly non-exempt employees to receive a COVID-19
10 vaccination while off-the-clock, which consisted of three separate injections during three separate
11 visits without paying them for that time; and

12 (c) Requiring Plaintiff and other current and former aggrieved California-based hourly
13 non-exempt employees to remain on-duty during their off-the-clock meal breaks because Plaintiff
14 and other current and former aggrieved California-based hourly non-exempt employees were
15 required to keep their employer-issued walkie-talkie on them at all times during their shift to
16 monitor and respond to calls from Defendant, including during their off-the-clock meal breaks.

17 16. Therefore, Defendants suffered, permitted, and required Plaintiff and other current
18 and former aggrieved California-based hourly non-exempt employees to be subject to Defendants'
19 control without paying wages for that time. This resulted in Plaintiff and other current and former
20 aggrieved California-based hourly non-exempt employees working time for which they were not
21 compensated any wages, in violation of Labor Code sections 1194 and 1197 and the applicable
22 Wage Order.

23 17. **Failure to pay wages for overtime hours worked at the overtime rate of pay:**
24 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
25 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
26 which includes all time that an employee is under control of the employer and all time the
27 employee is suffered and permitted to work. This includes the time an employee spends, either
28 directly or indirectly, performing services that inure to the benefit of the employer.'

1 18. Labor Code sections 510 and 1194 require an employer to compensate employees a
2 higher rate of pay for hours worked in excess of eight (8) hours in a workday, in excess of forty
3 (40) hours in a workweek, and on any seventh consecutive day of work in a workweek:

4 Any work in excess of eight (8) hours in one workday, any work in excess of forty (40)
5 hours in any one (1) workweek, and the first eight (8) hours worked on the seventh day of
6 work in any one (1) workweek, shall be compensated at the rate of no less than one-and-
7 one-half (1.5) times the regular rate of pay for an employee. Any work in excess of twelve
8 (12) hours in one (1) day shall be compensated at the rate of no less than twice the regular
9 rate of pay for an employee. In addition, any work in excess of eight (8) hours on any
10 seventh day of a workweek shall be compensated at the rate of no less than twice the
11 regular rate of pay of an employee.

12 Labor Code section 510.

13 19. In this case, Defendants failed to pay Plaintiff and other current and former
14 aggrieved California-based hourly non-exempt employees overtime wages for all overtime hours
15 worked due to Defendants' policies, practices, and/or procedures including, but not limited to:

16 (a) During the COVID-19 pandemic, every Wednesday, Defendant required Plaintiff
17 and other current and former aggrieved California-based hourly non-exempt employees to take
18 COVID-19 tests off-the-clock, wait for their results, and transmit their results to Defendant's
19 Human Resources Department prior to clocking-in or the start of their shift;

20 (b) Later during the COVID pandemic, Defendant required Plaintiff and other current
21 and former aggrieved California-based hourly non-exempt employees to receive a COVID-19
22 vaccination while off-the-clock, which consisted of three separate injections during three separate
23 visits without paying them for that time; and

24 (c) Requiring Plaintiff and other current and former aggrieved California-based hourly
25 non-exempt employees to remain on-duty during their off-the-clock meal breaks because Plaintiff
26 and other current and former aggrieved California-based hourly non-exempt employees were
27 required to keep their employer-issued walkie-talkie on them at all times during their shift to
28 monitor and respond to calls from Defendant, including during their off-the-clock meal breaks.

 20. Overtime is based upon an employee's regular rate of pay. "The regular rate at
which an employee is employed shall be deemed to include all remuneration for employment paid
to, or on behalf, of the employee." See Division of Labor Standards Enforcement – Enforcement

1 Policies and Interpretations Manual, Section 49.1.2.

2 21. In this case, Plaintiff alleges that when she and other current and former aggrieved
3 California-based hourly non-exempt employees earned overtime wages, Defendants failed to pay
4 them overtime wages at the proper overtime rate of pay due to Defendants' failure to include all
5 remuneration when calculating the overtime rate of pay. Specifically, Defendants maintained a
6 policy, practice, and/or procedure of failing to include all remuneration such as "healthcare worker
7 bonus pay" and "appreciation pay," for example, when calculating Plaintiff's and other current
8 and former aggrieved California-based hourly non-exempt employees regular rate of pay for the
9 purpose of paying overtime wages.

