

GREGORY P. WONG (SBN: 204502)
LYFE LAW, LLP
864 S. Robertson Blvd., 3rd Floor
Los Angeles, California 90035
Telephone: (888) 203-1422
Facsimile: (888) 203-1424
Email: Gregw@Lyfe.com

Attorneys for Plaintiff
ERIN NAYMARK

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

ERIN NAYMARK, an individual,	)	Case No.: 23SMCV04750
Plaintiff,	)	Assigned to: Hon. Michael E. Whitaker (Dept. 207)
vs.	)	
TUTORED BY TEACHERS, INC., a Delaware Corporation; and DOES 1 through 100, inclusive,	)	DECLARATION OF GREGORY P. WONG IN SUPPORT OF PLAINTIFF'S MOTION FOR APPROVAL OF PAGA SETTLEMENT AND JUDGMENT THEREON
Defendants.	)	
	)	Date: July 17, 2024
	)	Time: 8:30 a.m.
	)	Location: Beverly Hills Courthouse – Dept. 207
	)	Reservation ID: 973134396193

DECLARATION OF GREGORY P. WONG

I, Gregory P. Wong, declare and state as follows:

1. I am an attorney employed by Lyfe Law LLP, counsel for Plaintiff Erin Naymark (“Plaintiff” or “Plaintiff Naymark”) in the above-captioned matter. I am the attorney responsible for the representation of Plaintiff in the above-captioned action.

2. Until March 1, 2024, I was Managing Attorney of the Barkhordarian Law Firm. In this capacity, I was one of the attorneys responsible for investigating, formulating, and filing this Action. I supervised and worked in close contact with all attorneys and paralegals from the Barkhordarian Law Firm who performed work on this case and I am familiar with their expertise, experience, and tasks performed.

3. I have personal knowledge of the facts set forth below, except for those which I have described as being based on information and belief, and, if called as a witness, I could and would competently testify thereto.

4. I am making this declaration in support of the Motion for Approval of PAGA Settlement and Judgment Thereon in this action.

5. Plaintiff was engaged by Defendant from March of 2022 until September of 2023 as a Teacher-Tutor and Instructional Support Staff. At all times during Plaintiff’s tenure, Defendant classified her as an independent contractor.

6. On September 14, 2023, Plaintiff, who at that time was represented by the Barkhordarian Law Firm (the “Lien Holder”) submitted the PAGA Notice to the LWDA through the online submission portal. A true and correct copy of the PAGA Notice is attached hereto as Exhibit A. Plaintiff served Defendant with the PAGA Notice via certified mail on September 14, 2023.

7. Plaintiff alleged in the PAGA Notice that she and the Aggrieved Individuals were misclassified as independent contractors by Defendant and, on that basis, were subjected violations of their rights under Labor Code sections 201, 202, 203, 204, 226, 226.3, 226.7, 226.8, 510, 512, 558, 558.1, 1174(d), 1194(a), 1197, 1197.1, 1198, and 2802.

1 8. Subsequent to filing the PAGA Notice and in the course of investigating the claims
2 in this action, Plaintiff's counsel determined that there was insufficient evidence to bring colorable
3 claims for violations of Labor Code sections 204, 510, 558, and 558.1. Thus the operative claims
4 brought on a representative basis in this Action are for: (1) Unlawful Misclassification as an
5 Independent Contractor (Labor Code section 226.8); (2) Minimum Wage (Labor Code sections 1194,
6 1197, and 1197.1); (3) Reimbursement of Business Expenses (Labor Code section 2802); (4) Failure
7 to Permit Rest Breaks (Labor Code section 226.7); (5) Failure to Provide Meal Periods (Labor Code
8 sections 226.7 and 512); (6) Wage Statements (Labor Code section 226 and 226.3); (7) Failure to
9 Maintain Accurate Records (Labor Code section 1174(d)); and (8) Failure to Pay Wages at
10 Termination/Waiting Time Penalties (Labor Code sections 201-203).

11 9. On October 5, 2023, Plaintiff filed the original complaint in this Action, alleging the
12 following claims on an individual basis: (1) Misclassification of Employment Status; (2) Failure to
13 Pay Minimum Wages; (3) Failure to Pay Overtime Wages; (4) Failure to Provide Meal Periods; (5)
14 Failure to Provide Rest Periods; (6) Failure to Provide Adequate Paystubs; (7) Failure to Maintain
15 Accurate Records; (8) Failure to Indemnify For All Employment Related Losses/Expenditures; and
16 (9) Unfair Competition.

17 10. On November 27, 2023, after expiration of the LWDA review period, Plaintiff filed
18 her First Amended Complaint ("FAC") adding a cause of action for civil penalties pursuant to the
19 PAGA. The FAC is the operative complaint in this Action. A true and correct copy of the FAC is
20 attached hereto as Exhibit B. PAGA Counsel provided notice to the LWDA of the FAC by
21 submitting it via the online portal. Confirmation of submission of the FAC to the LWDA is attached
22 hereto as Exhibit C.

23 11. Defendant answered the FAC on December 20, 2023.

24 12. On March 19, 2024, Plaintiff Erin Naymark substituted Lyfe Law, LLP as her counsel
25 of record in the place of the Barkhordarian Law Firm.

26 13. On March 21, 2024, the Barkhordarian Law Firm filed a Notice of Attorney Lien.
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1 14. On May 23, 2024, the Barkhordarian Law firm filed an Amended Notice of Attorney
2 Lien specifying that it was asserting a lien for Five Thousand One Hundred and Thirty-Five Dollars
3 (\$5,135.00) in attorneys' fees and Seven Hundred Ninety-Five Dollars and Ninety Cents (\$795.00)
4 in costs.

5 15. The Parties mutually agreed to submit this matter to private mediation with Chris
6 Barnes, Esq. of Barnes Dispute Resolution, an experienced labor and employment mediator and
7 litigator with substantial experience in the area of mediating PAGA claims.

8 16. Plaintiff obtained from Defendant via informal discovery, a detailed production of
9 documents and data that allowed Plaintiff's counsel to thoroughly investigate and evaluate the
10 alleged claims. The informal production included Plaintiff's complete personnel and payroll records,
11 all form independent contractor agreements used by Defendant with the Aggrieved Individuals
12 during the relevant time period, and spreadsheets containing data regarding all hours worked by and
13 wages paid to the Aggrieved Individuals. With the use of this data, Plaintiff's counsel was able to
14 fully model the maximum and risk-adjusted potential PAGA penalties at issue and was also able to
15 identify and quantify potential limiting factors and litigation risks should the case not settle at
16 mediation.

17 17. On May 1, 2024, the Parties engaged in an all-day mediation, at which the Parties'
18 negotiations reached an impasse. However, the Parties and mediator Barnes remained in contact and
19 were able to reach resolution after continued negotiations on May 14, 2024.

20 18. The parties have drafted and executed Joint Stipulation Re PAGA Settlement (the
21 "Settlement Agreement" or the "Settlement"), a true and correct copy of which is attached hereto as
22 Exhibit D.

23 19. In advance of mediation, I conducted a thorough quantitative analysis of the data
24 produced by Defendant. Defendant produced .pdf and excel files which included all payments made
25 to Aggrieved Individuals, their work schedules, and all reported hours worked by Aggrieved
26 Employees. I reviewed all Excel spreadsheets for data integrity and cleaned up any records that
27 28

1 would create data analysis problems. I reviewed all pdf documents and, where appropriate, I
2 converted them into electronically manipulable data sets. I then compiled and cross-referenced the
3 pay and working hours data to create an analytic set that could be used to analyze all claims alleged
4 in this action for every Aggrieved Employee throughout the PAGA Period.

5 20. In evaluating potential penalties for misclassification pursuant to Labor Code Section
6 226.8, I calculated a maximum potential penalty of \$2,350,000.00 based on the mid-level penalty of
7 \$10,000.00 for each of the 235 Aggrieved Individuals.

8 21. In evaluating the Unpaid Minimum Wages claim (Labor Code section 1194, 1197,
9 1197.1), I calculated a potential maximum recovery of \$191,232.00 based on an assumption of 3
10 hours of unpaid time per week spent on uncompensated work such as preparing lesson plans and
11 attending meetings. This assumption was derived from granular discussions with Plaintiff about her
12 job duties and experiences working for Defendant.

13 22. In evaluating the Unpaid Business Expenses Claim (Labor Code Section 2802), I
14 calculated a maximum penalty of \$99,600.00 based on an assumption of \$50.00 of unreimbursed
15 business expenses per pay period for each Aggrieved Individual. This assumption was also based
16 on extensive discussions with Plaintiff which revealed typical unreimbursed expenses of home
17 internet, mobile devices, school supplies, and membership charges for online teacher resources
18 websites.

19 23. In evaluating the Rest Break claim (Labor Code section 226.7), I calculated a potential
20 maximum recovery of \$59,234.11. This calculation was based on the assumption that Aggrieved
21 Employees were denied a rest break during every shift that was at least 3.5 hours long. Based on the
22 timekeeping data produced by Defendant, I was able to calculate that this happened in 16.80% of
23 shifts worked by Aggrieved Individuals. For each of these shifts, I assessed a one hour rest break
24 premium of \$35.40 – which was the weighted average rate of pay I was able to calculate based on
25 the payroll records produced by Defendant in advance of mediation.
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24. In evaluating the Meal Period claim (Labor Code sections 226.7 and 512), I calculated a potential maximum recovery of \$17,276.62. This calculation was based on the assumption that Aggrieved Employees were denied a meal period during every shift that was at least 5.0 hours long. Based on the timekeeping data produced by Defendant, I was able to calculate that this happened in 4.90% of shifts worked by Aggrieved Individuals. For each of these shifts I assessed a one hour meal period premium of \$35.40 – which was the weighted rate of pay I was able to calculate based on the payroll records produced by Defendant in advance of mediation.

25. In evaluating the Wage Statement Claim (Labor Code Sections 226 and 226.3), I calculated a maximum potential recovery of \$187,450.00 based on the pay periods actually worked by the Aggrieved Individuals during the PAGA Period.

26. In evaluating the Recordkeeping claim (Labor Code section 1174(d)), I calculated a potential maximum recovery of \$750.00 for each of the 235 Aggrieved Individuals.

27. In evaluating the Waiting Time Penalties claim (Labor Code sections 201-203), I calculated a potential maximum recovery of \$347,656.32 for the 177 Aggrieved Individuals that I classified as terminated based on their having not performed any work in 2024.

28. The results of my analysis of the claims in this action are summarized below:

Violation	Maximum Penalty
Misclassification	\$2,350,000.00
Minimum Wage	\$191,232.00
Reimbursement	\$99,600.00
Rest Break	\$59,234.11
Meal Period	\$17,276.62
Wage Statement	\$187,450.00
Recordkeeping	\$176,250.00
Waiting Time	\$347,656.32
Total	\$3,428,699.05

29. In order to evaluate the range of potential outcomes and the fairness of a proposed settlement before mediation and during the negotiation process, I also evaluated the “risk-adjusted” potential PAGA penalty factoring in Defendant’s potential defenses and Plaintiff’s burden of proof (the “Kullar analysis”). Three risk factors took prominence in the *Kullar* analysis. The first was the California Supreme Court’s recent ruling in *Naranjo v. Spectrum Security Services, Inc.*, 15 Cal.5th 1056 (2024) establishing a reasonable and good faith defense to allegations of willful violation of Labor Code section 203 (Waiting Time Penalties) and section 226 (Wage Statements). Violations of these two statutes are alleged in this PAGA action and several other key violations at issue, including the misclassification claim which formed the vast majority of the potential exposure in this matter, similarly require a showing of a “willful” violation. While I strongly felt that there were facts to support purposeful and willful violations in this case, the *Naranjo* decision introduced a significant amount of uncertainty as it has yet to be seen how trial courts and appellate courts will apply the nuances and permutations of the Supreme Court’s ruling. The second factor that weighed heavily on my analysis was the risk that Defendant would be able to show that the Aggrieved Individuals were properly classified as independent contractors under the “business to business” exception to the ABC test. *See* Labor Code section 2776; *People v. Superior Court (Cal Cartage Transportation Express)*, 57 Cal.App.5th 632-634 (2020). Finally, I factored in my concerns that the judge deciding the case would exercise the authority granted under the PAGA to reduce the amount awarded below the potential maximum. This could be for a number of reasons, including a refusal to “stack” PAGA penalties (i.e. refusing to impose penalties for multiple violations) or simply reducing the amount out of fairness and equity considerations. While the imposition of full penalties was something that I strongly felt was warranted in this case, the uncertainty of the eventual outcome was something that I had a responsibility to consider. With these considerations in mind, the risk-adjusted evaluation of the penalty claims in this action is as follows:

30. In order to calculate the “risk-adjusted” penalties for unlawful misclassification (Labor Code section 226.8), I accounted for a 25% to 75% chance that Defendant would be able to

1 successfully establish a “willfulness” defense. I accounted for a 50% chance that Defendant would
2 be able to successfully assert a “business to business” defense. Finally, I accounted for a 50%
3 reduction in potential damages based on concerns that Defendant would be able to successfully
4 convince the court to reduce the penalty assessed in the event Plaintiff prevailed. Based on these
5 risk factors, I calculated a “risk adjusted” recovery on this claim of **\$146,875.00** on the low end to
6 **\$440,625.00** on the high end.

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8 31. In order to calculate the “risk-adjusted” unpaid minimum wage claim (Labor Code
9 sections 1194, 1197, and 1197.1), I accounted for a 50% chance that Defendant would be able to
10 successfully assert a “business to business” defense. I also accounted for a 50% reduction in potential
11 damages based on concerns that Defendant would be able to successfully convince the court to
12 reduce the penalty assessed in the event Plaintiff prevailed. Finally, because the minimum wage
13 claim was based on off-the-clock work and the Aggrieved Individuals worked remotely without day
14 to day supervision, I assed a 25% to 50% reduction based on the potential defense that the employer
15 did not did not know and should not have known the amount of work being performed off the clock.
16 Based on these risk factors, I calculated a “risk adjusted” recovery on this claim of **\$23,904.00** on
17 the low end to **\$35,856.00** on the high end.

18 32. In order to calculate the “risk adjusted” business reimbursement claim (Labor Code
19 section 2802), I accounted for a 50% to 75% chance that Plaintiff would not be able to document or
20 prove that the Aggrieved Individuals spent the amount of money (\$50 per pay period) asserted in the
21 maximum penalty calculation. I accounted for a 50% chance that Defendant would be able to
22 successfully assert a “business to business” defense. Finally, I accounted for a 50% reduction in
23 potential damages based on concerns that Defendant would be able to successfully convince the court
24 to reduce the penalty assessed in the event Plaintiff prevailed. Based on these risk factors, I
25 calculated a “risk adjusted” recovery on this claim of **\$6,225.00** on the low end to **\$18,675.00** on the
26 high end.
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1 33. In order to calculate the “risk-adjusted” penalties for rest break violations (Labor
2 Code section 226.7), I accounted for a 50% to 75% chance that Defendant would be able to show
3 that the Aggrieved Individuals, who worked remotely and often had substantial gaps of time between
4 tutoring assignments on the same day, were permitted to take rest breaks. I accounted for a 50%
5 chance that Defendant would be able to successfully assert a “business to business” defense. Finally,
6 I accounted for a 50% reduction in potential damages based on concerns that Defendant would be
7 able to successfully convince the court to reduce the penalty assessed in the event Plaintiff prevailed.
8 Based on these risk factors, I calculated a “risk adjusted” recovery on this claim of **\$3,702.13** on the
9 low end to **\$7,404.26** on the high end.

10 34. In order to calculate the “risk-adjusted” penalties for meal period violations (Labor
11 Code sections 226.7 and 512), I accounted for a 50% to 75% chance that Defendant would be able
12 to show that the Aggrieved Individuals, who worked remotely and often had substantial gaps of time
13 between tutoring assignments on the same day, were provided meal periods. I accounted for a 50%
14 chance that Defendant would be able to successfully assert a “business to business” defense. Finally,
15 I accounted for a 50% reduction in potential damages based on concerns that Defendant would be
16 able to successfully convince the court to reduce the penalty assessed in the event Plaintiff prevailed.
17 Based on these risk factors, I calculated a “risk adjusted” recovery on this claim of **\$1,079.79** on the
18 low end to **\$2,159.58** on the high end.

19 35. In order to calculate the “risk-adjusted” penalties for wage statement violations
20 (Labor Code section 226, 226.1), I accounted for a 25% to 75% chance that Defendant would be able
21 to successfully establish a “willfulness” defense. I accounted for a 50% chance that Defendant would
22 be able to successfully assert a “business to business” defense. Finally, I accounted for a 50%
23 reduction in potential damages based on concerns that Defendant would be able to successfully
24 convince the court to reduce the penalty assessed in the event Plaintiff prevailed. Based on these
25 risk factors, I calculated a “risk adjusted” recovery on this claim of **\$11,715.63** on the low end to
26 **\$35,146.88** on the high end.
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36. In order to calculate the “risk-adjusted” penalties for recordkeeping violations (Labor Code section 1174(d)), I accounted for a 25% to 75% chance that Defendant would be able to successfully establish a “willfulness” defense. I accounted for a 50% chance that Defendant would be able to successfully assert a “business to business” defense. Finally, I accounted for a 50% reduction in potential damages based on concerns that Defendant would be able to successfully convince the court to reduce the penalty assessed in the event Plaintiff prevailed. Based on these risk factors, I calculated a “risk adjusted” recovery on this claim of **\$11,015.63** on the low end to **\$33,046.88** on the high end.

37. In order to calculate the “risk-adjusted” penalties for waiting time penalties (Labor Code sections 201-203), I accounted for a 25% to 75% chance that Defendant would be able to successfully establish a “willfulness” defense. I accounted for a 50% chance that Defendant would be able to successfully assert a “business to business” defense. Finally, I accounted for a 50% reduction in potential damages based on concerns that Defendant would be able to successfully convince the court to reduce the penalty assessed in the event Plaintiff prevailed. Based on these risk factors, I calculated a “risk adjusted” recovery on this claim of **\$21,728.52** on the low end to **\$57,942.72** on the high end.

38. As detailed in the table below, the overall result of my *Kullar* risk analysis determined that the range of risk-adjusted recovery was **\$226,245.69** to **\$630,856.31**. This places the proposed gross settlement amount of **\$550,000.00** squarely in the high range of potential outcomes.

Violation	Max Exposure	Low Recovery	High Recovery
Misclassification	\$2,350,000.00	\$146,875.00	\$440,625.00
Minimum Wage	\$191,232.00	\$23,904.00	\$35,856.00
Reimbursement	\$99,600.00	\$6,225.00	\$18,675.00
Rest Break	\$59,234.11	\$3,702.13	\$7,404.26
Meal Period	\$17,276.62	\$1,079.79	\$2,159.58
Wage Statement	\$187,450.00	\$11,715.63	\$35,146.88
Recordkeeping	\$176,250.00	\$11,015.63	\$33,046.88
Waiting Time	\$347,656.32	\$21,728.52	\$57,942.72
Total	\$3,428,699.05	\$226,245.69	\$630,856.31

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2 39. Plaintiff Naymark alleges individual claims that go beyond the scope of the
3 representative PAGA claims at issue in this Action. To begin with, Plaintiff Naymark began work
4 for Defendant in March of 2022. The PAGA Period for purposes of this action begins on September
5 14, 2022. Thus, Plaintiff has approximately six months of additional damages that have been pled
6 on an individual basis beyond the PAGA penalties sought. Additionally, Plaintiff possesses
7 “Individual PAGA” claims that are distinct from the representative PAGA claims. *See Adolph v.*
8 *Uber Technologies, Inc.*, 14 Cal.5th 1104 (2023). By agreeing to a general release and judgment as
9 to all claims alleged in this Action, Plaintiff is compromising claims that go beyond the representative
10 PAGA claims. Based on my experience as an employment litigator and my knowledge of Plaintiff’s
11 individual claims, I estimate that a reasonable range of settlement for Plaintiff’s individual claims
12 would have met or exceeded \$20,000.00.

