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Assigned for All Purposes
Judge Melissa R. McCormick
Dept. CX104

Attorneys for Plaintiff, the State of California, and the Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE

ALYSHA VILLAPUDUA, solely in her
representative capacity under the Private Attorneys
General Act of 2004 (“PAGA”),

Plaintiff,

v.

SCHOOLSFIRST FEDERAL CREDIT UNION;
and DOES 1 through 100, inclusive,

Defendants.

Case No. 30-2024-01400940-CU-OE-CXC

COMPLAINT

(1) Violation of California Labor Code § 2698 et
seq. (California Labor Code Private Attorney
General Act of 2004)

DEMAND FOR JURY TRIAL

1 Plaintiff ALYSHA VILLAPUDUA (“Plaintiff”), solely in her representative capacity under the
2 California Labor Code Private Attorneys General Act of 2004 (“PAGA”), files this Complaint against
3 Defendants SCHOOLSFIRST FEDERAL CREDIT UNION and DOES 1 through 100, inclusive
4 (“Defendants”). Plaintiff’s allegations are based upon information and belief and upon investigation of
5 Plaintiff’s counsel, except for allegations specifically pertaining to Plaintiff, which are based upon
6 Plaintiff’s personal knowledge.

7 **JURISDICTION AND VENUE**

8 1. This PAGA action asserts claims by Plaintiff only in her representative capacity on behalf
9 of the State of California and all other current and former aggrieved employees for civil penalties pursuant
10 to California Labor Code sections 2698, *et seq.*

11 2. This PAGA action does not assert any individual PAGA claim.

12 3. Plaintiff is not pursuing an individual PAGA claim and hereby expressly waives any
13 recovery for her individual PAGA claim.

14 4. The monetary damages and restitution sought by Plaintiff exceed the minimal jurisdiction
15 limits of the Superior Court and will be established according to proof at trial.

16 5. This Court has jurisdiction over this action pursuant to the California Constitution, Article
17 VI, section 10, which grants the Superior Court “original jurisdiction in all causes except those given by
18 statute to other courts.” The statutes under which this action is brought do not specify any other basis for
19 jurisdiction.

20 6. This Court has jurisdiction over all Defendants because each defendant is either a citizen
21 of California, has sufficient minimum contacts in California, or otherwise intentionally avails itself of the
22 California market so as to render the exercise of jurisdiction over it by the California courts consistent
23 with traditional notions of fair play and substantial justice.

24 7. Venue is proper in this Court because, upon information and belief, the named Defendants
25 reside, transact business, or have offices in this county and the acts and omissions alleged herein took
26 place in this county.

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1 **PARTIES**

2 8. Plaintiff ALYSHA VILLAPUDUA (“Plaintiff”) is a citizen of the State of California.

3 9. Defendant SCHOOLSFIRST FEDERAL CREDIT UNION (“SCHOOLSFIRST”) is an
4 entity that transacts business throughout the State of California, with its principal place of business and
5 headquarters located at 15332 Newport Avenue, Tustin, California 92780, in the County of Orange. At
6 all relevant times, SCHOOLSFIRST is the “employer” of Plaintiff within the meaning of all applicable
7 state laws and statutes.

8 10. At all times herein relevant, Defendants SCHOOLSFIRST and DOES 1 through 100, and
9 each of them, were the agents, partners, joint venturers, representatives, servants, employees, successors-
10 in-interest, co-conspirators and assigns, each of the other, and at all times relevant hereto were acting
11 within the course and scope of their authority as such agents, partners, joint venturers, representatives,
12 servants, employees, successors, co-conspirators and assigns, and that all acts or omissions alleged herein
13 were duly committed with the ratification, knowledge, permission, encouragement, authorization and
14 consent of each defendant designated herein.