10 22. The foregoing policies, practices, and/or procedures resulted in time during each
11 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
12 employees were under the control of Defendants but were not compensated. To the extent that the
13 foregoing uncompensated time occurred when Plaintiff and other current and former aggrieved
14 California-based hourly non-exempt employees worked more than eight (8) hours in a workday,
15 more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, Defendants failed
16 to pay them at their overtime rate of pay for overtime hours worked, in violation of Labor Code
17 sections 510 and 1194 and the applicable Wage Order.

18 23. **Failure to pay wages to hourly non-exempt employees for workdays that**
19 **Defendants failed to provide legally required and compliant meal periods:** Plaintiff and other
20 current and former aggrieved California-based hourly non-exempt employees regularly worked
21 shifts of more than five (5) hours in length and shifts of more than ten (10) hours in length.

22 24. California law requires an employer to authorize or permit an employee an
23 uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of
24 all duties and the employer relinquishes control over the employee's activities prior to the
25 employee's sixth hour of work. Labor Code sections 226.7, 512; Wage Order 4 at §11; *Brinker*
26 *Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an
27 employee for a work period of more than ten (10) hours per day without providing the employee
28 with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh

1 hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period
2 shall be considered an “on duty” meal period and counted as time worked. A paid “on duty” meal
3 period is only permitted when: (1) the nature of the work prevents an employee from being
4 relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

5 25. If an employer fails to provide an employee a meal period in accordance with the
6 law, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of pay
7 for each workday that a legally required and compliant meal period was not provided. Labor Code
8 section 226.7; Wage Order 4 at §11.

9 26. In this case, Defendants failed to authorize or permit legally required and compliant
10 meal periods to Plaintiff and other current and former aggrieved California-based hourly non-
11 exempt employees due to Defendants’ policies, practices, and/or procedures, including but not
12 limited to:

13 (a) Requiring Plaintiff and other current and former aggrieved California-based hourly
14 non-exempt employees to remain on-duty during their off-the-clock meal breaks because Plaintiff
15 and other current and former aggrieved California-based hourly non-exempt employees were
16 required to keep their employer-issued walkie-talkie on them at all times during their shift to
17 monitor and respond to calls from Defendant, including during their off-the-clock meal breaks.

18 27. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
19 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
20 based hourly non-exempt employees one (1) hour of pay at their regular rate of pay for each
21 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
22 employees did not receive legally required and compliant meal periods, in violation of Labor Code
23 section 226.7.

24 28. Finally, on occasions when Defendant paid Plaintiff and other current and former
25 aggrieved California-based hourly non-exempt employees a “premium” wage for late, missed,
26 short, on-premise, on-duty, and/or interrupted meal periods, Defendant failed to pay the one (1)
27 additional hour of pay at Plaintiff and other current and former aggrieved California-based hourly
28 non-exempt employees regular rate of compensation. Specifically, Defendant maintained a policy,

1 practice, and/or procedure of failing to include all remuneration such as “healthcare worker bonus
2 pay” and “appreciation pay,” for example, when calculating Plaintiff and other current and former
3 aggrieved California-based hourly non-exempt employees regular rate of compensation for the
4 purpose of paying meal period premium wages.

5 29. Defendants’ foregoing policies, practices, and/or procedures resulted in Plaintiff
6 and other current and former aggrieved California-based hourly non-exempt employees not
7 receiving wages to compensate them for workdays during which Defendants did not provide them
8 with meal periods in compliance with California law..

9 30. **Failure to timely pay earned wages during employment:** In California, wages
10 must be paid at least twice during each calendar month on days designated in advance by the
11 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages
12 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the
13 16th and the 26th day of that month and wages earned between the 16th and the last day,
14 inclusive, of any calendar month must be paid between the 1st and 10th day of the following
15 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be
16 paid within seven (7) calendar days following the close of the payroll period in which wages were
17 earned. Labor Code section 204(d).

18 31. As a derivative of Plaintiff’s claims above, Plaintiff alleges that Defendants failed
19 to timely pay Plaintiff’s and other current and former aggrieved California-based hourly non-
20 exempt employees’ earned wages (including minimum wages, overtime wages, and/or meal period
21 premium wages), in violation of Labor Code section 204. Defendants’ aforementioned policies,
22 practices, and/or procedures resulted in their failure to pay Plaintiff’s and other current and former
23 aggrieved California-based hourly non-exempt employees’ their earned wages within the
24 applicable time frames outlined in Labor Code section 204.

