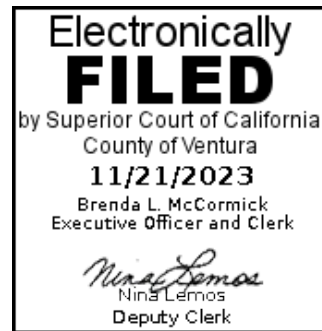




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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF VENTURA – HALL OF JUSTICE

MARIE SAVERY, Individually and on Behalf
of Other Members of the Public and those
Similarly Situated,

Plaintiff,

v.

ATX LEARNING, LLC.,
AUSTIN TEXAS LEARNING GROUP, LLC.,
SYED KHALIL, an individual, and
DOES 1-10, Inclusive,

Defendants.

Case No.: 2023CUOE013956

**CLASS ACTION AS TO PLAINTIFF'S FIRST
THROUGH NINTH CAUSES OF ACTION**

**PAGA ACTION AS TO THE TENTH CAUSE
OF ACTION**

FIRST AMENDED COMPLAINT FOR:

- (1) **ILLEGAL NON-COMPETE AGREEMENT;**
- (2) **ILLEGAL LIMITATIONS ON DAMAGES AGREEMENT;**
- (3) **FAILURE TO INDEMNIFY FOR BUSINESS EXPENSES;**
- (4) **OVERTIME VIOLATIONS;**
- (5) **MINIMUM WAGE VIOLATIONS;**
- (6) **UNPAID WAGE VIOLATIONS;**
- (7) **FAILURE TO PAY TIMELY WAGES UPON SEPARATION OF EMPLOYMENT;**
- (8) **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT ITEMIZED WAGE STATEMENTS;**
- (9) **UNFAIR COMPETITION;**
- (10) **CLAIMS UNDER THE PAGA**

Judge: Hon. Matthew P. Guasco
Dept.: 20
Original Filing Date: September 13, 2023

DAMAGES EXCEED \$25,000
DEMAND FOR JURY TRIAL

COMES NOW Plaintiff MARIE SAVERY ("Plaintiff"), individually and on behalf of the public, persons similarly situated and in a representative capacity, and asserts claims against ATX LEARNING, LLC., ("ATX LEARNING") and AUSTIN TEXAS LEARNING GROUP, LLC. ("LEARNING GROUP"), and Does 1-10 inclusive (collectively with ATX LEARNING and LEARNING GROUP, "Defendants"), and individual SYED KHALIL (individual also known as "Individual Defendant") (ATX LEARNING and LEARNING GROUP and Individual Defendant are collectively referred to as "PAGA Defendants") as follows:

JURISDICTION AND VENUE

1. This is an individual action as well as a class action (Causes of Action One through Nine) brought by Plaintiff for violations of the California Labor Code including those pertaining to: the illegal use of non-competition agreements, the inclusion of illegal damage limiting language in employment agreements, the failure to reimburse employees for business expenses/losses, the failure to pay overtime wages and at the correct rate of pay, the failure to pay all regular wages, the failure to pay minimum wages, the failure to pay all wages and timely wages to employees upon separation of employment and the failure to pay waiting time penalties to employees, the failure to issue and maintain compliant itemized wage statements, unfair competition. The declaratory and injunctive relief sought by Plaintiff are within the jurisdiction of the Superior Court. The monetary damages, penalties and restitution sought by Plaintiff exceed the minimal jurisdiction limits of the Superior Court and will be established according to proof at trial.

2. This is also a private attorneys general enforcement action brought by Plaintiff SAVERY under the California Labor Code Private Attorneys General Act of 2004 codified in California Labor Code §2698, *et seq.* ("PAGA") (Tenth Cause of Action). Plaintiff SAVERY seeks PAGA penalties on behalf of PAGA Defendants' current and former California employees as further defined herein.

3. This Court has jurisdiction over this action pursuant to the California Constitution, Article VI, §10, which grants the California Superior Court original jurisdiction except those given by statute to other courts. The statutes under which this action is brought do not give jurisdiction to any other court.

4. This Court has jurisdiction over Defendants and PAGA Defendants because, upon information and belief, each defendant is either a resident of California, has sufficient minimum contacts

1 in California, or otherwise intentionally avails itself of the California market so as to render the exercise
2 of jurisdiction over it by the California Courts consistent with traditional notions of fair play and
3 substantial justice.

4 5. Venue is proper in this Court because Defendants and PAGA Defendants transact business
5 in the County of Ventura. Plaintiff performed work in the County of Ventura.

6 **PARTIES**

7 6. Plaintiff MARIE SAVERY is, and at times mentioned in this complaint was a resident of
8 California who performed work as an employee in California, including work in County of Ventura
9 County. Plaintiff SAVERY was an “employee,” at times relevant, as that term is defined in the California
10 Labor Code and California Industrial Welfare Commission Wage Order.

11 7. Upon information and belief, Plaintiff is informed and believes, and thereon allege that
12 ATX LEARNING, LLC., who is identified on Plaintiff’s Employment Agreement as the employing
13 company, is and has been a staffing company that supplies personnel to various clients throughout
14 California including but not limited to where Plaintiff was placed/assigned to work. Upon information and
15 belief, Plaintiff is informed and believes, and thereon alleges, that at relevant times mentioned herein ATX
16 LEARNING, LLC. has had a location and address in California and has and continues to transact business
17 in California, including in the County of Ventura, and further alleges that conduct and injuries alleged
18 herein occurred in California, including in the County of Ventura.

19 8. Plaintiff is informed and believes, and thereon alleges, that, at times relevant, ATX
20 LEARNING, LLC. has been an “employer” as that term is used in the California Labor Code and
21 applicable California Industrial Welfare Commission (“IWC”) Wage Order.

22 9. Upon information and belief, Plaintiff is informed and believes, and thereon alleges that
23 AUSTIN TEXAS LEARNING GROUP, LLC., who is identified on Plaintiff’s paystub as the employer,
24 is and has been a staffing company, that supplies personnel to various clients throughout California
25 including but not limited to where Plaintiff was placed/assigned to work. Upon information and belief,
26 Plaintiff is informed and believes, and thereon allege, that at relevant times mentioned herein AUSTIN
27 TEXAS LEARNING GROUP, LLC. did and continues to transact business in California, including in the
28

County of Ventura, and conduct and injuries alleged herein occurred in California, including in the County of Ventura.

10. Plaintiff is informed and believes, and thereon alleges, that, at times relevant, AUSTIN TEXAS LEARNING GROUP, LLC. has been an “employer” as that term is used in the California Labor Code and applicable California Industrial Welfare Commission (“IWC”) Wage Order.

11. Whenever in this complaint reference is made to any act, deed, or conduct of ATX LEARNING, LLC., and/or AUSTIN TEXAS LEARNING GROUP, LLC., the allegation means that the entities engaged in the act, deed, or conduct by or through one or more of its officers, directors, agents, employees, or representatives, including those who were actively engaged in the management, direction, control, or transaction of the ordinary business and affairs of the entities.

12. SYED KHALIL, on information and belief, is an officer and/or director of ATX LEARNING, LLC., and/or AUSTIN TEXAS LEARNING GROUP, LLC. Plaintiff is informed and believes, and thereon alleges, that at relevant times mentioned herein SYED KHALIL was and is at all times relevant: (i) an “employer or other person acting on behalf of an employer” under California Labor Code §§558(a) and 558.1(a) and (b) (“For purposes of [California Labor Code §558.1(a)], the term ‘other person acting on behalf of an employer’ is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term ‘managing agent’ has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.”); (ii) a “person who fails to pay the wages of each employee” under California Labor Code §210(a); (iii) a “person who unlawfully withholds wages due any employee...” under California Labor Code §225.5; (iv) an “other person violating...” under California Labor Code §248.5(e); (v) a “person employing labor” under California Labor Code §§1174, 1174.5; (vi) an “employer” under California Labor Code §1182.12(b)(3) (an employer “means any person who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person”); (vii) a “person acting either individually or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed...” under California Labor Code §1197.1(a); (viii) an “employer, or agent, manager, superintendent, or officer thereof” under California Labor Code §432.5; and/or (ix) a “person” under California Labor Code §225.5.

14. Plaintiff is informed and believes, and thereon alleges, that the Doe Defendants are the partners, agents, or principals and/or co-conspirators of ATX LEARNING, LLC., and/or AUSTIN TEXAS LEARNING GROUP, LLC, and/or SYED KHALIL and of each other; that ATX LEARNING, LLC., AUSTIN TEXAS LEARNING GROUP, LLC., SYED KHALIL and the Doe Defendants performed the acts and conduct herein alleged directly, aided and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the benefits of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent of the liability of ATX LEARNING, LLC., AUSTIN TEXAS LEARNING GROUP, LLC., SYED KHALIL as alleged herein.

15. Plaintiff is further informed and believes, and thereon alleges, that at all times herein material, each Defendant was completely dominated and controlled by its co-Defendants and each was the alter ego of the other. Whenever and wherever reference is made in this complaint to any conduct by ATX LEARNING, LLC., and/or AUSTIN TEXAS LEARNING GROUP, LLC. and/or SYED KHALIL or defendants, such allegations and references shall also be deemed to mean the conduct of each of the defendants, acting individually, jointly, and severally. Whenever and wherever reference is made to individuals who are not named as defendants in this complaint, but were employees and/or agents of defendants, such individuals at all relevant times acted on behalf of defendants named in this complaint within the scope of their respective employments.

16. Plaintiff brings this action (Causes of Action One through Nine) on behalf of each and all other persons similarly situated, and thus, seek class certification under California Code of Civil Procedure §382.

17 17. All claims alleged herein arise under California law for which Plaintiff seeks relief as
18 authorized by California law.

1 18. The proposed Non-Competition Class is comprised of and defined as:

2 Any and all persons who are or were employees of ATX LEARNING, LLC., and/or
3 AUSTIN TEXAS LEARNING GROUP, LLC., however titled, in the state of California
4 who have been presented with any document and/or signed any document (including but
5 not limited to an "Employment Agreement") that purports to be a non-competition and/or
non-solicitation agreement (hereinafter collectively referred to as the "Non-Competition
Class").

6 The proposed Damages Limitation Class is comprised of and defined as:

7 Any and all persons who are or were employees of ATX LEARNING, LLC., and/or
8 AUSTIN TEXAS LEARNING GROUP, LLC., however titled, in the state of California
9 and whose Employment Agreement or any other document contains language that purports
10 to limit claims for damages (hereinafter collectively referred to as the "Damages Limitation
Class").

11 The proposed Business Expense Class is comprised of and defined as:

12 Any and all persons who are or were employees of ATX LEARNING, LLC., and/or
13 AUSTIN TEXAS LEARNING GROUP, LLC., however titled, in the state of California at
14 any time during the applicable statutory period (plus applicable time for tolling under
Emergency Rule No. 9 or similar tolling rules) until resolution of this lawsuit (hereinafter
collectively referred to as the "Business Expense Class").

15 The proposed Salary Non-Exempt Class is comprised of and defined as:

16 Any and all persons who are or were non-exempt employees of ATX LEARNING, LLC.,
17 and/or AUSTIN TEXAS LEARNING GROUP, LLC., placed and/or assigned to a client
18 and paid a salary, however titled, in the state of California at any time during the applicable
19 statutory period (plus applicable time for tolling under Emergency Rule No. 9 or similar
tolling rules) until resolution of this lawsuit (hereinafter collectively referred to as the
"Salary Non-Exempt Class").

20 The proposed Waiting Time Class is comprised of and defined as:

21 Any and all persons who are or were employees of ATX LEARNING, LLC., and/or
22 AUSTIN TEXAS LEARNING GROUP, LLC, however titled, in the state of California
23 and whose employment with ATX LEARNING, LLC., and/or AUSTIN TEXAS
24 LEARNING GROUP, LLC ended at any time at any time during the applicable statutory
25 period (plus applicable time for tolling under Emergency Rule No. 9 or similar tolling
rules) until resolution of this lawsuit (hereinafter collectively referred to as the "Waiting
Time Class").