15 11. The true names and capacities, whether corporate, associate, individual or otherwise, of
16 defendants DOES 1 through 100, inclusive, are unknown to Plaintiff who sues said defendants by such
17 fictitious names. Plaintiff is informed and believes, and based on that information and belief alleges, that
18 each of the defendants designated as a Doe is legally responsible for the events and happenings referred
19 to in this complaint, and unlawfully caused the injuries and damages to Plaintiff alleged in this complaint.
20 Plaintiff will seek leave of court to amend this complaint to show the true names and capacities when the
21 same have been ascertained

22 12. Defendants SCHOOLSFIRST and DOES 1 through 100 will hereinafter collectively be
23 referred to as “Defendants” or “SchoolsFirst.”

24 **FACTUAL ALLEGATIONS**

25 13. Defendants employed Plaintiff as an hourly-paid or non-exempt employee.

26 14. Defendants have the authority to hire and terminate Plaintiff and the other aggrieved
27 employees; to set work rules and conditions governing Plaintiff and the other aggrieved employees; and
28 to supervise their daily employment activities.

1 15. Defendants directly hired and paid wages and benefits to Plaintiff and the other aggrieved
2 employees.

3 16. Plaintiff is informed and believes, and based thereon alleges, that at all times herein
4 relevant, Defendants were advised by skilled lawyers and other professionals, employees, advisors, and
5 consultants highly knowledgeable about California wage law, employment and personnel practices.

6 17. Plaintiff is informed and believes, and based thereon alleges, that at all times herein
7 relevant, without any justification, Defendants ignored the employment and personnel policy changes
8 proposed by skilled lawyers and other professionals, employees, advisors, and consultants highly
9 knowledgeable about California wage laws, employment, and personnel practice.

10 18. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
11 should have known that Plaintiff and aggrieved employees were entitled to receive certain wages for all
12 work performed, including for overtime compensation at the rate of no less than one and one-half times the
13 *regular rate of pay* for an employee.

14 19. Plaintiff is informed and believes, and based thereon alleges, that for purposes of applying
15 these overtime pay requirements, Defendants must factor their non-discretionary bonus into an
16 employee's regular rate of pay for the relevant pay period.

17 20. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
18 should have known that Plaintiff and the other aggrieved employees were working over eight (8) hours
19 and/or over twelve (12) hours per day and/or over forty (40) hours per week, that they were entitled to
20 receive certain wages for overtime compensation, and that they were not receiving wages for overtime
21 compensation with the non-discretionary bonus factored into their regular rate of pay for the relevant
22 pay period.

23 21. Plaintiff is informed and believes, and based thereon alleges, that Defendants engaged in a
24 uniform policy and systematic scheme of wage abuse against their hourly paid employees.

25 22. Plaintiff is informed and believes, and based thereon alleges, that Defendants failed to
26 provide Plaintiff and the other aggrieved employees the required rest and meal periods during the relevant
27 time period as required under the Industrial Welfare Commission Wage Orders and/or applicable Labor
28 Codes, thus are entitled to any and all applicable penalties.

1 23. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
2 should have known that Plaintiff and the other aggrieved employees were entitled to receive all meal
3 periods or payment of one additional hour of pay at Plaintiff's and the other aggrieved employees' regular
4 rate of pay when a meal period was missed.

5 24. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
6 should have known that Plaintiff and the other aggrieved employees were entitled to receive all rest periods
7 or payment of one additional hour of pay at Plaintiff's and the other aggrieved employees' regular rate of
8 pay when a rest period was missed.

9 25. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
10 should have known that they are required to pay meal and rest break premiums at a regular rate that
11 includes commissions, bonuses, or other non-discretionary pay.

12 26. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
13 should have known that Plaintiff and the other aggrieved employees were entitled to receive all wages
14 owed to them upon discharge or resignation.

15 27. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
16 should have known that Plaintiff and the other aggrieved employees were entitled to receive complete and
17 accurate wage statements in accordance with California law.

18 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
19 should have known that they had to keep complete and accurate payroll records for Plaintiff and the other
20 aggrieved employees in accordance with California laws.

