BOKHOUR LAW GROUP, P.C.
Mehrdad Bokhour, Esq., CA Bar No. 285256
mehrdad@bokhourlaw.com
1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067
Tel: (310) 975-1493; Fax: (310) 675-0861

FALAKASSA LAW, P.C.
Joshua S. Falakassa, CA Bar No. 295045
josh@falakassalaw.com
1901 Avenue of the Stars, Suite 450
Los Angeles, California 90067
Tel: (818) 456-6168; Fax: (888) 505-0868

Attorneys for Plaintiff and the Aggrieved Employees,

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County of Alameda
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA

ALEXANDRA SANTOS, on behalf of herself, other Aggrieved Employees, and the State of California, Plaintiff, v. GALILEO LEARNING, LLC, a California Limited Liability Company; and DOES 1-50, inclusive. Defendants.	CASE NO.: 24CV076353 **REPRESENTATIVE ACTION COMPLAINT:** (1) **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698 *et seq.*)** **UNLIMITED CIVIL CASE**

Plaintiff Alexandra Santos ("Plaintiff"), on behalf of herself, other Aggrieved Employees, and the State of California, hereby brings this PAGA Representative Action Complaint ("Complaint") against Defendant Galileo Learning, LLC ("Defendant") and DOES 1 to 50 (collectively, "Defendants") and each of them, as follows:

INTRODUCTION

1. Defendant specializes in educational programs and camps throughout the State of California.

2. Plaintiff brings this PAGA representative action against Defendants for alleged violations of the California Labor Code and applicable Wage Orders.

3. By this instant action, Plaintiff does not seek to recover anything other than penalties as permitted by California Labor Code § 2699.

4. The "PAGA Period" as used herein, is defined as the period from September 25, 2022, to the present and ongoing.

5. This PAGA action is brought on behalf of Plaintiff, the State of California as private attorney general, and on behalf of the following aggrieved employees: All individuals who are or were employed by Defendant Galileo Learning, LLC as non-exempt employees in California during the PAGA Period (the "Aggrieved Employees").

6. As set forth below, Plaintiff alleges that Defendant did not pay for all hours worked due to its unlawful rounding policy/practice. Plaintiff further alleges that Defendant uniformly failed to pay split shift premiums due. Next, Plaintiff alleges that Defendant failed to pay all overtime and sick pay wages at the proper legal rates by failing to properly calculate the "regular rate of pay."

7. Moreover, Plaintiff alleges that Defendant's meal and rest period policies and practices failed to allow and permit Aggrieved Employees to take all compliant and timely meal and rest periods or pay premium wages at the "regular rate of pay" in lieu thereof. As a result, Plaintiff alleges that Defendant failed to provide Aggrieved Employees with accurate written itemized wage statements in violation of Labor Code § 226(a) and failed to timely pay all final wages upon separation of employment in violation of Labor Code §§ 201-203. Finally, Plaintiff alleges that Defendant uniformly failed to reimburse for all necessary business expenses.

JURISDICTION

8. Plaintiff, on behalf the State of California brings this representative action pursuant to Labor Code § 2699, *et seq*. seeking penalties for Defendant's violation of California Labor Code §§ 201-204, 210, 226(a), 226(a)(6), 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 1194, 1197.1, 1199, 2802-2804, and applicable Industrial Welfare Commission Wage Orders ("Wage Orders").

9. Based upon the foregoing, Plaintiff and all Aggrieved Employees are aggrieved employees within the meaning of Labor Code §2699, *et seq*.

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

VENUE

11. Venue is proper in this judicial district pursuant to California Code of Civil Procedure §§ 395(a) and 395.5, as most of the acts and omissions complained of herein occurred in the County of Alameda. Defendant owns, maintains offices, transacts business, has an agent or agents within the County of Alameda, and/or otherwise is found within the County of Alameda, and Defendant is within the jurisdiction of this Court for purposes of service of process.

PARTIES

12. At all relevant times herein, Plaintiff, who is over 18, was and currently is a California resident residing in the State of California.

13. Plaintiff is informed, believes, and alleges that Defendants are authorized to do business within the County of Alameda and is and/or was the legal employer of Plaintiff and the Class Members during the applicable statutory periods. Plaintiff was, and is, a victim of Defendants' policies and/or practices complained of herein and has been deprived of the rights guaranteed to her by California Labor Code §§ 201-203, 204, 210, 221, 226(a), 226(e), 226.3, 226.7, 227.3, 246, 510, 512, 516, 1174, 1174.4, 1199, 2802-2804, and applicable Wage Orders.