26 ///

27 ///

1 The proposed Wage Statement Class is comprised of and defined as:

2 Any and all persons who are or were employees of ATX LEARNING, LLC., and/or
3 AUSTIN TEXAS LEARNING GROUP, LLC, however titled, in the state of California at
4 any time during the applicable statutory period (plus applicable time for tolling under
5 Emergency Rule No. 9 or similar tolling rules) until resolution of this lawsuit and who
6 were issued a wage statement (hereinafter collectively referred to as the “Wage Statement
7 Class”).

8 19. The members of the Non-Competition Class, Damages Limitation Class, Business Expense
9 Class, Salary Non-Exempt Class, Waiting Time Class, and Wage Statement Class (collectively the
10 “Classes” or “Class Members”) are so numerous as to make it impracticable to bring them all before this
11 Court. Plaintiff is unable to state the exact number of the Class Members without discovery of Defendants'
12 books and records, but based on discovery to date the Classes exceed 100 members. The identity of Class
13 Members is readily ascertainable by an inspection of Defendants' employment and payroll records.

14 20. There are questions of law and fact common to the members of each of the Classes that
15 predominate over any questions affecting any individual in the Classes. Defendants have acted, and
16 refused to act, on grounds generally applicable to members of the Classes.

17 21. Plaintiff’s claims are typical of the claims of the Class Members and Plaintiff will fairly
18 and adequately protect the interests of these members.

19 22. The prosecution of separate actions by individual members of the Classes would create the
20 risk of:

21 (a) Inconsistent or varying adjudications in different jurisdictions with respect to
22 individual Class Members, which would establish incompatible standards of conduct for Defendants; and

23 (b) Adjudications with respect to individual Class Members which, as a practical
24 matter, would be dispositive of the interests and rights of Class Members who are not parties to the
25 adjudications, or would substantially impair or impede the ability of Class Members to protect their
26 interests.

27 23. At all times relevant to this action, Defendants have enacted and effected unlawful and
28 unfair state-wide employment policies and practices which have caused Plaintiff and members of the
Classes to suffer injury. A class action is superior to other available methods for the fair and efficient

adjudication of Defendants' policies and practices and the damage they caused Plaintiff and members of the Classes to suffer and which are the subject matter of this action.

24. The claims asserted herein implicate questions of law or fact common to members of the Classes. These common questions predominate over any questions affecting only individual Class Members. Common questions include, but are not limited to:

(a) Whether Defendants failed to provide Wage Statement Class Members with wage statements that complied with the requirements of the California Labor Code §226(a);

(b) Whether Defendants failed to compensate Waiting Time Class Members timely upon separation of employment;

(c) Whether Defendants failed to pay waiting time penalties to Waiting Time Class Members;

(d) Whether Defendants failed to indemnify members of the Business Expense Class for all expenses and losses incurred in violation of California Labor Code §2802;

(e) Whether Defendants unlawfully restrained engagement of a lawful profession, trade, or business of any kind with respect to the Non-Competition Class;

(f) Whether Defendants acted unlawfully with respect to the Damages Limitations Class;

(g) Whether Defendants failed to calculate and pay all wages correctly for the Salary Non-Exempt Class;

(h) Whether Defendants engaged in unfair competition in violation of California Business and Professions Code §§17200, *et seq.*; and

(i) The appropriate amount of penalties, damages, and restitution and declaratory and injunctive relief resulting from Defendants' violations of California law.

ALLEGATIONS REGARDING PAGA ENFORCEMENT ACTION

25. This is a PAGA enforcement action as to the Tenth Cause of Action for recovery of civil penalties under the PAGA. *See Arias*, 46 Cal. 4th at 969. PAGA permits an "aggrieved employee" to bring a lawsuit for civil penalties on a representative basis, to address an employer's violations of the California Labor Code committed against the aggrieved employee and other current and former

employees. Id. at 980-81. In this case, it is alleged that PAGA Defendant violated California Labor Code §§201, 202, 203, 204, 226(a), 227.3, 245 *et seq.*, 432.5, 510, 925(a)(2), 1174(d), 1182.12, 1194 *et seq.* 1197 *et seq.*, 1198, 2802 *et seq.*, 2804 as set forth more fully below. Plaintiff SAVERY seeks PAGA penalties on behalf of PAGA Defendants' current and former California employees as follows:

(i) any and all persons who are or were employees of ATX LEARNING, LLC., and/or AUSTIN TEXAS LEARNING GROUP, LLC., however titled, in the state of California who have been, at any time since one year prior to the PAGA Notice submitted on September 12, 2023 (plus applicable time for tolling under Emergency Rule No. 9 or similar tolling rules) until resolution of this lawsuit, presented with any document and/or signed any document (including but not limited to an “Employment Agreement”) that purports to be a non-competition and/or non-solicitation agreement (hereinafter collectively referred to as the “Non-Competition Employees”);

(ii) any and all persons who are or were employees of ATX LEARNING, LLC., and/or AUSTIN TEXAS LEARNING GROUP, LLC., however titled, in the state of California at any time since one year prior to the PAGA Notice submitted on September 12, 2023 (plus applicable time for tolling under Emergency Rule No. 9 or similar tolling rules) until resolution of this lawsuit, and whose Employment Agreement or any other document contains language that purports to limit claims for damages (hereinafter collectively referred to as the “Damages Limitation Employees”);

(iii) any and all persons who are or were employees of ATX LEARNING, LLC., and/or AUSTIN TEXAS LEARNING GROUP, LLC., however titled, in the state of California at any time since one year prior to the PAGA Notice submitted on September 12, 2023 (plus applicable time for tolling under Emergency Rule No. 9 or similar tolling rules) until resolution of this lawsuit (hereinafter collectively referred to as the “Business Expense Employees”);

(iv) any and all persons who are or were non-exempt employees of ATX LEARNING, LLC., and/or AUSTIN TEXAS LEARNING GROUP, LLC., placed and/or assigned to a client and paid a salary, however titled, in the state of California, at any time since one year prior to the PAGA Notice submitted on September 12, 2023 (plus applicable time for tolling under Emergency Rule No. 9 or similar tolling rules) until resolution of this lawsuit (hereinafter collectively referred to as the “Salary Non-Exempt Employees”);

1 (v) any and all persons who are or were employees of ATX LEARNING, LLC.,
2 and/or AUSTIN TEXAS LEARNING GROUP, LLC, however titled, in the state of California and whose
3 employment with ATX LEARNING, LLC., and/or AUSTIN TEXAS LEARNING GROUP, LLC ended
4 at any time since one year prior to the PAGA Notice submitted on September 12, 2023 (plus applicable
5 time for tolling under Emergency Rule No. 9 or similar tolling' rules) until resolution of this lawsuit
6 (hereinafter collectively referred to as the "Waiting Time Employees);

7 (vi) any and all persons who are or were employees of ATX LEARNING, LLC.,
8 and/or AUSTIN TEXAS LEARNING GROUP, LLC, however titled, in the state of California at any time
9 since one year prior to the PAGA Notice submitted on September 12, 2023 (plus applicable time for
10 tolling under Emergency Rule No. 9 or similar tolling rules) until resolution of this lawsuit and who were
11 issued a wage statement (hereinafter collectively referred to as the "Wage Statement Employees"). (Non-
12 Competition Employees, Damages Limitation Employees, Business Expense Employees, Salary Non-
13 Exempt Employees, Waiting Time Employees, and Wage Statement Employees are collectively referred
14 to as "PAGA Employees").

15 26. Plaintiff SAVERY's Tenth Cause of Action is suitable for treatment as a PAGA
16 enforcement action for the following reasons:

17 (a) the violations set forth in the Tenth Cause of Action allege violations of the
18 California Labor Code for which the Code provides a civil penalty to be assessed and recovered by the
19 Labor and Workforce Development Agency ("LWDA") or any department, division, commission, boards,
20 agencies, or employees, or for which a penalty is provided for under California Labor Code §2699(f);

21 (b) Plaintiff SAVERY is an "aggrieved employee" because she was employed by the
22 alleged violator and against whom one or more of the alleged violations was committed;

23 (c) Plaintiff SAVERY has complied with the requirement to commence a civil action
24 pursuant to the PAGA including pursuant to California Labor Code §2699.3;

25 (d) Plaintiff SAVERY has complied with the exhaustion requirements of PAGA by
26 providing written online notice to the LWDA and notice by certified letter to Defendants ATX
27 LEARNING, LLC., and AUSTIN TEXAS LEARNING GROUP, LLC. and SYED KHALIL on
28 September 12, 2023 concerning the PAGA claims Plaintiff SAVERY intends to pursue (the "PAGA

Notice”). A true and correct copy of the PAGA Notice is attached hereto as Exhibit 1. Sixty-five (65) days have elapsed since Plaintiff submitted the PAGA Notice to the LWDA and PAGA Defendants and Plaintiff has received no response from the LWDA and no response or notice (including any “cure” notice) from PAGA Defendants in response to the PAGA Notice.

FACTUAL ALLEGATIONS

27. At times relevant, including in the statutory periods, Plaintiff was employed by Defendants and PAGA Defendants (as used throughout the complaint, the term PAGA Defendants is used as applicable to PAGA Employees) in California. On information and belief, at times relevant, including in the statutory periods, Defendants and PAGA Defendants employed, and continue to employ, employees throughout the state of California, including Class Members and PAGA Employees.

NON-COMPETE/NON-SOLICITATION

28. At times relevant, including in the statutory periods, Plaintiff, Non-Competition Class Members and Non-Competition Employees were, from time to time, presented with and/or were required to sign a non-competition/non-solicitation agreement with ATX LEARNING, LLC., and/or AUSTIN TEXAS LEARNING GROUP, LLC. that restrained the engagement in a lawful profession, trade, or business of any kind.

29. Plaintiff’s “Employment Agreement,” for example, in relevant part states the following:

Non-Solicitation. Employee agrees that during the term of this Agreement and for a period of one (1) year thereafter, Employee will not affiliate with, join or attempt to join the Company’s client or its associates nor use any partners, employees or agents for such purpose.

On information and belief, employment agreements for Non-Competition Class Members and Non-Competition Employees contain the same or similar non-compete/non solicitation language.

30. A non-competition/non-solicitation agreement places restrictions on Plaintiff’s and other Non-Competition Class Members and Non-Competition Employees’ opportunities for work. Such conduct is an unlawful restraint of trade, business and/or profession, in violation of California Business Code §16600. In addition, the non-compete violates Cal. Labor Code §432.5 which states that “[n]o employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant

for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law.” It also violates Cal. Labor Code §925(a)(2) which prohibits an employer from requiring an employee who primarily resides and works in California, as a condition of employment, to agree to a provision that would “deprive the employee of the substantive protection of California with respect to a controversy arising in California.” Furthermore, from time to time at times relevant, including in the statutory periods, California Labor Code §§432.5 and 925(a)(2) are violated through any sort of purported agreement to contract away protections under California Business and Professions Code §§16600 et seq., the California Labor Code including but not limited to indemnification under Sections 2802 and one-way fee and cost shifting, and California Civil Code §1668 (“All contracts which have for their object, directly or indirectly, to exempt anyone from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law.”) It further violates Cal. Labor Code §2802 (requiring indemnification for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer) and §2804 which states that “[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of this article [Section 2802 *et seq.*] or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State.”

DAMAGES LIMITATION CLAUSE

31. At times relevant, including in the statutory periods, employment agreements or other documents for Plaintiff, Damages Limitations Class Members and Damages Limitations Employees have contained, from time to time, language that purports to limit claims to damages.

32. Plaintiff’s “Employment Agreement,” for example, in relevant part states the following:

Damages Except for claims for fraud, willful injury to person or property, and violation of law, no party shall claim damages against the other in excess of 50% of the total amount to be paid out under the [Employment] Agreement. In addition, no party shall recovery any special, consequential, or indirect damages or any type against the Company.

On information and belief, employment agreements or other documents for Damages Limitations Class Members and Damages Limitations Employees contain the same or similar language purporting to limit claims for damages.