21 29. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew or
22 should have known that they had a duty to compensate Plaintiff and the other aggrieved employees
23 pursuant to California law, and that Defendants had the financial ability to pay such compensation, but
24 willfully, knowingly, and intentionally failed to do so, and falsely represented to Plaintiff and the other
25 aggrieved employees that they were properly denied wages, all in order to increase Defendants' profits.

26 30. At all material times set forth herein, Defendants regularly and consistently failed to
27 compensate Plaintiff and the other aggrieved employees for all hours worked.

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31. At all material times set forth herein, Defendants failed to fully comply with the relevant provision of the Labor Code and the IWC orders to pay overtime wages with the non-discretionary bonus factored into their regular rate of pay for the relevant pay period to Plaintiff and the other aggrieved employees.

32. At all material times set forth herein, Defendants failed to fully comply with the relevant provision of the Labor Code and the IWC orders to provide legally compliant meal and rest periods to Plaintiff and the other aggrieved employees and pay them premium pay with the non-discretionary bonus factored into their regular rate of pay for the relevant pay period.

33. At all material times set forth herein, Defendants regularly and consistently failed to provide complete and accurate wage statements to Plaintiff and the other aggrieved employees with the non-discretionary bonus factored into their regular rate of pay for the relevant pay period.

34. At all material times set forth herein, Defendants regularly and consistently failed to pay Plaintiff and the other aggrieved employees all wages owed to them upon discharge or resignation with the non-discretionary bonus factored into their regular rate of pay for the relevant pay period.

35. At all material times set forth herein, Defendants failed to keep complete and accurate payroll records for Plaintiff and the other aggrieved employees with the non-discretionary bonus factored into their regular rate of pay for the relevant pay period.

PAGA ALLEGATIONS

36. At all times set forth herein, PAGA was applicable to Plaintiff's employment by Defendants.

37. At all times set forth herein, Plaintiff, like the other aggrieved employees, were employed by Defendants and against whom one or more of the following Labor Code violations were committed.

38. At all times herein, PAGA provides that any provision of law under the California Labor Code that provides for a civil penalty to be assessed and collected by the LWDA for violations of the California Labor Code may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself and other current or former employees pursuant to procedures outlined in California Labor Code section 2699.3.

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1 39. Pursuant to PAGA, a civil action under PAGA may be brought by an “aggrieved
2 employee,” who is any person that was employed by the alleged violator and against whom one or more
3 of the alleged violations was committed.

4 40. Plaintiff is employed by Defendants and the alleged violations were committed against her
5 during her time of employment and she is therefore, an aggrieved employee. Plaintiff is an “aggrieved
6 employee” as defined by California Labor Code section 2699, subdivision (c).

7 41. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved employee,
8 including Plaintiff, may pursue a civil action arising under PAGA after the following requirements have
9 been met:

10 a. The aggrieved employee shall give written notice by certified mail (hereinafter
11 “Employee’s Notice”) to the LWDA and the employer of the specific provisions of
12 the California Labor Code alleged to have been violated, including the facts and
13 theories to support the alleged violations.

14 b. The LWDA shall provide notice (hereinafter “LWDA Notice”) to the employer and
15 the aggrieved employee by certified mail that it does not intend to investigate the
16 alleged violation within sixty (60) calendar days of the postmark date of the
17 Employee’s Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice is
18 not provided within thirty-three (65) calendar days of the postmark date of the
19 Employee’s Notice, the aggrieved employee may commence a civil action pursuant
20 to California Labor Code section 2699 to recover civil penalties in addition to any
21 other penalties to which the employee may be entitled.

22 42. On February 22, 2024, Plaintiff provided written notice to the LWDA and to Defendants
23 of the specific provisions of the California Labor Code alleged to have been violated, including the facts
24 and theories to support the alleged violations. A true and correct copy of the notice is attached hereto as
25 Exhibit “A.” Plaintiff has not received any response from the LWDA.