14. Plaintiff is informed and believes, and based thereon alleges, that during the four years preceding the filing of the Complaint and continuing to the present, Defendants did (and continue to

do) business in the State of California, County of Alameda.

15. Plaintiff does not know the true names or capacities, whether individual, partner, or corporate, of the Defendants sued herein as DOES 1 to 50, inclusive, and for that reason, said Defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to amend this Complaint when such true names and capacities are discovered. Plaintiff is informed, and believes, and thereon alleges, that each of said fictitious Defendants, whether individual, partners, or corporate, were responsible in some manner for the acts and omissions alleged herein, and proximately caused Plaintiff and the Classes to be subject to the unlawful employment practices alleged herein.

16. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned herein, Defendants were and are the employers of Plaintiff and all members of the Classes. At all times herein mentioned, each of said Defendants participated in the acts hereinafter alleged to have been done by the named Defendants. Furthermore, the Defendants, and each of them, were the agents, servants, and employees of each and every one of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting within the course and scope of said agency and employment. Defendants, and each of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or omissions complained of herein.

17. At all times mentioned herein, Defendants and each of them were members of and engaged in a joint venture, partnership, and common enterprise and acting within the course and scope of and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and aggrieved employees.

REPRESENTATIVE ACTION ALLEGATIONS

18. Defendant specializes in educational programs and camps throughout the State of California.

19. Plaintiff was employed by Defendant as a non-exempt employee with the title of "Camp Director." Plaintiff began working for Defendant on March 15, 2023, until her separation from employment on or about June 9, 2023.

20. Plaintiff and other Aggrieved Employees (including, but not limited to, Program Assistants, Educators, Assistants, Staff, and all other non-exempt positions) were responsible for all aspects of Defendant's business in California. However, in these roles, Plaintiff and Aggrieved Employees were often not afforded all protections and rights conferred under the California Labor Code and applicable Wage Orders.

21. At all relevant times, Plaintiff and other Aggrieved Employees regularly worked various shifts, many of which were in excess of 8.0 hours in a workday and 40.0 hours in a workweek. Plaintiff alleges that other Aggrieved Employees were also subjected to the same policies, procedures, practices, working conditions, and corresponding wage and hour violations to which she was subjected during her employment.

22. First, at all relevant times, Defendant has had a consistent practice of unevenly rounding Plaintiff's and other Aggrieved Employees' time entries, failing to pay all hours worked. As a result of this practice, Plaintiff and other Aggrieved Employees are not compensated for all the hours that they work and all the overtime hours they work, in violation of Cal. Labor Code §§ 204, 210. 510, 1194, 1197.1, 1199, and applicable Wage Orders.

23. The Court in *See's Candy Shops v. Superior Court* (2012) 210 Cal.App.4th 889, 907, held that rounding time policies can be lawful "if the rounding policy is fair and neutral on its face and 'it is used in such a manner that it will not result, over a period of time, in failure to compensate the employees properly for all the time they have actually worked,' (29 C.F.R. § 785.48; see DLSE Manual, supra, §§ 47.1, 47.2.)."

24. Here, Defendant's time recording practice is not neutral on its face or in the application as Plaintiff and other Aggrieved Employees are subject to discipline, including termination for being tardy in reporting to work or returning from a meal or rest period. Moreover, because Defendant can track the time worked by non-exempt employees to the minute, the practice exists not for the convenience or benefit of the employees who are trying to report their time worked accurately but for Defendant's benefit. As a result of the unlawful time recording practice, Plaintiff and other Aggrieved Employees were not paid for all hours worked, including all minimum wages and overtime wages for hours worked in excess of eight hours per shift.

25. As a result of this rounding practice, over a period of time, Plaintiff and other Aggrieved Employees were also not properly paid for all hours worked, including overtime hours, in violation of Labor Code §§ 204, 510, 1194, 1197.1, 1199, and applicable Wage Orders.

26. Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed by an applicable state or local law or by order of the commission a civil penalty, restitution of wages, and liquidated damages as follows: (1) for any initial violation that is intentionally committed, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee is underpaid....[and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty dollars ($250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed.