13
14 40. I received my law degree from The University of California – Berkeley Law (Boalt
15 Hall) and was admitted to the California Bar in 1999. I have practiced labor and employment law
16 exclusively throughout my career. Between 1999 and 2004, I was an associate with the international
17 labor and employment law specialty firm Littler Mendelson. In 2004, I joined the labor and
18 employment group of Greenberg Traurig, LLP, where I was elevated to shareholder in 2009. I
19 rejoined Littler Mendelson in 2010 as a shareholder and worked there until founding Adept
20 Employment Law, APC in June of 2014. I joined the Barkhordarian Law Firm in January of 2019 as
21 its Managing Attorney. On March 1, 2024 I joined Lyfe Law, LLP as a Junior Partner in charge of
22 the firm’s Employment Litigation Department.

23 41. My professional accolades include being named a Super Lawyers Rising Star in 2008,
24 2009, and 2012, being named a Southern California Super Lawyer in 2022, 2023, and 2024, and
25 being one of only 29 labor and employment attorneys in the industry named as a BTI Client Service
26 All-Star for 2015 based on BTI Consulting Group’s annual survey of General Counsel and Legal
27 Decision Makers at large and Fortune 1000 companies.
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1 42. As a management-side attorney with Littler Mendelson and Greenberg Traurig, I
2 gained substantial experience in all phases of litigating wage and hour class action matters. This
3 includes developing case strategy, participating in and overseeing discovery, drafting and arguing
4 motions for class certification, and participating in class action trial teams. Between 2010 and 2014,
5 my litigation practice consisted almost entirely of class action litigation. Specifically, I specialized
6 in class action exposure evaluation and data-related case strategy.

7 43. I founded Adept Employment Law, APC in 2014 to expand my practice to include
8 advocacy for workers' rights on an individual and class or representative basis. Through Adept
9 Employment Law, APC, I served as lead counsel or co-lead counsel on twenty-three (23) class and/or
10 representative actions in both state and federal court.

11 44. I joined the Barkhordarian Law Firm in January of 2019. At the Barkhordarian Law
12 Firm, my practice continued to focus on the representation of workers in employment law matters.
13 At the Barkhordarian Law Firm I served as lead counsel on more than one hundred and ten (110)
14 class and/or representative actions in both state and federal court.

15 45. I joined Lyfe Law, LLP on March 1, 2024 as a Junior Partner in charge of the Firm's
16 Employment Litigation Department.

17 46. The representative matters for which I have been approved as class counsel or
18 settlement and/or class certification purposes include but are not limited to:
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- 20 a. *Gonzalez v. Roto-Rooter Servs. Co.*, Case No. 22STCV34334, Los Angeles County
21 Superior Court;
- 22 b. *Miller v. PAG Consulting, LLC*, Case No. CIVDS2010908, San Bernardino
23 County Superior Court;
- 24 c. *Rios v. Classic Distributing & Beverage Group, Inc.*, Case No. 20PSCV00012,
25 Los Angeles County Superior Court;
- 26 d. *Bernal v. Serco, Inc.*, Case No. 30-2020-01150203-CU-OE-CXC, Orange County
27 Superior Court;
- 28

- e. *Pagh v. Wyndham*, Case No.: 89:19-cv-00812, United States Federal District Court for the Central District of California;
- f. *Hatfield v. Iiota Productions*, Case No. 19STCV30328, Los Angeles County Superior Court;
- g. *O'Braza v. Dignity Health* Case No.: 34-2018-00240446, Sacramento County Superior Court;
- h. *Rodriguez v. Golden Leaf* , Case No. 20STCV05547, Los Angeles County Superior Court;
- i. *Balajadia v. ECOLA*, Case No. 20CHCV00657, Los Angeles County Superior Court;
- j. *Valle v. Earthbar, LLC* Case No. BC575277, Los Angeles Superior Court;
- k. *Rodriguez v. National Retail Transportation* Case No. BC594139, Los Angeles County Superior Court;
- l. *Nunes v. California Dinner Entertainment, LLC*, Case No. 30-2014-00741912-CU-OE-CXC. Orange County Superior Court;
- m. *McGuire, et al. v. GRID Alternatives*, 19STCV28671, Los Angeles County Superior Court;
- n. *Colvin v. Graphics Packaging International, Inc.*, Case No. 2015-00781730-CU-OE-CXC, Orange County Superior Court ; and
- o. *Williams v. Western Express*, Case No. 5:15-CV-00402-JBG-SPx, United States Federal District Court for the Central District of California.

47. The settlement before the Court was facilitated by the substantial amount of factual investigation, legal analysis, and advocacy by PAGA Counsel. My firm has invested 229.70 attorney hours into this matter through the date of this Motion. Upon joining Lyfe Law, LLP, I dedicated the majority of my working time analyzing the data and documents provided by Defendant and preparing for mediation.

48. PAGA Counsel anticipates that up to an additional 2.00 hours of attorney time may be needed to prepare for and appear at the final fairness hearing, address any further concerns the Court might have about granting Final Approval, remaining involved in the settlement payment process, and reporting back to the Court regarding distribution of any settlement funds.

49. The following chart summarizes the hours spent, fees incurred, and representative tasks in each of the major phases of this case.

Phase	Hours	Rate	Fees	Representative Tasks
Investigation	47.50	\$775.00	\$36,812.50	Conduct multiple interviews with client regarding job duties, expenses, timekeeping, and issues related to potential defenses; review and research company policies; review and analyze multiple historic versions of contractor agreement and determine claims and defenses pertinent to each iteration; conduct background research on defendant and its business operations; conduct litigation search and legal research re similar pending or past cases.
Data Analysis	85.20	\$775.00	\$66,030.00	Conduct initial review of data; perform data integrity check; clean and process data into analytic set; model and conduct statistical analyses of all claims alleged; develop mediation strategy model; perform <i>Kullar</i> analysis and update analysis during course of negotiations.
Mediation	37.10	\$775.00	\$28,752.50	Prepare client for mediation; draft and revise mediation brief; create PowerPoint presentation detailing arguments against "business to business" exemption; prepare for and participate in full day mediation.

				Draft and revise settlement stipulation and all supporting documents; solicit multiple administration bids and analyze bids before proposing administrator; correspondence with defense counsel regarding stipulation.
Settlement Stipulation	13.90	\$775.00	\$10,772.50	
Briefing	12.80	\$775.00	\$9,920.00	Research, draft and revise motion for settlement approval.
				Legal research re issues for analysis and mediation. Includes detailed research re California and federal appellate decisions analyzing independent contractor issues in the context of tutors and private teachers, detailed research re business-to-business exemption, legal research supporting potential arguments should the court apply the <i>Borello</i> test.
Legal Research	18.70	\$775.00	\$14,492.50	
				Continued communications with mediator; update and analyze <i>Kullar</i> model; factual investigation re public contracts awarded to defendant and potential ability to pay issues; factual investigation re investors and board members of Defendant; develop and advocate for negotiation strategy.
Post mediation negotiations	12.50	\$775.00	\$9,687.50	
Hearings	2.00	\$775.00	\$1,550.00	Prepare for and participate in future hearing on motion for settlement approval.
				Conduct initial investigation; draft and file PAGA Notice; draft and file initial complaint; draft and file First Amended Complaint.
Barkhordarian Fees			\$5,135.00	
Total	229.77		\$183,152.50	

50. The lodestar proposed by Counsel is based on an hourly rate of \$775.00/Hour for work performed by me on this case. This rate is commensurate with the rates charged for hourly

engagements. In fact, the rate sought in this action is less than the standard billable rates charged for my time at the defense firms with which I worked prior to founding Adept Employment Law, APC.

51. PAGA Counsel has been awarded attorneys' fees based on a rate commensurate with that claimed in this action on several occasions, including in the following matters: Number *Valle v. Earthbar, LLC*, Los Angeles Superior Court Case Number 19STCV28671 (award of attorneys' fees in wage and hour class action based on an hourly rate for me of \$725.00); *Nunes, et al. v. California Dinner Entertainment, LLC*, Orange County Superior Court Case Number 30-2014-00741912-CU-OE-CXC (award of attorneys' fees in wage and hour class action); *Williams v. Western Express*, USDC – Central District Case Number EDCV 15-402 JGB (SPx) (award of attorneys' fees by Hon. Jesus G. Bernal in wage and hour class action); *Martinez v. Hartford Medical Management*, Los Angeles Superior Court Case Number BC655530 (Award of attorneys' fees by Hon. Samantha P. Jessner in single plaintiff retaliation lawsuit); *Kramer v. Lumber Liquidators* – Sacramento County Superior Court Case No. 34-2017-00222434; *Vazquez v. Kair Harbor Express, LLC*, Los Angeles Superior Court Case No. 19STCV03197 and *Emily Lavitola v. Valentino USA, Inc.* Orange County Superior Court Case No. 30-2018-00986461.

52. Plaintiff's Counsels' rates are similar to or less than those judicially approved for other plaintiff's firms. See e.g. *Kearney v. Hyundai Motor Am.*, 2013 U.S. Dist. LEXIS 91636, *24 (C.D. Cal. June 28, 3013) (approving hourly rates of \$650-\$800 for senior attorneys in consumer class action); *Laffitte v. Robert Half International, Inc.*, 231 Cal.App.4th 860 (2014) (approving hourly rates of \$750 - \$500 in wage and hour class action); *Heyen v. Safeway, Inc.*, 2014 WL 2154676 (2014) (approving rates of up to \$1000/hr. in wage and hour class action).

53. Lyfe Law, LLP and the Barkhordarian Firm have incurred a total of \$8,723.25 in costs and expenses that would normally be billed to a fee-paying client and anticipate expending as much as \$350.00 more in potential future costs. These costs consist of the following, with the cost of mediation constituting the bulk of the costs incurred:

Category	Cost
Initial Pleading	\$435.00
Service of Process	\$285.90
PAGA Filing Fee	\$75.00
Court service, e-filing fees	\$367.35
Court fee - Motion for approval	\$60.00
Mediation	\$7,500.00
Anticipated future costs	\$350.00

54. Prior to the substitution of Lyfe Law, LLP as counsel of record for Plaintiff, the Barkhordarian Law Firm presented Plaintiff and myself with a detailed breakdown of legal fees and costs expended on this matter. As Managing Attorney and head of the Employment Litigation department at the Barkhordarian Law Firm, I was familiar with the attorneys and paralegals who worked on this Action and I was personally involved in the supervision of the work performed. Based on my personal knowledge, I believe that the amount of legal fees and costs claimed by the Lien Holder is fair and reasonable. Plaintiff was advised of the amount of the lien being sought by the Lien Holder and has agreed that it is accurate.

55. My firm obtained settlement administration quotes from three different companies. Based on this estimate, Plaintiff is confident that the proposed Claims Administration fees of no more than \$3,750.00 will be sufficient to administer the proposed settlement, even if unexpected additional costs arise during the course of settlement administration. Attached hereto as Exhibit E is a true and correct copy of the “not to exceed” declaration executed by the proposed Administrator, Phoenix Class Action Administration Solutions. The estimate obtained from CPT reflects a total estimated expense of \$3,750.00.

56. PAGA Counsel has conducted an independent litigation search and met and conferred with Defense counsel, and on that basis, believes that there are no concurrent pending class, representative or collective actions in any court that are similar to the action being settled.

57. In the interest of making sure that effected individuals are fully notified of the scope, nature, and terms of the PAGA settlement, the parties have stipulated to have a Notice of PAGA

1 Settlement sent along with the Individual PAGA Payments. A true and correct copy of the PAGA
2 Settlement Notice is attached hereto as Exhibit F.

3 58. On June 25, 2024, the proposed settlement was submitted to the LWDA via its online
4 portal. A true and correct copy of the confirmation of submission sent by the LWDA is attached
5 hereto as Exhibit G.

6 I declare under penalty of perjury under the laws of the State of California that all the
7 foregoing is true and correct.

8 Executed on June 26, 2024 in Los Angeles, California.
9

10 By: /s/ Gregory P. Wong

11 Gregory P. Wong
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EXHIBIT A
PAGA LETTER

BARKHORDARIAN
— L A W F I R M —

6047 Bristol Parkway
Culver City, CA 90230
t. 323.450.2777 f. 323.594.8227

September 14, 2023

VIA ELECTRONIC SUBMISSION

California Labor and Workforce Development Agency
Attn: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Re: Erin Naymark v. Tutored by Teachers, Inc.
PAGA Notice Pursuant to California Labor Code section 2699.3, et seq.

Dear Sir/Madam:

This firm represents Erin Naymark (hereinafter “Plaintiff”) and all other aggrieved employees who intend to file a claim against Tutored by Teachers, Inc. a Delaware corporation (hereinafter “Defendant”) with the Los Angeles Superior Court regarding violations of the California Labor Code committed by Defendant. This letter shall serve as notice, and a request, pursuant to California Labor Code section 2699.3, et seq. (Private Attorneys General Act of 2004 (hereinafter “PAGA”), that your agency investigate the alleged violations by Defendant described herein against Plaintiff and other current and/or former employees. If the agency does not intend to investigate the alleged violations described herein, we respectfully request that the agency specifically notify our office of the same at your earliest possible opportunity.

Statement of Specific Provisions of the Labor Code Alleged to Have Been Violated

The above-mentioned civil action will be brought by Plaintiff against Defendant for violations of California Labor Code sections, 201 through 204, 226, 226.3, 226.7, 226.8, 510, 512, 558, 558.1 1174(d), 1194(a), 1197, 1197.1, 1198 and 2802 and the industrial wage orders.

Facts and Theories in Support of Alleged Violations

Defendant owns and operates a national online platform to provide tutoring services. Throughout the relevant time period, Defendant employed Plaintiff and other aggrieved workers throughout the State of California. Plaintiff and other employees were not free from the control and direction of Defendant in the performance of their work and were not performing work outside Defendant’s usual course of business.

On or around April 18, 2022, Defendant hired Plaintiff as a tutor, and she was misclassified as an independent contractor instead of an employee throughout her employment with Defendant. Plaintiff’s duties included but were not limited to creating lessons plans for students and engaging in one-to-one sessions with students to teach the lesson plans. Defendant exercised significant control over Plaintiff’s work, including enforcing session times as well as penalizing Plaintiff for attempting to cancel or postpone a learning session.

Therefore, Plaintiff was entitled to rest periods, meal periods, and payment of minimum wage and overtime compensation pursuant to the California Labor Code. Further, Plaintiff was forced to incur expenses necessary to the performance of her job, including the subscription of educational software. However, throughout Plaintiff's employment, she was the victim of unlawful, uniform and systematic practices that resulted in a continual violation of rights owed to Plaintiff and Defendants' other aggrieved employees as follows:

Willful Misclassification of Employees (Labor Code section 226.8): Plaintiff is informed and believes, and based thereon alleges, that during the relevant period to Plaintiff's intended action, Defendant willfully misclassified Plaintiff and other aggrieved employees as independent contractors to evade the obligations of an employer and the rights of employees, such as providing rest periods, meal periods, and payment of minimum wages and overtime wages. At all times, Defendant exercised control and direction over Plaintiff and the other aggrieved employees in connection with performance of the work performed. For example, Defendant sets Plaintiff's schedule, and supervised her work, setting prices for Plaintiff's work, managed Plaintiff's work product and deadlines, and penalized Plaintiff's autonomy when she attempted to control her own schedule.

Failure to Pay All Wages (Labor Code section 204): Plaintiff is informed and believes, and based thereon alleges, that during the period relevant to Plaintiff's intended action, Defendant did not pay all wages to her and other aggrieved employees within the same pay period in which they were earned as they were treated as independent contractors.

Failure to Pay Minimum Wage For All Hours Worked: Plaintiff and all other non-exempt employees who worked for Defendant were not compensated for at an hourly rate of at least the applicable minimum wage for all hours worked as they were treated as independent contractors. As a consequence, Plaintiff and the other aggrieved employees were not paid all wages owed to them. Defendant's policies and practices with respect to payment of minimum wage violate the Wage Orders as well as Labor Code sections 204, 1194(a), and 1198.

Failure to Pay Overtime (Labor Code section 510): Plaintiff is informed and believes, and based thereon alleges, that during the period relevant to Plaintiff's intended action, Defendant did not pay Plaintiff and other aggrieved employees, one and one-half (1.5) their normal rate of pay for hours worked past eight (8) hours in one day and/or forty (40) hours in one workweek. Defendant paid non-exempt employees their base pay for all hours worked past eight (8) hours in one day and/or forty (40) hours in one workweek and/or eighty (80) in one pay period.

Failure to Provide Accurate Wage Statements (Labor Code section 226): Plaintiff is informed and believes, and based thereon alleges, that during the period relevant to Plaintiff's intended action, Defendant did not provide accurate wage statements showing (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and only the last four digits of his or her social security number; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Wage statements issued by Defendant to Plaintiff and other aggrieved employees did not provide an accurate showing of gross wages earned, total hours worked by the employee, deductions, net wages earned, the address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the

corresponding number of hours worked at each hourly rate by the employee as they were treated as independent contractors.

Failure to Provide Rest Periods and/or Pay Rest Period Premiums (Labor Code section 226.7): Plaintiff is informed and believes, and based thereon alleges, that during the period relevant to Plaintiff's intended action, Defendant did not provide Plaintiff and other aggrieved employees with all lawful rest periods and failed to compensate Plaintiff and other aggrieved employees one additional hour of pay at the employees' regular rate of compensation for each workday that the rest period was not provided.

Failure to Provide Meal Periods and/or Pay Meal Period Premiums (Labor Code sections 226.7 and 512(a)): Plaintiff is informed and believes, and based thereon alleges, that during the period relevant to Plaintiff's intended action, Defendant did not provide Plaintiff and other aggrieved employees with a meal period of not less than 30 minutes for each work period of more than five hours per day, and failed to compensate Plaintiff and other aggrieved employees one additional hour of pay at the employees' regular rate of compensation for each workday that the meal period was not provided. Further, Defendant did not always provide a second lawful meal period when Plaintiff and other aggrieved employees worked over ten (10) hours in a workday.

Failure to Pay All Wages Due Upon End of Employment (Labor Code section 201 and 202): Plaintiff is informed and believes, and based thereon alleges, that during the period relevant to Plaintiff's intended action, Defendant did not pay all wages due to Plaintiff and other employees when the employment relationship ended. Because Defendant did not pay Plaintiff and other aggrieved employees applicable minimum and overtime wages and failed to pay Plaintiff and other aggrieved employees rest and meal period premiums, those wages were due and owing to Plaintiff and other aggrieved employees at the time of termination or within 72 hours of resignation. Plaintiff is informed and believes, and based thereon alleges, that other aggrieved employees were also not compensated for all wages due as required by the Labor Code.

Failure to Maintain Records (Labor Code section 1174(d)): Plaintiff is informed and believes, and based thereon alleges, that during the period relevant to Plaintiff's intended action, Defendant did not maintain payroll records showing the hours worked daily by and the wages paid to Plaintiff and other aggrieved employees. Further, Defendant did not maintain timecard records that accurately reflect the actual hours worked by Plaintiff and other aggrieved employees.

Failure to Reimburse Employees for Necessary Expenditures (Labor Code section 2802): Plaintiff is informed and believes, and based thereon alleges, that during the period relevant to Plaintiff's intended action, Defendant did not reimburse Plaintiff and other aggrieved employees for their necessary business expensing including the subscription of educational software.

Related Penalties (Labor Code sections): As a result of Defendant's violations related to its misclassification as independent contractors of Plaintiff and other aggrieved employees along with its failure to pay overtime, failure to pay all wages due upon termination, and failure to pay rest and meal period premiums, Plaintiff and the other aggrieved employees are entitled to recovery of penalties, including penalties for failure to provide accurate wage statements (L.C. 226); waiting time penalties (L.C. 203); and civil penalties pursuant to California Labor Code section 2699(f)(2).