26 43. Plaintiff satisfied the administrative prerequisites under California Labor Code section
27 2699.3, subdivision (a), to recover civil penalties against Defendants in addition to other remedies, for
28 violations of the California Labor Code and all applicable wage orders.

1 **FIRST CAUSE OF ACTION**

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

3 **(Against Defendant SCHOOLSFIRST FEDERAL CREDIT UNION**

4 **and DOES 1 through 100)**

5 44. Plaintiff hereby incorporates by reference all the prior allegations in the preceding
6 paragraphs and each and every part thereof has the same force and effect as though fully set forth herein.

7 45. PAGA expressly establishes that any provision of the California Labor Code which
8 provides for a civil penalty to be assessed and collected by the LWDA, or any of its departments,
9 divisions, commissions, boards, agencies or employees for a violation of the California Labor Code,
10 may be recovered through a civil action brought by an aggrieved employee on behalf of himself or
11 herself, and other current or former employees.

12 46. Whenever the LWDA, or any of its departments, divisions, commissions, boards,
13 agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to
14 exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

15 47. Plaintiff and the other hourly-paid or non-exempt employees are “aggrieved employees”
16 as defined by California Labor Code section 2699, subdivision (c) in that they are all current or former
17 employees of Defendants, and one or more of the alleged violations was committed against them.

18 48. California requires employers to pay overtime compensation for “any work in excess of eight
19 hours in one workday and any work in excess of 40 hours in any one work week . . . at the rate of no less
20 than one and one-half times the *regular rate of pay* for an employee.” (Lab. Code, § 510, subd. (a), italics
21 added). “For purposes of applying these overtime pay requirements, an employer must factor the per-
22 hour value of a flat sum bonus into an employee’s regular rate of pay for the relevant pay period.”
23 (*Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 559.) Employers are also
24 required to pay meal and rest break premiums at a regular rate that includes commissions, bonuses, or
25 other non-discretionary pay. (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858.)

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49. Because California does not specifically address what makes up an employee’s “regular rate of pay” (see *Marin v. Costco Wholesale Corp.* (2008) 169 Cal.App.4th 804, 815), courts look to the federal Fair Labor Standards Act (“FLSA”) for guidance (*Zator v. Sprint/United Management Co.* (S.D.Cal. Mar. 29, 2011, No 09-cv-0935-LAB(MDD)) 2011 WL 1157527, at *3) Under the FLSA, an employee’s regular rate of pay “include[s] *all* remuneration for employment paid to, or on behalf of, the employee,” subject to certain listed exceptions. (29 U.S.C. § 207(e), italics added.) One of these exceptions excludes

50. Here, Defendants issued non-discretionary bonuses to Plaintiff and the other aggrieved employees that were not included in calculating their regular rate of pay for purposes of overtime and meal and rest period premiums. These non-discretionary bonuses are reflected as “Txbl Fmg Gift” on the paystubs. Because of this, Defendants failed to pay overtime at the correct regular rate of pay in violation of the Wage Orders and California Labor Code sections 510 and 1198, which constitutes a violation of California Labor Code section 2698, *et seq.* Defendants also failed to pay one additional hour of pay at the correct regular rate of pay for each workday that a meal or rest period was not provided in violation of the Wage Orders and California Labor Code sections 226.7 and 512(a), which constitutes a violation of California Labor Code section 2698, *et seq.* During the relevant period, Plaintiff worked overtime and received meal and rest period premium payments from Defendants based on incorrect regular rates of pay that did not include the non-discretionary bonuses she received from Defendants.

Failure to Pay Overtime

51. California Labor Code sections 510 and 1198 and the applicable wage order require employers to pay their employees overtime compensation equal to one and one-half times their regular rate of pay for all hours worked in excess of eight (8) hours and/or twelve (12) hours in one day and/or over 40 hours in a week.