33. An agreement to limit damages or anything else that limits damages places unlawful restrictions on Plaintiff's and other Damages Limitations Class Members and Damages Limitations Employees' rights to damages including but not limited to those under the California Labor Code, the Industrial Welfare Commission Wage Orders, and California Business Code §16600 et seq. and California Civil Code §1668 ("All contracts which have for their object, directly or indirectly, to exempt anyone from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law") is unlawful. In addition, the damages limitations clause violates Cal. Labor Code §432.5 which states that "[n]o employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law." It also violates Cal. Labor Code §925(a)(2) which prohibits an employer from requiring an employee who primarily resides and works in California, as a condition of employment, to agree to a provision that would "deprive the employee of the substantive protection of California with respect to a controversy arising in California." It further violates Cal. Labor Code §2802 (requiring indemnification for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer) and Cal. Labor Code §2804 which states that "[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of this article [Section 2802 *et seq.*] or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State."

BUSINESS EXPENSES

34. At times relevant, including in the statutory periods, Defendants and PAGA Defendants from time to time, failed to indemnify Plaintiff, Business Expense Class Members and Business Expense Employees for all necessary expenditures or losses incurred by the employee in direct consequence of job duties. From time to time, work duties (including but not limited to work communications, administrative

work, time keeping, client work, and remote work) required the use of telephones, electronic devices including but not limited to iPad or similar device, internet, phone and data services, subscriptions and applications, supplies such as paper, printer and ink, and home office use, among other things. These items, on information and belief, were provided by Plaintiff, Business Expense Class Members, and Business Expense Employees, and not by Defendants and PAGA Defendants, and are and were used for business purposes, without reimbursement for the business use. Additionally, at times relevant, including in the statutory periods, Defendants and PAGA Defendants from time to time, failed to fully indemnify Plaintiff, Business Expense Class Members and Business Expense Employees for business travel and expenses related to travel positions. Each of these failures violate Section 2802 which states “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer...” In violation of Section 2802, Defendants and PAGA Defendants pass on (or attempt to pass on) the employer’s cost of doing business onto Plaintiff, Business Expense Class Members, and Business Expense Employees.

SALARY NON-EXEMPT EMPLOYEES

OVERTIME/MINIMUM WAGES

35. At times during the relevant statutory periods, Plaintiff and other Salary Non-Exempt Class Members and Salary Non-Exempt Employees, from time to time, were paid wages designated as “Salary.”

36. At times during the relevant statutory periods, Plaintiff and other Salary Non-Exempt Class Members and Salary Non-Exempt Employees, from time to time, did not meet both the duties test and the salary basis test for the employee’s compensation and therefore are non-exempt as defined by California law including within the meaning of the California Labor Code and the implementing rules and regulations of the California IWC Wage Orders. On information and belief, from time to time at times during the relevant statutory periods, the salary basis test was not met as a result of the Defendants’ and PAGA Defendants’ failure to pay wages as required by the salary basis test; if the salary basis test is not met, exemption is not met.

37. On information and belief, at times during the relevant statutory periods, Defendants and PAGA Defendants did not, from time to time, pay Plaintiff and other Salary Non-Exempt Class Members

and Salary Non-Exempt Employees all wages due and owing for all time worked (including but not limited to administrative time such as timekeeping, paperwork, communications, training, meetings, travel work time, client work time, and preparatory and wrap up work time) as a result of treating Plaintiff and other Salary Non-Exempt Class Members and Salary Non-Exempt Employees as exempt. As a result, Defendants and PAGA Defendants have, from time to time, among other things failed to: pay overtime wages correctly for overtime hours worked using the regular rate of pay (the computation of which includes all forms of non-discretionary wages including but not limited to bonuses, and per-diem that operated as wages) thereby violating Sections 510 and 1198 of the California Labor Code; pay minimum wages correctly for non-overtime hours worked thereby violating Sections 1182.12, 1194 *et seq.* and 1198 of the California Labor Code; maintain and provide wage statements compliant with Section 226(a) of the California Labor Code; timely pay all wages due and owing during employment in violation of Section 204 of the California Labor Code, and upon separation of employment in violation of Sections 201, 202, 203 of the California Labor Code; pay a waiting time penalties to Plaintiff and those who are also Waiting Time Class Members, and Waiting Time Employees.

SALARY NON-EXEMPT EMPLOYEES

ASSIGNMENT SALARY

38. At times during the relevant statutory periods, Plaintiff, Salary Non-Exempt Class Members and Salary Non-Exempt Employees, from time to time, were assigned/placed with a client through Employment Agreements or other documents in which the contracted pay for the assignment was an annual salary to be paid in full notwithstanding the term of the job assignment/placement was less than twelve months. The job assignment salary is the pay due to Plaintiff, Salary Non-Exempt Class Members and Salary Non-Exempt Employees.

39. Defendants and PAGA Defendants, on information and belief, have failed to pay, from time to time, the full contracted assignment salary but instead have paid only through the term of the job assignment, thereby underpaying employees. For example, Plaintiff's contracted annual salary was not tied to the duration of the job assignment/placement (the term of which was approximately October 2022 to the last date of work for the school year on or about June 15, 2023) and was confirmed by ATX Learning, LLC. policy that it was to be paid in full rather than in a lesser amount based on term of the

1 assignment. Notwithstanding this, Defendants and PAGA Defendants ceased paying Plaintiff the
2 contracted assignment salary when the job assignment concluded and consequently only paid Plaintiff
3 approximately 70% of her contracted salary, leaving approximately 30% unpaid. On information and
4 belief, Defendants and PAGA Defendants have similarly underpaid the regular wages of Salary Non-
5 Exempt Class Members and Salary Non-Exempt Employees whereby Defendants and PAGA Defendants
6 incorrectly calculated and paid the employee's contracted twelve-months of wages in an amount less than
7 the amount.

8 40. As a result, Defendants and PAGA Defendants have, from time to time, among other things
9 failed to: pay regular wages thereby violating Sections 218 and 1198 of the California Labor Code;
10 maintain and provide wage statements compliant with Section 226(a) of the California Labor Code; timely
11 pay all wages due and owing during employment in violation of Section 204 of the California Labor Code,
12 and upon separation of employment in violation of Sections 201, 202, 203 of the California Labor Code;
13 pay a waiting time penalties to Plaintiff and those who are also Waiting Time Class Members, and Waiting
14 Time Employees.

15 **PAID TIME OFF - VACATION/PAID SICK TIME**

16 41. At times relevant, including in the statutory periods, Defendants and PAGA Defendants,
17 from time to time, provided paid time off to Plaintiff, Salary Non-Exempt Class Members, Salary Non-
18 Exempt Employees, Waiting Time Class Members and Waiting Time Employees. On information and
19 belief, the paid time off plan is outside of a collective bargaining agreement, and sums up all vacation and
20 sick time into one category (titled paid time off), for which it may be used for any purpose.

21 42. The paid time off is "vacation" for purposes of California law (including that of Section
22 227.3) due to the fact that all forms of this paid time off is permitted to be used for any purpose. For
23 purposes of this complaint, paid time off is termed "PTO."

24 43. From time to time at times during the relevant statutory periods, Plaintiff, Salary Non-
25 Exempt Class Members, Salary Non-Exempt Employees, Waiting Time Class Members and Waiting
26 Time Employees have had their PTO time showing as "accruing" on a pay period basis despite PTO
27 language stating that a certain PTO amount is provided to the employee, and thus not earned/accrued on
28 a pay period basis. For example, Plaintiff's contract states she is to received 3 PTO days but her paystub

(at times when it does notate PTO accrual), indicates PTO is accrued on a per pay period basis. In Plaintiff's instance, for example, PTO is not noted until her fourth paystub (approximately two months into employment), and when noted it reports that Plaintiff's PTO accrual is 0.88 per pay period.

44. From time to time at times during the relevant statutory periods, all earned but unused PTO is not paid out correctly by Defendants and PAGA Defendants to Plaintiff, Salary Non-Exempt Class Members, Salary Non-Exempt Employees, Waiting Time Class Members, and Waiting Time Employees, in violation of California Labor Code §§201, 202, 203, 204, 226(a), 227.3. The reasons for this include Defendants' and PAGA Defendants' non-compliant accrual method, use-it-or-lose it policy, and Defendants' and PAGA Defendants' general failure to pay accrued, unused vacation at time of separation.

45. From time to time at times during the relevant statutory periods, because the PTO plan includes paid sick time, it is subject to California Labor Code §§245 *et seq.* (California's Healthy Workplaces, Healthy Families Act of 2014) including the requirements relating to the amount, terms and rate of compensation set forth in said law.

46. From time to time at times during the relevant statutory periods, the PTO policy has failed to provide Plaintiff, Salary Non-Exempt Class Members, Salary Non-Exempt Employees, Waiting Time Class Members and Waiting Time Employees the amount due for paid sick time in conformance with the accrual requirements of California Labor Code §246(b), thereby denying, at times, paid sick time wages both during employment and upon separation of employment. Section 246 requires, in part, that an employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment. An employer may use a different accrual method, other than providing one hour per every 30 hours worked, provided that the accrual is on a regular basis so that an employee has no less than 24 hours of paid time off by the 120th calendar day of employment or each calendar year, or in each 12 month period. An employer may satisfy the accrual requirements by providing not less than 24 hours or three days of paid sick leave that is available to use by the completion of the employee's 120th calendar day of employment. On information and belief, Defendants and PAGA Defendants, from time to time at times during the relevant statutory periods, do not meet the accrual requirements of Section 246. Plaintiff for example, per the paystubs provided to her, "accrued" 0.88 per pay period (based on two pay dates per month). This accrual method shown on the paystub does not meet

the requirements of Section 246 (i.e. it does not equate to not less than one hour per every 30 hours worked beginning at the commencement of employment; it does not equate to not less than 24 hours of paid time off by the 120th calendar day of employment).

47. From time to time at times during the relevant statutory periods, the PTO policy violates California Labor Code §246(i)'s requirement that an employer shall provide an employee with written notice that sets for the amount of paid sick leave available, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages. The reason for this includes that (i) at times, the employee's itemized wage statement is not provided on the designated pay date with the employee's payment of wages (but rather at a later date, if at all); and (ii) at times, itemized wage statements do not provide written notice that sets for the amount of paid sick leave available in that the wage statement omits the information entirely, or the information is included and is incorrect. Notice of available paid sick time therefore is not appropriately recorded, from time to time at times during the relevant statutory periods, on itemized wage statements as required by California Labor Code §226(a), 246(i).

48. From time to time at times during the relevant statutory periods, the PTO policy violates California Labor Code §246(j)'s requirement for calculating paid sick leave. On information and belief, from time to time at times during the relevant statutory periods, Defendants and PAGA Defendants have not computed and made payment of paid sick leave in conformance with Section 246(j), to the detriment of Plaintiff, Salary Non-Exempt Class Members, Salary Non-Exempt Employees, Waiting Time Class Members, and Waiting Time Employees, in violation of California Labor Code §§201, 202, 203, 204, 226(a) 245 *et seq.*

UNTIMELY PAYMENT OF WAGES

49. At times relevant, including in the statutory periods, Defendants and PAGA Defendants, from time to time, have failed to timely pay Plaintiff, Waiting Time Class Members and Waiting Time Employees all wages due upon separation of employment as required by California Labor Code §§ 201, 202, 203's timing requirements. Plaintiff, for example, a former employee of ATX LEARNING, LLC., and/or AUSTIN TEXAS LEARNING GROUP, LLC as of on or about June 15, 2023 (as a result of being released from the employer upon Plaintiff's completion of the work for her particular job assignment or

contract term with the client) was not provided all wages due and owing to her by the time required by California law. On information and belief, Defendants and PAGA Defendants have a pattern and practice of, time to time, not providing all wages due timing upon separation of employment to Waiting Time Class Members and Waiting Time Employees whose employment from ATX LEARNING, LLC., and/or AUSTIN TEXAS LEARNING GROUP, LLC has ended including as a result of the employee being released from employment upon the employee's completion of the particular job assignment or duration for which hired for the job assignment.

50. At times relevant, including in the statutory periods, Defendants and PAGA Defendants, from time to time, have failed to timely pay Plaintiff, Salary Non-Exempt Class Members, and Salary Non-Exempt Employees, all wages due as required by California Labor Code §204's timing requirements. On information and belief, Defendants and PAGA Defendants have a pattern and practice of not providing all wages due on a timely manner during employment. The reasons for the untimely wage payments are due to the general failure to pay wages due and owing during employment as alleged herein, in addition to that Defendants and PAGA Defendants, from time to time, delay and do not release employees' wage payments until timesheets are signed by an authorized signer (e.g. supervisor), and/or other forms are submitted such as exit papers. Under California law, wages cannot be withheld and/or delayed under these circumstances.