Plaintiff alleges that Defendant has violated the California Labor Code by:

- (a) Misclassifying employees as independent contractors;
- (b) Failing to pay all wages earned;
- (c) Failing to pay wages at a rate of at least minimum wage for all hours worked;
- (d) Failing to pay mandatory overtime and/or double time wages;
- (e) Failing to provide mandatory rest periods;
- (f) Failing to provide mandatory meal periods;
- (g) Failing to pay one (1) hour of wages to aggrieved employees who were not provided with legally compliant rest periods;
- (h) Failing to pay one (1) hour of wages to aggrieved employees who were not provided with legally compliant meal periods;
- (i) Failing to reimburse employees for necessary expenditures;
- (j) Failing to maintain full, complete, and accurate payroll records, including an accurate accounting of all hours worked.; and
- (k) Failing to pay all wages earned upon termination.

Plaintiff alleges that during the relevant period, Defendant's conduct resulted in systematic violations of California Labor Code sections 201 through 204, 226, 226.3, 226.7, 226.8, 510, 511, 512, 558, 558.1, 1174(d), 1194(a), and 1198 and 2802.

CONCLUSION

We provide notice pursuant to California Labor Code section 2699.3 of the Private Attorneys General Act of 2004, and specifically ask that your agency conduct an investigation as to the alleged violations described herein; or, in the alternative, if the agency does not intend to investigate the alleged violations, we ask that you issue an immediate notification letter to our office confirming the same so that we may proceed with our civil action with regard to the PAGA claims described herein against Defendant.

If you require anything further and/or have any questions, please do not hesitate to contact me. Nothing in this letter is intended to be, nor should be construed as, an admission against the interests of Plaintiffs, and/or other current and/or former employees and shall not be construed as a waiver of their rights, remedies, claims, or defenses, all of which are expressly reserved.

Respectfully,

Barkhordarian Law Firm

By: /s/ Heather K. Cox

Heather K. Cox

cc: VIA CERTIFIED MAIL

Tutored by Teachers, Inc.

Corporate Service Company, Registered Agent for Service

251 Little Falls Drive

Wilmington, Delaware 19808

Tutored by Teachers

2903 Philadelphia Pike #7265

Claymont Delaware 19703

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EXHIBIT B
FIRST AMENDED COMPLAINT

GREGORY P. WONG (SBN: 204502)
HEATHER K. COX (SBN: 278898)
BARKHORDARIAN LAW FIRM, PLC
6047 Bristol Parkway, Second Floor
Culver City, CA 90230
Telephone: (323) 450-2777
Facsimile: (310) 215-3416
Email: Greg@barklawfirm.com
Email: Heather@barklawfirm.com

Attorneys for Plaintiff
Erin Naymark

SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY
OF LOS ANGELES – BEVERLY HILLS COURTHOUSE

ERIN NAYMARK, an individual,

Plaintiff,

vs.

TUTORED BY TEACHERS, INC., a
Delaware Corporation; and DOES 1 through
100, inclusive,

Defendants.

CASE NO.: 23SMCV04750

FIRST AMENDED COMPLAINT FOR:

1. Misclassification of Employment Status;
2. Failure to Pay Minimum Wages;
3. Failure to Pay Overtime Wages;
4. Failure to Provide Meal Periods;
5. Failure to Provide Rest Periods;
6. Failure to Provide Adequate Paystubs;
7. Failure to Maintain Accurate Records;
8. Failure to Indemnify for All Employment Related Losses/Expenditures; and
9. Unfair Competition, Cal. Bus. & Prof. § 17200 *et seq.*
10. Violation of California Labor Code Section 2698, et seq. (Private Attorneys General Act (“PAGA”))

**UNLIMITED CIVIL
DEMAND FOR JURY TRIAL**

1 Plaintiff ERIN NAYMARK (hereinafter “Plaintiff”) individually and in a representative
2 capacity on behalf of all aggrieved employee, brings this action against Defendant TUTORED
3 BY TEACHERS, INC. and DOES 1 through 100, inclusive (hereinafter, referred to collectively
4 as “Defendants”) as follows:

5 **THE PARTIES**

6 1. At all times relevant herein, Plaintiff was, and is, an individual residing in the
7 County of Los Angeles, State of California.

8 2. Plaintiff is informed and believes, and based thereon allege, that at all times
9 relevant herein, TUTORED BY TEACHERS, INC. (“TBT”), is at all relevant times a Delaware
10 Corporation, lawfully doing substantial business throughout the state of California, including in
11 the County of Los Angeles. TBT was and continues to be Plaintiff’s employer at all times
12 relevant herein.

13 3. Plaintiff is unaware of the true names and capacities of Defendants named herein
14 as DOES 1 through 100, inclusive, and therefore sue these Defendants by such fictitious names.
15 Plaintiffs will amend this Complaint to allege such names and capacities when the same has been
16 ascertained. Plaintiff is informed and believes, and based thereon alleges that each of the
17 fictitiously named Defendants stated herein bears a legal responsibility to Plaintiffs similar to that
18 of the named Defendants herein.

19 4. At all times mentioned herein, Defendants DOES 1 through 100, inclusive, were
20 the agents, servants, and employees of their Co-Defendants, and in doing the things herein alleged
21 were acting in the scope of their authority as such agents, servants, and employees, and with the
22 permission and consent of their Co-Defendants.

23 5. Plaintiff hereby demands a trial by jury.

24 **JURISDICTION AND VENUE**

25 6. This Court has jurisdiction over this action and the matters alleged herein pursuant
26 to the grant of original jurisdiction set forth in Article VI, Section 10 of the California
27 Constitution. The statutes under which this action are brought do not specify any other basis for
28 jurisdiction.

1 7. This Court has jurisdiction over Defendants because, upon information and belief,
2 each Defendant is either a citizen of California, has sufficient minimum contracts in California, or
3 otherwise intentionally avails itself of the California market so as to render the exercise of
4 jurisdiction over it by this Court consistent with traditional notions of fair play and substantial
5 justice.

6 8. Venue is proper in this Court, because, upon information and belief, one or more
7 of the named Defendants resides, transacts business, or has offices in this county and the acts or
8 omissions alleged herein took place in this county.

9 9. On September 14, 2023, Plaintiff provided notice to the California Labor and
10 Workforce Development Agency (“LWDA”) of her intent to file a lawsuit against Defendants
11 pursuant to the Private Attorneys General Act for violations of Labor Code sections 201 through
12 204, 226, 226.3, 226.7, 226.8, 510, 512, 558, 558.1 1174(d), 1194(a), 1197, 1197.1, 1198 and
13 2802 and the industrial wage orders. This matter has been assigned case number LWDA-CM-
14 981566-23 by the LWDA. As of the date of filing of this First Amended Complaint, the LWDA
15 has not provided any notice that it intends to investigate the alleged violations. Accordingly,
16 Plaintiff now files this First Amended Complaint pursuant to California Labor Code section
17 2699.3(c), which authorizes a plaintiff to amend an existing civil complaint within 60 days of the
18 relevant event giving rise to a complaining employee’s right to proceed in a civil action brought
19 under the California Private Attorneys General Act (California Labor Code section 2698, et seq.).

20 **FACTS COMMON TO ALL CAUSES OF ACTION**

21 10. Defendants own and operate a national business that provides online tutoring
22 services.

23 11. In or around April 2022, Defendants hired Plaintiff as an online tutor stationed in
24 Los Angeles, California. Plaintiff’s duties included but were not limited to creating teaching plans
25 and having teaching sessions with customers/students.

26 12. Plaintiff was wrongfully misclassified as an independent contractor instead of an
27 employee throughout her employment with Defendant. Plaintiff was and is not free from the
28 control and direction of Defendant in the performance of her work, and she was and is not

1 performing work outside Defendant's usual course of business. Defendants exercised significant
2 control over Plaintiff's work, including enforcing timelines in regard to preparing and reviewing
3 teaching sessions, and penalizing for violating any of the proposed times by Defendants.

4 13. Since Plaintiff was misclassified by Defendant as an independent contractor, she
5 was therefore entitled to rest periods, meal periods, and payment of minimum wage for all hours
6 worked and overtime compensation pursuant to the California Labor Code. Plaintiff worked the
7 necessary hours under Defendant's control that entitled her meal and rest breaks and premiums,
8 minimum and overtime wages.

9 14. At all times relevant to Plaintiff's employment, Defendants controlled all aspects
10 of her job. Plaintiff was paid through "invoices" for the work she performed for Defendants.
11 Defendant voluntarily and knowingly misclassified Plaintiff's employment status as an
12 independent contractor to effectively deny her rights and benefits of employment. To the
13 detriment of Plaintiff's employment, Defendant deliberately and continuously engaged in
14 violations of the Labor Code, including failure to pay wages due, failure to overtime
15 compensation, failure to provide meal and rest periods and failure to reimburse reasonable
16 business expenses such as for the necessary education software subscriptions to perform her job.

17 **FIRST CAUSE OF ACTION**

18 **Misclassification of Employment Status**

19 **Plaintiff Against All Defendants**

20 15. Plaintiff refers to and incorporates herein by reference paragraphs 1 through 14 as
21 though fully set forth herein.

22 16. In violation of California Labor Code section 226.8, Defendants willfully
23 misclassified Plaintiff as an independent contractor despite controlling and supervising Plaintiff's
24 day-to-day work and as further alleged above.

25 17. As a direct and proximate result of Defendants' willful and intentional pattern and
26 practice of misclassifying Plaintiff's employment. Plaintiff was not paid overtime compensation,
27 rest and meal periods and/or premiums, and she was not provided accurate wage statements.

28 18. As such, Plaintiff is entitled to lost wages, plus pre-judgment interest, reasonable

1 attorneys' fees, costs, and civil penalties. The exact amount and nature of such damages are
2 presently unknown to Plaintiff who will either seek leave to amend this Complaint upon
3 ascertaining such information or will prove the same at the time of trial.

4 **SECOND CAUSE OF ACTION**

5 **Failure to Pay Minimum Wages**

6 **Plaintiff Against All Defendants**

7 19. Plaintiff refers to and incorporates herein by reference paragraphs 1 through 18 as
8 though fully set forth herein.

9 20. Throughout Plaintiff's employment, Plaintiff worked and continues to work as a
10 misclassified employee and should be paid as an hourly non-exempt employee for Defendants.

11 21. Pursuant to Labor Code section 1182.12, 1194 1197, and the applicable Wage
12 Order, Plaintiff is entitled to receive wages for all hours worked, i.e., all time Plaintiff was subject
13 to Defendants' control, and those wages must be paid at least at the minimum wage rate in effect
14 during the time Plaintiff earned the wages.

15 22. Defendants' policies, practices, and/or procedures required Plaintiff to be engaged,
16 suffered, or permitted to work without being paid wages for all of the time in which she was
17 subject to Defendants' control.

18 23. In this case, Plaintiff worked more minutes per shift than Defendants credited her
19 with having worked because, inter alia, she was required to work beyond her regularly scheduled
20 shift to tend her duties as a Tutor. However, Plaintiff's time records did not reflect the actual
21 hours worked.

22 24. Consequently, Plaintiff was and continues to be subject to Defendants' control
23 without being compensated any wages, in violation of Labor Code section 1182.12, 1194, 1197,
24 and the Wage Order.

25 25. As a result of Defendants' unlawful conduct, Plaintiff suffered and continues to
26 suffer damages in an amount subject to proof, to the extent that she was not paid wages at a
27 minimum wage rate for all hours worked.

28 26. Pursuant to California Labor Code sections 1194 and 1194.2, Plaintiff is entitled to

1 recover unpaid minimum wage, interest thereon, liquidated damages in the amount of her unpaid
2 minimum wage, and attorneys' fees and costs.

3 **THIRD CAUSE OF ACTION**

4 **Failure to Pay Overtime Wages**

5 **Plaintiff Against All Defendants**

6 27. Plaintiff refers to and incorporates herein by reference paragraphs 1 through 26 as
7 though fully set forth herein.

8 28. Throughout Plaintiff's employment, Plaintiff worked and continues to work as a
9 misclassified employee and should be paid as an hourly non-exempt employee for Defendants,
10 covered by California Labor section 510 and 1194 and the applicable Wage Order.

11 29. Pursuant to California Labor Code section 510 and 1194 and the Wage Order,
12 hourly, non-exempt employees are entitled to receive a higher rate of pay for all hours worked in
13 excess of eight (8) hours in a workday and/or forty hours in a workweek.

14 30. California Labor Code section 510, subdivision (a) states in relevant part: Eight
15 hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and
16 any work in excess of 40 hours in any one workweek and the first eight hours worked on the
17 seventh day of work in any one workweek shall be compensated at the rate of no less than one
18 and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one
19 day shall be compensated at the rate of no less than twice the regular rate of pay for an employee.
20 In addition, any work in excess of eight hours on any seventh day of a workweek shall be
21 compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in
22 this section requires an employer to combine more than one rate of overtime compensation in
23 order to calculate the amount to be paid to an employee for any hour of overtime work.

24 31. Further, California Labor Code section 1196 provides, the maximum hours of
25 work and the standard conditions of labor fixed by the commission shall be the maximum hours
26 of work and the standard conditions of labor for employees. The employment of any employee
27 for longer hours than those fixed by the order or under conditions of labor prohibited by the order
28 is unlawful.

1 32. Despite California law requiring employers to pay employees a higher rate of pay
2 for all hours worked more than eight (8) hours in a workday, more than (40) hours in a
3 workweek, and on the seventh day of work in a workweek, Defendants failed to pay all overtime
4 wages to Plaintiff for her daily overtime hours worked.

5 33. In this case, Plaintiff worked more minutes per shift than Defendants credited her
6 with having worked because, inter alia, she was required to work beyond her regularly scheduled
7 to tend her duties as Tutor. However, Plaintiff's timecards did not reflect all hours worked and the
8 applicable rates.

9 34. To the extent that the foregoing uncompensated time occurred on workdays when
10 Plaintiff already worked eight (8) hours, in workweeks where Plaintiff already worked forty (40)
11 hours, and/or seven days in a workweek, the foregoing resulted in time in which Plaintiff was and
12 currently is under the control of Defendants, which constituted overtime hours, but not
13 compensated at her overtime rate of pay in violation of Labor Code section 510, 1194, 1198, and
14 the Wage Order.

15 35. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
16 amount subject to proof, to the extent that she was not paid at her proper overtime rate of pay for
17 all overtime hours worked.

18 36. Pursuant to Labor Code section 1194, Plaintiff is entitled to recover the full
19 amount of her unpaid overtime wages, prejudgment interest, and attorneys' fees.

20 **FOURTH CAUSE OF ACTION**

21 **Failure to Provide Meal Periods**

22 **Plaintiff Against All Defendants**

23 37. Plaintiff refers to and incorporates herein by reference paragraphs 1 through 36 as
24 though fully set forth herein.

25 38. Throughout Plaintiff's employment, Plaintiff worked and continues to work as a
26 misclassified employee and should be paid as an hourly non-exempt employee for Defendants,
27 covered by Labor Code sections 512 and 226.7 and the applicable Wage Order.

28 39. California law requires an employer to provide its employees an uninterrupted

1 meal period of no less than thirty (30) minutes in which the employee is relieved of all duties and
2 the employer relinquishes control over the employee's activities no later than the end of the
3 employee's fifth hour of work and a second meal period no later than the employee's tenth hour
4 of work. (Labor Code sections 226.7, 512; *Brinker Rest. Corp. v. Super Ct. (Hohnbaum)* (2012)
5 53 Cal.4th 1004). If the employer requires the employee to remain at the work site or facility
6 during the meal period, the meal period must be paid. This is true even where the employee is
7 relieved of all work duties during the meal period. (*Bono Enterprises, Inc. v. Bradshaw* (1995) 32
8 Cal.App.4th 968). If the employee is not free to leave the work premises or worksite during the
9 meal period, even if the employee is relieved of all other duty during the meal period, the
10 employee is subject to the employer's control and the meal period is counted as time worked.

11 40. If an employer fails to provide an employee a meal period in accordance with the
12 law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of
13 pay for each workday that a legally required and compliant meal period was not provided. (Labor
14 Code section 226.7).

15 41. In this case, Plaintiff worked shifts long enough to entitle her to meal periods
16 under California law. Nevertheless, Defendants failed to provide Plaintiff with compliant, duty-
17 free meal periods to tend her duties as Tutor.

18 42. Similarly, Defendants also failed to pay premium wages to Plaintiff to compensate
19 her for each workday she did not receive all legally required and/or compliant meal periods.

20 43. Pursuant to Labor Code section 226.7 and the Wage Order, Defendants are liable
21 to Plaintiff for one (1) hour of additional pay at her regular rate of compensation for each
22 workday that Defendants did not provide all legally required and compliant meal periods plus
23 pre-judgment interest.

24 **FIFTH CAUSE OF ACTION**

25 **Failure to Provide Rest Periods**

26 **Plaintiff Against All Defendants**

27 44. Plaintiff refers to and incorporates herein by reference paragraphs 1 through 43 as
28 though fully set forth herein.

1 45. Throughout Plaintiff's employment, Plaintiff worked and continues to work as a
2 misclassified employee and should be paid as an hourly non-exempt employee for Defendants,
3 covered by Labor Code section 226.7 and the applicable Wage Order.

4 46. California law requires that "[e]very employer shall authorize and permit all
5 employees to take rest periods, which insofar as practicable shall be in the middle of each work
6 period. The authorized rest period time shall be based on the total hours worked daily at the rate
7 of ten (10) minutes net rest time per four (4) hours or major fraction thereof...." Wage Order 4,
8 §12. Employees are entitled to 10 minutes rest for shifts from three and one-half to six hours in
9 length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more
10 than 10 hours up to 14 hours, and so on." *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)*
11 (2012) 53 Cal.4th 1004, 1029; Labor Code §226.7. Additionally, the rest period requirement
12 "obligates employers to permit – and authorizes employees to take – off-duty rest periods."
13 *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods
14 employers must relieve employees of all duties and relinquish control over how employees spend
15 their time. *Id.* If an employer fails to provide an employee a rest period in accordance with the
16 applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at
17 the employee's regular rate of compensation for each work day that the rest period is not
18 provided." Wage Order 4, §12; Labor Code §226.7.

19 47. In this case, Plaintiff worked shifts of more than three-and-a-half (5.5) hours.
20 Nevertheless, Defendants employed practices that failed to authorize and/or permit Plaintiff to
21 receive all legally required and compliant rest periods since she had to tend her duties as Tutor.

22 48. Similarly, Defendants failed to pay Plaintiff one (1) hour of pay at her regular rate
23 of pay for each workday she did not receive all legally required and/or legally compliant rest
24 periods.

25 49. Pursuant to Labor Code section 226.7 and the applicable Wage Order, Defendants
26 are liable to Plaintiff for one (1) hour of additional pay at the regular rate of compensation for
27 each workday that Defendants did not provide all legally required and/or legally compliant rest
28 periods plus pre-judgment interest.

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1 54. As to injury, section 226 provides: An employee is deemed to suffer injury . . . if
2 the employer fails to provide accurate and complete information as required by any one or more
3 items (1) to (9), inclusive, of subdivision (a) and the employer cannot promptly and easily
4 determine from the wage statement alone one or more of the following: (1) the amount of the
5 gross wages or net wages paid to the employee during the pay period.

6 55. Wage Statements issued to Plaintiff did not list all hours worked and the applicable
7 rate. Because a reasonable person necessarily would need to refer to extrinsic documents or
8 information to determine this information, Plaintiff suffered injury under Labor Code section
9 226(a).

10 56. Accordingly, because Defendants failed to provide the information required by
11 Labor Code section 226, Defendants are liable to Plaintiff for statutory damages, attorneys' fees
12 and costs.

13 **SEVENTH CAUSE OF ACTION**

14 **Failure to Maintain Accurate Records**

15 **Plaintiff Against All Defendants**

16 57. Plaintiff refers to and incorporates herein by reference paragraphs 1 through 56 as
17 though fully set forth herein.

18 58. Labor Code section 1174 provides that every person employing labor in this state
19 shall keep at a central location in the state or at the plants or establishments at which employees
20 are employed, payroll records showing the hours worked daily by and the wages paid to, and the
21 number of piece-rate units earned by and any applicable piece rate paid to, employees employed
22 at the respective plants or establishments.