52. Defendants do not pay Plaintiff and the other aggrieved employees overtime compensation when they worked in excess of eight (8) hours and/or twelve (12) hours in one day and/or over 40 hours in a week as alleged above with the non-discretionary bonus factored into their regular rate of pay for the relevant pay period.

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1 **Failing to Provide Meal Periods**

2 53. California Labor Code sections 226.7 and 512 and the applicable wage order require
3 employers to pay their employees one additional hour of pay at the employee's regular rate of pay for
4 each workday that a meal period is not provided when it should have been.

5 54. Defendants do not provide Plaintiff and the other aggrieved employees with meal periods
6 when they should have, nor do they pay them premium pay as alleged above with the non-discretionary
7 bonus factored into their regular rate of pay for the relevant pay period.

8 **Failure to Provide Rest Periods**

9 55. California Labor Code sections 226.7 and 512 and the applicable wage order require
10 employers to pay their employees one additional hour of pay at the employee's regular rate of pay for
11 each workday that a rest break is not provided when it should have been.

12 56. Defendants do not provide Plaintiff and the other aggrieved employees with rest breaks
13 when they should have, nor do they pay them premium pay as alleged above with the non-discretionary
14 bonus factored into their regular rate of pay for the relevant pay period.

15 **Failure to Timely Pay Wages Upon Termination**

16 57. California Labor Code sections 201, 202, and 203 and the applicable wage order provide
17 that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are
18 due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or
19 her wages shall become due and payable not later than seventy-two hours thereafter, unless the employee
20 has given seventy-two hours previous notice of his or her intention to quit, in which case the employee
21 is entitled to his or her wages at the time of quitting.

22 58. As explained above, Defendants failed to pay Plaintiff and the other aggrieved minimum
23 wage for each hour of work they performed, failed to pay them overtime when they worked in excess
24 of eight hours in one day and/or over 40 hours in a week with the non-discretionary bonus factored into
25 their regular rate of pay for the relevant pay period, and failed to pay them one additional hour of pay
26 at their regular rate of pay with the non-discretionary bonus factored into their regular rate of pay for
27 the relevant pay period when they were not provided meal periods and rest breaks. Accordingly, these
28 wages are not timely paid to Plaintiff and the other aggrieved employees upon their discharge or

1 termination.

2 59. By failing to pay overtime and meal and rest period premiums at the correct regular rate
3 of pay, Defendants also willfully failed to timely pay wages upon termination in violation of California
4 Labor Code sections 201 and 202, which constitutes a violation of California Labor Code section 2698,
5 *et seq.*

6 **Failure to Timely Pay Wages During Employment**

7 60. California Labor Code section 204 and the applicable wage order require that all wages
8 earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar
9 month, other than those wages due upon termination of an employee, are due and payable between the
10 16th and the 26th day of the month during which the labor was performed, and that all wages earned by
11 any person in any employment between the 16th and the last day, inclusive, of any calendar month,
12 other than those wages due upon termination of an employee, are due and payable between the 1st and
13 the 10th day of the following month. Labor Code section 204 also requires that all wages earned for
14 labor in excess of the normal work period shall be paid no later than the payday for the next regular
15 payroll period.

16 61. As explained above, Defendants failed to pay Plaintiff and the other aggrieved employees
17 minimum wage for each hour of work they performed, failed to pay them overtime when they worked
18 in excess of eight hours in one day and/or over 40 hours in a week with the non-discretionary bonus
19 factored into their regular rate of pay for the relevant pay period, and failed to pay them one additional
20 hour of pay at their regular rate of pay with the non-discretionary bonus factored into their regular rate
21 of pay for the relevant pay period when they were not provided meal periods and rest breaks.
22 Accordingly, these wages are not timely paid Plaintiff and the other aggrieved employees during their
23 employment.

24 62. By failing to pay overtime and meal and rest period premiums at the correct regular rate
25 of pay, Defendants also willfully failed to timely pay wages during employment in violation of
26 California Labor Code section 204, which constitutes a violation of California Labor Code section 2698,
27 *et seq.*

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1 **Failure to Provide Compliant Wage Statements**

2 63. California Labor Code section 226 and the applicable wage order require employers to
3 make, keep, and provide true, accurate, timely, and complete wage statement.