WAGE STATEMENTS AND TIME RECORDS

51. At times relevant, including in the statutory periods, Defendants and PAGA Defendants from time to time, failed, and continue to fail, to maintain accurate time records for Plaintiff, Salary Non-Exempt Class Members, and Salary Non-Exempt Employees. This includes but is not limited to not maintaining accurate time records for the reason that Defendants and PAGA Defendants treated these employees as exempt when in fact they are/were not and did not maintain accurate and compliant time records for the employees, in violation of California Labor Code §§1174(d) and 1198.

52. At times relevant, including in the statutory periods, Defendants and PAGA Defendants from time to time, failed, and continue to fail, to maintain and provide Plaintiff, Wage Statement Class Members and Wage Statement Employees with wage statements that contained the information required by California Labor Code §226(a). From time to time, at times relevant including the statutory periods, in

addition to the reasons set forth herein for how Labor Code §226(a) has been violated, the wage statements Defendants and PAGA Defendants maintain and have provided to Plaintiff, Wage Statement Class Members and Wage Statement Employees fail to:

- include the name and address of the legal entity that is the employer in violation of Labor Code Labor Code §226(a)(8) (as a result of wage statements showing AUSTIN TEXAS LEARNING GROUP, LLC (and its associated address) as the employer, and not showing the name of ATX LEARNING, LLC. and its address as the legal entity that is the employer, or any other legal entity that is the employer)¹. As a result the employee cannot promptly and easily determine from the wage statement alone the name and address of the employer;
- include the gross wages earned and the net wages earned in violation of Labor Code Labor Code §§226(a)(1), (5) (as a result of wage statements not reporting gross and net wages earned, rather wage statements report amounts “paid” regardless of whether this payment is for wages earned or for something else (e.g. nontaxable per diem payments²)). As a result the employee cannot promptly and easily determine from the wage statement alone the amount of the gross wages or net wages paid to the employee during the pay period;
- include, for those who are also Salary Non-Exempt Class Members and Salary Non-Exempt Employees, the total hours worked by the employee, 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 in violation of Labor Code Labor Code §§226(a)(2) and (a)(9) respectively (as a result of omitting this information from the wage statements). As a result

¹ Plaintiff’s Employment Agreement identifies ATX LEARNING, LLC. as the employing company. Her wage statement identifies AUSTIN TEXAS LEARNING GROUP, LLC as the employing legal entity. The W-2 issued to Plaintiff for the calendar year 2022, identifies “ATX Learning” as the employer. The reported address for ATX LEARNING, LLC. and ATX Learning on the Employment Agreement and the W-2 are the same. The address on the wage statement for AUSTIN TEXAS LEARNING GROUP, LLC is different than the address for ATX LEARNING, LLC. and ATX Learning.

² For example, on wage statements, per-diem payments, from time to time, are reported under the “Pay” section where wages are also reported. However, because wage statements, from time to time, do not report net wages and gross wages earned, per diem payments are not differentiated from wage payments other than at times being identified as non-taxable.

the employee cannot promptly and easily determine from the wage statement alone the total hours worked by the employee, 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;

- include, for those who are also Salary Non-Exempt Class Members, and Salary Non-Exempt Employees, the gross wages earned and the net wages earned in violation of Labor Code Labor Code §§226(a)(1), (5) (as a result of failing to include unpaid but earned wages on the wage statements). As a result the employee cannot promptly and easily determine from the wage statement alone the amount of the gross wages or net wages paid to the employee during the pay period;
- be issued at the time of payment of wages, in violation of Labor Code Labor Code §§226(a) (as a result of failing to issue the wage statement at the time of payment of wages and instead issuing at a time after the time of payment of wages, if at all).

UNFAIR COMPETITION

53. Plaintiff is informed and believes, and thereon alleges, that from time to time at times relevant, including in the statutory periods, the allegations alleged in this Complaint apply with equal force to covered employees and that Defendants and PAGA Defendants engaged in unfair competition.

CLASS ACTION CLAIMS

FIRST CAUSE OF ACTION

Non-Competition Agreement Claim by Plaintiff and on Behalf of Non-Competition Class Members Against Defendants

54. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein, except for paragraphs 2, 25-26.

55. Plaintiff and Non-Competition Class Members were, from time to time, presented with and/or were required to sign a non-competition with ATX LEARNING, LLC. that restrained the engagement in a lawful profession, trade, or business of any kind. For example, an ATX LEARNING, LLC. "Employment Agreement" (which was presented to Plaintiff) provides, in relevant part the following:

1 Non-Solicitation. Employee agrees that during the term of this Agreement and
2 for a period of one (1) year thereafter, Employee will not affiliate with, join
3 or attempt to join the Company's client or its associates nor use any partners,
4 employees or agents for such purpose.

5 56. Such conduct is an unlawful restraint of lawful profession, trade, or business in violation
6 of California Business and Professions Code §16600. Such conduct furthermore is not conduct that is
7 permitted under one of the limited exceptions to California Business and Professions Code §16600, *et seq.*
8 Specifically, California Business and Professions Code §16600 states "[e]xcept as provided in this chapter,
9 every contract by which anyone is restrained from engaging in a lawful profession, trade, or business of
10 any kind is to that extent void." Any contract restraining anyone from engaging in a lawful profession,
11 trade, or business of any kind – a non-compete agreement and a non-solicitation agreement – is against
12 public policy if the contract does not fall within one of the limited exceptions in California Business and
13 Professions Code §16600.

14 57. California Labor Code §925(a)(2) prohibits an employer from requiring an employee who
15 primarily resides and works in California, as a condition of employment, to agree to a provision that would
16 "deprive the employee of the substantive protection of California with respect to a controversy arising in
17 California." In direct contravention to California Labor Code §925(a)(2), Defendants require employees
18 who primarily reside and work in California, as a condition of employment, to agree to non-compete/non-
19 solicitation agreements – a provision that would deprive employees of the substantive protection of
20 California with respect to a controversy arising in California. California Labor Code §925(b) provides that
21 "[a]ny provision of a contract that violates subdivision (a) is voidable by the employee, and if a provision
22 is rendered void at the request of the employee, the matter shall be adjudicated in California and California
23 law shall govern the dispute." Further, California Labor Code §925(c) provides that "[i]n addition to
24 injunctive relief and any other remedies available, a court may award an employee who is enforcing his
25 or her rights under this section reasonable attorney's fees." Furthermore, from time to time at times
26 relevant, including in the statutory periods, California Labor Code §§432.5 and 925(a)(2) are violated
27 through any sort of purported agreement to contract away protections under California Business and
28 Professions Code §§16600 *et seq.*, the California Labor Code including but not limited to indemnification
 under Sections 2802 and one-way fee and cost shifting, and California Civil Code §1668 ("All contracts

1 which have for their object, directly or indirectly, to exempt anyone from responsibility for his own fraud,
2 or willful injury to the person or property of another, or violation of law, whether willful or negligent, are
3 against the policy of the law.”). It further violates Cal. Labor Code §2802 (requiring indemnification for
4 all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of
5 his or her duties, or of his or her obedience to the directions of the employer) and §2804 which states that
6 “[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of this
7 article [Section 2802 *et seq.*] or any part thereof, is null and void, and this article shall not deprive any
8 employee or his personal representative of any right or remedy to which he is entitled under the laws of
9 this State.”

10 58. Non-competition agreements also violate Cal. Labor Code §432.5 which states that “[n]o
11 employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant
12 for employment to agree, in writing, to any term or condition which is known by such employer, or agent,
13 manager, superintendent, or officer thereof to be prohibited by law.”

14 59. Pursuant to California Code of Civil Procedure §1060, any person interested under a
15 written instrument, or under a contract, or who desires a declaration of his or her rights or duties with
16 respect to another may, in cases of actual controversy relating to the legal rights and duties of the respective
17 parties, bring an original action for a declaration of his or her rights and duties, including a determination
18 of any question of construction or validity arising under the instrument or contract. He or she may ask for
19 a declaration or rights or duties, either alone or with other relief and the court may make a binding
20 declaration of these rights or duties, whether or not future relief is or could be claimed at the time. The
21 declaration may be had before there has been any breach of the obligation in respect to which said
22 declaration is sought. The declaration shall have the force of a final judgment. Pursuant to California
23 Code of Civil Procedure §1062, the remedies set forth in the chapter (including §1060) are cumulative
24 and shall not be contrived as restricting any remedy, provisional or otherwise, provided by law for the
25 benefit of any party to such action, and no judgment under the chapter shall preclude any party from
26 obtaining additional relief based upon the same facts.

27 60. On behalf of herself and Non-Competition Class Members, Plaintiff seeks a declaration
28 that any contract that purports to restrain Non-Competition Class Members’ lawful trade, profession, or

business is invalid and void. Plaintiff further seeks the court to require Defendants to send and post notices to inform its California employees including the Non-Competition Class members that its attempts to restrain lawful trade, profession, or business is invalid and that any such agreement is invalid and void. Additionally, Plaintiff seeks the court to require Defendants to send and post notices with all Defendants customers and clients to inform them that its attempts to restrain lawful trade, profession, or business is invalid and that any such agreement is invalid and void.

61. In addition to seeking to void the contract and declaratory relief, Plaintiff seeks an injunction, pursuant to California Code of Civil Procedure §§526 and 527, to enjoin Defendants from presenting any non-compete instruments/agreements including but not limited to Non-Competition Class members, to its California employees, and to its customers and clients, and to further enjoin Defendants from enforcing any non-compete/non-solicitation instrument/agreement.

62. Plaintiff seeks any and all remedies including, but not limited to, declaratory and injunctive relief, monetary relief, and recovery of damages, and reasonable attorneys' fees and costs including pursuant to California Code of Civil Procedure §1021.5, California Labor Code §925, 2802, California Business and Professions Code §16600 *et seq.*, (and any additions and/or amendments thereto), the substantial benefit doctrine, and/or the common fund doctrine.

SECOND CAUSE OF ACTION

Limitations on Damages Agreement Claim by Plaintiff and on Behalf of Damages Limitation Class Against Defendants

63. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein, except for paragraphs 2, 25-26.

64. Employment agreements or other documents for Plaintiff and Damages Limitations Class Members have contained, from time to time, language that purports to limit claims to damages, including but not limited through the inclusion of this language:

Damages Except for claims for fraud, willful injury to person or property, and violation of law, no party shall claim damages against the other in excess of 50% of the total amount to be paid out under the [Employment] Agreement. In addition, no party shall recovery any special, consequential, or indirect damages or any type against the Company.

65. An agreement to limit damages or anything else that limits damages places unlawful restrictions on Plaintiff's and other Damages Limitation Class Members' rights to damages including but not limited to those under the California Labor Code, the Industrial Welfare Commission Wage Orders, and California Business Code §16600.

66. California Labor Code §925(a)(2) prohibits an employer from requiring an employee who primarily resides and works in California, as a condition of employment, to agree to a provision that would "deprive the employee of the substantive protection of California with respect to a controversy arising in California." In direct contravention to California Labor Code §925(a)(2), Defendants require employees who primarily reside and work in California, as a condition of employment, to agree to non-compete/non-solicitation agreements – a provision that would deprive employees of the substantive protection of California with respect to a controversy arising in California. California Labor Code §925(b) provides that "[a]ny provision of a contract that violates subdivision (a) is voidable by the employee, and if a provision is rendered void at the request of the employee, the matter shall be adjudicated in California and California law shall govern the dispute." Further, California Labor Code §925(c) provides that "[i]n addition to injunctive relief and any other remedies available, a court may award an employee who is enforcing his or her rights under this section reasonable attorney's fees."

67. An agreement to limit damages, including statutory damages that cannot be waived also violate Cal. Labor Code §432.5 which states that "[n]o employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law."

68. An agreement to limit damages, including statutory damages that cannot be waived also violates Cal. Labor Code §2802 (requiring indemnification for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer) and Cal. Labor Code §2804 which states that "[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of this article [Section 2802 *et seq.*] or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State."