23 59. California Labor Code section 1174.5 provides that any person employing labor
24 who willfully fails to maintain accurate and complete records required by subdivision (d) of
25 Section 1174 shall be subject to a civil penalty of five hundred dollars (\$500).

26 60. Defendants failed to comply with California Labor Code section 1174 by failing to
27 maintain accurate records with respect to hours worked and wages paid for Plaintiff.

28 61. Accordingly, Defendants are liable to Plaintiff for statutory damages and costs.

1 **EIGHTH CAUSE OF ACTION**

2 **Failure to Indemnify for All Employment Related Losses and Expenditures**

3 **Plaintiff Against All Defendants**

4 62. Plaintiff refers to and incorporates herein by reference paragraphs 1 through 61 as
5 though fully set forth herein.

6 63. Defendants employed Plaintiff as an online tutor in the county of Los Angeles.
7 Defendants have a duty to indemnify their employees for all expenditures or losses incurred by
8 the employee. Plaintiff incurred reasonable business expenses during the course of her
9 employment such as for the necessary education software subscriptions to perform her job.

10 64. Labor Code section 2802(a) states that “[a]n employer shall indemnify his or her
11 employee for all necessary expenditures or losses incurred by the employee in direct consequence
12 of the discharge of his or her duties, or of his or her obedience to the direction of the employer...”
13 An employer is prohibited from passing the ordinary business expenses and losses of the
14 employer onto the employee. (Labor Code section 2802).

15 65. Defendant violated Labor Code section 2802 by impermissibly passing business-
16 related expenses to Plaintiff. These policies, practices, and/or procedures included, but were not
17 limited to reimburse software subscriptions that were essential to perform her duties.

18 66. Moreover, Defendants failed to indemnify Plaintiff for all necessary expenditures
19 or losses incurred by her as required by California law.

20 67. Because Defendants failed to indemnify Plaintiff for the necessary expenditures
21 she incurred, they are liable to Plaintiff for monies to compensate Plaintiff for such expenditures
22 or losses pursuant to Labor Code section 2802.

23 68. As a direct and proximate result of Defendants’ violation of Labor Code section
24 2802, Plaintiff has suffered irreparable harm and monetary damages entitling her to both
25 injunctive relief and restitution. Plaintiff seeks damages and all other relief allowable including
26 indemnification for all employment-related expenses as well as ordinary business expenses
27 incurred by Defendants and passed on to Plaintiff, pursuant to Labor Code section 2802.

28 69. Pursuant to Labor Code section 2802, Plaintiff is entitled to recover full

1 indemnification, reasonable attorneys' fees, and costs of suit.

2 **NINTH CAUSE OF ACTION**

3 **Unfair Competition**

4 **Plaintiff Against All Defendants**

5 70. Plaintiff refers to and incorporates herein by reference paragraphs 1 through 69 as
6 though fully set forth herein.

7 71. As alleged above, Defendants have and continue to misclassify Plaintiff and fail to
8 fully compensate Plaintiff for all hours worked, Plaintiff's overtime wages, and Plaintiff's meal
9 and rest period premiums.

10 72. On information and belief, by violating the provisions of the Labor Code and
11 Wage Orders, Defendants have gained a competitive advantage and unfairly injured competitors
12 in violation of Cal. Bus. & Prof. Code section 17203.

13 73. The victims of these unfair and illegal business practices include, but are not
14 limited to, Plaintiff, Defendants' other employees, competing businesses, and the general public.
15 Plaintiff is informed and believes, and thereon alleges, Defendants performed the above-
16 mentioned acts with the intent of gaining an unfair competitive advantage.

17 74. The identity of the precise persons to whom restitution should be made is a matter
18 that can be ascertained from Defendants' records, which they are required to keep and maintain.

19 75. Plaintiff's efforts in securing the requested relief will result "in the enforcement of
20 an important right affecting the public interest," as "a significant benefit, whether pecuniary or
21 nonpecuniary, [will] be[] conferred on . . . a large class of persons." Cal. Civ. Proc. Code
22 § 1021.5. Because "the necessity and financial burden of private enforcement . . . are such as to
23 make [an attorney's fees] award appropriate, and [because attorney's fees] should not in the
24 interest of justice be paid out of the recover, if any," Plaintiff requests an award of reasonable
25 attorneys' fees pursuant to section 1021.5 of the California Code of Civil Procedure. *Id.*

26 76. Pursuant to Business and Professions Code section 17203, Plaintiff requests
27 restitution and disgorgement of wages and premiums wrongfully retained by Defendants in
28 violation of Business and Professions Code sections 17200 et seq.

1 **TENTH CAUSE OF ACTION**

2 **Violation of California Labor Code Section 2698, et seq. (PAGA)**

3 **Plaintiff Against All Defendants**

4 77. Plaintiff refers to and incorporates herein by reference paragraphs 1 through 76 as
5 though fully set forth herein.

6 78. California Labor Code section 2698, et seq., the Private Attorneys General Act
7 (“PAGA”), allows an aggrieved employee to bring suit against an employer for violations of most
8 California Labor Code provisions, including, but not limited to, violations of California Labor
9 Code sections 201-203, 204, 226, 226.3, 226.7, 226.8, 510, 512, 558, 558.1, 1174(d), 1194, 1197,
10 1197.1, 1198 and 2802. By virtue of Defendants’ numerous violations of the California Labor
11 Code as against Plaintiff as described herein, Plaintiff is an aggrieved employee as defined in
12 California Labor Code section 2698, et seq.

13 79. Defendants’ acts constitute an ongoing unlawful activity prohibited by the
14 California Labor Code, and, therefore, these acts constitute violations of the PAGA.

15 80. Plaintiff has provided notice of these violations pursuant to California Labor Code
16 section 2699.3 and has specifically asked the LWDA if it intends to investigate the alleged
17 violations. Plaintiff did not receive a response back from the LWDA within the time limits
18 outlined in California Labor Code section 2699.3 with notification that it intends to investigate
19 the alleged violations, and thus, Plaintiff is entitled to prosecute his PAGA claims under
20 California Labor Code section 2699, et seq.

21 81. Defendants’ conduct of violating the California Labor Code constitutes violations
22 of the PAGA.

23 82. Therefore, Plaintiff requests penalties against Defendants under the provisions of
24 PAGA section 2699(f).

25 83. The proper measure of damages and penalties under the PAGA is all aggrieved
26 employees, whether a party to this action or not. Further, this claim needs no certification to
27 proceed with class-wide recovery. *See Arias v. Superior Court*, 46 Cal. 4th 969, 970-975 (2009).

28 84. Further, as a direct and proximate result of the conduct of Defendants, as set forth

1 above, Plaintiff was forced to incur substantial attorney's fees and costs which are recoverable
2 under California Labor Code Section 2699(g)(1).

3 85. Accordingly, Plaintiff and all aggrieved employees respectfully request that the
4 Court award judgment and relief in their favor as described herein.

5 **PRAYER FOR DAMAGES**

6 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, jointly
7 and severally, as follows:

- 8 1. For an award of compensatory damages, including without limitation lost wages,
9 earnings, benefits, and other compensation, according to proof, as well as damages
10 for any emotional distress and pain and suffering, according to proof as allowed by
11 law;
- 12 2. For reimbursement of reasonable business expenses incurred;
- 13 3. For a declaratory judgment that Defendants have violated California public policy;
- 14 4. For injunctive relief to ensure compliance with the Labor Code;
- 15 5. For an award of prejudgment and post-judgment interest;
- 16 6. For an award of reasonable attorneys' fees;
- 17 7. For statutory fees and/or penalties, including premium wages and liquidated
18 damages;
- 19 8. For penalties against Defendant on behalf of Plaintiff and all aggrieved employees
20 according to the Private Attorneys General Act ("PAGA");
- 21 9. For all costs of suit; and
- 22 10. For an award of any other and further legal and equitable relief as the Court deems
23 just and proper.

24 DATED: November 27, 2023

Respectfully Submitted,
BARKHORDARIAN LAW FIRM, PLC

25 */s/ Heather K. Cox*

26 _____
Gregory P. Wong
Heather K. Cox
27 Attorneys for Plaintiff Erin Naymark
28

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial for the individual causes of action set forth herein.

DATED: November 27, 2023

Respectfully Submitted,
BARKHORDARIAN LAW FIRM, PLC

/s/ Heather K. Cox

Gregory P. Wong
Heather K. Cox
Attorneys for Plaintiff Erin Naymark

PROOF OF SERVICE
(CCP §§ 1013(A) AND 2015.5)

State of California,

Case No.: 23SMCV04750

County of Los Angeles

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and am not a party to the within action; my business address is 6047 Bristol Parkway, Culver City, CA 90230.

On November 27, 2023, I served the foregoing document described as:

First Amended Complaint and Demand for Jury Trial

on the interested parties in this action by placing same in a sealed envelope, as follows:

Blake A. Dillion
Leila Narvid
Payne & Fears LLP
4 Park Plaza, Suite 1100
Irvine, CA 92614

Attorneys for Defendant Tutored by Teachers,
Inc.

Emails: bad@paynefears.com;
ln@paynefears.com

☐ **(BY MAIL)** – I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail in Culver City, California.

I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid at Costa Mesa, California, in the ordinary course of business. I am fully aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing an affidavit.

☒ **(BY E-MAIL)** – Based on a Court order or an agreement by the parties to accept service by e-mail or electronic transmission, I caused the documents described above to be sent by e-mail to the persons at the e-mail addresses listed above. I did not receive, within a reasonable amount of time after transmission, any electronic message or other indication that the transmission was unsuccessful.

☐ **(BY FACSIMILE)** – I caused the above described document(s) to be transmitted to the offices of the interested parties at the facsimile number(s) indicated on the attached Service List and the activity report(s) generated by facsimile number (310) 215.3416 indicating on all pages that they were transmitted.

☐ **(BY PERSONAL SERVICE)** – I caused such envelope(s) to be delivered by hand to Defendant.

☒ **(STATE)** – I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ **(FEDERAL)** – I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

/s/ Evelyn Monreal

EVELYN MONREAL

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EXHIBIT C

CONFIRMATION OF SUBMISSION OF PAGA COMPLAINT TO LWDA



Greg Wong <gregw@lyfe.com>

Thank you for your Court Complaint Submission.

DIR PAGA Unit <lwdadonotreply@dir.ca.gov>

Fri, Jun 7, 2024 at 4:32 PM

To: gregw@lyfe.com

06/07/2024 04:31:56 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Court Complaint

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

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EXHIBIT D
PAGA SETTLEMENT STIPULATION

GREGORY P. WONG (SBN: 204502)

LYFE LAW, LLP

864 S. Robertson Blvd., 3rd Floor

Los Angeles, California 90035

Telephone: (888) 203-1422

Facsimile: (888) 203-1424

Email: Gregw@Lyfe.com

Attorneys for Plaintiff

ERIN NAYMARK

Leila Narvid, Bar No. 229402

ln@paynefears.com

Blake A. Dillion, Bar No. 305835

bad@paynefears.com

PAYNE & FEARS LLP

Attorneys at Law

655 Montgomery Street, Suite 1430

San Francisco, CA 94111

Telephone: (415) 738-6850

Facsimile: (415) 738-6855

Attorneys for Defendant TUTORED BY

TEACHERS, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

ERIN NAYMARK, an individual,

Plaintiff,

vs.

TUTORED BY TEACHERS, INC., a Delaware
Corporation; and DOES 1 through 100,
inclusive,

Defendants.

Case No.: 23SMCV04750

Assigned to: Hon. Michael E. Whitaker (Dept.
207)

**JOINT STIPULATION RE PAGA
SETTLEMENT**

1 This PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiff Erin
2 Naymark (“Plaintiff” or “Naymark”) and Defendant Tutored by Teachers, Inc., a Delaware
3 Corporation (“Defendant” or “TBT”). The Agreement refers to Naymark and TBT collectively as
4 the “Parties.”:

5 **DEFINITIONS**

6 1. “Action” means the matter of *Erin Naymark v. Tutored by Teachers, Inc., et al.*
7 (LASC Case No. 23SMCV04750) initiated on October 5, 2023 and pending in the Superior Court of
8 the State of California, County of Los Angeles.

9 2. “Administrator” means Phoenix Class Action Administration Solutions, the neutral
10 entity the Parties have agreed to appoint to administer the Settlement.

11 3. “Administration Expenses Payment” means the amount the Administrator will be
12 paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses. The
13 Administrator has provided a “Not to Exceed” administration quote based on 235 aggrieved
14 individuals of \$3,750.00.

15 4. “Aggrieved Individuals” means all persons, including but not limited to Plaintiff, who
16 performed work in the State of California for Defendant during the PAGA Period as a “Teacher-
17 Tutor,” a “Mentor Teacher,” an “Interviewer,” or any other role with similar job duties and were
18 classified as an independent contractor. The Aggrieved Individuals shall consist of the 235
19 individuals identified by Defendant in advance of mediation for whom data was provided to PAGA
20 Counsel.
21

22 5. “Aggrieved Individual Data” means Aggrieved Individual identifying information in
23 Defendant’s possession including the Aggrieved Employee’s name, last-known mailing address,
24 Social Security number and number of PAGA Pay Periods.

25 6. “Aggrieved Individual Address Search” means the Administrator's investigation and
26 search for current Aggrieved Individual mailing addresses using all reasonably available sources,
27 methods and means including, but not limited to, the National Change of Address database, skip
28

traces and direct contact by the Administrator with Aggrieved Individuals.

7. “Approval Order” means the proposed Court Order Granting Approval of PAGA Settlement.

8. “Court” means the Superior Court of California, County of Los Angeles.

9. “Defendant” or “TBT” means Defendant Tutored by Teachers, Inc.

10. “Defense Counsel” means Blake A. Dillion and Leila Narvid of Payne & Fears LLP.

11. “Effective Date” means the date upon which the Court enters a Judgment on its Order Approving the PAGA Settlement.

12. “Gross Settlement Amount” means five hundred and fifty thousand dollars (\$550,000.00) which is the total amount TBT agrees to pay under the Settlement. The Gross Settlement Amount will be used to pay Individual PAGA Payments, the Representative Release Payment, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, the Lien Satisfaction Payment, and the Administrator's Expenses Payment.

13. “Individual PAGA Payment” means the Aggrieved Individual’s pro rata share of 25% of the PAGA Penalties calculated by: (a) dividing the amount of the Aggrieved Individual’s 25% share of the PAGA Penalties by the total number of PAGA Period Pay Periods worked by all Aggrieved Individuals during the PAGA Period; and (b) multiplying the result by each Aggrieved Individual’s PAGA Period Pay Periods.

14. “Judgment” means the judgment entered by the Court based upon the Final Approval.

15. “Lien Holder” means Plaintiff’s prior counsel, the Barkhordarian Law Firm.

16. “Lien Satisfaction Payment” means the amounts to be paid to the Lien Holder in satisfaction of the lien filed by the Barkhordarian Law Firm on March 21, 2024. The Lien Satisfaction Payment consists of Five Thousand One Hundred and Thirty Five Dollars (\$5,135.00) in attorneys’ fees to be deducted from the PAGA Counsel Fees Payment and Seven Hundred

1 Ninety Five Dollars and Ninety Cents (\$795.00) to be deducted from the PAGA Counsel Litigation
2 Expenses Payment.

3 17. "LWDA" means the Labor Workforce Development Agency.

4 18. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the
5 LWDA under Labor Code section 2699, subdivision (i).

6 19. "Net Settlement Amount" means the Gross Settlement Amount, less the following
7 payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA
8 Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, the
9 Representative Release Payment, the Lien Satisfaction Payment, and the Administration Expenses
10 Payment. The remainder is to be paid to Aggrieved Individuals as Individual PAGA Payments.

11 20. "PAGA Counsel" means Lyfe Law, LLP, counsel of record for the Plaintiff in the
12 Action.

13 21. "PAGA Counsel Fees Payment" means the amounts allocated to PAGA Counsel
14 for reimbursement of reasonable attorneys' fees. Pursuant to this stipulation Plaintiff and PAGA
15 Counsel request attorneys' fees in the amount of One Hundred Ninety-Two Thousand, Five
16 Hundred Dollars (\$192,500.00) representing 35% of the Gross Settlement Amount. The PAGA
17 Counsel Fees Payment shall be allocated: (1) One Hundred Eight-Seven Thousand, Three Hundred
18 Sixty Five Dollars (\$187,365.00) to Lyfe Law, LLP; and (2) Five Thousand One Hundred and
19 Thirty Five Dollars (\$5,135.00) allocated to the Lien Satisfaction Payment for attorneys' fees
20 incurred by the Lien Holder.

21 22. "PAGA Counsel Litigation Expenses Payment" mean the amounts allocated to
22 PAGA Counsel for reimbursement of reasonable expenses incurred to prosecute the Action. The
23 total amount of expenses requested is Nine Thousand Seventy-Three Dollars and Eighty-Nine
24 Cents (\$9,073.89) allocated as follows: (1) Eight Thousand Two Hundred Seventy-Seven Dollars
25 and Ninety-Nine Cents (\$8,277.99) to Lyfe Law LLP; and (2) Seven Hundred Ninety Five Dollars
26 and Ninety Cents (\$795.00) to the Lien Holder per the Lien Satisfaction Payment.
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23. “PAGA Pay Period” means any Pay Period during which an Aggrieved Individual worked for TBT for at least one day during the PAGA Period.

24. “PAGA Period” means the period from September 14, 2022 until the date of the Approval Order.

25. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

26. “PAGA Notice” means Plaintiff’s September 14, 2023 letter to TBT and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

27. “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, or \$322,426.11, representing 58.6% of the Gross Settlement Amount, allocated 25% to the Aggrieved Individuals (\$80,606.53) and 75% to LWDA (\$241,819.58) in settlement of the PAGA claims.

28. “Plaintiff” or “Representative” means Plaintiff Erin Naymark, the named Plaintiff in the Action.

29. “Released PAGA Claims” means the claims being released by the Plaintiff and PAGA Counsel and as described in Paragraphs 50-53 below.

30. “Released Parties” means: TBT and each of its former and present direct and/or indirect owners, dba’s, affiliates, subsidiaries, brother and sister corporations, divisions, related companies, successors and predecessors, and current and former employees, directors, officers, shareholders, owners, trustees, fiduciaries, beneficiaries, subrogees, executors, partners, privies, agents, servants, attorneys, insurers, representatives, administrators, employee benefit plans, predecessors, successors, investors, and assigns.

31. “Representative Release Payment” means the payment made to Plaintiff in consideration for her service and assistance in prosecuting the PAGA claims, her dismissal with prejudice of all individual claims alleged in the Action, and agreement and execution of a General Release in favor of the Released Parties. The amount of the Representative Release Payment

1 agreed to by the Parties pursuant to this Joint Stipulation is Twenty Thousand Dollars and Zero
2 Cents (\$20,000.00).

3 32. "Settlement" means the disposition of the Action effected by this Agreement and
4 the Judgment.

5 RECITALS

6 33. Plaintiff was engaged by Defendant from March of 2022 until September of 2023 as
7 a Teacher-Tutor. At all times during her tenure as a Teacher-Tutor, Defendant classified her as an
8 independent contractor.

9 34. On September 14, 2023, Plaintiff submitted the PAGA Notice (Attached hereto as
10 Exhibit A) to the LWDA through the online submission portal. Plaintiff served Defendant with the
11 PAGA Notice via certified mail on September 14, 2023.

12 35. On October 5, 2023, Plaintiff filed the original complaint in this Action, alleging the
13 following claims on an individual basis: (1) Misclassification of Employment Status; (2) Failure to
14 Pay Minimum Wages; (3) Failure to Pay Overtime Wages; (4) Failure to Provide Meal Periods; (5)
15 Failure to Provide Rest Periods; (6) Failure to Provide Adequate Paystubs; (7) Failure to Maintain
16 Accurate Records; (8) Failure to Indemnify For All Employment Related Losses/Expenditures; and
17 (9) Unfair Competition.