4 64. Defendants do not provide Plaintiff and the other aggrieved employees with true,
5 accurate, timely, and complete wage statements as alleged above with the non-discretionary bonus
6 factored into their regular rate of pay for the relevant pay period.

7 65. By failing to pay overtime and meal and rest period premiums at the correct regular rate
8 of pay, Defendants failed to provide compliant wage statements in violation of California Labor Code
9 section 226(a), which constitutes a violation of California Labor Code section 2698, *et seq.*

10 **Failure to Keep Complete and Accurate Payroll Records**

11 66. California Labor Code section 1174, subdivision (d) requires employers to keep complete
12 and accurate payroll records.

13 67. Defendants do not keep complete and accurate payroll records for Plaintiff and the other
14 aggrieved employees as alleged above with the non-discretionary bonus factored into their regular rate
15 of pay for the relevant pay period.

16 68. During the relevant time period, Defendants intentionally and willfully failed to keep
17 accurate and complete payroll records, including but not limited to, failing to keep, at a central location
18 in the State of California or at the plants or establishments at which employees are employed, payroll
19 records showing the hours worked daily by and the wages paid to, or the number of piece rate united
20 earned by or any applicable piece rate paid to, employees employed at the respective plants or
21 establishments. Defendants' payroll records are incomplete and inaccurate because Defendants paid
22 Plaintiff and other aggrieved employees at the inaccurate regular rates of pay that failed to incorporate
23 their non-discretionary bonuses.

24 **PRAYER FOR RELIEF**

25 WHEREFORE, Plaintiff prays for relief and judgment against Defendants, jointly and severally, as
26 follows

27 1. Pursuant to California Labor Code section 2699, Plaintiff requests and is entitled to
28 recover from Defendants civil penalties, including:

- a. Penalties under California Labor Code section 2699 in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation;
- b. Penalties under California Code of Regulations Title 8 section 11070 in the amount of fifty dollars (\$50) for each aggrieved employee per pay period for the initial violation, and one hundred dollars (\$100) for each aggrieved employee per pay period for each subsequent violation;
- c. Penalties under California Labor Code section 210 in addition to, and entirely independent and apart from, any other penalty provided in the California Labor Code in the amount of a hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation, and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation; and
- d. Any and all additional penalties and sums as provided by the California Labor Code and/or other statutes.

2. Pursuant to California Labor Code section 2699, subdivision (i), civil penalties recovered by aggrieved employees shall be distributed as follows: seventy-five percent (75%) to the Labor and Workforce Development Agency for the enforcement of labor laws and education of employers and employees about their rights and responsibilities and twenty-five percent (25%) to the aggrieved employees.

3. Plaintiff is not seeking any sort of individualized (i.e., victim-specific) relief as described in *Esparza v. KS Industries, L.P.* (2007) 13 Cal.App.5th 1228.

4. Plaintiff is not seeking to recover any penalties for her individual PAGA claim and her Prayer for Relief expressly excludes penalties for her individual PAGA claim.

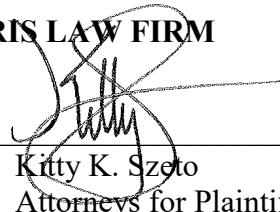
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1 5. Further, Plaintiff is entitled to seek and recover reasonable attorneys' fees and costs
2 pursuant to California Labor Code section 2699, 218.5, 210, and any other applicable statute.

3
4 Date: May 20, 2024

PARRIS LAW FIRM

5
6 By: _____


Kitty K. Szeto

Attorneys for Plaintiff, the State of
California, and the Aggrieved Employees

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by a jury.