27. Labor Code § 510 requires an employer to compensate an employee who works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours worked on the seventh consecutive day, no less than one and one-half times (11/2) the regular rate of pay. In addition, Labor Code § 510 obligates employers to compensate employees at no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a workday or more than eight (8) hours on the seventh consecutive day of work. Pursuant to Section 3 of the applicable Wage Orders, non-exempt employees shall not be employed more than eight (8) hours in any workday or more than 40 hours in any workweek unless the employee receives one and one-half (11/2) times such employee's regular rate of pay for all hours worked over 40 hours in the workweek.

28. As set forth above, Defendant failed to compensate Plaintiff and other Aggrieved Employees for all hours worked, including all minimum and overtime wages, by failing to properly record and pay non-exempt employees for all hours worked, including all minimum and overtime wages in violations of Labor Code §§ 204, 210, 510, 1194, 1197.1, 1199, and applicable Wage Orders.

29. Next, at all relevant times, Plaintiff and other Aggrieved Employees were not properly paid at the correct overtime rate for all hours worked in excess of eight (8) hours per workday and/or forty (40) hours per workweek. While Plaintiff and other Aggrieved Employees regularly worked overtime hours, they were not compensated at one and one-half times their "regular rate of pay"

because Defendant failed to include all forms of compensation, including but not limited to, non-discretionary bonuses, stipends, commissions, incentives, and other forms of remuneration when calculating the "regular rate of pay" used in payment of overtime wages.

30. Under the California Labor Code (as well as the FLSA), courts have held that regularly paid non-discretionary Shift Premium Pay/Bonuses must be included in determining an employee's "regular rate of pay" for purposes of calculating overtime. (*See Haber v. The Americana Corp*. 378 (9th Cir. 1967) F. 2d 854, 855-856 [holding that regularly paid efficiency bonuses must be included in calculating the "regular rate"]; *Wang v. Chinese Daily News, Inc*. (C.D. Cal. 2006) 435 F. Supp. 2d 1042, 1055-1057 [granting summary judgment to Plaintiff under California and federal law on the grounds that Defendant improperly calculated overtime by excluding annual bonuses paid to employees from the "regular rate of compensation"]; see *Walling v. Youngerman-Reynolds Hardwood Co*. (1945) 65 S.Ct. 1242, 1245. ("The regular rate by its very nature must reflect all payments which the parties have agreed shall be received regularly during the workweek, exclusive of overtime payments. It is not an arbitrary label chosen by the parties; it is an actual fact. Once the parties have decided upon the amount of wages and the mode of payment the determination of the regular rate becomes a matter of mathematical computation, the result of which is unaffected by any designation of a contrary 'regular rate' in the contracts."); *see also* 29 CFR §§ 778.110 ("production bonus") and 778.111 ("piece-rate").

31. At all relevant times, Defendant consistently paid Aggrieved Employees' non-discretionary compensation, including, but not limited to, bonuses, stipends, commissions, incentive pay, as well as overtime pay, however, these forms of compensation were uniformly omitted when calculating non-exempt employees' "regular rate of pay" for overtime purposes.

32. By their policy of requiring Plaintiff and the other Aggrieved Employees to work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating them at the lawful rate of one-half (1 1/2) their regular rate of pay, Defendant willfully violated the provisions of Labor Code § 510 and the applicable Wage Orders.

33. Similarly, at all relevant times, Defendant also failed in its obligation to provide Plaintiff and other Aggrieved Employees the legally required paid sick days at the legal rate pursuant

to Labor Code § 246(a),(b), which requires that "[a]n employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days. . . at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment." Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees must be "calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek."

34. Additionally, Labor Code § 246(l)(2) states that the paid sick time must be "calculated by dividing the employee's total wages, not including overtime premium pay, by the employee's total hours worked in the full pay periods of the prior 90 days of employment." Labor Code §246(i) requires employers to "provide an employee with written notice that sets forth the amount of paid sick leave available, or paid time off leave an employer provides in lieu of sick leave, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages."

35. Here, at all relevant times, Defendant failed in its obligation to provide Plaintiff and other Aggrieved Employees the legally required paid sick days at the legal rate, including all forms of compensation, pursuant to Labor Code § 246(a), (b). As such, Defendant paid sick time below the "regular rate of pay" as required by Labor Code § 246(l) (1-2).

36. Furthermore, in accordance with the IWC Wage Order, a split shift is "a work schedule, which is interrupted by non-paid non-working periods established by the employer, other than bona fide rest or meal periods." When an employer requires an employee to work a split shift, the employer must pay the employee a split shift premium, which is one hour's pay at the state minimum wage, or the local minimum wage if there is one, in addition to the employee's regular earnings paid for that shift.