69. Pursuant to California Code of Civil Procedure §1060, any person interested under a written instrument, or under a contract, or who desires a declaration of his or her rights or duties with respect to another may, in cases of actual controversy relating to the legal rights and duties of the respective parties, bring an original action for a declaration of his or her rights and duties, including a determination of any question of construction or validity arising under the instrument or contract. He or she may ask for a declaration or rights or duties, either alone or with other relief and the court may make a binding declaration of these rights or duties, whether or not future relief is or could be claimed at the time. The declaration may be had before there has been any breach of the obligation in respect to which said declaration is sought. The declaration shall have the force of a final judgment. Pursuant to California Code of Civil Procedure §1062, the remedies set forth in the chapter (including §1060) are cumulative and shall not be contrived as restricting any remedy, provisional or otherwise, provided by law for the benefit of any party to such action, and no judgment under the chapter shall preclude any party from obtaining additional relief based upon the same facts.

70. On behalf of herself and Damages Limitation Class Members, Plaintiff seeks a declaration that any contract that purports to limit damages is invalid and void. Plaintiff further seeks the court to require Defendants to send and post notices to inform its California employees including the Damages Limitation Class members that its attempts to limit damages and claims for damages as invalid and that any such agreement is invalid and void.

71. In addition to seeking to void the contract and declaratory relief, Plaintiff seeks an injunction, pursuant to California Code of Civil Procedure §§526 and 527, to enjoin Defendants from presenting any agreements to limit damages including but not limited to Damages Limitation Class Members to its California employees, and to further enjoin Defendants from enforcing any damages limitation agreements.

72. Plaintiff seeks any and all remedies including, but not limited to, declaratory and injunctive relief, monetary relief, and recovery of damages, and reasonable attorneys' fees and costs including pursuant to California Code of Civil Procedure §1021.5, California Labor Code §§925, 2802, California Business and Professions Code §16600 *et seq.*, (and any additions and/or amendments thereto), the substantial benefit doctrine, and/or the common fund doctrine.

THIRD CAUSE OF ACTION

**Cal. Labor Code 2802 Claim for Business Expense Indemnification by Plaintiff
and on Behalf of Business Expense Class Members Against Defendants**

73. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein, except for paragraphs 2, 25-26.

74. Pursuant to California Labor Code §2802, “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”

75. As alleged herein, at times relevant, including in the statutory periods, Defendants, from time to time, failed to indemnify Plaintiff and Business Expense Class Members for all necessary expenditures or losses incurred by the employee in direct consequence of job duties (including but not limited to work communications, administrative work, time keeping, client work, remote work). These business losses and expenditures include but are not limited to telephones, electronic devices including but not limited to iPad or similar device, internet, phone and data services, subscriptions and applications, supplies such as paper, printer and ink, and home office use, among other things. Additionally, at times relevant, including in the statutory periods, Defendants from time to time, failed to fully indemnify Plaintiff and Business Expense Class Members for business travel and expenses related to travel positions. Defendants thereby has been passing on the employer’s cost of doing business onto Plaintiff and Business Expense Class Members.

76. Plaintiff, on her behalf and on behalf of Business Expense Class Members seeks, all remedies available under California law including but not limited the payment of the expenditures and/or losses, interest, and attorney’s fees and costs including but not limited to remedies available under California Labor Code §2802.

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FOURTH CAUSE OF ACTION
**Overtime Claim by Plaintiffs and on Behalf of Salary Non-Exempt Class Members
Against Defendants**

77. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein, except for paragraphs 2, 25-26

78. As alleged herein, during relevant statutory periods, Plaintiffs and Salary Non-Exempt Class Members have not been exempt from receiving overtime wages.

79. During the relevant statutory periods, the IWC Wage Order applicable to Plaintiff and Salary Non-Exempt Class Members requires the payment of daily and weekly overtime compensation.

80. During the relevant statutory periods, California Labor Code §510 codifies the right to overtime daily and weekly compensation for Plaintiff and Salary Non-Exempt Class Members.

81. Unpaid overtime wages may be recovered through a civil action pursuant to California Labor Code §§510, 1194.

82. As alleged herein, from time to time during the relevant statutory periods, Defendants failed to pay overtime wages owed to Plaintiff and Salary Non-Exempt Class Members for overtime hours worked. As a result, from time to time during the relevant statutory periods, Plaintiff and Salary Non-Exempt Class Members have not been fully compensated for all overtime wages they are eligible for and at the correct rate of pay using the regular rate of pay as the basis for the calculation.

83. For this violation, Plaintiff and on behalf of Salary Non-Exempt Class Members seeks any and all remedies available under the law to the extent permissible including but not limited to recovery of the unpaid overtime wages as well as the recovery of penalties, interest, attorneys' fees, and costs.

FIFTH CAUSE OF ACTION
**Minimum Wage Claim by Plaintiff and on Behalf of Salary Non-Exempt Class Members
Against Defendants**

84. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein, except for paragraphs 2, 25-26.

85. During the relevant statutory periods California Labor Code §1197 provides that the minimum wage for employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a lesser wage than the established minimum is unlawful.

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86. During the relevant statutory periods, California Labor Code §1182.12 sets forth the minimum wages due to employees and California Labor Code §1194 makes it unlawful for an employee to receive less than the legal minimum wage due.

87. As alleged herein, during the relevant statutory periods, Plaintiff and Salary Non-Exempt Class Members have not been exempt from receiving minimum wages.

88. As alleged herein, from time to time during the relevant statutory periods, Plaintiff and Salary Non-Exempt Class Members have not been paid, at least minimum wage, for all hours that they worked.

89. Defendants' failure to pay Plaintiff and Salary Non-Exempt Class Members all minimum wages as required violates California Labor Code §§1182.12, 1194, 1197.

90. Plaintiff, and on behalf of Salary Non-Exempt Class Members, seeks any and all remedies available under the law to the extent permissible including but not limited to recovery of the unpaid balance of the minimum wage compensation as well as the recovery of penalties, interest, attorneys' fees, costs and liquidated damages.

SIXTH CAUSE OF ACTION
**Unpaid Wage Claim by Plaintiff and on Behalf of Salary Non-Exempt Class Members,
Against Defendants**

91. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein, except for paragraphs 2, 25-26.

92. As alleged herein, during the relevant statutory periods, Plaintiff and Salary Non-Exempt Class Members have earned non-minimum/overtime wages as well as earned PTO, which, as alleged herein, from time to time, have not been paid to them.

93. Unpaid wages may be recovered through a civil action including pursuant to California Labor Code §§200-203, 218, 218.5, 218.6.

94. Plaintiff and on behalf of Salary Non-Exempt Class Members, seek any and all remedies available under the law to the extent permissible including but not limited to recovery of the unpaid balance of the wages, damages, penalties, interest, attorneys' fees, and costs.

SEVENTH CAUSE OF ACTION
**Claim for Failure to Pay Wages Due on Separation of Employment
by Plaintiff and on Behalf of Waiting Time Class Members Against Defendants**

95. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein, except for paragraphs 2, 25-26.

96. California Labor Code §203 provides that if an employer willfully fails to pay compensation promptly upon discharge, as required by California Labor Code §§201, 202, the employer is liable for waiting time penalties in the form of continued compensation for up to thirty workdays.

97. During the relevant time frame, Defendants, from time to time, have willfully failed to timely pay Plaintiff and Waiting Time Class Members all wages due upon separation of employment as required by California Labor Code §§ 201-203's timing requirements.

98. Defendants' willful failure to timely pay Plaintiff and Waiting Time Class Members their earned wages violates California Labor Code §§201, 202.

99. The exact amount of the wages accrued and unpaid at the time of discharge is unknown at this time but information for the calculation may be ascertained from Defendants' records. Based on information and belief, unpaid wages include the amount of work time that went unpaid, underpayment of regular, minimum and overtime wages, and underpayment of paid sick time wages.

100. Plaintiff on behalf of Waiting Time Class Members seek to recover any and all remedies available including but not limited to waiting time penalties pursuant to California Labor Code §§203 in an amount according to proof at the time of trial.

EIGHTH CAUSE OF ACTION
**Claim for Wage Statement Violations by Plaintiff and on Behalf of Wage Statement Class
Members Against Defendants**

101. Plaintiff incorporates by reference and realleges each and every allegation contained above, as though fully set forth herein, except for paragraphs 2, 25-26.

102. California Labor Code §226(a) sets forth reporting requirements for employers when they pay wages. In relevant part Section 226(a) provides that

Every employer shall furnish to his or her employees, either as a detachable part of the draft, or voucher paying the employee's wages, or separately if wages are paid by personal check or cash, an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee..., (5) net wages earned, (8) the name and address

of the legal entity that is the employer..., (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.

103. California Labor Code §226(e) provides:

An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) shall be entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not exceeding an aggregate penalty of four thousand dollars (\$4,000), and shall be entitled to an award of costs and reasonable attorney's fees.

104. California Labor Code §226(e)(2)(B) provides in relevant part:

An employee is deemed to suffer injury for purposes of this subdivision if the employer fails to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot promptly and easily determine from the wage statement alone one or more of the following: (i) The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision (a)..., (iii) the and address of the employer

105. California Labor Code §226(e)(2)(C) provides in relevant part:

For purposes of this paragraph, “promptly and easily determine” means a reasonable person would be able to readily ascertain the information without reference to other documents or information.

106. As alleged herein, during the relevant timeframe, Defendants, from time to time as a result of conduct alleged herein, knowingly and intentionally failed, and continue to fail to furnish and maintain for Plaintiff and Wage Statement Class Members, complete and accurate wage statements upon each payment of wages in violation of California Labor Code §§226(a).

107. Defendants' failures from time to time during the relevant time period to record and record properly information required on itemized wage statements were not isolated and unintentional payroll errors due to clerical or inadvertent mistakes. Indeed, Defendants' policies, procedures and practices have been to purposefully exclude required information from wage statements. These omissions occur routinely and were not isolated events. Each of these omissions is evident on the face of the wage statements. As a result, Defendants knew of the omissions and inaccuracies, and intended for the form and content of the wage statements to be inaccurate and incomplete. Further, each of these omissions is a failure to provide

1 accurate and complete information as required by any one or more of items (1) to (9) inclusive of
2 California Labor Code §226(a) and results in Plaintiff and Wage Statement Class Members not being able
3 to promptly and easily determine from the wage statement alone one or more of items required but that
4 has been omitted.

5 108. Plaintiff and Wage Statement Class Members have been injured by these failures because,
6 among other things, these failures required them to perform mathematical computations to analyze
7 amounts paid, and they were not able to determine from the wage statements alone one or more of the
8 items required to be provided.

9 109. Defendants will no doubt continue these illegal practices until such time as it is forced to
10 pay penalties in compliance with California Labor Code §226(e).

11 110. Plaintiff and on behalf of Wage Statement Class Members seek to recover any and all
12 remedies available including statutory penalties, interest, injunctive relief, and attorneys' fees and costs
13 pursuant to California Labor Code §§226(e) and (h).

14
15 **NINTH CAUSE OF ACTION**
Unfair Competition Claim by Plaintiff and on Behalf of Class Members Against Defendants

16 111. Plaintiff incorporates by reference and realleges each and every allegation contained
17 above, as though fully set forth herein, except for paragraphs 2, 25-26.

18 112. Defendants' conduct, as alleged in this complaint, has been, and continues to be, unfair,
19 unlawful, and harmful to Plaintiff, Class Members', Defendants' competitors, Defendants' clients and
20 customers, and the general public. Plaintiff seeks to enforce important rights affecting the public interest
21 within the meaning of California Code of Civil Procedure §1021.5.

22 113. Defendants' policies, activities, and actions as alleged herein are violations of California
23 law and constitute unlawful business acts and practices in violation of California Business and Professions
24 Code §§17200, *et seq.*

25 114. A violation of California Business and Professions Code §§17200, *et seq.*, may be
26 predicated on the violation of any state or federal law. In the instant case, as alleged herein, Defendants'
27 policies and practices of not complying with California laws includes the following violations: an unlawful
28 non-competition contract, unlawful damages limitation agreement, not paying overtime and minimum

1 wages, unlawful non-payment of wages, not paying all wages due upon separation of employment, not
2 indemnifying employees for business expenditures, not providing compliant wage statements and not
3 maintaining accurate compliant time records.