25 32. **Failure to provide complete and accurate wage statements:** Labor Code section
26 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an
27 employee his or her wages, the employer must “furnish each of his or her employees ... an
28 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the

1 employee, except for any employee whose compensation is solely based on a salary and who is
2 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
3 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
4 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
5 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
6 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
7 name of the employee and his or her social security number, (8) the name and address of the legal
8 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
9 the corresponding number of hours worked at each hourly rate by the employee.”

10 33. As a derivative of Plaintiff’s allegations above, Defendants’ failure to pay Plaintiff
11 and other current and former aggrieved California-based hourly non-exempt employees all wages
12 earned (including minimum wages, overtime wages, and/or meal period premium wages) rendered
13 Plaintiff’s and other current and former aggrieved California-based hourly non-exempt employees’
14 wage statements inaccurate, in violation of Labor Code section 226.

15 34. **Failure to pay employees all wages due at time of termination/resignation:** An
16 employer is required to pay all unpaid wages timely after an employee’s employment ends. The
17 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
18 hours of resignation (Labor Code section 202).

19 35. As a derivative of Plaintiff’s allegations above, because Defendants failed to pay
20 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
21 all their earned wages (including minimum wages, overtime wages, and/or meal period premium
22 wages), Defendants failed to pay those employees timely after each employee’s termination and/or
23 resignation, in violation of Labor Code sections 201, 202, and 203.

24 36. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved
25 employee, on behalf of himself or herself and other current or former employees, to bring a civil
26 action to recover civil penalties against all Defendants pursuant to the procedures specified in
27 Labor Code section 2699.3.

28 37. Plaintiff has complied with the procedures for bringing suit specified in Labor

1 Code section 2699.3. On May 5, 2023, Plaintiff filed a PAGA Claim Notice with the LWDA and
2 provided notice to Defendants by certified mail which provided notice of the specific provisions of
3 the Labor Code alleged to have been violated, including the facts and theories to support the
4 violations alleged.

5 38. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
6 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
7 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
8 parties notice within 60 days of the date of Plaintiff's PAGA Claim Notice that the LWDA intends
9 to investigate Plaintiff's claims.

10 39. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
11 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 510,
12 512, 1194, 1197, beginning one (1) year preceding Plaintiff sending the initial PAGA Claim
13 Notice to the LWDA to the present, in the following amounts:

14 a. For violations of Labor Code sections 201, 202, 203, 204, 226.7, 512 one
15 hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and
16 two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent
17 violation [penalty amounts established by Labor Code section 2699(f)(2)].

18 b. For violations of Labor Code section 226, two hundred fifty dollars (\$250)
19 for each employee for each pay period for the initial violation, and for each subsequent violation,
20 one thousand dollars (\$1000) for each underpaid employee for each pay period [penalty amounts
21 established by Labor Code section 226.3].

22 c. For violations of Labor Code section 510, fifty dollars (\$50) for each
23 employee for each pay period for the initial violation, and for each subsequent violation, one
24 hundred dollars (\$100) for each underpaid employee for each pay period [penalty amounts
25 established by Labor Code section 558].

26 d. For violations of Labor Code section 1194 and 1197, one hundred dollars
27 (\$100) for each underpaid employee for each pay period for the initial violation, and for each
28 subsequent violation, two hundred fifty dollars (\$250) for each underpaid employee for each pay

1 period [penalty amounts established by Labor Code section 1197.1].

2 40. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of
3 reasonable attorneys' fees and costs in connection with her claims for civil penalties.

4 **PRAYER FOR RELIEF**

5 **WHEREFORE, PLAINTIFF, ON BEHALF OF HERSELF AND ON OTHER**
6 **AGGRIEVED EMPLOYEES, PRAYS AS FOLLOWS:**

7 **ON THE FIRST CAUSE OF ACTION:**

8 1. That Defendants be found to have violated the provisions of the Labor Code and
9 the IWC Wages Orders as to the Plaintiff and aggrieved employees;

10 2. For any and all legally applicable penalties during the relevant statute of limitations
11 subject to any permissible tolling, including but not limited to those recoverable under the
12 California Labor Code, including but not limited to section 2699(f);

13 3. For attorneys' fees and costs of suit, including but not limited to those recoverable
14 under California Labor Code section 2699(g); and

15 4. For such and other further relief, in law and/or equity, as the Court deems just or
16 appropriate

17
18 Dated: July 10, 2023

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP

19
20 By:



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