37. Here, at all relevant times, Defendant failed to pay Plaintiff and other Aggrieved Employees one (1) hour's pay at the minimum wage for the workday. This includes numerous occasions where the total amount paid to Plaintiff and other Aggrieved Employees was less than the minimum wage for all hours worked.

38. Specifically, Defendant did pay split shift premiums in violation of Wage Order paragraph 4(C). Defendant routinely failed and failed to pay employees working split shifts (i.e., work schedules interrupted by non-paid non-working periods established by the employer, other than bona fide meal periods) one hour's pay at the minimum wage in addition to the minimum wage for hours worked that day. Plaintiff and other Aggrieved Employees are and were at times scheduled to work more than one shift in the same day, with an unpaid, non-working break of longer than an hour between each scheduled shift.

39. Moreover, at all relevant times, Plaintiff and other Aggrieved Employees were denied compliant and timely 30-minute off-duty meal periods as mandated by California law. Due to Defendant's improper meal period policies/practices and operational requirements, Plaintiff and other Aggrieved Employees often could not take timely and uninterrupted 30-minute first meal periods before the end of the fifth hour of work. Further, when Plaintiff and other Aggrieved Employees worked more than 10.0 hours in a shift, they were not allowed and permitted to take a mandated second meal period before the end of the tenth hour of work in violation of the Labor Code and applicable Wage Orders.

40. Labor Code § 226.7(a) authorizes a civil penalty for violations of the meal period provisions of one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

41. Pursuant to Labor Code § 1194.2, non-exempt employees are entitled to recover unpaid wages for the failure to provide timely and compliant meal periods. Similarly, Labor Code § 512 requires that employers authorize and permit employees to take an off-duty meal period of not less than 30 minutes, except that if an employee works more than 10.0 hours per day, the employee will be provided two meal periods unless the total hours worked is no more than 12 hours.

42. Here, Defendant failed to provide timely and compliant meal periods to Plaintiff and other Aggrieved Employees in violation of Labor Code §§ 512 and 1194.

43. Moreover, at all relevant times, Defendant failed and continues to fail to authorize and permit Plaintiff and other Aggrieved Employees from taking legally compliant rest periods due to its unlawful rest period policy/practices. Plaintiff and other Aggrieved Employees were often unable to

take legally compliant rest periods or had their rest periods cut short due to the demands of the job, interruptions, staffing shortages, job responsibilities, and other factors.

44. As a result, Plaintiff and other Aggrieved Employees were and are often unable to take (10) minute duty-free rest periods for every major fraction of four hours worked. This includes a second rest period for shifts in excess of six hours and a third rest period for shifts in excess of 10.0 hours in a workday. Making matters worse, Defendant's policy requires that Plaintiff and Aggrieved Employees to remain on-premises during rest periods.

45. By not relieving all non-exempt employees of all duties during rest periods, Defendant failed to provide legally compliant rest periods. See *Augustus v. ABM Security Services, Inc*. (2016) 2 Cal. 5th 257, 269 [concluding that "during rest periods employers must relieve employees of all duties and relinquish control over how employees spend their time."]. In *Augustus*, the California Supreme Court expressly rejected the employer's assertion that it could provide an on-duty rest period to employees who worked as security guards and further explained: "that employers [must] relinquish any control over how employees spend their break time and relieve their employees of all duties." *Id*. at 273. Each time Plaintiff and other Aggrieved Employees were unable to take a compliant rest period, Defendant failed and continues to fail to adequately pay rest period premium payments at the "regular rate of pay" as required by Labor Code § 226.7.

46. Importantly, each time Plaintiff and other Aggrieved Employees were unable to take a compliant rest period, Defendant failed and continues to fail to adequately pay rest period premium payments at the "regular rate of pay" as required by Labor Code § 226.7.

47. Furthermore, at all relevant times, Defendant required Plaintiff and other Aggrieved Employees to incur necessary business expenses associated with using their personal cell phones for work-related purposes but did not reimburse Aggrieved Employees adequately for these necessary expenditures in violation of Labor Code §§ 2802-2804. (*See Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137, 1144 ["[i]f an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for the purposes of section 2802. It does not matter whether the phone bill is paid for by a third person, or at all...To show liability under section 2802, an employee need only show that he or she was required to use a personal cell phone

to make work-related calls, and he or she was not reimbursed"].)