4 115. Plaintiff and Class Members have been personally aggrieved and injured by Defendants'
5 unlawful and unfair business acts and practices alleged herein by the loss of money and/or property.

6 116. Pursuant to California Business and Professions Code §§17200, *et seq.*, Plaintiff and on
7 behalf of Class Members seek injunctive and restitutionary relief for the period that commences four years
8 prior to the filing of the original Complaint, an award of attorneys' fees pursuant to California Code of
9 Civil Procedure §1021.5, and an award of costs.

10 **PAGA ACTION CLAIM**

11 **TENTH CAUSE OF ACTION**

12 **PAGA Action Claims by Plaintiff and on Behalf of Non-Competition Employees, Damages**
13 **Limitation Employees, Business Expense Employees, Salary Non-Exempt Employees, Waiting**
Time Employees, and Wage Statement Employees Against PAGA Defendants

14 117. Plaintiff incorporates by reference and realleges each and every allegation contained above,
15 as though fully set forth herein, except for paragraphs 1, 16-24.

16 118. PAGA permits an "aggrieved employee" to bring an action on behalf of himself or herself
17 and other current and former employees to address an violations of the California Labor Code.

18 119. Plaintiff is an "aggrieved employee" as defined under the PAGA because she is a person
19 who was employed by the alleged violator and against whom one or more of the alleged violations was
20 committed.

21 120. Plaintiff bring this PAGA action on behalf of Non-Competition Employees, Damages
22 Limitation Employees, Business Expense Employees, Salary Non-Exempt Employees, Waiting Time
23 Employees, and Wage Statement Employees.

24 (a) Plaintiff has complied with the requirements to commence a civil action pursuant
25 to the PAGA including by exhausting requirements of PAGA by providing written online notice to the
26 LWDA and notice by certified letter to each of the PAGA Defendants on September 12, 2023 concerning
27 the PAGA claims Plaintiff intends to pursue and the provisions of the Labor Code alleged to have been
28 violated as required by Labor Code § 2699.3(the "PAGA Notice"). A true and correct copy of the PAGA

Notice is attached hereto as Exhibit 1. Sixty-five (65) days have elapsed since Plaintiff submitted the
PAGA Notice to the LWDA and PAGA Defendants and Plaintiff has received no response from the
LWDA and no response or notice (including any “cure” notice) from PAGA Defendants in response to
the PAGA Notice.

121. In this case, as alleged and incorporated herein, PAGA Defendants violated the following
California Labor Code sections, and penalties are sought for same because PAGA Defendants from time
to time at times during the statutory periods: (a) violated California’s anti non-compete laws and violated
Labor Code §§432.5, 925(a)(2), 2802 *et seq.* and 2804 with respect to Non-Competition Employees; (b)
violated Labor Code §§432.5, 925(a)(2), 2802 *et seq.*, and 2804 with respect to Damages Limitation
Employees; (c); failed to indemnify for business expenses to Business Expense Employees (Labor Code
§2802); (d) failed to accurately calculate and accurately pay overtime and minimum wages and failed to
timely pay overtime and minimum wages during employment to Salary Non-Exempt Employees (Labor
Code §§204, 510, 1182.12, 1194 *et seq.*, 1197, 1198); (e) failed to pay all non-minimum/overtime wages
and PTO due and owing (Labor Code §§204, 218, 227.3, 245 *et seq.*, 1198); (f) failed to pay all wages
due and owing in the form of the full contracted assignment salary to Salary Non-Exempt Employees
(Labor Code §§204, 218, 1198); (g) failed to pay all wages due and owing timely at separation/discharge
of employment and failed to pay waiting time penalties to Waiting Time Penalty Employees (Labor Code
§§201, 202, 203); (h) failed to provide and maintain accurate and compliant wage statements, with respect
to Wage Statement Employees (Labor Code §§226(a), 1198); (i) failed to maintain accurate and compliant
time records with respect to Salary Non-Exempt Employees (Labor Code §§1174(d), 1198). For these
violations, Savery seeks all available remedies under the PAGA including PAGA penalties (including
underpaid wages as part of civil penalties to the extent available) on behalf of the State of California, Non-
Competition Employees, Damages Limitation Employees, Business Expense Employees, Salary Non-
Exempt Employees, Waiting Time Employees, and Wage Statement Employees, plus attorney’s fees and
costs.

122. For these violations, Plaintiff seeks all available remedies under the PAGA including
PAGA penalties on behalf of the State of California, Non-Competition Employees, Damages Limitation

Employees, Business Expense Employees, Salary Non-Exempt Employees, Waiting Time Employees, and Wage Statement Employees plus attorney's fees and costs.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests entry of judgment against each defendant, jointly and severally, as follows:

Class Certification

1. That the First through Ninth Causes of Action be certified as a class action;
2. That Plaintiff be appointed as the representatives of all members of the Classes; and
3. That counsel for Plaintiff be appointed as counsel for all Classes.

On the First Cause of Action

1. For declaratory relief;
2. For injunctive relief;
3. For posting and mailing of notice of voiding of the non-compete agreement;
3. For reasonable attorneys' fees;
4. For costs of suit incurred herein; and
5. For damages and such other and further relief as the Court deems proper.

On the Second Cause of Action

1. For declaratory relief;
2. For injunctive relief;
3. For posting and mailing of notice of voiding of the damages limitation agreement;
3. For reasonable attorneys' fees;
4. For costs of suit incurred herein; and
5. For damages and such other and further relief as the Court deems proper.

On the Third Cause of Action

1. For indemnification pursuant to §2802;
2. For pre-judgment interest from the date on which the employee incurred the necessary expenditure or loss;
3. For reasonable attorneys' fees and costs;

4. For such other and further relief as the Court deems proper.

On the Fourth Cause of Action

1. For all unpaid overtime wages;

2. For liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon pursuant;

3. For reasonable attorneys' fees and costs;

4. For interest;

5. For such other and further relief as the Court deems proper.

On the Fifth Cause of Action

1. For compensatory damages equal to the amount of unpaid minimum wage compensation owed to Plaintiff and Class Members;

2. For pre-judgment interest on any unpaid minimum wage compensation due from the day that such amounts were due;

3. For liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon pursuant to California Labor Code §1194.2;

4. For payment of waiting time penalties according to proof;

5. For reasonable attorneys' fees and costs; and

6. For such other and further relief as the Court deems proper including that under 1194, 1194.2 and 1197.

On the Sixth Cause of Action

1. For unpaid wages;

2. For pre-judgment interest on any unpaid wages due from the day that such amounts were due;

3. For reasonable attorneys' fees and costs;

4. For such other and further relief as the Court deems proper.

On the Seventh Cause of Action

1. For statutory penalties pursuant to California Labor Code §203;

2. For reasonable attorneys' fees and costs;

3. For such other and further relief as the Court deems proper.

On the Eighth Cause of Action

1. For statutory damages pursuant to California Labor Code §226(e);
2. For reasonable attorneys' fees and costs pursuant to California Labor Code §226(e) and (h);
3. For injunctive relief pursuant to California Labor Code §226(h);
4. For penalties as available;
5. For such other and further relief as the Court deems proper.

On the Ninth Cause of Action

1. That Defendants pay restitution and/or disgorgement of sums to Plaintiff and Class in an amount according to proof;
2. For injunctive relief;
3. For pre-judgment interest on any unpaid wages due from the day that such amounts were due;
4. For reasonable attorneys' fees that Plaintiffs and Class Members are entitled to recover under California Code of Civil Procedure §1021.5;
5. For costs of suit incurred herein;
6. For such other and further relief as the Court deems proper.

On the Tenth Cause of Action

1. For civil penalties according to proof including underpaid wages as part of civil penalties;
2. For reasonable attorneys' fees and costs; and
3. For such other and further relief as the Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiff requests a jury trial in this matter as permitted.

Dated: November 20, 2023

RICHARD LAW, P.C.

By: Diane Richard

DIANE E. RICHARD

Attorneys for Plaintiff Marie Savery

September 12, 2023

VIA ONLINE SUBMISSION

STATE OF CALIFORNIA
LABOR & WORKFORCE DEVELOPMENT AGENCY/DIR

VIA U.S. CERTIFIED MAIL

ATX LEARNING, LLC.
10821 Red Run Blvd., #407
Owings Mills, MD 21117

AUSTIN TEXAS LEARNING GROUP, LLC.
12613 Scofield Farms Drive
Austin, Texas 78727-4542

SYED KHALIL, an individual and as an agent of ATX LEARNING, LLC. and AUSTIN TEXAS LEARNING GROUP, LLC.
19212 Castlebay Lane
Porter Ranch, CA 91326

Re: Notice of Claims/Labor Code Private Attorneys General Act of 2004, California Labor Code §2698, et seq.

To: California Labor and Workforce Development Agency, ATX LEARNING, LLC., AUSTIN TEXAS LEARNING GROUP, LLC., SYED KHALIL:

This firm represents Marie Savery ("Savery") who was employed at ATX LEARNING, LLC., AUSTIN TEXAS LEARNING GROUP, LLC. Collectively, ATX LEARNING, LLC., AUSTIN TEXAS LEARNING GROUP, LLC. and SYED KHALIL are "PAGA Defendants".

This notice is intended to constitute notice, including notice pursuant to the California Labor Code Private Attorneys General Act of 2004, California Labor Code §2698, et seq. ("PAGA"), of the provisions of the California Labor Code alleged to have been violated including the facts and theories to support the alleged violations by PAGA Defendants. Savery alleges that PAGA Defendants have violated the California Labor Code provisions alleged herein and intends to bring a PAGA action on behalf of aggrieved employees in California.¹ Aggrieved employees are defined as:

any and all persons who are or were employees of ATX LEARNING, LLC., and/or AUSTIN TEXAS LEARNING GROUP, LLC., however titled, in the state of California who have been, at any time since one year prior to the PAGA Notice submitted on September 12, 2023 (plus applicable time for tolling under Emergency Rule No. 9 or similar tolling rules) until resolution of this lawsuit, presented with any document and/or signed any document (including but not limited to an "Employment

¹PAGA permits an "aggrieved employee" to bring an action on behalf himself or herself and also on behalf of other current and former employees to address an violations of the California Labor Code. Savery is an "aggrieved employee" as defined under the PAGA because she is a person who was employed by the alleged violator and against whom one or more of the alleged violations was committed.

Agreement”) that purports to be a non-competition and/or non-solicitation agreement (hereinafter collectively referred to as the “Non-Competition Employees”);

any and all persons who are or were employees of ATX LEARNING, LLC., and/or AUSTIN TEXAS LEARNING GROUP, LLC., however titled, in the state of California at any time since one year prior to the PAGA Notice submitted on September 12, 2023 (plus applicable time for tolling under Emergency Rule No. 9 or similar tolling rules) until resolution of this lawsuit, and whose Employment Agreement or any other document contains language that purports to limit claims for damages (hereinafter collectively referred to as the “Damages Limitation Employees”);

any and all persons who are or were employees of ATX LEARNING, LLC., and/or AUSTIN TEXAS LEARNING GROUP, LLC., however titled, in the state of California at any time since one year prior to the PAGA Notice submitted on September 12, 2023 (plus applicable time for tolling under Emergency Rule No. 9 or similar tolling rules) until resolution of this lawsuit (hereinafter collectively referred to as the “Business Expense Employees”);

any and all persons who are or were non-exempt employees of ATX LEARNING, LLC., and/or AUSTIN TEXAS LEARNING GROUP, LLC., placed and/or assigned to a client and paid a salary, however titled, in the state of California, at any time since one year prior to the PAGA Notice submitted on September 12, 2023 (plus applicable time for tolling under Emergency Rule No. 9 or similar tolling rules) until resolution of this lawsuit (hereinafter collectively referred to as the “Salary Non-Exempt Employees”);

any and all persons who are or were employees of ATX LEARNING, LLC., and/or AUSTIN TEXAS LEARNING GROUP, LLC, however titled, in the state of California and whose employment with ATX LEARNING, LLC., and/or AUSTIN TEXAS LEARNING GROUP, LLC ended at any time since one year prior to the PAGA Notice submitted on September 12, 2023 (plus applicable time for tolling under Emergency Rule No. 9 or similar tolling’ rules) until resolution of this lawsuit (hereinafter collectively referred to as the “Waiting Time Employees);

any and all persons who are or were employees of ATX LEARNING, LLC., and/or AUSTIN TEXAS LEARNING GROUP, LLC, however titled, in the state of California at any time since one year prior to the PAGA Notice submitted on September 12, 2023 (plus applicable time for tolling under Emergency Rule No. 9 or similar tolling rules) until resolution of this lawsuit and who were issued a wage statement (hereinafter collectively referred to as the “Wage Statement Employees”)

Non-Competition Employees, Damages Limitation Employees, Business Expense Employees, Salary Non-Exempt Employees, Waiting Time Employees, and Wage Statement Employees are collectively referred to as “PAGA Employees.”