Date: May 20, 2024

PARRIS LAW FIRM

By: _____

Kitty K. Szeto

Attorneys for Plaintiff, the State of
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February 22, 2024

VIA ONLINE & BY CERTIFIED MAIL

California Labor & Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, California 94612

Re: SchoolsFirst Federal Credit Union

Dear Representative:

The Parris Law Firm has been retained to represent Alysha Villapudua against SchoolsFirst Federal Credit Union (“SchoolsFirst”) for violations of the California Labor Code. Ms. Villapudua intends to seek penalties under the California Labor Code Private Attorneys General Act of 2004 (“PAGA”) on behalf of the State of California and all current and former employees of SchoolsFirst (“Aggrieved Employees”) based on the factual and legal allegations alleged in this letter. This letter is sent in compliance with the requirements of California Labor Code section 2699.3.

According to its website, <https://www.schoolsfirstfcu.org/about-us/>, SchoolsFirst is “the largest credit union in California, and the fifth largest in the nation with more than one million Members and more than \$25 billion in assets.” According to the entity address listed on Ms. Villapudua’s paystubs, SchoolsFirst’s principal place of business and headquarters are located at 15332 Newport Avenue, Tustin, California 92780. A copy of this letter was mailed there to SchoolsFirst by certified mail in satisfaction of the requirement under California Labor Code section 2699.3(a)(1)(A).

Since its founding in 1934, SchoolsFirst provides financial services to California school employees and their families. To facilitate its operations, SchoolsFirst employs hourly-paid or non-exempt employees in California. SchoolsFirst employed Ms. Villapudua as an hourly-paid or non-exempt employee. Ms. Villapudua, like the Aggrieved Employees, was employed by SchoolsFirst, and against whom one or more of the following Labor Code violations were committed.

California requires employers to pay overtime compensation for “any work in excess of eight hours in one workday and any work in excess of 40 hours in any one work week . . . at the rate of no less than one and one-half times the *regular rate of pay* for an employee.” (Lab. Code, § 510, subd. (a), *italics added*). “For purposes of applying these overtime pay requirements, an employer must factor the per-hour value of a flat sum bonus into an employee’s regular rate of pay for the relevant pay period.” (*Alvarado v. Dart Container Corp. of California* (2018) 4 Cal.5th 542, 559.) Employers are also required to pay meal and rest break premiums at a regular rate that includes commissions, bonuses, or other non-discretionary pay. (*Ferra v. Loews Hollywood Hotel, LLC* (2021) 11 Cal.5th 858.)

PERSONAL INJURY | ENVIRONMENTAL | EMPLOYMENT

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Because California does not specifically address what makes up an employee’s “regular rate of pay” (see *Marin v. Costco Wholesale Corp.* (2008) 169 Cal.App.4th 804, 815), courts look to the federal Fair Labor Standards Act (“FLSA”) for guidance (*Zator v. Sprint/United Management Co.* (S.D.Cal. Mar. 29, 2011, No 09-cv-0935-LAB(MDD)) 2011 WL 1157527, at *3) Under the FLSA, an employee’s regular rate of pay “include[s] *all* remuneration for employment paid to, or on behalf of, the employee,” subject to certain listed exceptions. (29 U.S.C. § 207(e), italics added.) One of these exceptions excludes

[s]ums paid in recognition of services performed during a given period if . . . both the fact that payment is to be made and the amount of the payment are determined at the sole discretion of the employer at or near the end of the period and not pursuant to any prior contract, agreement, or promise causing the employee to expect such payments regularly

(*Id.* § 207(e)(3)(a).) The Department of Labor has interpreted this section as permitting an employer to exclude from an employee’s regular rate of pay a “discretionary bonus,” but not a “promised bonus.”

For example, . . . [b]onuses which are announced to employees to induce them to work more steadily or more rapidly or more efficiently or to remain with the firm are regarded as part of the regular rate of pay. Attendance bonuses, individual or group production bonuses, bonuses for quality and accuracy of work, bonuses contingent upon the employee’s continuing in employment until the time the payment is to be made and the like are in this category. They must be included in the regular rate of pay.