48. Here, Defendant uniformly failed to reimburse Plaintiff and other Aggrieved Employees for a reasonable portion of cell phone bill, and other necessary costs incurred in the discharge of their duties for those Aggrieved Employees.

49. As a result of Defendant's failure to pay Plaintiff and other Aggrieved Employees for all minimum wages, overtime wages, sick pay wages at the appropriate legal rate, and Defendants' failure to pay for meal and rest period premiums at the "regular rate of pay," Defendant issued wage statements which failed to identify the gross wages earned accurately, the total hours worked, the net wages earned, and the correct corresponding number of hours worked at each hourly rate, in violation of Labor Code § 226(a).

50. Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars ($250) per employee per violation in an initial violation and one thousand dollars ($1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226."

51. Thus, for the violations of Labor Code § 226 described above, Plaintiff and other Aggrieved Employees may also recover Labor Code § 226.3 penalties for Defendant's violations of Labor Code § 226(a).

52. As a further result of Defendant's failure to pay all minimum wages, sick pay and overtime wages, and meal and rest period premiums at the "regular rate of pay," Defendant also failed and continues to fail to pay the non-exempt employees all wages owed at their time of separation from employment in violation of Labor Code §§ 201-203.

<u>FIRST CAUSE OF ACTION</u>

PRIVATE ATTORNEYS GENERAL ACT

(Plaintiff and Similarly Aggrieved Employees Against All Defendants)

53. Plaintiff re-alleges and incorporates by reference each and every allegation outlined in the preceding paragraphs.

/ / /

54. Defendant has committed several Labor Code violations against Plaintiff and other similarly Aggrieved Employees. Plaintiff, an "Aggrieved Employee" within the meaning of Labor Code § 2698 *et seq*., acting on behalf of the State of California, brings this representative action against Defendant to recover the civil penalties due to Plaintiff, other similarly Aggrieved Employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including, but not limited to (1) $100 for each initial violation and $200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided based on the following Labor Code violations:

a) Defendant's failure to accurately record and pay for all hours worked, including all minimum and overtime wages;

b) Defendant's failure to pay split shift premiums;

c) Defendant's failure to pay all overtime wages at the "regular rate of pay" because Defendant failed to include all forms of compensation, including, but not limited to, stipends, non-discretionary bonuses, incentive pay, and other forms of remuneration;

d) Defendant's failure to pay all sick pay at the "regular rate of pay";

e) Defendant's failure to allow and permit legally compliant meal periods or compensation at the "regular rate of pay" in lieu thereof;

f) Defendant's failure to allow and permit legally compliant rest periods or compensation at the "regular rate of pay" in lieu thereof;

g) Defendant's failure to furnish legally compliant wage statements pursuant to Labor Code § 226(a);

h) Defendant's failure to timely pay final wages to aggrieved employees at the time of separation from employment was unlawful; and

i) Defendant's failure to reimburse aggrieved employees for all necessary business expenses in violation of Labor Code §§ 2802-2804.

55. On September 25, 2023, Plaintiff filed her PAGA Notice alleging the facts and theories of liability as listed above with the LWDA and served the same upon Defendant via U.S. Certified Mail.

56. Now that more than 65 days has passed, Plaintiff has exhausted her administrative requirements for bringing a claim under the Private Attorneys General Act with respect to these violations.

57. Plaintiff was compelled to retain the services of counsel to file this court action to protect her interests and the interests of other similarly aggrieved employees and to assess and collect the civil penalties owed by Defendant. Plaintiff has, therefore, incurred attorneys' fees and costs, which she is entitled to receive under California Labor Code § 2699.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment for herself and all others on whose behalf this suit is brought against Defendant, as follows:

1. Upon the First Cause of Action, for civil penalties due to similarly aggrieved employees, and the State of California according to proof pursuant to Labor Code § 2699 (a) and (f) including, but not limited to (1) $100 for each initial violation and $200 for each subsequent violation per employee per pay period for those violations of the Labor Code for which no civil penalty is specifically provided under the Labor Code;

2. For attorneys' fees and costs as provided by Labor Code § 2698 *et seq*., and Code of Civil Procedure §1021.5; and

3. For such other relief that the Court may deem just and proper.

Dated: May 20, 2024

FALAKASSA LAW, P.C.
BOKHOUR LAW GROUP, P.C.

By: ____________________

Joshua Falakassa, Esq.
Mehrdad Bokhour, Esq.
Attorneys for Plaintiff and the Aggrieved Employees