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SAVERY AND PAGA DEFENDANTS

Savery is, and at times mentioned herein, was a resident of California who performed work as an employee in California, including work in County of Ventura County. Savery was an “employee,” at times relevant, as that term is defined in the California Labor Code and California Industrial Welfare Commission Wage Order.

Upon information and belief, Savery is informed and believes, and thereon alleges that ATX LEARNING, LLC., who is identified on Savery’s Employment Agreement as the employing company, is and has been a staffing company that supplies personnel to various clients throughout California including but not limited to where Savery was placed/assigned to work. Upon information and belief, Savery is informed and believes, and thereon alleges, that at relevant times mentioned herein ATX LEARNING, LLC. has had a location and address in California and has and continues to transact business in California, including in the County of Ventura, and further alleges that conduct and injuries alleged herein occurred in California, including in the County of Ventura.

Savery is informed and believes, and thereon alleges, that, at times relevant, ATX LEARNING, LLC. has been an “employer” as that term is used in the California Labor Code and applicable California Industrial Welfare Commission (“IWC”) Wage Order.

Upon information and belief, Savery is informed and believes, and thereon alleges that AUSTIN TEXAS LEARNING GROUP, LLC., who is identified on Savery’s paystub as the employer, is and has been a staffing company, that supplies personnel to various clients throughout California including but not limited to where Savery was placed/assigned to work. Upon information and belief, Savery is informed and believes, and thereon alleges, that at relevant times mentioned herein AUSTIN TEXAS LEARNING GROUP, LLC. did and continues to transact business in California, including in the County of Ventura, and conduct and injuries alleged herein occurred in California, including in the County of Ventura.

Savery is informed and believes, and thereon alleges, that, at times relevant, AUSTIN TEXAS LEARNING GROUP, LLC. has been an “employer” as that term is used in the California Labor Code and applicable California Industrial Welfare Commission (“IWC”) Wage Order.

Whenever reference is made to any act, deed, or conduct of ATX LEARNING, LLC., and/or AUSTIN TEXAS LEARNING GROUP, LLC., the allegation means that the entities engaged in the act, deed, or conduct by or through one or more of its officers, directors, agents, employees, or representatives, including those who were actively engaged in the management, direction, control, or transaction of the ordinary business and affairs of the entities.

SYED KHALIL, on information and belief, is an officer and/or director of ATX LEARNING, LLC., and/or AUSTIN TEXAS LEARNING GROUP, LLC. Savery is informed and believes, and thereon alleges, that at relevant times mentioned herein SYED KHALIL was and is at all times relevant: (i) an “employer or other person acting on behalf of an employer” under California Labor Code §§558(a) and 558.1(a) and (b) (“For purposes of [California Labor Code §558.1(a)], the term ‘other person acting on behalf of an employer’ is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term ‘managing agent’ has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.”); (ii) a “person who fails to pay the wages of each employee” under California Labor Code §210(a); (iii) a “person who unlawfully withholds wages due any employee...” under California Labor Code §225.5; (iv) an “other person violating...” under California Labor Code §248.5(e); (v) a “person employing labor” under California Labor Code §§1174, 1174.5; (vi) an “employer” under California Labor Code §§1182.12(b)(3) (an employer “means any person who directly or indirectly, or through an agent or any other person, employs or exercises control over the wages, hours, or working conditions of any person”); (vii) a “person acting either individually or as an officer, agent, or employee

of another person, who pays or causes to be paid to any employee a wage less than the minimum fixed..." under California Labor Code §1197.1(a); (viii) an "employer, or agent, manager, superintendent, or officer thereof" under California Labor Code §432.5; and/or (ix) a "person" under California Labor Code §225.5.

ALLEGATIONS

At times relevant, including in the statutory periods, Savery was employed by PAGA Defendants in California. On information and belief, at times relevant, including in the statutory periods, PAGA Defendants employed, and continue to employ, employees throughout the state of California, including PAGA Employees.

NON-COMPETITION

At times relevant, including in the statutory periods, Savery and Non-Competition Employees were, from time to time, presented with and/or were required to sign a non-competition/non-solicitation agreement with ATX LEARNING, LLC., and/or AUSTIN TEXAS LEARNING GROUP, LLC. that restrained the engagement in a lawful profession, trade, or business of any kind.

Savery's "Employment Agreement," for example, in relevant part states the following:

Non-Solicitation. Employee agrees that during the term of this Agreement and for a period of one (1) year thereafter, Employee will not affiliate with, join or attempt to join the Company's client or its associates nor use any partners, employees or agents for such purpose.

On information and belief, employment agreements for Non-Competition Employees contain the same or similar non-compete/non solicitation language.

A non-competition/non-solicitation agreement places restrictions on Savery's and other Non-Competition Employees' opportunities for work. Such conduct is an unlawful restraint of trade, business and/or profession, in violation of California Business Code §16600. In addition, the non-compete violates Cal. Labor Code §432.5 which states that "[n]o employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law." It also violates Cal. Labor Code §925(a)(2) which prohibits an employer from requiring an employee who primarily resides and works in California, as a condition of employment, to agree to a provision that would "deprive the employee of the substantive protection of California with respect to a controversy arising in California." Furthermore, from time to time at times relevant, including in the statutory periods, California Labor Code §§432.5 and 925(a)(2) are violated through any sort of purported agreement to contract away protections under California Business and Professions Code §16600 et seq., the California Labor Code including but not limited to indemnification under Sections 2802 and one-way fee and cost shifting, and California Civil Code §1668 ("All contracts which have for their object, directly or indirectly, to exempt anyone from responsibility for his own fraud, or willful injury to the person or property of another, or violation of law, whether willful or negligent, are against the policy of the law.") It further violates Cal. Labor Code §2802 (requiring indemnification for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer) and §2804 which states that "[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of this article [Section 2802 et seq.] or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State."

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DAMAGES LIMITATION CLAUSE

At times relevant, including in the statutory periods, employment agreements or other documents for Savery, and Damages Limitations Employees have contained, from time to time, language that purports to limit claims to damages.

Savery's "Employment Agreement," for example, in relevant part states the following:

Damages Except for claims for fraud, willful injury to person or property, and violation of law, no party shall claim damages against the other in excess of 50% of the total amount to be paid out under the [Employment] Agreement. In addition, no party shall recovery any special, consequential, or indirect damages or any type against the Company.

On information and belief, employment agreements or other documents for Damages Limitations Employees contain the same or similar language purporting to limit claims for damages.

An agreement to limit damages or anything else that limits damages places unlawful restrictions on Plaintiff's and other Damages Limitations Class Members and Damages Limitations Employees' rights to damages including but not limited to those under the California Labor Code, the Industrial Welfare Commission Wage Orders, and California Business Code §16600. In addition, the damages limitations clause violates Cal. Labor Code §432.5 which states that "[n]o employer, or agent, manager, superintendent, or officer thereof, shall require any employee or applicant for employment to agree, in writing, to any term or condition which is known by such employer, or agent, manager, superintendent, or officer thereof to be prohibited by law." It also violates Cal. Labor Code §925(a)(2) which prohibits an employer from requiring an employee who primarily resides and works in California, as a condition of employment, to agree to a provision that would "deprive the employee of the substantive protection of California with respect to a controversy arising in California." It further violates Cal. Labor Code §2802 (requiring indemnification for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer) and Cal. Labor Code §2804 which states that "[a]ny contract or agreement, express or implied, made by any employee to waive the benefits of this article [Section 2802 *et seq.*] or any part thereof, is null and void, and this article shall not deprive any employee or his personal representative of any right or remedy to which he is entitled under the laws of this State."

BUSINESS EXPENSES

At times relevant, including in the statutory periods, PAGA Defendants from time to time, failed to indemnify Savery, and Business Expense Employees for all necessary expenditures or losses incurred by the employee in direct consequence of job duties. From time to time, work duties (including but not limited to work communications, administrative work, time keeping, client work, and remote work) required the use of telephones, electronic devices including but not limited to iPad or similar device, internet, phone and data services, subscriptions and applications, supplies such as paper, printer and ink, and home office use, among other things. These items, on information and belief, were provided by Savery and Business Expense Employees, and not by PAGA Defendants, and are and were used for business purposes, without reimbursement for the business use. Additionally, at times relevant, including in the statutory periods, PAGA Defendants from time to time, failed to fully indemnify Savery and Business Expense Employees for business travel and expenses related to travel positions. Each of these failures violate Section 2802 which states "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer..." In violation of Section 2802, PAGA Defendants pass on (or attempt to pass on) the employer's cost of doing business onto Savery, and Business Expense Employees.

***SALARY NON-EXEMPT EMPLOYEES
OVERTIME/MINIMUM WAGES***

At times during the relevant statutory periods, Savery and other Salary Non-Exempt Employees, from time to time, were paid wages designated as “Salary.”

At times during the relevant statutory periods, Savery and other Salary Non-Exempt Employees, from time to time, did not meet both the duties test and the salary basis test for the employee’s compensation, and therefore are non-exempt as defined by California law including within the meaning of the California Labor Code and the implementing rules and regulations of the California IWC Wage Orders. On information and belief, from time to time at times during the relevant statutory periods, the salary basis test was not met as a result of the PAGA Defendants’ failure to pay wages as required by the salary basis test.

On information and belief, at times during the relevant statutory periods, PAGA Defendants did not, from time to time, pay Savery and other Salary Non-Exempt Employees all wages due and owing for all time worked (including but not limited to administrative time such as timekeeping, paperwork, communications, training, meetings, travel work time, client work time, and preparatory and wrap up work time) as a result of treating Savery and other Salary Non-Exempt Employees as exempt. As a result, PAGA Defendants have, from time to time, among other things failed to: pay overtime wages correctly for overtime hours worked using the regular rate of pay (the computation of which includes all forms of non-discretionary wages including but not limited to bonuses, and per-diem that operated as wages) thereby violating Sections 510 and 1198 of the California Labor Code; pay minimum wages correctly for non-overtime hours worked thereby violating Sections 1182.12, 1194 *et seq.* and 1198 of the California Labor Code; maintain and provide wage statements compliant with Section 226(a) of the California Labor Code; timely pay all wages due and owing during employment in violation of Section 204 of the California Labor Code, and upon separation of employment in violation of Sections 201, 202, 203 of the California Labor Code; pay a waiting time penalties to Savery and those who are also Waiting Time Employees.

***SALARY NON-EXEMPT EMPLOYEES
ASSIGNMENT SALARY***

At times during the relevant statutory periods, Savery and Salary Non-Exempt Employees, from time to time, were assigned/placed with a client through Employment Agreements or other documents in which the contracted pay for the assignment was an annual salary to be paid in full notwithstanding the term of the job assignment/placement was less than twelve months. The job assignment salary is the pay due to Savery, and Salary Non-Exempt Employees.

PAGA Defendants, on information and belief, have failed to pay, from time to time, the full contracted assignment salary but instead have paid only through the term of the job assignment, thereby underpaying employees. For example, Savery’s annual salary was not tied to the duration of the job assignment/placement (the term of which was approximately October 2022 to the last date of work for the school year - on or about June 15, 2023) and was confirmed by ATX Learning, LLC. policy that it was to be paid in full rather than in a lesser amount based on term of the assignment. Notwithstanding this, PAGA Defendants ceased paying Savery the contracted assignment salary when the job assignment concluded and consequently only paid Savery approximately 70% of her contracted salary, leaving approximately 30% unpaid. On information and belief, PAGA Defendants have similarly underpaid the regular wages of Salary Non-Exempt Employees whereby PAGA Defendants incorrectly calculated and paid the employee’s contracted twelve-months of wages in an amount less than the amount.