(29 C.F.R. § 778.211(c); see also *Faulkinbury v. Boyd Associates, Inc.* (2013) 216 Cal.App.4th 220, 239 [“Bonuses based on incentive must be calculated into the employee’s wages to determine the ‘regular rate of pay[.]’ ” (alteration in original)].)

Here, SchoolsFirst issued non-discretionary bonuses to Ms. Villapudua and the Aggrieved Employees that were not included in calculating their regular rate of pay for purposes of overtime and meal and rest period premiums. These non-discretionary bonuses are reflected as “Txbl Frng Gift” on the paystubs. Because of this, SchoolsFirst failed to pay overtime at the correct regular rate of pay in violation of the Wage Orders and California Labor Code sections 510 and 1198, which constitutes a violation of California Labor Code section 2698, *et seq.* SchoolsFirst also failed to pay one additional hour of pay at the correct regular rate of pay for each workday that a meal or rest period was not provided in violation of the Wage Orders and California Labor Code sections 226.7 and 512(a), which constitutes a violation of California Labor Code section 2698, *et seq.* During the relevant period, Ms. Villapudua worked overtime and received meal and rest period premium payments from SchoolsFirst based on incorrect regular rates of pay that did not include the non-discretionary bonuses she received from SchoolsFirst.

PERSONAL INJURY | ENVIRONMENTAL | EMPLOYMENT

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By failing to pay overtime and meal and rest period premiums at the correct regular rate of pay, SchoolsFirst also willfully failed to timely pay wages upon termination in violation of California Labor Code sections 201 and 202, which constitutes a violation of California Labor Code section 2698, *et seq.*

By failing to pay overtime and meal and rest period premiums at the correct regular rate of pay, SchoolsFirst also willfully failed to timely pay wages during employment in violation of California Labor Code section 204, which constitutes a violation of California Labor Code section 2698, *et seq.*

By failing to pay overtime and meal and rest period premiums at the correct regular rate of pay, SchoolsFirst also failed to provide compliant wage statements in violation of California Labor Code section 226(a), which constitutes a violation of California Labor Code section 2698, *et seq.*

California Labor Code section 226 requires employers to make, keep and provide true, accurate, and complete wage statements. The violations of this section include, without limitation, the failure to include (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of Section 1682, the name and address of the legal entity that secured the services of the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. The deductions made from payment of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement and the record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

During the relevant time period, SchoolsFirst did not provide Ms. Villpudua and other Aggrieved Employees with properly itemized wage statements because SchoolsFirst's paystubs failed to include the correct rates of pay due to its failure to use the accurate regular rates of pay for purposes of calculating the overtime rate of pay and meal and rest period premiums.

By failing to pay overtime and meal and rest period premiums at the correct regular rate of pay, SchoolsFirst also failed to keep complete or accurate payroll records in violation of California Labor Code section 1174(d), which constitutes a violation of California Labor Code section 2698, *et seq.*

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California Labor Code section 1174, subdivision (d) requires employers keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than two years.

During the relevant time period, SchoolsFirst intentionally and willfully failed to keep accurate and complete payroll records, including but not limited to, failing to keep, at a central location in the State of California or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, or the number of piece rate units earned by or any applicable piece rate paid to, employees employed at the respective plants or establishments. SchoolsFirst's payroll records are incomplete and inaccurate because SchoolsFirst paid Ms. Villapudua and other Aggrieved Employees at the inaccurate regular rates of pay that failed to incorporate their non-discretionary bonuses.

* * *

In light of the above, Ms. Villapudua seeks, on behalf of the State of California and all Aggrieved Employees, all applicable penalties related to the above-mentioned violations of the California Labor Code pursuant to PAGA. If you have any questions or require additional information, please do not hesitate to contact us. Thank you for your attention to this matter.

PARRIS LAW FIRM



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PERSONAL INJURY | ENVIRONMENTAL | EMPLOYMENT

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