18 36. On November 27, 2023, after expiration of the LWDA review period, Plaintiff filed
19 her First Amended Complaint ("FAC") adding a cause of action for civil penalties pursuant to the
20 PAGA. The FAC (Attached hereto as Exhibit B) is the operative complaint in this Action.

21 37. Defendant answered the FAC on December 20, 2023.

22 38. On March 19, 2024, Plaintiff Erin Naymark substituted Lyfe Law, LLP as her counsel
23 of record in the place of the Barkhordarian Law Firm.

24 39. The Parties mutually agreed to submit this matter to private mediation with Chris
25 Barnes, Esq. of Barnes Dispute Resolution, an experienced labor and employment mediator and
26 litigator with substantial experience in the area of mediating PAGA claims.
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1 40. In advance of mediation, Plaintiff obtained from Defendant via informal discovery, a
2 detailed production of documents and data that allowed Plaintiff's counsel to thoroughly investigate
3 and evaluate the alleged claims. The informal production included Plaintiff's complete personnel
4 and payroll records, all form independent contractor agreements used by Defendant with the
5 Aggrieved Individuals during the relevant time period, and spreadsheets containing data regarding
6 all hours worked by and wages paid to the Aggrieved Individuals. With the use of this data, Plaintiff's
7 counsel was able to fully model the maximum and risk-adjusted potential PAGA penalties at issue
8 and was also able to identify and quantify potential limiting factors and litigation risks should the
9 case not settle at mediation.

10 41. On May 1, 2024, the Parties engaged in an all-day mediation, at which the Parties'
11 negotiations reached an impasse . However, the Parties and mediator Barnes remained in contact
12 and were able to reach resolution after continued negotiations on May 14, 2024.

13 42. The Parties, PAGA Counsel and Defense Counsel represent that they are not aware
14 of any other pending matter or action asserting claims that will be extinguished or affected by the
15 Settlement.
16

17 **TERMS OF SETTLEMENT**

18 43. **Gross Settlement Amount.** Defendant promises to pay Five Hundred and Fifty
19 Thousand Dollars and Zero Cents (\$550,000.00) and no more as the Gross Settlement Amount upon
20 approval of the proposed settlement. The Administrator will disburse the entire Gross Settlement
21 Amount without asking or requiring Aggrieved Individuals to submit any claim as a condition of
22 payment. None of the Gross Settlement Amount will revert to Defendant.

23 44. **Payments from the Gross Settlement Amount.** The Administrator will make and
24 deduct the following payments from the Gross Settlement Amount:

25 (a) **To PAGA Counsel:** (1) attorneys' fees and costs of \$187,365.00; and (2)
26 reasonable costs of \$8,277.99.
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1 (b) **To the Lien Holder:** (1) attorneys' fees and costs of \$5,135.00; and (2)
2 costs in the amount of \$795.90.

3 (c) **To the Administrator:** An Administrator Expenses Payment not to exceed
4 \$3,750.00, except for a showing of good cause and as approved by the Court.

5 (d) **To Plaintiff Erin Naymark:** The Representative Release Payment of
6 \$20,000.00.

7
8 (e) **To the LWDA and Aggrieved Individuals:** PAGA Penalties in the total
9 amount of \$324,676.11 with 75% (\$243,507.08) allocated to the LWDA PAGA Payment and 25%
10 (\$81,169.03) allocated to the Individual PAGA Payments. The Administrator will report the
11 Individual PAGA Payments on IRS 1099 Forms. Aggrieved Individuals assume full responsibility
12 and liability for any taxes owed on their Individual PAGA Payments.
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15 **SETTLEMENT FUNDING AND PAYMENTS**

16 45. **Aggrieved Individual Pay Periods.** Based on a review of its records to date,
17 Defendant estimates there are two hundred thirty-five (235) Aggrieved Individuals who worked a
18 total of 1,992 PAGA Pay Periods.

19 46. **Aggrieved Individual Data.** Within ten (10) business days after the Effective Date,
20 Defendant will deliver the Aggrieved Individual Data to the Administrator in the form of a
21 Microsoft Excel spreadsheet. To protect Aggrieved Individuals' privacy rights, the Administrator
22 must maintain the Aggrieved Individual Data in confidence, use the Aggrieved Individual Data
23 only for purposes of this Settlement and for no other purpose and restrict access to the Aggrieved
24 Individual Data to Administrator employees who need access to the Aggrieved Individual Data to
25 effect and perform under this Agreement. Defendant has a continuing duty to immediately notify
26 PAGA Counsel if it discovers that the Aggrieved Individual Data omitted individual identifying
27 information and to provide corrected or updated Aggrieved Individual Data as soon as reasonably
28

1 feasible. Without any extension of the deadline by which Defendant must send the Aggrieved
2 Individual Data to the Administrator, the Parties and their counsel will expeditiously use best
3 efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted
4 Aggrieved Individual Data.

5 47. **Funding of Gross Settlement Amount.** Defendant shall fully fund the Gross
6 Settlement Amount by transmitting the funds to the Administrator no later than fifteen (15) business
7 days after the Effective Date.

8 48. **Payments from the Gross Settlement Amount.** Within ten (10) business days after
9 Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all Individual
10 PAGA Payments, the LWDA PAGA Payment, the Representative Release Payment, the
11 Administration Expenses Payment, the portion of the PAGA Counsel Fees Payment payable to Lyfe
12 Law, LLP, the portion of the PAGA Counsel Litigation Expenses Payment payable to Lyfe Law,
13 LLP, and the Lien Satisfaction Payment to the Barkhordarian Law Firm.

14 49. **Procedure for Individual Settlement Payments:** The Administrator will issue
15 checks for the Individual PAGA Payments and send them to the Aggrieved Individuals via First
16 Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less
17 than 180 days after the date of mailing) when the check will be voided. The Administrator will
18 cancel all checks not cashed by the void date. Before mailing any checks, the Settlement
19 Administrator must update the recipients' mailing addresses using the National Change of Address
20 Database.

21
22 The Administrator must conduct an Aggrieved Individual Address Search for all Aggrieved
23 Individuals whose checks are returned undelivered without USPS forwarding address. Within
24 seven (7) days of receiving a returned check, the Administrator must re-mail checks to the USPS
25 forwarding address provided or to an address ascertained through the Aggrieved Individual
26 Address Search. The Administrator need not take further steps to deliver checks to Aggrieved
27 Individuals whose re- mailed checks are returned as undelivered. The Administrator shall
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1 promptly send a replacement check to any Aggrieved Individual whose original check was lost or
2 misplaced, requested by the Aggrieved Individual prior to the void date.

3 For any Aggrieved Individual whose Individual PAGA Payment check is uncashed and
4 cancelled after the void date, the Administrator shall transmit the funds represented by such checks
5 to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Individual.

6 The payment of Individual PAGA Payments shall not obligate Defendant to confer any
7 additional benefits or make any additional payments to the Aggrieved Individuals (such as 401(k)
8 contributions or bonuses) beyond those specified in this Agreement.

9 RELEASE OF CLAIMS

10 50. **Release Date:** Effective on the date when Defendant fully funds the entire Gross
11 Settlement Amount, Plaintiff and the Aggrieved Individuals will release claims against all Released
12 Parties as follows:

13 51. **Plaintiff's Release.** Plaintiff and his, her or their respective former and present
14 spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators,
15 successors and assigns generally, release and discharge Released Parties from all claims, transactions
16 or occurrences that occurred prior to the approval of this Settlement, including, but not limited to: all
17 claims that were, or reasonably could have been, alleged, based on the facts contained in the
18 Operative Complaint and the PAGA Notice, including but not limited to claims for alleged
19 misclassification as an independent contractor, failure to pay minimum and overtime wages, failure
20 to provide meal and rest breaks, failure to provide and maintain accurate records, failure to indemnify
21 for all employment related losses and expenses, civil penalties recoverable under Labor Code section
22 2699 for the same, and unfair competition ("Plaintiff's Release"). Plaintiff's Release does not extend
23 to any claims or actions to enforce this Agreement, or to any claims for vested benefits,
24 unemployment benefits, disability benefits, social security benefits, workers' compensation benefits
25 that arose at any time or based on occurrences that cannot be released according to law. Plaintiff
26 acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or
27
28

1 law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release
2 shall be and remain effective in all respects, notwithstanding such different or additional facts or
3 Plaintiff's discovery of them.

4 52. **Plaintiff's Waiver of Rights Under Civil Code Section 1542.** For purposes of
5 Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if
6 any, of section 1542 of the California Civil Code, which reads:

7 A general release does not extend to claims that the creditor or
8 releasing party does not know or suspect to exist in his or her favor
9 at the time of executing the release, and that if known by him or
10 her would have materially affected his or her settlement with the
11 debtor or Released Party.

12 53. **Release by Aggrieved Individuals:** All Aggrieved Individuals are deemed to release,
13 on behalf of themselves and their respective former and present representatives, agents, attorneys,
14 heirs, administrators, successors and assigns, the Released Parties from all claims for PAGA
15 penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts
16 stated in the Operative Complaint and the PAGA Notice, which are attached hereto as Exhibits B
17 and A, respectively, including but not limited to claims for civil penalties recoverable under Labor
18 Code section 2699 due to Defendant's alleged misclassification as independent contractors .

19 54. **Release by PAGA Counsel:** PAGA Counsel release on behalf of their present and
20 former attorneys, employees, agents, successors and assigns the Released Parties from all claims for
21 the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses Payment incurred in
22 connection with the Operative Complaint and the PAGA Period facts stated in the Operative
23 Complaint and the PAGA Notice.

24 **MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT**

25 55. Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all
26 documents necessary for obtaining approval of this Settlement under Labor Code Section 2699, subd.
27
28

(f)(2)) including (i) a draft proposed Order Granting Approval of PAGA Settlement; (ii) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (1)(1)), this Agreement (Labor Code section 2699, subd. (1)(2)); and (iv) all facts relevant to any actual or potential conflict of interest with Aggrieved Employees and/or the Administrator. In their Declarations, Plaintiff and PAGA Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

56. Responsibilities of PAGA Counsel. PAGA Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the application or motion for approval of this Settlement no later than [30] days after the full execution of this Agreement and, if necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the motion. PAGA Counsel is responsible for delivering the Court’s Preliminary Approval to the Administrator.

57. Duty to Cooperate. If the Parties disagree on any aspect of the proposed application or motion for approval of this Settlement and/or the supporting declarations and documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant the motion for approval of this Settlement or conditions its approval on any material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of the

1 Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and
2 otherwise satisfy the Court's concerns.

3 **SETTLEMENT ADMINISTRATION**

4 58. **Selection of Administrator.** After soliciting competing quotes from three
5 settlement administration companies, the Parties have jointly selected Phoenix Class Action
6 Administration Solutions ("Phoenix") to serve as the Administrator and verified that, as a condition
7 of appointment, Phoenix agrees to be bound by this Agreement and to perform, as a fiduciary, all
8 duties specified in this Agreement in exchange for payment of Administration Expenses. The
9 Parties and their Counsel represent that they have no interest or relationship, financial or otherwise,
10 with the Administrator other than a professional relationship arising out of prior experiences
11 administering settlements.

12 59. **Employer Identification Number.** The Administrator shall have and use its own
13 Employer Identification Number for purposes of calculating payroll tax withholdings, if any, and
14 providing reports to state and federal tax authorities.

15 60. **Qualified Settlement Fund.** The Administrator shall establish a settlement fund
16 that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation
17 section 468B-1.

18 61. **Administrator Duties.** The Administrator has a duty to perform or observe all tasks
19 to be performed or observed by the Administrator contained in this Agreement or otherwise.

20 **CONTINUING JURISDICTION OF THE COURT**

21 62. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over
22 the Parties, Action and the Settlement solely for purposes of (i) enforcing this Agreement and/or
23 Judgment, (ii) addressing settlement administration matters and (iii) addressing such post-Judgment
24 matters as are permitted by law.

25 63. Provided the Judgment is consistent with the terms and conditions of this Agreement,
26 specifically including the PAGA Counsel Fees Payment and PAGA Counsel Litigation Expenses
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1 Payment, the Parties, their respective counsel, waive all rights to appeal from the Judgment, including
2 all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment,
3 motions for new trial, extraordinary writs and appeals. The waiver of appeal does not include any
4 waiver of the right to oppose such motions, writs or appeals. If another party appeals the Judgment,
5 the Parties' obligations to perform under this Agreement will be suspended until such time as the
6 appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the
7 amount of the Net Settlement Amount.

8 **ADDITIONAL PROVISIONS**

9
10 **64. No Admission of Liability or Representative Manageability for Other**
11 **Purposes.** This Agreement represents a compromise and settlement of highly disputed claims.
12 Nothing in this Agreement is intended or should be construed as an admission by Defendant that
13 any of the allegations in the Operative Complaint have merit or that Defendant has any liability for
14 any claims asserted; nor should it be intended or construed as an admission by Plaintiff that
15 Defendant's defenses in the Action have merit. The Parties agree that representative treatment is
16 for purposes of this Settlement only. If for any reason the Court does not approve this Settlement,
17 Defendant reserves all available defenses to the claims in the Action, including that Plaintiff and
18 the Aggrieved Individuals were at all relevant times properly classified as independent contracts,
19 and Plaintiff reserves the right to contest Defendant's defenses. The Settlement, this Agreement
20 and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in
21 connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and
22 this Agreement).

23 **65. No Press Releases/Public Comment.** Unless they first obtain Defendant's express
24 written consent, PAGA Counsel and Plaintiff shall not (a) discuss, reveal, disclose, publicize, or
25 promote the terms of the Settlement, or the negotiations leading to the Settlement, to any third
26 party (including but not limited to the media, the legal community, or the public at large), or (b)
27 issue any press releases or initiate any contact with the media regarding the Settlement, or
28

1 otherwise advertise or publicize the Settlement. Nothing in this Agreement is intended to prevent
2 Plaintiff or PAGA Counsel from disclosing or discussing the terms of the Settlement (i) with the
3 Court, (ii) with any Aggrieved Individual, (iii) with the Settlement Administrator, (iv) with the
4 LWDA in conformity with PAGA, or (v) as otherwise required by law. Moreover, nothing herein
5 will restrict PAGA Counsel from including publicly available information regarding the Settlement
6 in future judicial submissions regarding PAGA Counsel's qualifications and experience.

7
8 66. **Integrated Agreement.** Upon execution by all Parties and their counsel, this
9 Agreement together with its attached exhibits shall constitute the entire agreement between the
10 Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants
11 or inducements made to or by any Party.

12 67. **Attorney Authorization.** PAGA Counsel and Defense Counsel separately warrant
13 and represent that they are authorized by Plaintiff and Defendant, respectively, to take all appropriate
14 action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its
15 terms, and to execute any other documents reasonably required to effectuate the terms of this
16 Agreement including any amendments to this Agreement.

17 68. **Cooperation.** The Parties and their counsel will cooperate with each other and use
18 their best efforts, in good faith, to implement the Settlement by, among other things, modifying the
19 Settlement Agreement, submitting supplemental evidence and supplementing points and authorities
20 as requested by the Court. In the event the Parties are unable to agree upon the form or content of
21 any document necessary to implement the Settlement, or on any modification of the Agreement that
22 may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator
23 and/or the Court for resolution.

24 69. **No Prior Assignments.** The Parties separately represent and warrant that they have
25 not directly or indirectly assigned, transferred, encumbered or purported to assign, transfer or
26 encumber to any person or entity and portion of any liability, claim, demand, action, cause of action
27 or right released and discharged by the Party in this Settlement.
28

1 70. **No Tax Advice.** Neither Plaintiff, PAGA Counsel, Defendant nor Defense Counsel
2 are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied
3 upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part
4 10, as amended) or otherwise.

5 71. **Modification of Agreement.** This Agreement, and all parts of it, may be amended,
6 modified, changed or waived only by an express written instrument signed by all Parties or their
7 representatives, and approved by the Court.

8 72. **Agreement Binding on Successors.** This Agreement will be binding upon, and inure
9 to the benefit of, the successors of each of the Parties.

10 73. **Applicable Law.** All terms and conditions of this Agreement and its exhibits will be
11 governed by and interpreted according to the internal laws of the state of California, without regard
12 to conflict of law principles.

13 74. **Cooperation in Drafting.** The Parties have cooperated in the drafting and
14 preparation of this Agreement. This Agreement will not be construed against any Party on the basis
15 that the Party was the drafter or participated in the drafting.

16 75. **Confidentiality.** To the extent permitted by law, all agreements made and orders
17 entered during Action and in this Agreement relating to the confidentiality of information shall
18 survive the execution of this Agreement.

19 76. **Use and Return of Aggrieved Individual Data.** Information provided to PAGA
20 Counsel pursuant to Evidence Code section 1152, and all copies and summaries of the PAGA Data
21 provided to PAGA Counsel by Defendant in connection with the mediation, other settlement
22 negotiations, or in connection with the Settlement, may be used only with respect to this Settlement,
23 and no other purpose, and may not be used in any way that violates any existing contractual
24 agreement, statute or California Rules of Court rule. Not later than 90 days after the Administrator
25 discharges its obligation to payout of all Settlement funds, Plaintiff shall destroy all paper and
26 electronic versions of Aggrieved Individual Data received from Defendant unless, prior to the
27
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1 Administrator's payment of all Settlement Funds, Defendant makes a written request to PAGA
2 Counsel for the return, rather than the destruction, of Aggrieved Individual Data.

3 77. **Headings.** The descriptive heading of any section or paragraph of this Agreement is
4 inserted for convenience of reference only and does not constitute a part of this Agreement.

5 78. **Calendar Days.** Unless otherwise noted, all reference to "days" in this Agreement
6 shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
7 weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

8 79. **Notice.** All notices, demands or other communications between the Parties in
9 connection with this Agreement will be in writing and deemed to have been duly given as of the third
10 business day after mailing by United States mail, or the day sent by email or messenger, addressed
11 as follows:
12

13 To Plaintiff:
14 Gregory P. Wong, Esq.
15 Lyfe Law, LLP
16 864 S. Robertson Blvd.
Los Angeles, CA 90035
gregw@lyfe.com

To Defendant:
Blake A. Dillion, Esq.
Payne & Fears LLP
655 Montgomery Street, Suite 1430
San Francisco, CA 94111
bad@paynefears.com

17
18 80. **Stay of Litigation.** The Parties agree that upon the execution of this Agreement the
19 litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree
20 that upon the signing of this Agreement that pursuant to Code of Civil Procedure section 583.330 to
21 extend the date to bring a case to trial under Code of Civil Procedure section 583.310 for the entire
22 period of this settlement process.
23

24 //

25 //

26 //

27 //

28 81. **Execution in Counterparts.** This Agreement may be executed in one or more

counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

Dated: 06/14/2024

PLAINTIFF

By: 
Erin Naymark

Dated: _____

DEFENDANT TUTORED BY TEACHERS, INC.

By: _____
[NAME]

Title: _____

Dated: _____

PLAINTIFF'S COUNSEL

By: _____
LYFE LAW, LLP
Gregory P. Wong, Esq.
Attorneys for Plaintiff Erin Naymark

Dated: _____

DEFENDANT'S COUNSEL

By: _____
PAYNE & FEARS, LLP
Blake A. Dillion, Esq.
Attorneys for Defendant Tutored By Teachers, Inc.

counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

Dated: _____

PLAINTIFF

By: _____
Erin Naymark

Dated: Jun 21, 2024

DEFENDANT TUTORED BY TEACHERS, INC.

By: Mohammad Shaan Akbar
Mohammad Shaan Akbar (Jun 21, 2024 17:59 CDT)
[NAME] Mohammad Shaan Akbar

Title: Co-founder and CEO

Dated: _____

PLAINTIFF'S COUNSEL

By: _____
LYFE LAW, LLP
Gregory P. Wong, Esq.
Attorneys for Plaintiff Erin Naymark

Dated: _____

DEFENDANT'S COUNSEL

By: _____
PAYNE & FEARS, LLP
Blake A. Dillion, Esq.
Attorneys for Defendant Tutored By Teachers, Inc.

counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

Dated: _____ PLAINTIFF

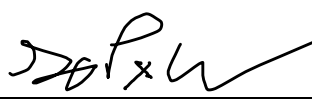
By: _____
Erin Naymark

Dated: _____ DEFENDANT TUTORED BY TEACHERS, INC.

