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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