As a result, PAGA Defendants have, from time to time, among other things failed to: pay regular wages thereby violating Sections 218 and 1198 of the California Labor Code; maintain and provide wage statements compliant with Section 226(a) of the California Labor Code; timely pay all wages due and

owing during employment in violation of Section 204 of the California Labor Code, and upon separation of employment in violation of Sections 201, 202, 203 of the California Labor Code; pay a waiting time penalties to Savery and those who are also Waiting Time Employees.

PAID TIME OFF - VACATION/PAID SICK TIME

At times relevant, including in the statutory periods, PAGA Defendants, from time to time, provided paid time off to Savery, Salary Non-Exempt Employees, and Waiting Time Employees. On information and belief, the paid time off plan is outside of a collective bargaining agreement, and sums up all vacation and sick time into one category (titled paid time off), for which it may be used for any purpose.

The paid time off is “vacation” for purposes of California law (including that of Section 227.3) due to the fact that all forms of this paid time off is permitted to be used for any purpose. For purposes of this complaint, paid time off is termed “PTO.”

From time to time at times during the relevant statutory periods, Savery, Salary Non-Exempt Employees, and Waiting Time Employees have had their PTO time showing as “accruing” on a pay period basis despite PTO language stating that a certain PTO amount is provided to the employee, and thus not earned/accrued on a pay period basis. For example, Savery’s contract states she is to received 3 PTO days but her paystub (at times when it does notate PTO accrual), indicates PTO is accrued on a per pay period basis. In Savery’s instance, for example, PTO is not noted until her fourth paystub (approximately two months into employment), and when noted it reports that Savery’s PTO accrual is 0.88 per pay period.

From time to time at times during the relevant statutory periods, all earned but unused PTO is not paid out correctly by PAGA Defendants to Savery, Salary Non-Exempt Employees, and Waiting Time Employees, in violation of California Labor Code §§201, 202, 203, 204, 226(a), 227.3. The reasons for this include PAGA Defendants’ non-compliant accrual method, use-it-or-lose it policy, and PAGA Defendants’ general failure to pay accrued, unused vacation at time of separation.

From time to time at times during the relevant statutory periods, because the PTO plan includes paid sick time, it is subject to California Labor Code §§245 *et seq.* (California’s Healthy Workplaces, Healthy Families Act of 2014) including the requirements relating to the amount, terms and rate of compensation set forth in said law.

From time to time at times during the relevant statutory periods, the PTO policy has failed to provide Savery, Salary Non-Exempt Employees and Waiting Time Employees the amount due for paid sick time in conformance with the accrual requirements of California Labor Code §246(b), thereby denying, at times, paid sick time wages both during employment and upon separation of employment. Section 246 requires, in part, that an employee shall accrue paid sick days at the rate of not less than one hour per every 30 hours worked, beginning at the commencement of employment. An employer may use a different accrual method, other than providing one hour per every 30 hours worked, provided that the accrual is on a regular basis so that an employee has no less than 24 hours of paid time off by the 120th calendar day of employment or each calendar year, or in each 12 month period. An employer may satisfy the accrual requirements by providing not less than 24 hours or three days of paid sick leave that is available to use by the completion of the employee’s 120th calendar day of employment. On information and belief, PAGA Defendants, from time to time at times during the relevant statutory periods, do not meet the accrual requirements of Section 246. Savery for example, per the paystubs provided to her, “accrued” 0.88 per pay period (based on two pay dates per month). This accrual method shown on the paystub does not meet the requirements of Section 246 (i.e. it does not equate to not less than one hour per every 30 hours worked beginning at the commencement of employment; it does not equate to not less than 24 hours of paid time off by the 120th calendar day of employment).

From time to time at times during the relevant statutory periods, the PTO policy violates California Labor Code §246(i)'s requirement that an employer shall provide an employee with written notice that sets for the amount of paid sick leave available, for use on either the employee's itemized wage statement described in Section 226 or in a separate writing provided on the designated pay date with the employee's payment of wages. The reason for this includes that (i) at times, the employee's itemized wage statement is not provided on the designated pay date with the employee's payment of wages (but rather at a later date, if at all); and (ii) at times, itemized wage statements do not provide written notice that sets for the amount of paid sick leave available in that the wage statement omits the information entirely, or the information is included and is incorrect. Notice of available paid sick time therefore is not appropriately recorded, from time to time at times during the relevant statutory periods, on itemized wage statements as required by California Labor Code §226(a), 246(i).

From time to time at times during the relevant statutory periods, the PTO policy violates California Labor Code §246(j)'s requirement for calculating paid sick leave. On information and belief, from time to time at times during the relevant statutory periods, PAGA Defendants have not computed and made payment of paid sick leave in conformance with Section 246(j), to the detriment of Savery, Salary Non-Exempt Employees, Waiting Time Employees, in violation of California Labor Code §§201, 202, 203, 204, 226(a) 245 *et seq.*

UNTIMELY PAYMENT OF WAGES

At times relevant, including in the statutory periods, PAGA Defendants, from time to time, have failed to timely pay Savery and Waiting Time Employees all wages due upon separation of employment as required by California Labor Code §§ 201, 202, 203's timing requirements. Savery, for example, a former employee of ATX LEARNING, LLC., and/or AUSTIN TEXAS LEARNING GROUP, LLC as of on or about June 15, 2023 (as a result of being released from the employer upon Savery's completion of the work for her particular job assignment or contract term with the client) was not provided all wages due and owing to her by the time required by California law. On information and belief, PAGA Defendants have a pattern and practice of, time to time, not providing all wages due timing upon separation of employment to Waiting Time Employees whose employment from ATX LEARNING, LLC., and/or AUSTIN TEXAS LEARNING GROUP, LLC has ended including as a result of the employee being released from employment upon the employee's completion of the particular job assignment or duration for which hired for the job assignment.

At times relevant, including in the statutory periods, PAGA Defendants, from time to time, have failed to timely pay Savery, and Salary Non-Exempt Employees, all wages due as required by California Labor Code §204's timing requirements. On information and belief, PAGA Defendants have a pattern and practice of not providing all wages due on a timely manner during employment. The reasons for the untimely wage payments are due to the general failure to pay wages due and owing during employment as alleged herein, in addition to that PAGA Defendants, from time to time, delay and do not release employees' wage payments until timesheets are signed by an authorized signer (e.g. supervisor), and/or other forms are submitted such as exit papers. Under California law, wages cannot be withheld and/or delayed under these circumstances.

WAGE STATEMENTS AND TIME RECORDS

At times relevant, including in the statutory periods, PAGA Defendants from time to time, failed to maintain accurate time records for Savery, and Salary Non-Exempt Employees. This includes but is not limited to not maintaining accurate time records for the reason that PAGA Defendants treated these employees as exempt when in fact they are/were not and did not maintain accurate and compliant time records for the employees, in violation of California Labor Code §§1174(d) and 1198.

At times relevant, including in the statutory periods, PAGA Defendants from time to time, failed, and continue to fail, to maintain and provide Savery, and Wage Statement Employees with wage statements that contained the information required by California Labor Code §226(a). From time to time, at times relevant including the statutory periods, in addition to the reasons set forth herein for how Labor Code §226(a) has been violated, the wage statements PAGA Defendants maintain and have provided to Savery, and Wage Statement Employees fail to:

- include the name and address of the legal entity that is the employer in violation of Labor Code Labor Code §226(a)(8) (as a result of wage statements showing AUSTIN TEXAS LEARNING GROUP, LLC (and its associated address) as the employer, and not showing the name of ATX LEARNING, LLC. and its address as the legal entity that is the employer, or any other legal entity that is the employer).² As a result the employee cannot promptly and easily determine from the wage statement alone the name and address of the employer;
- include the gross wages earned and the net wages earned in violation of Labor Code Labor Code §§226(a)(1), (5) (as a result of wage statements not reporting gross and net wages earned, rather wage statements report amounts “paid” regardless of whether this payment is for wages earned or for something else (e.g. nontaxable per diem payments³)). As a result the employee cannot promptly and easily determine from the wage statement alone the amount of the gross wages or net wages paid to the employee during the pay period;
- include, for those who are also Salary Non-Exempt Employees, the total hours worked by the employee, 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 in violation of Labor Code Labor Code §§226(a)(2) and (a)(9) respectively (as a result of omitting this information from the wage statements). As a result the employee cannot promptly and easily determine from the wage statement alone the total hours worked by the employee, 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;
- include, for those who are also Salary Non-Exempt Employees, the gross wages earned and the net wages earned in violation of Labor Code Labor Code §§226(a)(1), (5) (as a result of failing to include unpaid but earned wages on the wage statements). As a result the employee cannot promptly and easily determine from the wage statement alone the amount of the gross wages or net wages paid to the employee during the pay period;
- be issued at the time of payment of wages, in violation of Labor Code Labor Code §§226(a)

² Savery’s Employment Agreement identifies ATX LEARNING, LLC. as the employing company. Her wage statement identifies AUSTIN TEXAS LEARNING GROUP, LLC as the employing legal entity. The W-2 issued to Savery for the calendar year 2022, identifies “ATX Learning” as the employer. The reported address for ATX LEARNING, LLC. and ATX Learning on the Employment Agreement and the W-2 are the same. The address on the wage statement for AUSTIN TEXAS LEARNING GROUP, LLC is different than the address for ATX LEARNING, LLC. and ATX Learning.

³ For example, on wage statements, per-diem payments, from time to time, are reported under the “Pay” section where wages are also reported. However, because wage statements, from time to time, do not report net wages and gross wages earned, per diem payments are not differentiated from wage payments other than at times being identified as non-taxable.

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(as a result of failing to issue the wage statement at the time of payment of wages and instead issuing at a time after the time of payment of wages, if at all).

CONCLUSION

In this case, it is alleged that PAGA Defendant violated California Labor Code §§201, 202, 203, 204, 226(a), 227.3, 245 *et seq.*, 432.5, 510, 925(a)(2), 1174(d), 1182.12, 1194 *et seq.*, 1197 *et seq.*, 1198, 2802 *et seq.*, 2804. As alleged herein, PAGA Defendants violated the following California Labor Code sections, and penalties are sought for same because PAGA Defendants from time to time at time during the statutory periods: (a) violated California's anti non-compete laws and violated Labor Code §§432.5, 925(a)(2), 2802 *et seq.* and 2804 with respect to Non-Competition Employees; (b) violated Labor Code §§432.5, 925(a)(2), 2802 *et seq.*, and 2804 with respect to Damages Limitation Employees; (c); failed to indemnify for business expenses to Business Expense Employees (Labor Code §2802); (d) failed to accurately calculate and accurately pay overtime and minimum wages and failed to timely pay overtime and minimum wages during employment to Salary Non-Exempt Employees (Labor Code §§204, 510, 1182.12, 1194 *et seq.*, 1197, 1198); (e) failed to pay all non-minimum/overtime wages and PTO due and owing (Labor Code §§204, 218, 227.3, 245 *et seq.*, 1198); (f) failed to pay all wages due and owing in the form of the full contracted assignment salary to Salary Non-Exempt Employees (Labor Code §§204, 218, 1198); (g) failed to pay all wages due and owing timely at separation/discharge of employment and failed to pay waiting time penalties to Waiting Time Penalty Employees (Labor Code §§201, 202, 203); (h) failed to provide and maintain accurate and compliant wage statements, with respect to Wage Statement Employees (Labor Code §§226(a), 1198); (i) failed to maintain accurate and compliant time records with respect to Salary Non-Exempt Employees (Labor Code §§1174(d), 1198). For these violations, Savery seeks all available remedies under the PAGA including PAGA penalties (including underpaid wages as part of civil penalties to the extent available) on behalf of the State of California, Non-Competition Employees, Damages Limitation Employees, Business Expense Employees, Salary Non-Exempt Employees, Waiting Time Employees, and Wage Statement Employees, plus attorney's fees and costs.

Please feel free to contact the undersigned with any questions you may have.

Very truly yours,

Diane Richard

Diane E. Richard