By: _____
[NAME]

Title: _____

Dated: 06/14/2024 PLAINTIFF’S COUNSEL

By:  _____
LYFE LAW, LLP
Gregory P. Wong, Esq.
Attorneys for Plaintiff Erin Naymark

Dated: _____ DEFENDANT’S COUNSEL

By: _____
PAYNE & FEARS, LLP
Blake A. Dillion, Esq.
Attorneys for Defendant Tutored By Teachers, Inc.

counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

Dated: _____ PLAINTIFF

By: _____
Erin Naymark

Dated: _____ DEFENDANT TUTORED BY TEACHERS, INC.

By: _____
[NAME]

Title: _____

Dated: _____ PLAINTIFF’S COUNSEL

By: _____
LYFE LAW, LLP
Gregory P. Wong, Esq.
Attorneys for Plaintiff Erin Naymark

Dated: 06/24/2024 DEFENDANT’S COUNSEL

By:  _____
PAYNE & FEARS, LLP
Blake A. Dillion, Esq.
Attorneys for Defendant Tutored By Teachers, Inc.

EXHIBIT A

BARKHORDARIAN
— L A W F I R M —

6047 Bristol Parkway
Culver City, CA 90230
t. 323.450.2777 f. 323.594.8227

September 14, 2023

VIA ELECTRONIC SUBMISSION

California Labor and Workforce Development Agency
Attn: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

Re: Erin Naymark v. Tutored by Teachers, Inc.
PAGA Notice Pursuant to California Labor Code section 2699.3, et seq.

Dear Sir/Madam:

This firm represents Erin Naymark (hereinafter “Plaintiff”) and all other aggrieved employees who intend to file a claim against Tutored by Teachers, Inc. a Delaware corporation (hereinafter “Defendant”) with the Los Angeles Superior Court regarding violations of the California Labor Code committed by Defendant. This letter shall serve as notice, and a request, pursuant to California Labor Code section 2699.3, et seq. (Private Attorneys General Act of 2004 (hereinafter “PAGA”), that your agency investigate the alleged violations by Defendant described herein against Plaintiff and other current and/or former employees. If the agency does not intend to investigate the alleged violations described herein, we respectfully request that the agency specifically notify our office of the same at your earliest possible opportunity.

Statement of Specific Provisions of the Labor Code Alleged to Have Been Violated

The above-mentioned civil action will be brought by Plaintiff against Defendant for violations of California Labor Code sections, 201 through 204, 226, 226.3, 226.7, 226.8, 510, 512, 558, 558.1 1174(d), 1194(a), 1197, 1197.1, 1198 and 2802 and the industrial wage orders.

Facts and Theories in Support of Alleged Violations

Defendant owns and operates a national online platform to provide tutoring services. Throughout the relevant time period, Defendant employed Plaintiff and other aggrieved workers throughout the State of California. Plaintiff and other employees were not free from the control and direction of Defendant in the performance of their work and were not performing work outside Defendant’s usual course of business.

On or around April 18, 2022, Defendant hired Plaintiff as a tutor, and she was misclassified as an independent contractor instead of an employee throughout her employment with Defendant. Plaintiff’s duties included but were not limited to creating lessons plans for students and engaging in one-to-one sessions with students to teach the lesson plans. Defendant exercised significant control over Plaintiff’s work, including enforcing session times as well as penalizing Plaintiff for attempting to cancel or postpone a learning session.

Therefore, Plaintiff was entitled to rest periods, meal periods, and payment of minimum wage and overtime compensation pursuant to the California Labor Code. Further, Plaintiff was forced to incur expenses necessary to the performance of her job, including the subscription of educational software. However, throughout Plaintiff's employment, she was the victim of unlawful, uniform and systematic practices that resulted in a continual violation of rights owed to Plaintiff and Defendants' other aggrieved employees as follows:

Willful Misclassification of Employees (Labor Code section 226.8): Plaintiff is informed and believes, and based thereon alleges, that during the relevant period to Plaintiff's intended action, Defendant willfully misclassified Plaintiff and other aggrieved employees as independent contractors to evade the obligations of an employer and the rights of employees, such as providing rest periods, meal periods, and payment of minimum wages and overtime wages. At all times, Defendant exercised control and direction over Plaintiff and the other aggrieved employees in connection with performance of the work performed. For example, Defendant sets Plaintiff's schedule, and supervised her work, setting prices for Plaintiff's work, managed Plaintiff's work product and deadlines, and penalized Plaintiff's autonomy when she attempted to control her own schedule.

Failure to Pay All Wages (Labor Code section 204): Plaintiff is informed and believes, and based thereon alleges, that during the period relevant to Plaintiff's intended action, Defendant did not pay all wages to her and other aggrieved employees within the same pay period in which they were earned as they were treated as independent contractors.

Failure to Pay Minimum Wage For All Hours Worked: Plaintiff and all other non-exempt employees who worked for Defendant were not compensated for at an hourly rate of at least the applicable minimum wage for all hours worked as they were treated as independent contractors. As a consequence, Plaintiff and the other aggrieved employees were not paid all wages owed to them. Defendant's policies and practices with respect to payment of minimum wage violate the Wage Orders as well as Labor Code sections 204, 1194(a), and 1198.

Failure to Pay Overtime (Labor Code section 510): Plaintiff is informed and believes, and based thereon alleges, that during the period relevant to Plaintiff's intended action, Defendant did not pay Plaintiff and other aggrieved employees, one and one-half (1.5) their normal rate of pay for hours worked past eight (8) hours in one day and/or forty (40) hours in one workweek. Defendant paid non-exempt employees their base pay for all hours worked past eight (8) hours in one day and/or forty (40) hours in one workweek and/or eighty (80) in one pay period.

Failure to Provide Accurate Wage Statements (Labor Code section 226): Plaintiff is informed and believes, and based thereon alleges, that during the period relevant to Plaintiff's intended action, Defendant did not provide accurate wage statements showing (1) gross wages earned; (2) total hours worked by the employee; (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; (4) all deductions; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7) the name of the employee and only the last four digits of his or her social security number; (8) the name and address of the legal entity that is the employer; and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. Wage statements issued by Defendant to Plaintiff and other aggrieved employees did not provide an accurate showing of gross wages earned, total hours worked by the employee, deductions, net wages earned, the address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the

corresponding number of hours worked at each hourly rate by the employee as they were treated as independent contractors.

Failure to Provide Rest Periods and/or Pay Rest Period Premiums (Labor Code section 226.7): Plaintiff is informed and believes, and based thereon alleges, that during the period relevant to Plaintiff's intended action, Defendant did not provide Plaintiff and other aggrieved employees with all lawful rest periods and failed to compensate Plaintiff and other aggrieved employees one additional hour of pay at the employees' regular rate of compensation for each workday that the rest period was not provided.

Failure to Provide Meal Periods and/or Pay Meal Period Premiums (Labor Code sections 226.7 and 512(a)): Plaintiff is informed and believes, and based thereon alleges, that during the period relevant to Plaintiff's intended action, Defendant did not provide Plaintiff and other aggrieved employees with a meal period of not less than 30 minutes for each work period of more than five hours per day, and failed to compensate Plaintiff and other aggrieved employees one additional hour of pay at the employees' regular rate of compensation for each workday that the meal period was not provided. Further, Defendant did not always provide a second lawful meal period when Plaintiff and other aggrieved employees worked over ten (10) hours in a workday.

Failure to Pay All Wages Due Upon End of Employment (Labor Code section 201 and 202): Plaintiff is informed and believes, and based thereon alleges, that during the period relevant to Plaintiff's intended action, Defendant did not pay all wages due to Plaintiff and other employees when the employment relationship ended. Because Defendant did not pay Plaintiff and other aggrieved employees applicable minimum and overtime wages and failed to pay Plaintiff and other aggrieved employees rest and meal period premiums, those wages were due and owing to Plaintiff and other aggrieved employees at the time of termination or within 72 hours of resignation. Plaintiff is informed and believes, and based thereon alleges, that other aggrieved employees were also not compensated for all wages due as required by the Labor Code.

Failure to Maintain Records (Labor Code section 1174(d)): Plaintiff is informed and believes, and based thereon alleges, that during the period relevant to Plaintiff's intended action, Defendant did not maintain payroll records showing the hours worked daily by and the wages paid to Plaintiff and other aggrieved employees. Further, Defendant did not maintain timecard records that accurately reflect the actual hours worked by Plaintiff and other aggrieved employees.

Failure to Reimburse Employees for Necessary Expenditures (Labor Code section 2802): Plaintiff is informed and believes, and based thereon alleges, that during the period relevant to Plaintiff's intended action, Defendant did not reimburse Plaintiff and other aggrieved employees for their necessary business expensing including the subscription of educational software.

Related Penalties (Labor Code sections): As a result of Defendant's violations related to its misclassification as independent contractors of Plaintiff and other aggrieved employees along with its failure to pay overtime, failure to pay all wages due upon termination, and failure to pay rest and meal period premiums, Plaintiff and the other aggrieved employees are entitled to recovery of penalties, including penalties for failure to provide accurate wage statements (L.C. 226); waiting time penalties (L.C. 203); and civil penalties pursuant to California Labor Code section 2699(f)(2).

Plaintiff alleges that Defendant has violated the California Labor Code by:

- (a) Misclassifying employees as independent contractors;
- (b) Failing to pay all wages earned;
- (c) Failing to pay wages at a rate of at least minimum wage for all hours worked;
- (d) Failing to pay mandatory overtime and/or double time wages;
- (e) Failing to provide mandatory rest periods;
- (f) Failing to provide mandatory meal periods;
- (g) Failing to pay one (1) hour of wages to aggrieved employees who were not provided with legally compliant rest periods;
- (h) Failing to pay one (1) hour of wages to aggrieved employees who were not provided with legally compliant meal periods;
- (i) Failing to reimburse employees for necessary expenditures;
- (j) Failing to maintain full, complete, and accurate payroll records, including an accurate accounting of all hours worked.; and
- (k) Failing to pay all wages earned upon termination.

Plaintiff alleges that during the relevant period, Defendant's conduct resulted in systematic violations of California Labor Code sections 201 through 204, 226, 226.3, 226.7, 226.8, 510, 511, 512, 558, 558.1, 1174(d), 1194(a), and 1198 and 2802.

CONCLUSION

We provide notice pursuant to California Labor Code section 2699.3 of the Private Attorneys General Act of 2004, and specifically ask that your agency conduct an investigation as to the alleged violations described herein; or, in the alternative, if the agency does not intend to investigate the alleged violations, we ask that you issue an immediate notification letter to our office confirming the same so that we may proceed with our civil action with regard to the PAGA claims described herein against Defendant.

If you require anything further and/or have any questions, please do not hesitate to contact me. Nothing in this letter is intended to be, nor should be construed as, an admission against the interests of Plaintiffs, and/or other current and/or former employees and shall not be construed as a waiver of their rights, remedies, claims, or defenses, all of which are expressly reserved.

Respectfully,

Barkhordarian Law Firm

By: /s/ Heather K. Cox

Heather K. Cox

cc: VIA CERTIFIED MAIL

Tutored by Teachers, Inc.

Corporate Service Company, Registered Agent for Service

251 Little Falls Drive

Wilmington, Delaware 19808

Tutored by Teachers

2903 Philadelphia Pike #7265

Claymont Delaware 19703

EXHIBIT B

GREGORY P. WONG (SBN: 204502)
HEATHER K. COX (SBN: 278898)
BARKHORDARIAN LAW FIRM, PLC
6047 Bristol Parkway, Second Floor
Culver City, CA 90230
Telephone: (323) 450-2777
Facsimile: (310) 215-3416
Email: Greg@barklawfirm.com
Email: Heather@barklawfirm.com

Attorneys for Plaintiff
Erin Naymark

SUPERIOR COURT OF THE STATE OF CALIFORNIA COUNTY
OF LOS ANGELES – BEVERLY HILLS COURTHOUSE

ERIN NAYMARK, an individual,

Plaintiff,

vs.

TUTORED BY TEACHERS, INC., a
Delaware Corporation; and DOES 1 through
100, inclusive,

Defendants.

CASE NO.: 23SMCV04750

FIRST AMENDED COMPLAINT FOR:

1. Misclassification of Employment Status;
2. Failure to Pay Minimum Wages;
3. Failure to Pay Overtime Wages;
4. Failure to Provide Meal Periods;
5. Failure to Provide Rest Periods;
6. Failure to Provide Adequate Paystubs;
7. Failure to Maintain Accurate Records;
8. Failure to Indemnify for All Employment Related Losses/Expenditures; and
9. Unfair Competition, Cal. Bus. & Prof. § 17200 *et seq.*
10. Violation of California Labor Code Section 2698, et seq. (Private Attorneys General Act (“PAGA”))

UNLIMITED CIVIL
DEMAND FOR JURY TRIAL

1 Plaintiff ERIN NAYMARK (hereinafter “Plaintiff”) individually and in a representative
2 capacity on behalf of all aggrieved employee, brings this action against Defendant TUTORED
3 BY TEACHERS, INC. and DOES 1 through 100, inclusive (hereinafter, referred to collectively
4 as “Defendants”) as follows:

5 **THE PARTIES**

6 1. At all times relevant herein, Plaintiff was, and is, an individual residing in the
7 County of Los Angeles, State of California.

8 2. Plaintiff is informed and believes, and based thereon allege, that at all times
9 relevant herein, TUTORED BY TEACHERS, INC. (“TBT”), is at all relevant times a Delaware
10 Corporation, lawfully doing substantial business throughout the state of California, including in
11 the County of Los Angeles. TBT was and continues to be Plaintiff’s employer at all times
12 relevant herein.

13 3. Plaintiff is unaware of the true names and capacities of Defendants named herein
14 as DOES 1 through 100, inclusive, and therefore sue these Defendants by such fictitious names.
15 Plaintiffs will amend this Complaint to allege such names and capacities when the same has been
16 ascertained. Plaintiff is informed and believes, and based thereon alleges that each of the
17 fictitiously named Defendants stated herein bears a legal responsibility to Plaintiffs similar to that
18 of the named Defendants herein.

19 4. At all times mentioned herein, Defendants DOES 1 through 100, inclusive, were
20 the agents, servants, and employees of their Co-Defendants, and in doing the things herein alleged
21 were acting in the scope of their authority as such agents, servants, and employees, and with the
22 permission and consent of their Co-Defendants.

23 5. Plaintiff hereby demands a trial by jury.

24 **JURISDICTION AND VENUE**

25 6. This Court has jurisdiction over this action and the matters alleged herein pursuant
26 to the grant of original jurisdiction set forth in Article VI, Section 10 of the California
27 Constitution. The statutes under which this action are brought do not specify any other basis for
28 jurisdiction.

1 7. This Court has jurisdiction over Defendants because, upon information and belief,
2 each Defendant is either a citizen of California, has sufficient minimum contracts in California, or
3 otherwise intentionally avails itself of the California market so as to render the exercise of
4 jurisdiction over it by this Court consistent with traditional notions of fair play and substantial
5 justice.

6 8. Venue is proper in this Court, because, upon information and belief, one or more
7 of the named Defendants resides, transacts business, or has offices in this county and the acts or
8 omissions alleged herein took place in this county.

9 9. On September 14, 2023, Plaintiff provided notice to the California Labor and
10 Workforce Development Agency (“LWDA”) of her intent to file a lawsuit against Defendants
11 pursuant to the Private Attorneys General Act for violations of Labor Code sections 201 through
12 204, 226, 226.3, 226.7, 226.8, 510, 512, 558, 558.1 1174(d), 1194(a), 1197, 1197.1, 1198 and
13 2802 and the industrial wage orders. This matter has been assigned case number LWDA-CM-
14 981566-23 by the LWDA. As of the date of filing of this First Amended Complaint, the LWDA
15 has not provided any notice that it intends to investigate the alleged violations. Accordingly,
16 Plaintiff now files this First Amended Complaint pursuant to California Labor Code section
17 2699.3(c), which authorizes a plaintiff to amend an existing civil complaint within 60 days of the
18 relevant event giving rise to a complaining employee’s right to proceed in a civil action brought
19 under the California Private Attorneys General Act (California Labor Code section 2698, et seq.).

20 **FACTS COMMON TO ALL CAUSES OF ACTION**

21 10. Defendants own and operate a national business that provides online tutoring
22 services.

23 11. In or around April 2022, Defendants hired Plaintiff as an online tutor stationed in
24 Los Angeles, California. Plaintiff’s duties included but were not limited to creating teaching plans
25 and having teaching sessions with customers/students.

26 12. Plaintiff was wrongfully misclassified as an independent contractor instead of an
27 employee throughout her employment with Defendant. Plaintiff was and is not free from the
28 control and direction of Defendant in the performance of her work, and she was and is not

1 performing work outside Defendant's usual course of business. Defendants exercised significant
2 control over Plaintiff's work, including enforcing timelines in regard to preparing and reviewing
3 teaching sessions, and penalizing for violating any of the proposed times by Defendants.

4 13. Since Plaintiff was misclassified by Defendant as an independent contractor, she
5 was therefore entitled to rest periods, meal periods, and payment of minimum wage for all hours
6 worked and overtime compensation pursuant to the California Labor Code. Plaintiff worked the
7 necessary hours under Defendant's control that entitled her meal and rest breaks and premiums,
8 minimum and overtime wages.

9 14. At all times relevant to Plaintiff's employment, Defendants controlled all aspects
10 of her job. Plaintiff was paid through "invoices" for the work she performed for Defendants.
11 Defendant voluntarily and knowingly misclassified Plaintiff's employment status as an
12 independent contractor to effectively deny her rights and benefits of employment. To the
13 detriment of Plaintiff's employment, Defendant deliberately and continuously engaged in
14 violations of the Labor Code, including failure to pay wages due, failure to overtime
15 compensation, failure to provide meal and rest periods and failure to reimburse reasonable
16 business expenses such as for the necessary education software subscriptions to perform her job.

17 **FIRST CAUSE OF ACTION**

18 **Misclassification of Employment Status**

19 **Plaintiff Against All Defendants**

20 15. Plaintiff refers to and incorporates herein by reference paragraphs 1 through 14 as
21 though fully set forth herein.

22 16. In violation of California Labor Code section 226.8, Defendants willfully
23 misclassified Plaintiff as an independent contractor despite controlling and supervising Plaintiff's
24 day-to-day work and as further alleged above.

25 17. As a direct and proximate result of Defendants' willful and intentional pattern and
26 practice of misclassifying Plaintiff's employment. Plaintiff was not paid overtime compensation,
27 rest and meal periods and/or premiums, and she was not provided accurate wage statements.

28 18. As such, Plaintiff is entitled to lost wages, plus pre-judgment interest, reasonable

1 attorneys' fees, costs, and civil penalties. The exact amount and nature of such damages are
2 presently unknown to Plaintiff who will either seek leave to amend this Complaint upon
3 ascertaining such information or will prove the same at the time of trial.

4 **SECOND CAUSE OF ACTION**

5 **Failure to Pay Minimum Wages**

6 **Plaintiff Against All Defendants**

7 19. Plaintiff refers to and incorporates herein by reference paragraphs 1 through 18 as
8 though fully set forth herein.

9 20. Throughout Plaintiff's employment, Plaintiff worked and continues to work as a
10 misclassified employee and should be paid as an hourly non-exempt employee for Defendants.

11 21. Pursuant to Labor Code section 1182.12, 1194 1197, and the applicable Wage
12 Order, Plaintiff is entitled to receive wages for all hours worked, i.e., all time Plaintiff was subject
13 to Defendants' control, and those wages must be paid at least at the minimum wage rate in effect
14 during the time Plaintiff earned the wages.

15 22. Defendants' policies, practices, and/or procedures required Plaintiff to be engaged,
16 suffered, or permitted to work without being paid wages for all of the time in which she was
17 subject to Defendants' control.

18 23. In this case, Plaintiff worked more minutes per shift than Defendants credited her
19 with having worked because, inter alia, she was required to work beyond her regularly scheduled
20 shift to tend her duties as a Tutor. However, Plaintiff's time records did not reflect the actual
21 hours worked.

22 24. Consequently, Plaintiff was and continues to be subject to Defendants' control
23 without being compensated any wages, in violation of Labor Code section 1182.12, 1194, 1197,
24 and the Wage Order.

25 25. As a result of Defendants' unlawful conduct, Plaintiff suffered and continues to
26 suffer damages in an amount subject to proof, to the extent that she was not paid wages at a
27 minimum wage rate for all hours worked.

28 26. Pursuant to California Labor Code sections 1194 and 1194.2, Plaintiff is entitled to

1 recover unpaid minimum wage, interest thereon, liquidated damages in the amount of her unpaid
2 minimum wage, and attorneys' fees and costs.

3 **THIRD CAUSE OF ACTION**

4 **Failure to Pay Overtime Wages**

5 **Plaintiff Against All Defendants**

6 27. Plaintiff refers to and incorporates herein by reference paragraphs 1 through 26 as
7 though fully set forth herein.

8 28. Throughout Plaintiff's employment, Plaintiff worked and continues to work as a
9 misclassified employee and should be paid as an hourly non-exempt employee for Defendants,
10 covered by California Labor section 510 and 1194 and the applicable Wage Order.

11 29. Pursuant to California Labor Code section 510 and 1194 and the Wage Order,
12 hourly, non-exempt employees are entitled to receive a higher rate of pay for all hours worked in
13 excess of eight (8) hours in a workday and/or forty hours in a workweek.

14 30. California Labor Code section 510, subdivision (a) states in relevant part: Eight
15 hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and
16 any work in excess of 40 hours in any one workweek and the first eight hours worked on the
17 seventh day of work in any one workweek shall be compensated at the rate of no less than one
18 and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one
19 day shall be compensated at the rate of no less than twice the regular rate of pay for an employee.
20 In addition, any work in excess of eight hours on any seventh day of a workweek shall be
21 compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in
22 this section requires an employer to combine more than one rate of overtime compensation in
23 order to calculate the amount to be paid to an employee for any hour of overtime work.

24 31. Further, California Labor Code section 1196 provides, the maximum hours of
25 work and the standard conditions of labor fixed by the commission shall be the maximum hours
26 of work and the standard conditions of labor for employees. The employment of any employee
27 for longer hours than those fixed by the order or under conditions of labor prohibited by the order
28 is unlawful.

1 32. Despite California law requiring employers to pay employees a higher rate of pay
2 for all hours worked more than eight (8) hours in a workday, more than (40) hours in a
3 workweek, and on the seventh day of work in a workweek, Defendants failed to pay all overtime
4 wages to Plaintiff for her daily overtime hours worked.

5 33. In this case, Plaintiff worked more minutes per shift than Defendants credited her
6 with having worked because, inter alia, she was required to work beyond her regularly scheduled
7 to tend her duties as Tutor. However, Plaintiff's timecards did not reflect all hours worked and the
8 applicable rates.

9 34. To the extent that the foregoing uncompensated time occurred on workdays when
10 Plaintiff already worked eight (8) hours, in workweeks where Plaintiff already worked forty (40)
11 hours, and/or seven days in a workweek, the foregoing resulted in time in which Plaintiff was and
12 currently is under the control of Defendants, which constituted overtime hours, but not
13 compensated at her overtime rate of pay in violation of Labor Code section 510, 1194, 1198, and
14 the Wage Order.

15 35. As a result of Defendants' unlawful conduct, Plaintiff has suffered damages in an
16 amount subject to proof, to the extent that she was not paid at her proper overtime rate of pay for
17 all overtime hours worked.

18 36. Pursuant to Labor Code section 1194, Plaintiff is entitled to recover the full
19 amount of her unpaid overtime wages, prejudgment interest, and attorneys' fees.

20 **FOURTH CAUSE OF ACTION**

21 **Failure to Provide Meal Periods**

22 **Plaintiff Against All Defendants**

23 37. Plaintiff refers to and incorporates herein by reference paragraphs 1 through 36 as
24 though fully set forth herein.

25 38. Throughout Plaintiff's employment, Plaintiff worked and continues to work as a
26 misclassified employee and should be paid as an hourly non-exempt employee for Defendants,
27 covered by Labor Code sections 512 and 226.7 and the applicable Wage Order.

28 39. California law requires an employer to provide its employees an uninterrupted

1 meal period of no less than thirty (30) minutes in which the employee is relieved of all duties and
2 the employer relinquishes control over the employee's activities no later than the end of the
3 employee's fifth hour of work and a second meal period no later than the employee's tenth hour
4 of work. (Labor Code sections 226.7, 512; *Brinker Rest. Corp. v. Super Ct. (Hohnbaum)* (2012)
5 53 Cal.4th 1004). If the employer requires the employee to remain at the work site or facility
6 during the meal period, the meal period must be paid. This is true even where the employee is
7 relieved of all work duties during the meal period. (*Bono Enterprises, Inc. v. Bradshaw* (1995) 32
8 Cal.App.4th 968). If the employee is not free to leave the work premises or worksite during the
9 meal period, even if the employee is relieved of all other duty during the meal period, the
10 employee is subject to the employer's control and the meal period is counted as time worked.

11 40. If an employer fails to provide an employee a meal period in accordance with the
12 law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of
13 pay for each workday that a legally required and compliant meal period was not provided. (Labor
14 Code section 226.7).

15 41. In this case, Plaintiff worked shifts long enough to entitle her to meal periods
16 under California law. Nevertheless, Defendants failed to provide Plaintiff with compliant, duty-
17 free meal periods to tend her duties as Tutor.

18 42. Similarly, Defendants also failed to pay premium wages to Plaintiff to compensate
19 her for each workday she did not receive all legally required and/or compliant meal periods.

20 43. Pursuant to Labor Code section 226.7 and the Wage Order, Defendants are liable
21 to Plaintiff for one (1) hour of additional pay at her regular rate of compensation for each
22 workday that Defendants did not provide all legally required and compliant meal periods plus
23 pre-judgment interest.

24 **FIFTH CAUSE OF ACTION**

25 **Failure to Provide Rest Periods**

26 **Plaintiff Against All Defendants**

27 44. Plaintiff refers to and incorporates herein by reference paragraphs 1 through 43 as
28 though fully set forth herein.

1 45. Throughout Plaintiff's employment, Plaintiff worked and continues to work as a
2 misclassified employee and should be paid as an hourly non-exempt employee for Defendants,
3 covered by Labor Code section 226.7 and the applicable Wage Order.

4 46. California law requires that "[e]very employer shall authorize and permit all
5 employees to take rest periods, which insofar as practicable shall be in the middle of each work
6 period. The authorized rest period time shall be based on the total hours worked daily at the rate
7 of ten (10) minutes net rest time per four (4) hours or major fraction thereof...." Wage Order 4,
8 §12. Employees are entitled to 10 minutes rest for shifts from three and one-half to six hours in
9 length, 20 minutes for shifts of more than six hours up to 10 hours, 30 minutes for shifts of more
10 than 10 hours up to 14 hours, and so on." *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)*
11 (2012) 53 Cal.4th 1004, 1029; Labor Code §226.7. Additionally, the rest period requirement
12 "obligates employers to permit – and authorizes employees to take – off-duty rest periods."
13 *Augustus v. ABM Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods
14 employers must relieve employees of all duties and relinquish control over how employees spend
15 their time. *Id.* If an employer fails to provide an employee a rest period in accordance with the
16 applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at
17 the employee's regular rate of compensation for each work day that the rest period is not
18 provided." Wage Order 4, §12; Labor Code §226.7.

19 47. In this case, Plaintiff worked shifts of more than three-and-a-half (5.5) hours.
20 Nevertheless, Defendants employed practices that failed to authorize and/or permit Plaintiff to
21 receive all legally required and compliant rest periods since she had to tend her duties as Tutor.

22 48. Similarly, Defendants failed to pay Plaintiff one (1) hour of pay at her regular rate
23 of pay for each workday she did not receive all legally required and/or legally compliant rest
24 periods.

25 49. Pursuant to Labor Code section 226.7 and the applicable Wage Order, Defendants
26 are liable to Plaintiff for one (1) hour of additional pay at the regular rate of compensation for
27 each workday that Defendants did not provide all legally required and/or legally compliant rest
28 periods plus pre-judgment interest.

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1 54. As to injury, section 226 provides: An employee is deemed to suffer injury . . . if
2 the employer fails to provide accurate and complete information as required by any one or more
3 items (1) to (9), inclusive, of subdivision (a) and the employer cannot promptly and easily
4 determine from the wage statement alone one or more of the following: (1) the amount of the
5 gross wages or net wages paid to the employee during the pay period.

6 55. Wage Statements issued to Plaintiff did not list all hours worked and the applicable
7 rate. Because a reasonable person necessarily would need to refer to extrinsic documents or
8 information to determine this information, Plaintiff suffered injury under Labor Code section
9 226(a).

10 56. Accordingly, because Defendants failed to provide the information required by
11 Labor Code section 226, Defendants are liable to Plaintiff for statutory damages, attorneys' fees
12 and costs.

13 **SEVENTH CAUSE OF ACTION**

14 **Failure to Maintain Accurate Records**

15 **Plaintiff Against All Defendants**

16 57. Plaintiff refers to and incorporates herein by reference paragraphs 1 through 56 as
17 though fully set forth herein.

18 58. Labor Code section 1174 provides that every person employing labor in this state
19 shall keep at a central location in the state or at the plants or establishments at which employees
20 are employed, payroll records showing the hours worked daily by and the wages paid to, and the
21 number of piece-rate units earned by and any applicable piece rate paid to, employees employed
22 at the respective plants or establishments.

23 59. California Labor Code section 1174.5 provides that any person employing labor
24 who willfully fails to maintain accurate and complete records required by subdivision (d) of
25 Section 1174 shall be subject to a civil penalty of five hundred dollars (\$500).

26 60. Defendants failed to comply with California Labor Code section 1174 by failing to
27 maintain accurate records with respect to hours worked and wages paid for Plaintiff.

28 61. Accordingly, Defendants are liable to Plaintiff for statutory damages and costs.

1 **EIGHTH CAUSE OF ACTION**

2 **Failure to Indemnify for All Employment Related Losses and Expenditures**

3 **Plaintiff Against All Defendants**

4 62. Plaintiff refers to and incorporates herein by reference paragraphs 1 through 61 as
5 though fully set forth herein.

6 63. Defendants employed Plaintiff as an online tutor in the county of Los Angeles.
7 Defendants have a duty to indemnify their employees for all expenditures or losses incurred by
8 the employee. Plaintiff incurred reasonable business expenses during the course of her
9 employment such as for the necessary education software subscriptions to perform her job.

10 64. Labor Code section 2802(a) states that “[a]n employer shall indemnify his or her
11 employee for all necessary expenditures or losses incurred by the employee in direct consequence
12 of the discharge of his or her duties, or of his or her obedience to the direction of the employer...”
13 An employer is prohibited from passing the ordinary business expenses and losses of the
14 employer onto the employee. (Labor Code section 2802).

15 65. Defendant violated Labor Code section 2802 by impermissibly passing business-
16 related expenses to Plaintiff. These policies, practices, and/or procedures included, but were not
17 limited to reimburse software subscriptions that were essential to perform her duties.

18 66. Moreover, Defendants failed to indemnify Plaintiff for all necessary expenditures
19 or losses incurred by her as required by California law.

20 67. Because Defendants failed to indemnify Plaintiff for the necessary expenditures
21 she incurred, they are liable to Plaintiff for monies to compensate Plaintiff for such expenditures
22 or losses pursuant to Labor Code section 2802.

23 68. As a direct and proximate result of Defendants’ violation of Labor Code section
24 2802, Plaintiff has suffered irreparable harm and monetary damages entitling her to both
25 injunctive relief and restitution. Plaintiff seeks damages and all other relief allowable including
26 indemnification for all employment-related expenses as well as ordinary business expenses
27 incurred by Defendants and passed on to Plaintiff, pursuant to Labor Code section 2802.

28 69. Pursuant to Labor Code section 2802, Plaintiff is entitled to recover full

1 indemnification, reasonable attorneys' fees, and costs of suit.

2 **NINTH CAUSE OF ACTION**

3 **Unfair Competition**

4 **Plaintiff Against All Defendants**

5 70. Plaintiff refers to and incorporates herein by reference paragraphs 1 through 69 as
6 though fully set forth herein.

7 71. As alleged above, Defendants have and continue to misclassify Plaintiff and fail to
8 fully compensate Plaintiff for all hours worked, Plaintiff's overtime wages, and Plaintiff's meal
9 and rest period premiums.

10 72. On information and belief, by violating the provisions of the Labor Code and
11 Wage Orders, Defendants have gained a competitive advantage and unfairly injured competitors
12 in violation of Cal. Bus. & Prof. Code section 17203.

13 73. The victims of these unfair and illegal business practices include, but are not
14 limited to, Plaintiff, Defendants' other employees, competing businesses, and the general public.
15 Plaintiff is informed and believes, and thereon alleges, Defendants performed the above-
16 mentioned acts with the intent of gaining an unfair competitive advantage.

17 74. The identity of the precise persons to whom restitution should be made is a matter
18 that can be ascertained from Defendants' records, which they are required to keep and maintain.

19 75. Plaintiff's efforts in securing the requested relief will result "in the enforcement of
20 an important right affecting the public interest," as "a significant benefit, whether pecuniary or
21 nonpecuniary, [will] be[] conferred on . . . a large class of persons." Cal. Civ. Proc. Code
22 § 1021.5. Because "the necessity and financial burden of private enforcement . . . are such as to
23 make [an attorney's fees] award appropriate, and [because attorney's fees] should not in the
24 interest of justice be paid out of the recover, if any," Plaintiff requests an award of reasonable
25 attorneys' fees pursuant to section 1021.5 of the California Code of Civil Procedure. *Id.*

26 76. Pursuant to Business and Professions Code section 17203, Plaintiff requests
27 restitution and disgorgement of wages and premiums wrongfully retained by Defendants in
28 violation of Business and Professions Code sections 17200 et seq.

1 **TENTH CAUSE OF ACTION**

2 **Violation of California Labor Code Section 2698, et seq. (PAGA)**

3 **Plaintiff Against All Defendants**

4 77. Plaintiff refers to and incorporates herein by reference paragraphs 1 through 76 as
5 though fully set forth herein.

6 78. California Labor Code section 2698, et seq., the Private Attorneys General Act
7 (“PAGA”), allows an aggrieved employee to bring suit against an employer for violations of most
8 California Labor Code provisions, including, but not limited to, violations of California Labor
9 Code sections 201-203, 204, 226, 226.3, 226.7, 226.8, 510, 512, 558, 558.1, 1174(d), 1194, 1197,
10 1197.1, 1198 and 2802. By virtue of Defendants’ numerous violations of the California Labor
11 Code as against Plaintiff as described herein, Plaintiff is an aggrieved employee as defined in
12 California Labor Code section 2698, et seq.

13 79. Defendants’ acts constitute an ongoing unlawful activity prohibited by the
14 California Labor Code, and, therefore, these acts constitute violations of the PAGA.

15 80. Plaintiff has provided notice of these violations pursuant to California Labor Code
16 section 2699.3 and has specifically asked the LWDA if it intends to investigate the alleged
17 violations. Plaintiff did not receive a response back from the LWDA within the time limits
18 outlined in California Labor Code section 2699.3 with notification that it intends to investigate
19 the alleged violations, and thus, Plaintiff is entitled to prosecute his PAGA claims under
20 California Labor Code section 2699, et seq.

21 81. Defendants’ conduct of violating the California Labor Code constitutes violations
22 of the PAGA.

23 82. Therefore, Plaintiff requests penalties against Defendants under the provisions of
24 PAGA section 2699(f).

25 83. The proper measure of damages and penalties under the PAGA is all aggrieved
26 employees, whether a party to this action or not. Further, this claim needs no certification to
27 proceed with class-wide recovery. *See Arias v. Superior Court*, 46 Cal. 4th 969, 970-975 (2009).

28 84. Further, as a direct and proximate result of the conduct of Defendants, as set forth

1 above, Plaintiff was forced to incur substantial attorney's fees and costs which are recoverable
2 under California Labor Code Section 2699(g)(1).

3 85. Accordingly, Plaintiff and all aggrieved employees respectfully request that the
4 Court award judgment and relief in their favor as described herein.

5 **PRAYER FOR DAMAGES**

6 WHEREFORE, Plaintiff prays for judgment against Defendants, and each of them, jointly
7 and severally, as follows:

- 8 1. For an award of compensatory damages, including without limitation lost wages,
9 earnings, benefits, and other compensation, according to proof, as well as damages
10 for any emotional distress and pain and suffering, according to proof as allowed by
11 law;
- 12 2. For reimbursement of reasonable business expenses incurred;
- 13 3. For a declaratory judgment that Defendants have violated California public policy;
- 14 4. For injunctive relief to ensure compliance with the Labor Code;
- 15 5. For an award of prejudgment and post-judgment interest;
- 16 6. For an award of reasonable attorneys' fees;
- 17 7. For statutory fees and/or penalties, including premium wages and liquidated
18 damages;
- 19 8. For penalties against Defendant on behalf of Plaintiff and all aggrieved employees
20 according to the Private Attorneys General Act ("PAGA");
- 21 9. For all costs of suit; and
- 22 10. For an award of any other and further legal and equitable relief as the Court deems
23 just and proper.

24 DATED: November 27, 2023

Respectfully Submitted,
BARKHORDARIAN LAW FIRM, PLC

25 */s/ Heather K. Cox*

26 _____
Gregory P. Wong
Heather K. Cox
27 Attorneys for Plaintiff Erin Naymark
28

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a jury trial for the individual causes of action set forth herein.

DATED: November 27, 2023

Respectfully Submitted,
BARKHORDARIAN LAW FIRM, PLC

/s/ Heather K. Cox

Gregory P. Wong
Heather K. Cox
Attorneys for Plaintiff Erin Naymark

PROOF OF SERVICE
(CCP §§ 1013(A) AND 2015.5)

State of California,

Case No.: 23SMCV04750

County of Los Angeles

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and am not a party to the within action; my business address is 6047 Bristol Parkway, Culver City, CA 90230.

On November 27, 2023, I served the foregoing document described as:

First Amended Complaint and Demand for Jury Trial

on the interested parties in this action by placing same in a sealed envelope, as follows:

Blake A. Dillion
Leila Narvid
Payne & Fears LLP
4 Park Plaza, Suite 1100
Irvine, CA 92614

Attorneys for Defendant Tutored by Teachers,
Inc.

Emails: bad@paynefears.com;
ln@paynefears.com

☐ **(BY MAIL)** – I caused such envelope(s) with postage thereon fully prepaid to be placed in the United States mail in Culver City, California.

I am “readily familiar” with the firm’s practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. Postal Service on the same day with postage thereon fully prepaid at Costa Mesa, California, in the ordinary course of business. I am fully aware that on motion of the party served, service is presumed invalid if the postal cancellation date or postage meter date is more than one day after the date of deposit for mailing an affidavit.

☒ **(BY E-MAIL)** – Based on a Court order or an agreement by the parties to accept service by e-mail or electronic transmission, I caused the documents described above to be sent by e-mail to the persons at the e-mail addresses listed above. I did not receive, within a reasonable amount of time after transmission, any electronic message or other indication that the transmission was unsuccessful.

☐ **(BY FACSIMILE)** – I caused the above described document(s) to be transmitted to the offices of the interested parties at the facsimile number(s) indicated on the attached Service List and the activity report(s) generated by facsimile number (310) 215.3416 indicating on all pages that they were transmitted.

☐ **(BY PERSONAL SERVICE)** – I caused such envelope(s) to be delivered by hand to Defendant.

☒ **(STATE)** – I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

☐ **(FEDERAL)** – I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

/s/ Evelyn Monreal

EVELYN MONREAL

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EXHIBIT E

“NOT TO EXCEED” DECLARATION FROM SETTLEMENT ADMINISTRATOR

DECLARATION OF JODEY LAWRENCE

I, **JODEY LAWRENCE**, declare as follows:

1. I have personal knowledge of the facts set forth herein and if called upon to testify, I could and would do so competently under oath.

2. I am employed by Phoenix Class Action Administration Solutions (“Phoenix”), as President of Business Development.

3. I personally have over fifteen years of experience in claims management and administration of class and collective action matters.

4. Phoenix has never had any financial interests in nor affiliation with the parties or counsel in the matter of *Erin Naymark v. Tutored By Teachers, Inc.* I am unaware of any other actual or potential conflicts of interest that would prevent Phoenix from serving as administrator in this matter.

Qualifications and Experience as Settlement Administrator

5. A true and correct copy of Phoenix’s Curriculum Vitae is attached hereto as **Exhibit A**.

6. Phoenix has extensive experience administering class and representative action matters and has been appointed as the Settlement Administrator in matters pending in both State and Federal courts. Phoenix has administered complex wage and hour, labor and employment, consumer/product liability, TCPA, FLSA, FACTA, ERISA, PAGA, and class and representative action matters through final approval and distribution. Phoenix has developed a robust system of quality assurance measures to ensure that the highest quality service is provided.

7. Phoenix has extensive experience in, and are experts, at all aspects of administering complex class and representative action matters including: (a) preparing, translating, printing, mailing, and tracking privacy notices; (b) operating a 24/7/365 multi-lingual call center; (c) establishing settlement websites; (d) claims management; (e) USPS processes and systems, including third party tracing and the use of reverse telephone directory services; (f) database

management, programming and security protocols; (g) calculating and issuing settlement payments; and (h) tax management, filings, and account reconciliation.

8. Phoenix's Claims Management Group has extensive experience in all aspects of Notification and Identification of Class Members and Aggrieved Employees, Claims Processing, Formulation and Calculation Methodologies, Award Distribution and Taxation, and Accounting and Reconciliation.

Protection of Aggrieved Employee Data

9. Phoenix has adequate procedures in place to safeguard the data and funds to be entrusted to it. Phoenix's Technology and Banking Groups are directly involved with Management on all issues regarding Information Security and Settlement Fund transfers, as it pertains to the continuance of business processes, and all risk, vulnerability, and security assessments as it pertains to sensitive data. The groups, along with Phoenix's internal systems, monitor and communicate with Management on a comprehensive level to prevent potential Strategic or Compliance Risks. All processing of confidential and personal information is handled and maintained within the organization and therefore all data received is kept within a strict chain of custody internally. All informational assets are classified and assigned based on an initial case assessment as well as client and procedural requirements. The Technology Group handles all higher-level ownership of information and physical peripherals, as well as ownership of direct/indirect assets associated with technology and the continuance of business. Specific Users, Groups, or Entities are assigned Shared Ownership or Management Capability based on procedural needs and security level granted.

10. In addition to high levels of Data Center Policies/Procedures and Facility/Maintenance Security Protocols, Phoenix conducts semi-annual training to maintain additional safeguards regarding the following:

- a. Phoenix's Business Continuity Policy;
- b. Phoenix's Disaster Recovery Plan;

- c. Phoenix's Incident Response Plan;
- d. Phoenix's Personal Computer Security Policy;
- e. Phoenix's Data Archiving and Retention Policy;
- f. Phoenix's Personnel Security Policy;
- g. Phoenix's Risk Assessment;
- h. Phoenix's Service Provider Risk Assessment;
- i. Phoenix's Classification and Access Rights Policy;
- j. Phoenix's Password Policy;
- k. Phoenix's Certification of Destruction; and
- l. Phoenix's Security Awareness Training Program.

11. Phoenix currently maintains an errors and omissions insurance policy, with a limit of liability of \$2,000,000.00, in addition to, cyber insurance policy, with a limit of liability of \$3,000,000.00.

Procedures for Notice Preparation and Distribution

12. As part of the procedures for mailing the Notice of Settlement to Aggrieved Employees, Phoenix will mail Individual PAGA Payments to the Aggrieved Employees along with the Notice of Settlement to Aggrieved Employees via First Class U.S. Mail, postage prepaid. Phoenix will provide the Parties' counsel reports regarding administration of the Settlement Agreement as needed or requested. If a Notice of Settlement to Aggrieved Employees and check for Individual PAGA Payment from the initial mailing is returned as undeliverable during the check-cashing period, Phoenix will attempt to obtain a current address for the Aggrieved Employee to whom the returned Notice of Settlement to Aggrieved Employees and check for Individual PAGA Payment had been mailed within three (3) calendar days of receipt of the returned Notice of Settlement to Aggrieved Employees and/or Individual PAGA Payment check, by: (a) contacting the Aggrieved Employee by phone, if possible, (b) undertaking all reasonable efforts to identify the Aggrieved Employee's correct address, and (c) undertaking skip tracing. If

Phoenix is successful in obtaining a new address, it will promptly remail the Notice of Settlement to Aggrieved Employees and Individual PAGA Payment check to the Aggrieved Employee at his or her updated address within three (3) business days.

13. Phoenix's costs are reasonable and competitive when compared to the industry.

14. To complete the settlement administration for this matter as defined herein, Phoenix's fee will include hard cost and hourly costs detailed below:

- **Hard Cost:** Postage, Printing Supplies, Toll Free Setup, QSF Bank Setup, NCOA, Skip Tracing and Remail costs.

- **Hourly Cost:** The hourly rates include Programming Database & Setup, Project Management, Notice Packet Formatting, Programming Undeliverable, Programming Claims Database, Programming Calculations, Disbursement Review, Printing of Notice & Checks, Reconcile Uncashed Checks, Conclusion Reports, Potential Tax Filing, and Case Management/Maintenance.

16. Phoenix prepared a detailed breakdown illustrating how its fee was calculated. A true and correct copy of Phoenix's Will not Exceed quote of **\$3,750** is attached hereto as **Exhibit B**.

I declare under the penalty of perjury under the laws of the United States and state of California that the foregoing is true and correct. Executed on June 25, 2024 at Orange, California.


Jodey Lawrence

EXHIBIT A



CLASS ACTION SETTLEMENT SOLUTIONS

1411 N. Batavia, Suite 105 Orange, CA 92867

800-523-5773

www.phoenixclassaction.com

CURRICULUM VITAE

Phoenix Settlement Administrators. PSA Overview

Phoenix Settlement Administrators, PSA, is an emerging, National, Class Action Notification and Claims Administration firm, located in San Diego and Newport Beach California. PSA's core competencies ensure delivery of the highest quality and accuracy to its Clients and Class members. With a combined 28 years of expert experience, PSA's Managing Partners, Case Supervisors, Managers and Associates, Data Programming, and Certified Secure Strategic Partners, possess all the qualities that our Clients expect throughout the Noticing and Administration process, to Final Approval. It is our Value Pricing, Efficiency, Experience, Consultative Expertise and Delivery, that has perpetuated PSA, as an emerging leader in Class Action Settlement Administration. Expert PSA staff members are currently managing, Consumer and Product Liability, TCPA, Complex Labor & Employment, FLSA, ERISA and PAGA cases.

PSA has over 100 Attorney & Law Firm Clients, which have entrusted us with the management of their claim's administration, because of the "Boutique" attention every case receives. PSA is value driven on all size cases. large or small, cases receive expert management, secure data custody, neutral communication and a dedicated team. This seamless process maintains superior case continuity to ensure our clients receive timely final approval and conclusion to their actions. Phoenix Settlement Administrators implements its successful C.A.S.E. solutions on all our class action matters.

With 10's of Millions of dollars in award distributions currently under management since our inception, PSA has the ability and strengths to manage all levels of Complex Cases. PSA's Staff "Synergy" is our greatest attribute. It allows our people to work closely together and solve our client's case issues. PSA prides itself as a true "Third Party Administrator" and holds Neutrality as a mantra. Because of this approach, both Defense and Plaintiff Clients, experience fairness, trust and confidence in us, and allows for continued business from both parties. PSA has been appointed Third Party Administrator in State and Federal Courts.

We look forward to working with you on your next Class Action Noticing Campaign or Claims Administration. Let us design a C.A.S.E. solution, which will allow us to showcase the difference you'll experience. Superior Service, Class Savings Value Pricing and Timely Outcomes is why our clients come back to PSA.



PHOENIX
SETTLEMENT ADMINISTRATORS

CLASS ACTION SETTLEMENT SOLUTIONS

Expert Core Services

Initial Planning and Consultative Service on Class Action Cases and Noticing Plans.

State/Nationwide Noticing Expertise: Privacy, Media, Publication, Internet & Email Campaigns.

Attorney General(s) CAFA Notification

Claims Programming, Administration, Processing and Reporting.

24/7/365 Multi-Lingual Call Center Support and Claims Processing

Secure Data Management Environment, Individual Firewalls, Encrypted Data and Storage

Settlement Fund Calculations, Solutions, Award Distribution, Award Reconciliation

Tax Filings: State, Federal, EDD, ETT, FUTA, PAGA Payments

Partial PSA Client List, Defense and Plaintiff

Fisher & Phillips
Gordon & Rees
Paul Plevin Sullivan & Connaughton
Call & Jensen
Drinker Biddle
McKenna Long & Aldridge
Greenberg Traurig
Manning & Kass
Littler Mendelson
Kring & Chung
Orrick Herrington & Sutcliffe
Ogletree Deakins Nash Smoak & Stewart
Perkins Coie
Ross Wersching & Wolcott
Winston & Strawn
Sheppard Mullins
Lewis Brisbois Bisgaard & Smith
Morgan Lewis & Bockius
Paul Hastings
Park & Zheng
Sidley Austin
Higgs Fletcher & Mack
Jackson Lewis
Norton Rose Fulbright

Law Offices of Jonathan Ricasa
Dente Law Firm
Mahoney Law Group
Law Office of Thomas Rutledge
Law Office of Briana Kim
Dychter Law Firm
Garay Law Firm
Olsen Law Offices
Gould & Associates
Cohelan, Khoury & Singer
Ridout, Lyon & Ottoson
Carter Law Firm
Law Office of Justian Jusuf
The Phelps Law Group
The Emilio Law Group
Zeldes, Haeggquist & Eck
Markham Law Firm
Arias Ozzello & Gignac
David Yeremian & Associates
Aegis Law Firm
Rukin Hyland Doria & Tindall
Malk Law Firm
Spiro Law Corp
Levine Law Group, APC

Phoenix Settlement Administrators 411 N. Batavia, Suite 105 Orange, CA 92867

Phone: 800-784-2174 Fax: 619.338.0308

www.psaaction.com

EXHIBIT B



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

CASE ASSUMPTIONS

Aggrieved Members	235
Opt Out Rate	N/A
Opt Outs Received	
Total Aggrieved Claimants	235
Subtotal Admin Only	\$3,750.00

Not-to-Exceed Total \$3,750.00

For 235 Aggrieved Members

Pricing Good for Scope of Estimate Only

May 22, 2024

Case: Naymark v. Tutored By Teachers PAGA Administration

Phoenix Contact: Jarrod Salinas

Contact Number: 800-523-5773

Email: Jarrod@phoenixclassaction.com

Requesting Attorney: Greg Wong, Esq.

Firm: Lyfe Law

Contact Number: 888.203.1422

Email: GregW@lyfe.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PHX will need to adjust this Estimate accordingly.

Estimate is based on 235 Aggrieved Members. Class data Must be sent in Microsoft Excel or uploaded in the same format. Class Data Must be sent in one spreadsheet, with no additional programming needed. A rate of \$150 per hour will be charged for any additional analysis or programming. Pricing good for 90 days.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)

Administrative Tasks:	Rate	Hours/Units	Line Item Estimate
Programming Manager	\$100.00	2	\$200.00
Programming Database & Setup	\$100.00	2	\$200.00
Toll Free Setup*	\$49.41	1	\$49.41
Call Center & Long Distance	\$2.00	24	\$47.00
NCOA (USPS)	\$100.00	1	\$100.00
Total			\$596.41

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Check & Postage

Project Action	Rate	Hours/Units	Line Item Estimate
Notice Packet Formatting	\$100.00	1	\$100.00
Data Merge & Duplication Scrub	\$0.25	235	\$58.75
Notice and Check Packet	\$1.25	235	\$293.75
Estimated Postage (up to 1 oz.)*	\$0.64	235	\$150.40
Total			\$602.90

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item Estimate
Case Associate	\$50.00	1	\$50.00
Skip Tracing Undeliverables	\$1.50	24	\$35.25
Remail Notice Packets	\$1.50	24	\$35.25
Estimated Postage	\$0.54	24	\$12.69
Programming Undeliverables	\$50.00	1	\$50.00
Total			\$183.19

Database Programming

Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Claims Database	\$125.00	2	\$250.00
Case Manager	\$125.00	2	\$250.00
Total			\$500.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item Estimate
Programming Calculations	\$100.00	2	\$200.00
Disbursement Review	\$100.00	2	\$200.00
Programming Manager	\$75.00	2	\$150.00
QSF Bank Account & EIN	\$50.00	1	\$50.00
Check Run Setup & Printing	\$120.00	2	\$240.00
Total			\$840.00

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Supervisor	\$125.00	1	\$125.00
Remail Undeliverable Checks (Postage Included)	\$1.50	35	\$52.50
Case Associate	\$125.00	1	\$125.00
Reconcile Uncashed Checks	\$125.00	1	\$125.00
Conclusion Reports	\$125.00	1	\$125.00
Case Manager Conclusion	\$75.00	1	\$75.00
Final Reporting & Declarations	\$100.00	1	\$100.00
QSF Annual Tax Reporting * (State Tax Reporting Included)	\$300.00	1	\$300.00
Total			\$1,027.50

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$3,750.00



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

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EXHIBIT F

[PROPOSED] NOTICE OF PAGA SETTLEMENT

Notice of PAGA Settlement and Release of Claims
Naymark v. Tutored by Teachers
Los Angeles Superior Court Case No. 23SMCV04750

TO: All persons who performed work in the State of California for Tutored by Teachers, Inc. from September 14, 2022 until [date of approval] as a “Teacher-Tutor,” a “Mentor Teacher,” an “Interviewer,” or any other role with similar job duties and were classified as an independent contractor.

The enclosed check is your share of a court-approved representative action settlement between Plaintiff Erin Naymark (“Plaintiff”), and Defendant Tutored by Teachers, Inc. (“Defendant”) in the matter of *Erin Naymark v. Tutored by Teachers, Inc.* (Los Angeles Superior Court Case Number 23SMCV04750) (the “PAGA claim”).

You are receiving this notice because you may be an Aggrieved Individual for purposes of the PAGA Claim. Defendant’s records indicate that you were classified as an independent contractor and performed work for Defendant in the State of California as a “Teacher-Tutor,” a “Mentor Teacher,” an “Interviewer” or another role with similar job duties at some time between September 14, 2022 to [date of approval] (the “Settlement Period”).

Plaintiff filed the PAGA claim against Defendant as the representative of the State of California and Defendant’s other current and former hourly or non-exempt employees that worked in California. Plaintiff asserted claims against Defendant under California Labor Code § 2698 *et seq.*, also known as the Private Attorneys General Act (“PAGA”), alleging violations of wage and hour laws including (1) Misclassification of Employment Status; (2) Failure to Pay Minimum Wages; (3) Failure to Pay Overtime Wages; (4) Failure to Provide Meal Periods; (5) Failure to Provide Rest Periods; (6) Failure to Provide Adequate Paystubs; (7) Failure to Maintain Accurate Records; (8) Failure to Indemnify For All Employment Related Losses/Expenditures; and (9) Unfair Competition.

Defendant denies any liability or wrongdoing and contends, among other things, that it has complied at all times with the California Labor Code, the related California Wage Orders, and all other state and federal wage laws, and further contends that the PAGA claim is without merit. Defendant has agreed to settle the case as part of a compromise with Plaintiff following a mediation with an experienced and well-respected mediator. The proposed settlement is not an admission of liability by Defendant. Throughout the course of litigation in the PAGA claim, Defendant has denied any liability or wrongdoing, or that any compensable injury arose out of any of the matters alleged. By agreeing to settle, Defendant is not admitting liability on any of the factual allegations or claims in the PAGA claim or that it can or should proceed as a PAGA representative action.

On [date of approval], the Court approved a Joint Stipulation re PAGA Settlement (“Settlement”) of the PAGA claim and ordered that a portion of the Settlement proceeds allocated to civil penalties under PAGA be distributed to all Aggrieved Individual, including you, after certain portions of the penalties are paid to the State of California according to California law.

The enclosed check represents your “Individual PAGA Payment,” which is your share of the Settlement funds that were allocated to settle claims for civil penalties pursuant to PAGA calculated by: (a) dividing the amount of the Aggrieved Individual’s 25% share of the PAGA Penalties by the total number of PAGA Period Pay Periods worked by all Aggrieved Individuals during the PAGA Period; and (b) multiplying the result by each Aggrieved Individual’s PAGA Period Pay Periods.

You may deposit or cash the check without any further obligation on your part and there is no need for you to contact the settlement administrator, the parties, or the Court. The Court-approved Settlement releases claims for civil penalties under PAGA as described in more detail in the section under the heading “Release of Claims” below.

THIS NOTICE IS NOT AN EXPRESSION OF ANY OPINION BY THE COURT AS TO THE MERITS OF THE CLAIMS OR DEFENSES BY EITHER SIDE IN THIS PROCEEDING. PLEASE DO NOT CONTACT THE COURT REGARDING THIS CASE, THE COURT CLERK’S OFFICE, DEFENDANT OR DEFENDANT’S ATTORNEYS TO INQUIRE ABOUT THIS SETTLEMENT OR THE CLAIM PROCESS.

As an Aggrieved Individual, you are covered by this Settlement for which the Court has approved the following Release of Claims applicable to **all Aggrieved Individuals**:

All Aggrieved Individuals are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice ... but not limited to claims for civil penalties recoverable under Labor Code section 2699 due to Defendant’s alleged misclassification as independent contractors.

Under the Settlement, Aggrieved Individuals do not need to do anything in order to receive their Individual PAGA Payment. Aggrieved Individuals have no ability to object or opt out of the Settlement.

Your enclosed check is valid for 180 days from the date of its issuance. After that date, you cannot cash the check and it will be null and void. Funds attributable to such uncashed checks will be sent to the State of California Unclaimed Property Fund in your name. You are bound by the settlement and release of claims based on the Court’s final judgment whether or not you cash or deposit the enclosed check. Regardless of what you do with the settlement check, you will have released claims for penalties arising under PAGA as asserted in the Action.

For tax purposes, the Individual PAGA Payments will be allocated 100% to settlement of claims for penalties, which will be paid without withholding any amount and shall be reported on an IRS Form 1099. IRS Forms 1099 (and the equivalent California forms) will be distributed to the Aggrieved Individuals reflecting the payments they receive under the Settlement. Aggrieved

Individuals should consult with their tax advisors concerning the tax consequences of the payments they receive under the Settlement.

You may obtain additional information about this settlement by going to the Settlement Administrator's website, please see <http://www.phoenixclassaction.com/>, or you may contact the Settlement Administrator at the following: Phoenix Settlement Administrators, P.O. Box 7208, Orange, CA 92863, Telephone: (800) 523-5773.

4885-9003-3608.2

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EXHIBIT G

CONFIRMATION OF SUBMISSION OF PROPOSED SETTLEMENT TO LWDA



Greg Wong <gregw@lyfe.com>

Thank you for your Proposed Settlement Submission

1 message

DIR PAGA Unit <lwdadonotreply@dir.ca.gov>
To: gregw@lyfe.com

Tue, Jun 25, 2024 at 10:59 AM

06/25/2024 10:59:27 AM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm