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Attorneys for Plaintiff RICHARD CHOI

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

RICHARD CHOI, individually, on behalf
of all others similarly situated, and as an
aggrieved former employee on behalf of
himself and all other Aggrieved Employees
brought in the name of the People of the
State of California and the Labor
Commissioner, as well as the Labor and
Workforce Development Agency
("LWDA") or any of its departments,
divisions, commissions, boards, agencies,
or employees

Plaintiff,

vs.

THE CLAREMONT COLLEGES, INC.
(TCC) a.k.a. THE CLAREMONT
COLLEGES SERVICES (TCCS) f.k.a
CLAREMONT UNIVERSITY
CONSORTIUM (CUC) AND DOES 1-10.

Defendants.

Case No.: 24STCV11245

Assigned for all purposes to Judge William F. Highberger

**FIRST AMENDED COMPLAINT FOR:
CLASS ACTION CLAIMS**

1. Failure to provide accurate written itemized wage statements (Lab. Code § 226(a));
2. Failure to pay minimum and overtime wages (§§ 204, 223, 510, 511, 1194, 1194.2, 1197, 1198 & IWC Order 4-2001, §§ 3-5 and § 20);
3. Failure to provide compliant meal periods (Lab. Code § 226.7(b) & (c) and § 512);
4. Failure to provide compliant rest breaks per Lab. Code § 226.7 & IWC Order 4-2001, § 12;
5. Failure to pay wages upon separation per Lab. Code § 201 (discharge) and/or § 202 (quit), and waiting time penalties per Lab. Code § 203;
6. Breach of Contract (specifically, the implied covenant of good faith and fair dealing);
7. Violation of Civil Code § 1572 and/or § 1573;
8. Violation of Civil Code §§ 1708, 1709, 1710, and/or 1711;
9. Unfair Business Practices: B & P Code § 17100;
10. Unfair Competition: B & P Code § 17200 et seq.

**PRIVATE ATTORNEY GENERAL ACT (PAGA)
REPRESENTATIVE CLAIMS**

1. PAGA Civil Penalties Per Plaintiff's PAGA Notice

INDIVIDUAL CLAIM(S)

1. Violation of Labor Code § 226(c); and
2. Violation of Labor Code § 1198.5(b).

Seeking damages for the enumerated claims as follows:

1. Statutory Damages;
2. Civil Penalties;
3. Punitive Damages;
4. Restitution and Injunction(s) (B&P § 17203);
5. Pre and Post Judgment Interest (§ 218.6);
6. Costs & Attorney's Fees (Lab. Code §§ 218.5, 226(e)(1), 226(h), 1194, 1198.5(l), 2699(g), 2802(c); CCP § 1021.5; and other applicable statutes;
7. Tax neutralization; and
8. Any other orders this Court deems just.

**DEMAND FOR A JURY TRIAL
FOR ALL LEGAL CLAIMS**

1. Plaintiff Richard Choi (MR. CHOI or Plaintiff)—individually, on behalf of all others similarly situated, and as an aggrieved former employee on behalf of himself and all other Aggrieved Employees, brought in the name of the People of the State of California and the Labor Commissioner, as well as the Labor and Workforce Development Agency (“LWDA”) or any of its departments, divisions, commissions, boards, agencies, or employees—alleges and complains based upon his own knowledge and acts—unless specifically stated based on information and belief—the following against Defendant The Claremont Colleges, Inc. (TCC), formerly known as Claremont University Consortium (CUC), and also known as The Claremont Colleges Services (TCCS), hereinafter collectively referred to as CLAREMONT, as well as against DOE Defendants 1-10 (DOES), all of whom are hereinafter collectively referred to as DEFENDANTS:

INTRODUCTION

2. This action arises out of DEFENDANTS’ numerous violations of California’s Civil, Labor and Business and Professions Codes, including but not limited to the following: (1) CLAREMONT failed to pay former and current employees all of the wages owed to them due to CLAREMONT (a) improperly classifying employees with the job title Sergeant as non-exempt employees because these employees do not meet the duty test(s) for any exemption and also, on information and belief, may not meet the salary test for exemption; (b) inaccurately and incompletely accounting and paying for all of the time non-exempt employees worked, including non-exempt employees who were/are Campus Safety Officers,

1 Corporals and misclassified Sergeants who worked off-the-clock donning and doffing CLAREMONT-
2 required uniforms and protective gear per CLAREMONT's Campus Safety Department's uniform
3 policy, procedure, and/or practice requiring Campus Safety Officers, Corporals, and Sergeants to dress
4 on work premises and to be fully dressed prior to clocking in, as well as clocking-out prior to undressing
5 and leaving required equipment, including but not limited to a ballistic vest, in CLAREMONT lockers;
6 and (c) on information and belief, because CLAREMONT utilized/s a corporation-wide unlawful
7 rounding system for all of its employees CLAREMONT classified as non-exempt or misclassified as
8 exempt; (2) CLAREMONT failed to pay applicable Campus Safety employees with all premium pay
9 due to them when these employees did not have a legitimate opportunity to take compliant meal,
10 recovery, and/or rest breaks because—due to CLAREMONT's Campus Safety Department's uniform
11 policy, procedure and/or practice—these employees' meal, recovery, and/or rest break(s) were
12 interrupted, missed, on-call or untimely due to, for example, being on-call through a radio on their
13 persons that had to be kept turned on and monitored, and to which CLAREMONT expected these
14 employees to respond to during their shift regardless of whether the employee was on a meal, recovery,
15 and/or rest break (this was/is the case for CLAREMONT's Campus Safety Officers, Corporals,
16 Sergeants, and possibly Dispatchers); (3) CLAREMONT failed to provide current and former
17 employees with Labor Code § 226 compliant accurate itemized wage statements causing them injury,
18 including but not limited to on a corporation-wide basis failing to list The Claremont Colleges, Inc.
19 (TCC) and formerly CUC as the name of the legal entity that is the employer. Instead, CLAREMONT
20 listed on its itemized wage statements TCCS as the employer even though TCCS is not a legal entity,
21 not even a registered fictitious business name, but rather TCCS is an internal department within TCC;
22 (4) CLAREMONT willfully failed to timely pay all wages when due and also failed to pay separated
23 employees waiting time penalties; (5) CLAREMONT failed to reimburse CLAREMONT's Campus
24 Safety Department employees for all necessary business expenses; and (6) due to these violations,
25 CLAREMONT engaged in unfair business practices and failed to fairly compete under California's
26 Business and Professions Code.

3. Also, on information and belief, since 2002 to present, CLAREMONT has defrauded and
deceived its employees, especially its Campus Safety employees out of various compensation, including
but not limited to minimum, contractual/regular, overtime, and possibly double time wages; premium
pay; and benefits including but not limited to vacation pay that should have accrued. Given
CLAREMONT's failure to pay all contractual wages, CLAREMONT also breached each of its contracts
with applicable employees, specifically the implied covenant of good faith and fair dealing.

CLAREMONT should be enjoined from violating California's Business and Professions Code, Civil Code, Industrial Wage Order 4-2001, and applicable Labor Code sections.

4. Given the numerous violations of California's applicable statutes, regulations, and/or orders alleged within this operative complaint, CLAREMONT is liable for unpaid minimum, contractual/regular, overtime, and possibly double time wages; premium pay; benefits and vacation pay that should have accrued; liquidated damages; unreimbursed necessary business expenses; statutory damages including but not limited to waiting time penalties; restitution; attorney(s)' fees; costs of suit; interest; and tax neutralization.

JURISDICTION & VENUE

5. Pursuant to California Code of Civil Procedure (CCP) § 395(a), the superior court in the county where the defendants or some of them reside at the commencement of the action is the proper court for the trial of the action.

6. At the commencement of and at all relevant dates relating to this action, CLAREMONT conducted/s business in the city of Claremont located in Los Angeles County, California.

7. DOE Defendants are owners, directors, officers, and/or other managing agents who worked or currently work for CLAREMONT that meet the required causal connection between their conduct and violations of Industrial Wage Order 4-2001 and/or Labor Code sections enumerated in §558, § 558.1 and/or § 1197.1. On information and belief, DOE Defendants are situated or reside within Los Angeles County, California.

8. There is no federal question at issue as the claims herein are based solely on California law.

9. Also, there is no diversity of citizenship amongst the Parties because DEFENDANTS are either incorporated or reside in California.

10. Thus, jurisdiction and venue are proper in Superior Court of California, County of Los Angeles.

PARTIES

11. ***Plaintiff, MR. CHOI***, worked from February 2004 to March 2022 as a non-exempt Campus Safety Officer employee for CLAREMONT, including prior to and pursuant to CLAREMONT'S unlawful alternative work schedule instituted September 2020. Thus, MR. CHOI worked within the applicable statute of limitations for each cause of action, i.e. at least sometime within the past three years under California's Labor Code, four years for California's Business and Professions Code, and within the time frames CLAREMONT deceived and defrauded MR. CHOI and affected CLAREMONT employees. Though MR. CHOI attempted to be promoted from Campus Safety Officer, he was not promoted. MR. CHOI, at all relevant times, was and still is a California resident.

1 12. MR. CHOI seeks, on a class and representative action basis, to recover his, similarly situate TCC
2 employees', and PAGA Aggrieved Employees' minimum, contractual/regular, overtime, and possibly
3 double time wages; premium pay and vacation pay that should have accrued; liquidated damages;
4 waiting time penalties; treble damages; reimbursement; restitution; other statutory damages, punitive
5 damages; costs of suit; attorney(s)'s fees; pre and post judgment interest; and tax neutralization to which
6 MR. CHOI, the Class as defined below, and PAGA Aggrieved Employees are entitled to recover under
7 California law. MR. CHOI also seeks to enjoin CLAREMONT, as may be necessary, to prevent
8 CLAREMONT'S use or employment of any practice which constitutes unfair business practices and/or
9 unfair competition in California.

10 13. With respect to class action claims, MR. CHOI is a member of the class who shares with class
11 members common legal rights and injuries caused by CLAREMONT's unlawful uniform policies,
12 procedures, and/or practices created, implemented, and/or maintained by CLAREMONT, its Human
13 Resources Department, its Campus Safety Department, and/or CLAREMONT upper-level leadership
14 such as its CEO Stig Lanesskog, former TCCS Director Stan Skipworth, and/or Captain Ernie Didier.

15 14. MR. CHOI seeks to be the class representative for the Class including for the following
16 subclasses defined within this operative complaint: (1) Non-Exempt Employees Wages, Liquidated
17 Damages, and Treble Damages Class; (2) Premium Pay Class; (3) Wage Statement Class; (4) Former
18 Employees Class; (5) Reimbursement-Owed Class; (6) Restitution Class; (7) Defrauded Class; and
19 (8) Deceived Class (collectively the "Class"). MR. CHOI has the requisite standing to represent this
20 group of individual employees, all of whom have causes of action similar to his own against
21 DEFENDANTS, especially against CLAREMONT.

22 15. Class members, including MR. CHOI, performed work in Los Angeles County, and
23 DEFENDANTS' legal obligations to class members under California law arose and were violated in the
24 County of Los Angeles. The members of the Class are identifiable, similarly situated persons who
25 presently work or formerly worked for CLAREMONT either as non-exempt employees or employees
26 misclassified as exempt, including but not necessarily limited to Campus Safety Officers, Campus
Safety Corporals, Campus Safety Sergeants, and possibly Dispatchers. The Class may include all
employees CLAREMONT subjected to its corporate-wide unlawful rounding policy, procedure, and/or
practice. The Class also includes all CLAREMONT employees who CLARMONT failed to provide
Labor Code § 226 complaint wage statements, including because TCCS, a non-legal entity, is listed as
the employer.

16. CLAREMONT's legal obligations to the class of employees, including himself that MR. CHOI

1 seeks to represent. arose under California law and were violated in Los Angeles County where MR.
2 CHOI and the Class performed work for CLAREMONT.

3 17. **Defendant The Claremont Colleges, Inc. (“CLAREMONT” and/or “TCC”)**, formerly
4 known as (f.k.a.) Claremont University Consortium (CUC) and also known as (a.k.a.) the unregistered
5 fictitious business name The Claremont Colleges Services (TCCS), is hereinafter collectively referred to
6 as CLAREMONT. According to its Articles of Incorporation filed with California’s Secretary of State,
7 CLAREMONT is a nonprofit public benefit corporation doing business in the State of California with its
8 principal business office located at 101 South Mills Avenue, Claremont, CA 91711. The legal entity of
9 TCC was effective January 1, 2018. Prior to this date TCC was known as Claremont University
10 Consortium (CUC). TCC’s specific and sole purpose is to support the activities of the group known as
11 The Claremont Colleges, presently consisting of five undergraduate colleges— Claremont McKenna
12 College, Harvey Mudd College, Pitzer College, Pomona College, and Scripps College--and two graduate
institutions, Claremont Graduate University and Keck Graduate Institute of Applied Life Sciences. TCC
is the currently existing legal entity that is the employer in this case.

13 18. **DOE Defendants** are any owners, directors, officers, and/or managing agents of CLAREMONT.
DOE Defendants are liable under Labor Code §§ 558, 558.1 and/or 1197.1.

14 19. Pursuant to Labor Code § 558(a), “Any employer or other person acting on behalf of an
15 employer who violates, or causes to be violated, a section of this chapter or any provision regulating
16 hours and days of work in any order of the Industrial Welfare Commission” may be held liable.

17 20. Pursuant to Labor Code § 558.1—effective January 1, 2016—DOE Defendants are “(a) [a]ny
18 employer or person acting on behalf of [CLAREMONT], who violates, or causes to be violated, any
19 provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare
20 Commission, or violates, or causes to be violated, Labor Code §§ 203, 226, 226.7, 1193.6, 1194, or
2802, [who] may be held liable as the employer for such violation.

21 21. Under 558.1(b), “[f]or purposes of this section, the term “other person acting on behalf of the
22 employer is limited to a natural person who is an owner, director, officer, or managing agent of the
23 employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of
the Civil Code.”

24 22. DOE Defendants also meet the requisite casual connection element of Labor Code § 1197.1.
25 Pursuant to § 1197.1(a), “Any employer or other person acting either individually or as an officer, agent,
26 or employee of another person, who pays or causes to be paid to any employee a wage less than the
minimum fixed by an applicable state or local law, or by an order of the commission, shall be subject to

1 a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable
2 penalties imposed pursuant to Section 203...”.

3 23. The true names and capacities, whether individual, corporate, subsidiary, partnership, associate
4 or otherwise of Defendant(s) DOES 1 through 10, inclusive, are presently unknown by MR. CHOI who
5 therefore sues these Defendants by such fictitious names pursuant to CCP § 474. MR. CHOI will seek
6 leave to amend this operative Complaint to allege the true names and capacities of DOE Defendants
if/when they are ascertained/confirmed through discovery.

7 24. MR. CHOI is informed and believes, and based upon such information and belief, alleges
8 DEFENDANTS are responsible in some manner for one or more of the occurrences that proximately
9 caused, and therefore are liable for, the injuries and damages alleged within this operative complaint
MR. CHOI, other putative CLASS members, and PAGA Aggrieved Employees suffered.

10 **VICARIOUS LIABILITY**

11 25. MR. CHOI incorporates by reference all of the allegations in the paragraphs above as though
12 fully set forth herein.

13 26. Vicarious liability is a form of a strict, secondary liability that arises under the common law
14 doctrine of agency, respondeat superior, the responsibility of the superior for the acts of their
15 subordinate or, in a broader sense, the responsibility of any third party that had the “right, ability or duty
to control” the activities of a violator.

16 27. CLAREMONT is vicariously liable for any DOE Defendant(s)’ actions, as well as the actions of
17 any of its other managing agents, co-conspirators, joint venturers, owners, directors, officers, members,
18 and/or employees of CLAREMONT, who acted within the course and scope of said agency, conspiracy,
19 joint venture, and/or employment, with the actual or constructive knowledge and/or consent of
20 CLAREMONT. MR. CHOI is informed and believes that each Defendant authorized and/or ratified the
21 wrongful activities of each of the remaining Defendants alleged within this operative Complaint.
22 CLAREMONT’S conduct was undertaken by its director(s), officer(s), managing agent(s) and other
23 persons responsible for supervision of employees and for the drafting and implementation of policies
24 and other managerial decisions. The conduct of the officers, managing agents, and other individuals was
25 on behalf of CLAREMONT. Further, CLAREMONT had advance knowledge of such conduct of said
26 individuals whose actions and conduct were authorized, approved, ratified, and/or actually or
constructively known by CLAREMONT’s director(s), officer(s), managing agent(s) and other persons
responsible for supervision of employees and for the drafting and implementation of policies and other
managerial decisions.

LABOR CODE § 211 DEMAND

28. MR. CHOI incorporates by reference all of the allegations in the paragraphs above as though fully set forth herein.

29. In an email titled “Question regarding don/doff time for new ballistic vests” dated April 3, 2017 to Crystal DeMatteo Rosetti, who held the title of CLAREMONT’s HR Business Partner at the time, as thus had the authority to communicate with CHOI on CLAREMONT’s behalf, CHOI mentions, “...since I am required to don and doff my ballistic vest on site, due to the requirements of the employer, this appears to be time for which Campus Safety Officers are eligible for compensation. ...”, which may be construed as MR. CHOI’s 2017 demand of CLAREMONT to pay for donning and doffing.

30. MR. CHOI reiterated his demand for wages, on behalf of himself and all others similarly situated, in his initial Complaint that CLAREMONT pay the highest calculatable penalties under § 210, as well as DEFENDANTS pay all wages due yet unpaid to MR. CHOI and the putative class, including under Labor Code § 204 and/or § 1197.5.

CLASS DEFINITION(S)

31. MR. CHOI incorporates by reference all of the allegations in the paragraphs above as though fully set forth herein. Pursuant to California’s Code of Civil Procedure (CCP) § 382, MR. CHOI brings class action claims on behalf of himself and on behalf of all other similarly situated persons who worked for CLAREMONT. The members of the California-Only Putative Class belong to the (a) Non-Exempt Employees Wages, Liquidated Damages, and/or Treble Damages Class; (b) Premium Pay Class; (c) Wage Statement Class; (d) Former Employees Class; (e) Reimbursement-Owed Class; (f) Restitution Class; (g) Defrauded Class; and (h) Deceived Class (collectively the “Class”) defined as follows:

(a) **Non-Exempt Employees Wages, Liquidated Damages, and/or Treble Damages Class:** All persons who, at any time since the date three years before the filing of the initial complaint until the future disposition of this case (class period), worked for CLAREMONT in California as a non-exempt employee including but not limited to Campus Safety Officers and Corporals, as well as employees whom CLAREMONT misclassified as salaried exempt, including but not limited to Sergeants and

(i) who were not compensated for time worked including but not limited to donning and doffing work uniforms and/or gear CLAREMONT required employees to don and doff on CLAREMONT premises; and/or

(ii) employees who may have been subject to CLAREMONT’s unlawful rounding policy, practice and procedure, including but not limited to Campus Safety Officers, Corporals, Dispatchers, and/or Sergeants.

- 1
- 2 (iii) the Non-Exempt Employees Wages, Liquidated Damages, and/or Treble
- 3 Damages Class includes but is not limited to employees who worked over
- 4 eight hours in a workday or over forty hours in a workweek prior to the
- 5 date CLAREMONT implemented the results from its August 14, 2020
- 6 alternative workweek election pursuant to Labor Code § 511, as well as
- 7 affected employees in the Campus Safety Department who work/ed over
- 8 10 hours in a workday or over 40 hours in a workweek after
- 9 CLAREMONT implemented an unlawful alternative workweek schedule
- 10 consisting of four days, ten hours per day;
- 11
- 12 (iv) employees paid wage rates less than the rates paid to employees of the opposite
- 13 sex for substantially similar work, when viewed as a composite of skill, effort,
- 14 and responsibility, and performed under similar working conditions;
- 15
- 16 (v) employees paid wage rates less than the rates paid to employees of another race or
- 17 ethnicity for substantially similar work, when viewed as a composite of skill,
- 18 effort, and responsibility, and performed under similar working conditions;
- 19
- 20 (vi) employees owed vacation pay that should have accrued; and/or
- 21
- 22 (vii) employees who are owed liquidated damages for CLAREMONT's failure
- 23 to pay minimum wages, and/or are owed treble damages for
- 24 CLAREMONT's unfair practices of failing to pay minimum wages.
- 25
- 26

(b) **Premium Pay Class:** All persons who, at any time since the date three years before the filing of the initial complaint until the future disposition of this case (class period), worked for CLAREMONT in California as a non-exempt employee or CLAREMONT misclassified as salaried exempt, and who did not have a legitimate opportunity to take Labor Code compliant meal, recovery and/or rest breaks because their meal, recovery, and/or rest break(s) were interrupted, missed, on-call, or untimely for any reason that was not their own fault such as CLAREMONT's requirement that employees monitor a radio on their persons at all working times, for example as such was the case with Campus Safety Officers, Corporals, Sergeants and Dispatchers;

(c) **Wage Statement Class:** All persons who, at any time since the date three years before the filing of the complaint until the future disposition of this case (class period), worked for CLAREMONT in California as a non-exempt employee or whom CLAREMONT misclassified as salaried exempt, and whose itemized wage statements are inaccurate and caused injury to such employee(s) including but not limited to CLAREMONT failing to accurately detail all of the gross wages earned by employees, CLAREMONT failing to accurately detail the total hours worked by employees due to unaccounted for off-the-clock work and/or an unlawful rounding policy/procedure/practice, and/or for CLAREMONT failing to provide the actual name of the legal entity that is the employer;

(d) **Former Employees Class:** All persons who worked for CLAREMONT in California as a non-exempt employee or whom CLAREMONT misclassified as salaried exempt, and

1 whose employment with CLAREMONT ended at any time three years before the filing
2 of the initial complaint for this action until the future disposition of this case (class
3 period), and to whom CLAREMONT willfully failed to pay all wages earned upon
employment separation;

4 (e) **Reimbursement-Owed Class:** All persons who worked for CLAREMONT in
5 California as an employee, and whose employment with CLAREMONT ended at any
6 time since the date three years before the filing of the initial complaint until the future
7 disposition of this case (class period), and CLAREMONT failed to indemnify for all
8 necessary expenditures or losses incurred by these employees in direct consequence of
9 the discharge of their duties, or of their obedience to the directions of CLAREMONT.
This includes but is not necessarily limited to reimbursement for the following: the pro
rata use of employees' cellphones including but not limited to taking evidentiary pictures and
conducting work-related calls; work-related black shoes/boots required by CLAREMONT as
part of their uniform, and shoe polish;

10 (f) **Restitution Class:** All persons who, at any time since the date four years before the filing
11 of the initial complaint, plus Emergency Rule 9 tolling, for this action until the future
12 disposition of this case (class period), worked for CLAREMONT in California as a
13 non-exempt employee or whom CLAREMONT misclassified as salaried exempt, and is
owed restitution for CLAREMONT's unfair competition due to CLAREMONT's
numerous violations of California's Labor Code;

14 (g) **Defrauded Class:** All persons who, at any time since 2002 until the future disposition of
15 this case (class period), worked for CLAREMONT in California as a non-exempt
16 employee or whom CLAREMONT misclassified as salaried exempt, and is owed any
17 form of compensation and/or wages stolen by CLAREMONT as a result of
CLAREMONT's fraud perpetrated upon applicable CLAREMONT employees in
violation of California's Civil Code § 1572 and/or § 1573;

18 (h) **Deceived Class:** All persons who, at any time since 2002 until the future disposition of this
19 case (class period), worked for CLAREMONT in California as a non-exempt employee
20 or whom CLAREMONT misclassified as salaried exempt, and is owed any form of
21 compensation and/or wages stolen by CLAREMONT as a result of CLAREMONT's
deceit perpetrated upon applicable CLAREMONT employees in violation of
California's Civil Code §§ 1708, 1709, 1710, and/or 1711;

22 **CLASS ALLEGATIONS**

23 32. MR. CHOI incorporates by reference all of the allegations in the paragraphs above as though
24 fully set forth herein. The requirements for class certification are met in this case as follows:

25 33. CLAREMONT failed to pay MR. CHOI and the Non-Exempt Employees Wages, Liquidated
26 Damages, and/or Treble Damages Class all minimum, contractual/regular, overtime, and possibly
double time wages these employees earned for the time CLAREMONT's policy/ies, procedure(s),
and/or practice(s) required them to don and doff their respective uniforms upon work premises during

1 MR. CHOI'S entire duration of employment with CLAREMONT until such time CLAREMONT
2 ceases such unlawful uniform policy/ies, procedure(s), and/or practice(s) that result in unpaid but earned
3 off-the-clock work. CLAREMONT may have also engaged/s in unlawful rounding practices, resulting
4 in CLAREMONT not only failing to compensate MR. CHOI for all the time he worked for
5 CLAREMONT, but also failing to compensate all non-exempt CLAREMONT employees for all the
6 time they worked. Additionally, CLAREMONT owes these employees liquidated damages and treble
7 damages for failing to pay them minimum wages in violation of California's Labor Code and Unfair
8 Practices Act.

9 34. As a result of CLAREMONT's failure to pay its non-exempt employees all wages they earned,
10 CLAREMONT also uniformly failed to provide MR. CHOI and other Wage Statement Class members
11 with accurate and complete wage statements as required by Labor Code § 226. Furthermore,
12 CLAREMONT's wage statements for all its employees, both exempt and non-exempt, uniformly
13 failed to list TCC fka CUC and instead list TCCS as the Wage Statement Class members' employer.

14 35. Also, CLAREMONT owes MR. CHOI and other Premium Pay Class members premium pay
15 because they did not have a legitimate opportunity to take Labor Code compliant meal, recovery, and/or
16 rest breaks, including but not limited to because these CLAREMONT employees' meal, recovery,
17 and/or rest breaks were on-call due to these Class member's adherence to CLAREMONT's uniform
18 policy, procedure and/or practice mandating Campus Safety personnel—including but not necessarily
19 limited to Campus Safety Officers, Corporals, Sergeants, and Dispatchers—keep their respective radio
20 on during the entire duration of a scheduled shift and respond to any and all radio notices no matter what
21 during the entire shift(s) these employees worked.

22 36. Additionally, CLAREMONT uniformly failed to pay former employees, including MR. CHOI,
23 all the wages owed to them upon separation of employment as required by Labor Code § 201 and/or §
24 202. As a result, CLAREMONT is liable to the Former Employees Class members, including MR.
25 CHOI, for waiting time penalties pursuant to Labor Code § 203 for CLAREMONT's willful failure to
26 pay former employees all the wages owed to them upon separation of employment.

37. CLAREMONT also failed to indemnify the Reimbursement-Owed Class, including MR. CHOI,
for all necessary expenditures or losses incurred by these employees in direct consequence of the
discharge of their duties, or of their obedience to the directions of CLAREMONT under Labor
Code § 2802, including but not limited to reimbursement for the following: the pro rata use of
employees' cellphones including but not limited to taking evidentiary pictures and conducting work-
related calls; work-related black shoes/boots required by CLAREMONT as part of their uniform, and

1 shoe polish.

2 38. Furthermore, due to CLAREMONT's numerous violations of California's Labor Code,
3 CLAREMONT unfairly competed by gaining an unfair advantage over CLAREMONT's competition.
4 Therefore, TCC is liable to the Restitution Class for its unfair competition. CLAREMONT also had
5 unfair business practices in failing to pay minimum wage for all the time MR. CHOI and the putative
6 class worked.

7 39. Lastly, CLAREMONT defrauded and/or deceived the Defrauded and/or Deceived Class(es),
8 which includes MR. CHOI, as explained towards the last few pages of this Complaint. This resulted in
9 wage theft by CLAREMONT as a result of CLAREMONT's fraud perpetrated upon applicable
10 CLAREMONT employees in violation of California's Civil Code § 1572 and/or § 1573, and/or
11 as a result of CLAREMONT's deceit perpetrated upon applicable CLAREMONT employees
12 in violation of California's Civil Code §§ 1708, 1709, 1710, and/or 1711;

13 40. **Numerosity:** The class members are so numerous that the individual joinder of all
14 them as named/described by MR. CHOI is impracticable. While the exact number of all CLASS
15 members is unknown to MR. CHOI at this time, MR. CHOI is informed and believes and thereon
16 alleges that there are not less than 50 members in each of the following subclasses: (a) Non-Exempt
17 Employees Wages, Liquidated Damages, and/or Treble Damages Class; (b) Premium Pay Class; (c)
18 Wage Statement Class; (d) Former Employees Class; (e) Reimbursement-Owed Class; (f) Restitution
19 Class; (g) Defrauded Class; and (h) Deceived Class (collectively the "Class"). According to TCCS's
20 (a.k.a. TCC's) website, "Stig Lanesskog, the Chief Executive Officer of TCCS oversees a staff of over
21 400 that provides...services that integrate fully with the missions of the institutions served by TCCS."
22 Therefore, it is possible the Class may be comprised of hundreds of members, and so likely is due to
23 TCC's fka CUC's violation of Labor Code § 226 in listing TCCS instead of TCC and/or CUC as the
24 employer. Similarly, TCC's public I.R.S. Form 990 filings demonstrate the Class consists of hundreds of
25 employees.

26 41. **Community of Interests:** This action has been brought and may be maintained as a class action
pursuant to CCP § 382 because there is a well-defined community of interests among many
persons who comprise a readily ascertainable class. Per *Vasquez v. Superior Court* (1971) 4 Cal.3d
800 at 809, the right of each employee to recover is not based on a separate set of facts applicable only
to him/her. "The requirement of a community of interest does not depend upon an identical recovery,
and the fact that each member of the class must prove his separate claim to a portion of any recovery by
the class is only one factor to be considered in determining whether a class action is proper." *Id.* "The

1 “community of interest” requirement embodies three factors: (1) predominant common questions of law
2 or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives
3 who can adequately represent the class.” *Sav-On Drugs Stores, Inc. v. Superior Court* (2004) 34 Cal.4th
4 319, 326. Courts may also consider whether the class action procedure is “superior” to litigating claims
individually.

5 **42. Commonality:** Common questions of law and fact exist as to the members of the Class and
6 predominate over any questions that affect only individual members of the Class. Though “[i]ndividual
7 issues do not render class certification inappropriate so long as such issues may effectively be
8 managed.” *Id.* at p. 33. These common questions of law and fact include, but are not limited to: (i) Did
9 CLAREMONT fail to pay earned wages to Class members by requiring them to don CLAREMONT-
10 required uniforms off-the-clock at CLAREMONT’s work premises prior to clocking in for their
11 scheduled work shift? (ii) Did CLAREMONT fail to pay earned wages to Class members by requiring
12 them to doff CLAREMONT-required uniforms off-the-clock at CLAREMONT’s work premises after
13 clocking out upon finishing their scheduled work shift? (iii) Did CLAREMONT utilize a time rounding
14 system that led to CLAREMONT violating California’s wage and hour laws that resulted in
15 CLAREMONT’s failure to pay Class members all wages owed for all hours worked? (iv) During meal
16 and/or rest periods, were Class members on call due to CLAREMONT’s uniform policy, procedure,
17 and/or practice requiring them to carry and monitor a communication device, e.g. radio, and thus
18 CLAREMONT owes Class members premium pay for interrupted, late, and/or missed meal and rest
19 periods? (v) Are the wage statements of Class members inaccurate and did such inaccuracy cause Class
20 members injury, including but not limited to listing TCCS instead of the lawful employer TCC/CUC, in
21 violation of Labor Code § 226? (vi) Did CLAREMONT willfully fail to pay Class members who no
22 longer work for CLAREMONT all the wages they earned upon separation of employment, and if so are
23 these Class members entitled to waiting time penalties pursuant to Labor Code § 203? (vii) Did
24 CLAREMONT fail to indemnify Class members for all necessary business expenses, and thus owes
25 reimbursement with interest to Class members? (viii) Are Class members owed restitution due to
26 CLAREMONT’s unfair competition resulting from CLAREMONT’s numerous violations of
California’s Labor Code. Even though all Class members may not have suffered a violation of the same
laws, essentially the Class members have suffered the same injury. The Class members claims depend
upon a common contention that is of such a nature that it is capable of class wide resolution, which
means that determination of its truth or falsity will resolve the issues that are central to the validity of
each one of the claims in one stroke.

1
2 43. **Typicality:** MR. CHOI is a member of the (a) Non-Exempt Employees Wages, Liquidated
3 Damages, and/or Treble Damages Class; (b) Premium Pay Class; (c) Wage Statement Class; (d) Former
4 Employees Class; (e) Reimbursement-Owed Class; (f) Restitution Class; (g) Defrauded Class; and (h)
5 Deceived Class (collectively the “Class”). The claims of MR. CHOI are typical of the claims of the
6 other class members who MR. CHOI seeks to represent. MR. CHOI was formerly employed by
7 CLAREMONT as a Camps Safety Officer and was subjected to the same unlawful practices as other
8 former and current CLAREMONT employees. MR. CHOI and other members of the Class suffered the
9 same injuries and seek the same relief.

10 44. **Adequacy:** MR. CHOI will adequately and fairly protect the interests of the Class. MR.
11 CHOI has no interest adverse to the interests of absent class members, and MR. CHOI is represented by
12 attorney(s) with adequate experience in civil litigation and employment law.

13 45. **Manageability:** A class action is superior to other available means (if any) for fair and efficient
14 adjudication of the claims of the Class and would be beneficial for the Parties and the Court. Class
15 action treatment will allow a large number of similarly situated persons, in this case at least 50 to over
16 400 persons, to prosecute their common claims in a single forum simultaneously, efficiently, and
17 without the unnecessary duplication of effort and expense that numerous individual actions would
18 require. The monetary amounts due to many individual Class members are likely to be relatively small
19 compared to the whole, and the burden and expense of litigation would make it difficult or impossible
20 for Class members to seek and obtain relief through individual lawsuits. A class action will serve an
21 important public interest by providing Class members an effective mechanism for redress of violation of
22 their statutory rights. MR. CHOI is presently unaware of any difficulties that are likely to be
23 encountered in the management of this action that would preclude its maintenance as a class action but
24 reserves the right to modify his allegations and/or the class definitions based on further investigation,
25 discovery and/or legal developments. This operative complaint is meant to establish by a preponderance
26 of the evidence that common issues predominate, thus a class action is superior to alternate means for a
fair and efficient adjudication of the litigation.

CAUSES OF ACTION

FIRST CAUSE OF ACTION AGAINST ONLY CLAREMONT

Lab. Code § 201 Violation

(Former Employees Class)

46. MR. CHOI incorporates the above as if fully alleged herein, and pleads the following on behalf

of applicable members of the Former Employees Class against ONLY CLAREMONT:

47. Labor Code § 201(a) reads in relevant part “If an employer discharges an employee, the wages^[1] earned and unpaid at the time of discharge are due and payable immediately.”

48. MR. CHOI knows CLAREMONT discharged members of the Former Employees Class. When CLAREMONT discharged relevant Former Employees Class members, CLAREMONT failed to pay the respective wages they earned but remained unpaid at the time of discharge which became due and payable immediately upon separation of employment.

49. However, CLAREMONT failed to immediately pay relevant discharged Former Employees Class members all earned and unpaid wages at the time of discharge, including but not necessarily limited to minimum, regular, overtime, double time wages, and/or vacation pay that should have accrued, due to these relevant Former Employees Class members (a) working off-the-clock every workday to don and doff their CLAREMONT-required work uniforms on CLAREMONT’s premises or at their respective homes, protective gear such as a ballistic vest, and other work-related equipment. “The relevant statutes and wage order do not allow employers to require employees to routinely work for minutes off the clock without compensation.” *Troester v. Starbucks Corp.* (2018) 5 Cal.5th 829, 848.

50. On information and belief, CLAREMONT also failed to pay reporting time pay to the relevant members of the Former Employees Class who CLAREMONT discharged. Reporting time pay constitutes wages. See *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal. 4th 1094. Thus, failure to pay all reporting time pay due at the time of employment termination is a basis for waiting time penalties pursuant to Labor Code § 203.

51. Also, CLAREMONT failed to immediately pay relevant discharged Former Employees Class members all earned and unpaid premium pay due to these employees being on-call through having to monitor radios during rest and meal breaks because these members of the Former Employees Class did not have a legitimate opportunity to take meal/rest breaks, took such untimely, and/or such meal/rest breaks were interrupted, especially Former Employees Class members who were/are Campus Safety Officers, Corporals, Sergeants, and/or Dispatchers expected to keep their radios powered on with audible volume, monitor their radios, and also respond to radio notices regardless of whether they were on a rest or meal break. Furthermore, at times relevant to this action, CLAREMONT’s written policies

¹ According to Labor Code §200(a) “‘Wages’ includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation. Under § 200(b) “Labor” includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

1 did not authorize off-duty rest breaks for Campus Safety Officers, Corporals, Sergeants, and/or
2 Dispatchers. “[T]he remedy provided in Labor Code section 226.7 constitutes a wage or premium pay
3 and is governed by a three-year statute of limitations...”. See *Murphy v. Kenneth Cole Productions, Inc.*
4 (2007) 40 Cal. 4th 1094.

5 52. Also, any CLAREMONT policy, procedure, and/or practice (if any) of utilizing an uneven/
6 unlawful rounding system resulted in, over a period of time, CLAREMONT’s failure to compensate
7 Class members properly for all the time they actually worked. A rounding policy is not “consistent with
8 the core statutory and regulatory purpose that employees be paid for all time worked...In light of the
9 wage order’s remedial purpose requiring a liberal construction, its directive to compensate employees
10 for all time worked, the evident priority it accorded that mandate notwithstanding customary
11 employment arrangements, and its concern with small amounts of time, the de minimis doctrine has no
12 application under the circumstances presented here.” *Troester v. Starbucks Corp.* at 847. CLAREMONT
13 is an employer that requires its employees to work minutes off the clock on a regular basis or as a
14 regular feature of the job. CLAREMONT may not evade the obligation to compensate its employees for
15 that time by invoking the de minimis doctrine. “[A] few extra minutes of work each day can add up.”
16 *Id.* Thus, CLAREMONT’s rounding policy resulted in CLAREMONT not complying with Labor Code
17 § 201 because CLAREMONT failed to compensate former CLAREMONT employees who are members
18 of the Non-Exempt Employees Wages, Liquidate Damages, and/or Treble Damages Class for the
19 minutes of work each day that added up due to CLAREMONT’s potential rounding system.

20 53. Thus, CLAREMONT failed to immediately pay, upon separation of employment, all wages
21 earned by members of the Former Employees Class who CLAREMONT discharged. Consequently,
22 CLAREMONT violated Labor Code § 201.

23 54. Furthermore, CLAREMONT and other defendant(s) are liable for statutory waiting time
24 penalties to the Former Employees Class under § 203 (*supra*).

25 **SECOND CAUSE OF ACTION AGAINST CLAREMONT**

26 **Lab. Code § 202 Violation**

(Former Employees Class)

55. MR. CHOI incorporates the above paragraphs as if fully alleged herein, and pleads the following
on behalf of the Former Employees Class against only CLAREMONT:

56. Under Labor Code § 202(a) “If an employee not having a written contract for a definite period
quits his or her employment, his or her wages shall become due and payable not later than 72 hours

1 thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in
2 which case the employee is entitled to his or her wages at the time of quitting...”

3 57. MR. CHOI knows that CLAREMONT did not timely pay Former Employees Class members
4 who quit all of their earned and unpaid wages in compliance with Labor Code § 202(a), including but
5 not necessarily limited to minimum, regular, overtime, double time wages, and/or vacation pay that
6 should have accrued, due to these relevant Former Employees Class members (a) working off-the-clock
7 every workday to don and doff their CLAREMONT-required work uniforms on CLAREMONT’s
8 premises or at their respective homes, protective gear such as a ballistic vest that later CLAREMONT
9 allowed them to take home, and other work-related equipment. “The relevant statutes and wage order do
10 not allow employers to require employees to routinely work for minutes off the clock without
11 compensation.” *Troester v. Starbucks Corp.* (2018) 5 Cal.5th 829, 848.

12 58. Also, CLAREMONT failed to comply with Labor Code § 202(a) because CLAREMONT failed
13 to pay relevant Former Employees Class members all earned and unpaid premium pay due to these
14 employees being on-call during rest and meal breaks because these Former Employees Class members
15 did not have a legitimate opportunity to take meal/rest breaks, took such untimely, and/or such meal/rest
16 breaks were interrupted, especially Former Employees Class members who were/are Campus Safety
17 Officers, Corporals, Sergeants, and/or Dispatchers expected to keep their radios powered on with
18 audible volume, monitor the radios, and also respond to radio notices regardless of whether they were on
19 a rest or meal break. Furthermore, at times relevant to this action, CLAREMONT’s written policies did
20 not authorize off-duty rest breaks for Campus Safety Officers, Corporals, Sergeants, and/or Dispatchers.
21 “[T]he remedy provided in Labor Code section 226.7 constitutes a wage or premium pay and is
22 governed by a three-year statute of limitations...”. See *Murphy v. Kenneth Cole Productions, Inc.* (2007)
23 40 Cal. 4th 1094.

24 59. Also, CLAREMONT’s potential policy, procedure, and/or practice of utilizing an
25 uneven/unlawful rounding system resulted in, over a period of time, DEFENDANTS’ failure to
26 compensate Class members properly for all the time they actually worked. A rounding policy is not
“consistent with the core statutory and regulatory purpose that employees be paid for all time worked...”
In light of the wage order’s remedial purpose requiring a liberal construction, its directive to compensate
employees for all time worked, the evident priority it accorded that mandate notwithstanding customary
employment arrangements, and its concern with small amounts of time, the de minimis doctrine has no
application under the circumstances presented here.” *Troester* at 847. CLAREMONT is an employer
that requires its employees to work minutes off the clock on a regular basis or as a regular feature of the

1 job. CLAREMONT may not evade the obligation to compensate its employees for that time by invoking
2 the de minimis doctrine. "...[A] few extra minutes of work each day can add up." *Id.* Thus,
3 CLAREMONT's rounding policy resulted in CLAREMONT not complying with Labor Code § 202(a)
4 because CLAREMONT failed to compensate the Former Employees Class for the minutes of work each
day that added up due to CLAREMONT's rounding system.

5 60. Thus, CLAREMONT failed to pay members of the Former Employees Class who quit all earned
6 and unpaid wages in compliance with Labor Code § 202. Thus, CLAREMONT violated Labor Code §
7 202. Furthermore, CLAREMONT is/DEFENDANTS are liable for statutory waiting time penalties
8 to the Former Employees Class under § 203 (*supra*).

9 **THIRD CAUSE OF ACTION AGAINST ALL DEFENDANTS**

10 **Lab. Code § 203 Statutory Penalties**

11 **(Former Employees Class, Which Includes MR. CHOI)**

12 61. MR. CHOI incorporates the above paragraphs as if fully alleged herein, and pleads the following
13 on behalf of himself as a former CLAREMONT employee, and on behalf of the Former Employees
14 Class against DEFENDANTS pursuant to Labor Code § 203 and/or § 558.1(a) which holds liable any
employer or other person—who is an owner, director, officer, or managing agent of the employer—
acting on behalf of an employer, who violates, or causes to be violated, Labor Code § 203:

15 62. California's public policy favors the full and prompt payment of wages due an employee. To
16 ensure that employers comply with the laws governing the payment of wages when an employment
17 relationship ends, California's Legislature enacted Labor Code § 203 to provide for the assessment of a
18 statutory penalty against the employer when there is a willful failure to pay wages due the employee at
conclusion of the employment relationship.

19 63. Labor Code § 203(a) states in pertinent part, "If an employer willfully fails to pay, without
20 abatement or reduction, in accordance with sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages
21 of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty
22 from the due date thereof at the same rate until paid or until an action therefor is commenced; but the
wages shall not continue for more than 30 days."

23 64. According to Labor Code § 203(b), "Suit may be filed for these penalties at any time before the
24 expiration of the statute of limitations on an action for the wages from which the penalties arise, which
25 is three (3) years. All compensation is considered in determining if all wages due were paid as
26 prescribed by law, including the following wages/pay DEFENDANTS failed to pay MR. CHOI and the
Non-Exempt Employees Wages, Liquidated Damages, and/or Treble Damages Class (1) minimum,

1 regular, overtime, and/or possible double time wages due to working off-the-clock hours to don and doff
2 a required uniform, protective gear including ballistic vest, and other work-related equipment; (2) all
3 wages due to CLAREMONT's unlawful rounding system; (3) all accrued, but unused, vacation or
4 vacation that should have accrued but remained unused; (4) reporting time pay in violation of the
5 Industrial Wage Order applicable to CLAREMONT, and (5) failing to pay premium pay per Labor Code
§ 226.7.

6 65. MR. CHOI knows for himself, and believes in good faith for the Former Employees Class, that
7 DEFENDANTS willfully failed to timely pay them all of their earned wages upon separation of
8 employment because of the email he himself sent to Crystal Rosetti in 2017 notify CLAREMONT of its
unlawful failure to pay for donning and doffing that CLAREMONT never rectified.

9 66. "The settled meaning of "willful," as used in section 203, is that an employer has intentionally
10 failed or refused to perform an act which was required to be done. (*Barnhill v. Robert Saunders & Co.*
11 (1981) 125 Cal.App.3d 1, 7-8; *Davis v. Morris* (1940) 37 Cal.App.2d 269, 274) "[T]he employer's
12 refusal to pay need not be based on a deliberate evil purpose to defraud workmen of wages which the
13 employer knows to be due." (*Barnhill, supra*, 125 Cal.App.3d at p. 7; see *Davis v. Morris, supra*, 37
14 Cal.App.2d at p. 274.)" *Amaral v. Cintas Corp.* (2008) 163 Cal.App.4th 1157, 1201. "[T]o be at fault
15 within the meaning of [section 203], the employer's refusal to pay need not be based on a deliberate evil
16 purpose to defraud workmen of wages which the employer knows to be due. As used in section 203,
17 'willful' merely means that the employer intentionally failed or refused to perform an act which was
18 required to be done." *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 54. "In civil
19 cases the word 'willful' as ordinarily used in courts of law, does not necessarily imply anything
20 blameable, or any malice or wrong toward the other party, or perverseness or moral delinquency, but
21 merely that the thing done or omitted to be done, was done or omitted intentionally. It amounts to
nothing more than this: That the person knows what he is doing, intends to do what he is doing, and is a
free agent." *Nishiki v. Danko Meredith, P.C.* (2018) 25 Cal.App.5th 883, 891.

22 67. DEFENDANTS' utter disregard of MR. CHOI's 2017 email is sufficient evidence
23 DEFENDANTS willfully failed to pay, without abatement or reduction, in accordance with §§ 201 and
24 202 any wages of the Former Employees Class, of which MR. CHOI is a member because he no longer
works for CLAREMONT. To this date, DEFENDANTS have yet to order the payment of all of MR.
25 CHOI'S earned wages. MR. CHOI believes this be true for other Former Employees Class members.

26 68. Therefore MR. CHOI's wages continue as a penalty from the due date thereof at the same

1 rate until paid or until an action therefor is commenced; but the wages do not continue for more than 30
2 days. Thirty (30) days have lapsed since MR. CHOI's last day of work for CLAREMONT.

3 69. MR. CHOI may file suit "for these [statutory] penalties at any time before the expiration
4 of the statute of limitations on an action for the wages from which the penalties arise", i.e. three (3)
5 years. MR. CHOI filed is well within the 3-years statute of limitations.

6 70. In calculating the rate of pay for purposes of computing the penalty, overtime and double time
7 wages are considered if they were regularly scheduled or worked each week, as is/was the case for MR.
8 CHOI during his employment with CLAREMONT. The penalty is measured at the employee's daily
9 rate of pay and is calculated by multiplying the daily wage by the number of days that the employee was
10 not paid, up to a maximum of 30 days. The 30-day period is calendar days and includes weekends and
11 holidays and any other days that the employee would not normally work.

12 71. Thus, DEFENDANTS owe MR. CHOI a waiting time penalty based on his last hourly rate of
13 pay for regular hours worked plus his average overtime pay to calculate MR. CHOI's regular rate of
14 pay, a dollar figure which MR. CHOI will have the ability to calculate only through the discovery phase
15 of litigation.

16 72. With regard to waiting time penalties for the Former Employees Class which includes MR.
17 CHOI, according to page 5 of CLAREMONT's Campus Safety Training Manual on Grooming –
18 Uniform – Equipment, under Additional Guidelines pertaining to UNIFORM, "You [meaning Campus
19 Safety personnel] must be fully dressed and properly groomed **from the moment you clock in**",
20 including equipment. According to page 7 of CLAREMONT's Campus Safety Training Manual on
21 Grooming – Uniform –Equipment, under EQUIPMENT, "Campus Safety personnel are responsible for
22 the safekeeping and security of all department-issued equipment, such as two-way radio and flashlight in
23 their possession." Under the header **Duty Belt/Gear**, "*Unless otherwise directed, personnel are to wear
24 the department-issued duty belt and authorized gear at all times while on duty. The placement of the
25 gear items on the duty belt shall be in the following order, looking at the duty belt from left to right:
26 Belt Keeper—Key Pouch—Baton—Radio—Belt Keeper—Gloves—Belt Keeper—Handcuffs—Flashlight
—Mace—Metal Key Hook—Belt Keeper.* Under **Special Note**, "Unless otherwise directed by Direct of
Campus Safety, personnel may not take the department-issued baton and pepper spray off campus and
must secure these items in their employee locker space upon departure from campus." Thus,
CLAREMONT not only knew but also intended, as demonstrated by CLAREMONT's Campus Safety
Training Manual, its Campus Safety Personnel—including but not necessarily limited to Campus Safety
Officers, Corporals, Sergeants, and Dispatchers—to don their uniforms and equipment prior to clocking

1 in, i.e. off-the-clock —because Campus Safety personnel “must be fully dressed and properly groomed
2 **from the moment [they] clock in.**” Likewise, CLAREMONT not only knew but also intended, as
3 demonstrated by CLAREMONT’s Campus Safety Training Manual, its Campus Safety Personnel—
4 including but not necessarily limited to Campus Safety Officers, Corporals, Sergeants, and
5 Dispatchers—to doff their uniforms and equipment after to clocking out, i.e. off-the-clock—because
6 Campus Safety “personnel may not take the department-issued baton and pepper spray off campus and
7 must secure these items in their employee locker space upon departure from campus.” Therefore,
8 CLAREMONT owes waiting time penalties to MR. CHOI and the Former Employees Class for
9 knowing and intending for them to don and doff their uniforms and equipment off-the-clock, and more
10 importantly for knowing and intending to not compensate MR. CHOI and the Former Employees Class
11 for this off-the-clock donning and doffing.

12 73. Due to the actual time MR. CHOI worked compared to his inaccurate payroll records, on
13 information and belief, the Former Employees Class experienced the same unlawful conduct perpetrated
14 upon them by DEFENDANTS.

15 74. Also, on information and belief, the estimated Labor Code § 203 penalty for the Former
16 Employees Class is, on average, likely similar to MR. CHOI’s monetary statutory penalty.

17 75. Summarily, DEFENDANTS continue to willfully fail to pay MR. CHOI, the Non-Exempt
18 Employees Wage Class and the Former Employees Class all of their earned and yet unpaid wages
19 without abatement or reduction due upon separation of employment, including but not necessarily
20 limited to minimum, regular, overtime, double time and/or premium wages as well as reporting time,
21 requested sick leave, and/or vacation pay due to (a) working off-the-clock to don and doff their campus
22 safety uniforms and equipment such as protective gear including but not limited to a ballistic vest; (b)
23 being on-call during rest and meal breaks because the Premium Pay Class did not have a legitimate
24 opportunity to take such uninterrupted, especially those who were/are Campus Safety Officers,
25 Corporals, Sergeants, and/or Dispatchers expected to not only keep their radios powered on with audible
26 volume but also respond to radio notices regardless of whether they were on a rest or meal break; and (c)
due to CLAREMONT’s policy, procedure, and/or practice of utilizing an uneven rounding system that
resulted in, over a period of time, DEFENDANTS’ failure to compensate the Non-Exempt Employees
Wages, Liquidated Damages, and/or Treble Damages Class properly for all the time they actually
worked.

76. Thus, DEFENDANTS violated and continue to violate Labor Code § 203. As a result,

1 DEFENDANTS are liable for statutory waiting time penalties to MR. CHOI and the Former Employees
2 Class.

3 **FOURTH CAUSE OF ACTION AGAINST ONLY CLAREMONT**

4 **Labor Code § 204, § 204(a) & § 204(b) Violations**

5 77. MR. CHOI incorporates the above paragraphs as if fully alleged herein, and pleads the following
6 against ONLY CLAREMONT:

7 78. Labor Code § 204(a) reads in relevant part “All wages, other than those mentioned in Section
8 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice
9 during each calendar month, on days designated in advance by the employer as the regular paydays.
10 Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for
11 between the 16th and the 26th day of the month during which the labor was performed, and labor
performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between
the 1st and 10th day of the following month...”

12 79. Per Labor Code § 204(b)(1), “Notwithstanding any other provision of this section, all wages
13 earned for labor in excess of the normal work period shall be paid no later than the payday for the next
regular payroll period.

14 80. Under Labor Code § 204(b)(2), “An employer is in compliance with the requirements of
15 subdivision (a) of § 226 relating to total hours worked by the employee, if hours worked in excess of
16 normal work period during the current pay period are itemized as corrections on the paystub for the next
17 regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive
18 dates of the pay period for which the employer is correcting its initial report of hours....” Labor Code §
19 204(d) further explains “The requirements of this section shall be deemed satisfied by the payment of
20 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar
days following the close of the payroll period.”

21 81. Despite the mandates of § 204, CLAREMONT did not abide by § 204(a) because
22 CLAREMONT did not pay twice during each calendar month “[a]ll wages, other than those mentioned
23 in § 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment...on days designated in
24 advance by the employer as the regular paydays.” Though CLAREMONT paid MR. CHOI and other
25 putative class employees wages twice during each calendar month, CLAREMONT failed to timely pay
26 them all applicable wages they earned. CLAREMONT also did not abide by § 204(b) because
CLAREMONT neither paid putative class employees, including MR. CHOI, for the hours they worked
in excess of the normal work period no later than the payday for the next regular payroll period, nor

1 itemized as corrections these hours and pay on the paystub for the next regular pay period. So, the
2 payment of these earned wages to putative class members certainly was not made within seven calendar
3 days following the close of the payroll period because these earned wages remain unpaid. These unpaid
4 wages include but are not necessarily limited to minimum, regular, overtime, double time and/or
5 premium wages as well as reporting time, requested sick leave, and/or vacation pay due to (a) working
6 off-the-clock to don and doff their campus safety uniforms and protective gear such as a ballistics vest;
7 (b) being on-call during rest and meal breaks because class members did not have a legitimate
8 opportunity to take such uninterrupted, especially employees who were/are Campus Safety Officers,
9 Corporals, Sergeants, and/or Dispatchers expected to not only keep their radios powered on with audible
10 volume but also respond to radio notices regardless of whether they were on a rest or meal break; and (c)
11 due to Defendants' policy, procedure, and/or practice of utilizing an uneven rounding system that
12 resulted in, over a period of time, Defendants' failure to compensate the Non-Exempt Employees
Wages, Liquidated Damages, and/or Treble Damages Class properly for all the time they actually
worked.

13 82. Labor Code § 204, § 204(a), and § 204(b) is not just about the frequency by which an employer
14 pays its employees, it is also about the accuracy of those wages periodically paid. Therefore,
15 CLAREMONT violated Labor Code § 204, § 204(a), and § 204(b) and is subject to the penalty/ies
enumerated in Labor Code § 210.

16 **FIFTH CAUSE OF ACTION AGAINST ONLY CLAREMONT**

17 **Statutory Penalties Pursuant to Labor Code § 98**

18 **Under Labor Code § 210 Due To § 204, § 204(b) And § 1197.5 Violations**

19 **(By The Non—Exempt Employee Wages, Liquidated Damages, and/or Treble Damages Class)**

20 83. MR. CHOI incorporates paragraphs as if fully alleged herein, and pleads the following on behalf
21 of the Non-Exempt Employees Wages, Liquidated Damages, and/or Treble Damages Class against
ONLY CLAREMONT:

22 84. Labor Code § 210 states, “(a) In addition to, and entirely independent and apart from, any other
23 penalty provided in this article, **every person** who fails to pay the wages of each employee as provided
24 in §§ 201.3, **204, 204b**, 204.1, 204.2, 204.11, 205, 205.5, and **1197.5**, shall be subject to a penalty as
25 follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee.
26 (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for
each failure to pay each employee, plus 25 percent of the amount unlawfully withheld. (b) The penalty
shall either be recovered by the employee as a statutory penalty pursuant to § 98...(c) An employee is

1 only entitled to either recover the statutory penalty provided for in this section or to enforce a civil
2 penalty as set forth in subdivision (a) of § 2699, but not both, for the same violation.

3 85. Due to CLAREMONT's violations of § 204 and § 204(b) (*supra*) and § 1197.5 (*infra*), MR.
4 CHOI pursues § 210 penalties statutorily under § 98 for the Non-Exempt Employees Wages, Liquidated
5 Damages, and/or Treble Damages Class for CLAREMONT's violations of § 204, § 204(b), and/or
6 § 1197.5.

7 86. According to Labor Code § 211, a demand is a prerequisite to the bringing of any action under
8 Labor Code § 210 or § 211. In accordance with Labor Code § 211, MR. CHOI initially demanded
9 payment of wages for donning and doffing in an April 2017 email to Crystal Rosetti, and again in his
10 initial Complaint.

11 87. Due to this, on behalf of himself and other members of the Non-Exempt Employees Wages,
12 Liquidated Damages, and/or Treble Damages Class, MR. CHOI demands that CLAREMONT pay the
13 highest calculatable penalties under § 210, as well as CLAREMONT pay all wages due to MR. CHOI
14 and the Non-Exempt Employees Wages, Liquidated Damages, and/or Treble Damages Class under §
15 204, 204(b), and/or § 1197.5 that CLAREMONT failed to pay.

16 **SIXTH CAUSE OF ACTION AGAINST CLAREMONT ONLY**

17 **(By The Non-Exempt Employee Wages, Liquidated Damages, and/or Treble Damages Class)**

18 88. MR. CHOI incorporates the above paragraphs as if fully alleged herein, and pleads the following
19 on behalf of himself and the Non-Exempt Employee Wages, Liquidated Damages, and/or Treble
20 Damages Class against ONLY CLAREMONT:

21 **§ 206(a)**

22 89. Labor Code § 206(a) states, "In case of a dispute over wages, the employer shall pay, without
23 condition and within the time set by this article, all wages, or parts thereof, conceded by him[/her/it] to
24 be due, leaving to the employee all remedies he[/she] might otherwise be entitled to as to any balance
25 claimed. A 'good faith dispute' that any wages are due occurs when an employer presents a defense,
26 based in law or fact, which, if successful, would preclude any recovery on the part of the employee...
Defenses presented which, under all the circumstances, are unsupported by any evidence, are
unreasonable, or are presented in bad faith, will preclude a finding of a 'good faith dispute. 8 C.C.R. §
13520(a).

90. In April 2017, MR. CHOI emailed CLAREMONT's then HR Business Partner at the time and

1 now Chief Human Resources Officer, explaining to CLAREMONT a new policy pertaining to donning
2 and doffing ballistic vests, and sharing that such appeared to him to be compensable work.
3 CLAREMONT never corrected its unlawful conduct.

4 91. Under the above circumstances, there is no reasonable defense(s) CLAREMONT can
5 present to justify that a good faith dispute exists regarding the Non-Exempt Employee Wages,
6 Liquidated Damages, and/or Treble Damages Class members' wages. Thus, CLAREMONT violated
7 Labor Code § 206.

8 92. Furthermore, on March 5, 2015, in LWDA case no. LWDA-CM-301358-17, Barbara
9 Erwin filed a PAGA Notice against Claremont University Consortium (CUC) apprising CUC, the name
10 by which CLAREMONT is formerly known, of its unlawful conduct that violated numerous Labor Code
11 sections enumerated within that PAGA Notice. Approximately 2 years and 7 months later, on October 6,
12 2017, Lance Gregory Leach did the same in LWDA case no. LWDA-CM-339861-17 and the operative
13 complaint for the LEACH lawsuit. Thereafter, in 2020, Plaintiff Shawn Butler also filed a PAGA Notice
14 and Complaint for wages against CLAREMONT. These three PAGA claims/case(s), in combination
15 with LEACH's and BUTLER's lawsuits, MR. CHOI's PAGA Notice and MR. CHOI'S ignored request
16 to CLAREMONT, including to Ms. Rosetti, for wages demonstrate CLAREMONT cannot dispute in
17 good faith the fact CLAREMONT owes wages to the Non-Exempt Employees Wages, Liquidated
18 Damages, and/or Treble Damages Class.

19 93. However, to this date, CLAREMONT either unreasonably or in bad faith, has yet to pay
20 MR. CHOI and, on information and belief, has also yet to pay other Non-Exempt Employees Wages,
21 Liquidated Damages, and/or Treble Damages Class member employees all of their undisputed wages,
22 including those earned when donning and doffing their uniform on CLAREMONT's premises off-the-
23 clock.

24 **SEVENTH CAUSE OF ACTION AGAINST ONLY CLAREMONT**

25 **Labor Code § 206.5 Violation**

26 (By The Non-Exempt Employees Wages, Liquidated Damages, and/or Treble Damages Class)

94. MR. CHOI incorporates the above paragraphs as if fully alleged herein, and pleads the following
on behalf of himself and the Non-Exempt Employees Wages, Liquidated Damages, and/or Treble
Damages Class against ONLY CLAREMONT:

95. Labor Code § 206.5(a) states in relevant part, "(a) An employer shall not require the execution of
a release of a claim or right on account of wages due, or to become due...unless payment of those wages
has been made. A release required or executed in violation of the provisions of this section shall be null

1 and void as between the employer and the employee...(b) For purposes of this section, “execution of a
2 release” includes requiring an employee, as a condition of being paid, to execute a statement of the
3 hours he or she worked during a pay period which the employer knows to be false.

4 96. “Section 206.5 prohibits an employer from requiring an employee to release a claim for
5 wages that are due and unpaid unless it has paid those wages. (§ 206.5, subd. (a).)[27] Section 206.5
6 thus provides an exception to a general release of wage claims—known or unknown. That exception is
7 limited, however. Wages are not considered “due” under the statute if the employer and employee have
8 “a bona fide dispute” as to whether they are owed. (*Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal.App.
9 4th 796, 803 (*Chindarah*).) Section 206.5 therefore does not preclude an employer and employee from
10 “‘compromis[ing] a bona fide dispute over wages.’” (*Chindarah*, at pp. 801, 803 [finding release valid
11 and explaining that, although statutory right to receive overtime is unwaiveable, no statute prevents an
12 employee from releasing “his claim to past overtime wages as part of a settlement of a bona fide dispute
13 over those wages”].) Accordingly, an employer may obtain a valid release as part of a compromise of an
14 employee’s wage claim, without paying the full amount of wages claimed, if the employer has a good
15 faith dispute that it does not owe the unpaid wages. (*Watkins v. Wachovia Corp.* (2009) 172 Cal.App.4th
16 1576, 1587 (*Watkins*).)”

17 97. CLAREMONT specifically required the execution of a release of a claim or right on account of
18 unpaid wages due to CLAREMONT’s unlawful rounding system in its settlement in *Leach v. The*
19 *Claremont Colleges, Inc.* (TCC), Los Angeles Superior Court case number BC686451 (“LEACH”).
20 However, MR. CHOI, on behalf of himself and the putative Class contends that although
21 CLAREMONT disputed whether CLAREMONT owed the Leach Class additional wages due to its
22 rounding policy, CLAREMONT disputed such in bad faith, and thus a bona fide dispute over the unpaid
23 wages in the LEACH case did/does not exist. Therefore, the LEACH settlement requiring the execution
24 of a release of a claim or right on account of wages due, or to become due, is null and void as between
25 the employer, CLAREMONT in that case, and the employee(s) in the LEACH case because payment of
26 those wages was not made by CLAREMONT.

98. On information and belief, CLAREMONT has required the execution of a release of a claim or
right on account of wages due, or to become due. Assuming and believing such to be true, the Court
should declare such releases void and violative of Labor Code § 206.5. Under C.C.P. § 473(d), “The
court may, upon motion of the injured party, or its own motion, correct clerical mistakes in its judgment
or orders as entered, so as to conform to the judgment or order directed, and may, on motion of either
party after notice to the other party, set aside any void judgment or order.”

1 **EIGHTH CAUSE OF ACTION AGAINST ONLY CLAREMONT**

2 **Labor Code § 223 Violation**

3 (By The Non-Exempt Employees Wages, Liquidated Damages, and/or Treble Damages Class)

4 99. MR. CHOI incorporates the above paragraphs as if fully alleged herein, and pleads the following
5 against ONLY CLAREMONT:

6 100. Under Labor Code § 223 “Where any statute or contract requires an employer to maintain
7 The designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the
8 wage designated by statute or by contract.”

9 101. Under California law, MR. CHOI and the Non-Exempt Employees Wages, Liquidated
10 Damages, and/or Treble Damages Class was/were entitled to compensation for all hours worked.

11 102. In this case, CLAREMONT was both statutorily required to pay at least minimum wage
12 pursuant to Labor Code § 1182.12, as well as obligated to pay MR. CHOI and the Non-Exempt
13 Employees Wages, Liquidated Damages, and/or Treble Damages Class their contractually agreed upon
14 wages which were or should have been at least minimum wage.

15 103. CLAREMONT was contractually obligated to pay MR. CHOI and the Non-Exempt
16 Employees Wages, Liquidated Damages, and/or Treble Damages Class agreed rates in excess of
17 California’s minimum wage for all hours worked. However, in requiring its Campus Safety Officers,
18 Corporals, and Sergeants to don and doff their uniform and equipment off-the-clock, CLAREMONT
19 effectively unlawfully secretly paid a lower hourly wage for all hours worked than these employees
20 were contractually entitled to.

21 104. Furthermore, CLAREMONT’s policy, procedure, and/or practice of utilizing an uneven
22 Rounding system resulted in, over a period of time, CLAREMONT’s failure to compensate MR. CHOI
23 and the Non-Exempt Employees Wages, Liquidated Damages, and/or Treble Damages Class properly
24 for all the time they actually worked. Thus, CLAREMONT secretly paid MR. CHOI and the Non-
25 Exempt Employees Wages, Liquidated Damages, and/or Treble Damages Class a lower wage while
26 purporting to pay the wage scale designated by statute, i.e. California’s minimum wage statute and
overtime wage statute(s), or by contract. See *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314.

105. The combined force of California Labor Code sections 221, 222, and 223 clearly
prohibits an employer from receiving from the employee, withholding from the employee, or secretly
paying to the employee, some amount less than the employee’s contractual or statutory wages for work
performed by the employee. *Armenta v. Osmose, Inc.* (2005) 37 Cal.Rptr.3d 460, 465. Because MR.
CHOI and the Exempt-Employees Wages Class were employed at agreed rates in excess of California’s

1 minimum wage (Labor Code § 1182.12), CLAREMONT effectively ‘reduce’ or ‘withhold’ a portion of
2 an employees’ contractual or statutory wages through the simple device of requiring work in excess of
3 the daily or weekly hours CLAREMONT actually compensated them without additional compensation.

4 106. California Labor Code sections 221, 222, and 223 prevent CLAREMONT from using any
5 part of the wage payments that are required under contract for activities that are compensated in an
6 amount that equals or exceeds the minimum wage, as a credit for satisfying minimum wage obligations
7 for those activities that are compensated at less than the minimum wage or under contractual rates.

8 107. Thus, CLAREMONT violated Labor Code § 223 and is subject to any attendant statutory
9 penalty/ies for so doing, which may include Labor Code § 225.5.

10 **NINTH CAUSE OF ACTION AGAINST ONLY CLAREMONT**

11 **Labor Code § 226 Violations and Remedies**

12 **(By The Wage Statement Class)**

13 108. MR. CHOI incorporates the above paragraphs as if fully alleged herein, and pleads the
14 following on behalf of himself and the Wage Statement Class against DEFENDANTS pursuant to Labor
15 Code § 558.1(a) which holds liable any employer or other person—who is an owner, director, officer, or
16 managing agent of the employer —acting on behalf of an employer, who violates, or causes to be
17 violated, Labor Code § 226.

18 **Labor Code § 226(a) Violation**

19 109. Under Labor Code § 226(a) “Every employer shall, semimonthly or at the time of each
20 payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft,
21 or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash,
22 an accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
23 employee...(4) all deductions, provided that all deductions made on written orders of the employee may
24 be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for
25 which the employee is paid, (7) the name of the employee and only the last four digits of his or her
26 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...(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 and
...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. For purposes of this subdivision, “copy” includes a duplicate of

1 the itemized statement provided to an employee or a computer-generated record that accurately shows
2 all of the information required by this subdivision.”

3 110. MR. CHOI’S and, on information and belief, that of the Wage Statement Class’s pay
4 records reconciled against their Kronos time records, plus on-call work though meal and rest breaks, as
5 well as off-the-clock work for donning and doffing their mandatory equipment and uniforms, combined
6 with CLAREMONT’s use of an uneven rounding system that resulted in, over a period of time,
7 DEFENDANTS’ failure to compensate MR. CHOI and the Non-Exempt Employees Wages, Liquidated
8 Damages, and/or Treble Damages Class properly for all the time they actually worked prove
9 DEFENDANTS failed to provide MR. CHOI and the Wage Statement Class with accurately written
10 itemized statements showing “(1) gross wages earned, (2) total hours worked by the employee...(5) net
11 wages earned,..(8) the name and address of the legal entity that is the employer...[and] (9) all applicable
12 hourly rates in effect during the pay period and the corresponding number of hours worked at each
13 hourly rate by the employee” because DEFENDANTS failed to accurately pay MR. CHOI the Non-
14 Exempt Employees Wages, Liquidated Damages, and/or Treble Damages Class and the Wage Statement
15 Class all earned and unpaid wages, including but not necessarily limited to minimum, regular, overtime,
16 and/or double time wages; premium wages; reporting time pay; requested but denied sick leave pay;
17 and/or unpaid accrued or should have been accrued vacation pay due to (a) working off-the-clock to don
18 and doff their campus safety uniforms and equipment like protective gear including a ballistic vest; (b)
19 being on-call during rest and meal breaks because MR. CHOI and the Premium Pay Class did not have a
20 legitimate opportunity to take such uninterrupted, especially employees who were/are Campus Safety
21 Officers, Corporals, Sergeants, and/or Dispatchers expected to not only keep their radios powered on
22 with audible volume but also monitor and respond to radio notices regardless of whether they were on a
23 rest or meal break; and (c) due to CLAREMONT’s policy, procedure, and/or practice of utilizing an
24 uneven rounding system that resulted in, over a period of time, DEFENDANTS’ failure to compensate
25 MR. CHOI and the Non-Exempt Employees Wages, Liquidated Damages, and/or Treble Damages Class
26 properly for all the time they actually worked. Additionally, Wage Statement Class members were
injured due to CLAREMONT listing TCCS instead of TCC as the name of the legal entity that is the
employer.

Labor Code § 226(e) Remedy

111. As a result, DEFENDANTS are liable to MR. CHOI and the Wage Statement Class
under Labor Code § 226(e)(1) which states, “An employee suffering injury as a result of a knowing and
intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all

1 actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one
2 hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an
3 aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable
4 attorney's fees."

Labor Code § 226(e)(2)(B) Injury

5 112. According to Labor Code § 226(e)(2)(B) "An employee is deemed to suffer injury for
6 purposes of this subdivision if the employer fails to provide accurate and complete information as
7 required by any one or more of items (1) to (9), inclusive, of subdivision (a) and the employee cannot
8 promptly and easily determine from the wage statement alone one or more of the following: (i) The
9 amount of the gross wages or net wages paid to the employee during the pay period or any of the other
10 information required to be provided on the itemized wage statement pursuant to items (2) to (4),
11 inclusive, (6), and (9) of subdivision (a). (ii) Which deductions the employer made from gross wages to
12 determine the net wages paid to the employee during the pay period...(iii) The name and address of the
13 employer...(iv) The name of the employee and only the last four digits of his or her social security
14 number or an employee identification number other than a social security number.

15 113. Per Labor Code § 226(e)(2)(C) "For purposes of this paragraph, "promptly and easily
16 determine" means a reasonable person would be able to readily ascertain the information without
17 reference to other documents or information."

18 114. MR. CHOI and the Wage Statement Class have suffered injury pursuant to §
19 226(e)(2)(B) because, per § 226(e)(2)(B)(i), CLAREMONT failed "to provide accurate and complete
20 information as required by any one or more of items (1) to (9), inclusive, of" § 226(a) (*supra*) and MR.
21 CHOI and the Wage Statement Class cannot promptly and easily determine from the wage statement
22 alone the amount of the gross wages and/or net wages paid or what should have been paid to them to
23 them during the pay period or any of the other information required to be provided on the itemized wage
24 statement pursuant § 226(a), specifically "(1) gross wages earned, (2) total hours worked by the
25 employee...(5) net wages earned...(8) the name and address of the legal entity that is the
26 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." Specifically, Wage Statement Class
member were injured due to CLAREMONT listing TCCS instead of TCC or CUC prior to January 1,
2018 as the name of the legal entity that is the employer.

115. MR. CHOI and the Wage Statement Class must refer to other documents and information

1 to reconstruct the time they worked to account for their unpaid work, including but not necessarily
2 limited to (1) their inaccurate time (clock-in and clock-out) records; (2) the average amount of time it
3 took/takes MR. CHOI and the Non-Exempt Employees Wages, Liquidated Damages, and/or Treble
4 Damages Class to don and doff their respective uniforms; (3) on-call work during rest and meal breaks
5 due to not having a legitimate opportunity to take such uninterrupted, especially Campus Safety
6 Officers, Corporals, Sergeants, and/or Dispatchers expected to not only keep their radios powered on
7 with audible volume but also to monitor and respond to radio notices regardless of whether they were on
8 a rest or meal break; and (4) determine the amount of time CLAREMONT's rounding system, over a
9 period of time, shorted MR. CHOI and the Wage Statement Class of time and thus of compensation.

10 116. Furthermore, MR. CHOI and the Wage Statement Class have suffered injury pursuant to
11 § 226(e)(2)(B) because, per Labor Code § 226(e)(2)(B)(iii), DEFENDANTS failed to list the applicable
12 legal name of the employer. The name of the employer listed on MR. CHOI's, and on information and
13 belief, and that of the Wage Statement Class' itemized wage statements is "The Claremont Colleges
14 Services" or "TCCS" when the current legal name of the employer is "The Claremont Colleges, Inc."
15 (TCC) and the former legal name of the employer was "Claremont University Consortium" (CUC) prior
16 to January 1, 2018.

17 117. MR. CHOI and the Wage Statement Class cannot "promptly and easily determine" the
18 employer's legal name, i.e. TCC or CUC when applicable, because they had to, like other reasonable
19 persons would have to, reference other documents or information because the employer's name is not
20 readily ascertainable without referring to public court records and/or to California State Secretary
21 records. For this case, the wage statements of MR. CHOI and the Wage Statement Class all demonstrate
22 TCCS is the employer even though TCC actually is and CUC was prior to January 1, 2018. The true
23 identity of the actual employer, i.e. TCC fka CUC not TCCS, is not information a reasonable person
24 would be able to readily ascertain without reference to other documents or information. MR. CHOI'S
25 attorney had to refer to the California's Secretary of State's Statement of Information for TCC and/or the
26 Leach lawsuit to determine the legal identity of TCCS is TCC fka CUC. Thus, the true identity of the
employer is not promptly and easily determined, causing injury to MR. CHOI and the Wage Statement
Class.

118. Therefore, MR. CHOI and the Wage Statement Class are entitled to the appropriate
remedy from DEFENDANTS under Labor Code § 226(e)(1).

Labor Code § 226(c) Violation & § 226(f) Statutory Penalty Against CLAREMONT

1 119. Under Labor Code § 226(b) “An employer that is required by this code or any regulation
2 adopted pursuant to this code to keep the information required by subdivision (a) shall afford current and
3 former employees the right to inspect or receive a copy of records pertaining to their employment, upon
4 reasonable request to the employer...” Under subsection (c) “An employer who receives a written or
5 oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or
6 former employee shall comply with the request as soon as practicable, but no later than 21 calendar days
from the date of the request...”.

7 120. On Friday, August 25, 2023, MR. CHOI, through his legal counsel Michelle Reynolds,
8 Esq., via an emailed letter, requested from CLAREMONT MR. CHOI’s employment records pursuant
to California Labor Code sections 226, 432, and 1198.5.

9 121. On September 12, 2023, counsel for CLAREMONT sent by email a letter refusing to
10 fulfill MR. CHOI’s August 25, 2023 request for his employment records under Labor Code section 226.
11 However, CLAREMONT had 21 calendar days to fulfill MR. CHOI’s Labor Code section 226 request
12 but did not waiver in its refusal. Claremont’s legal counsel’s letter states in relevant part, “In response to
13 your request for records, please note that a former employee’s right to inspect his personnel file under
14 section 1198.5 ceases once he files a lawsuit that “relates to a personnel matter against his ... former
15 employer.” Cal. Labor Code §§1198.5(n), (o). In any event, your co-counsel Mr. Kim previously
16 requested MR. CHOI’s records on May 12, 2022. TCCS provided the requested documents at that time.
17 Even assuming your request was proper in light of the pending litigation, there are no additional payroll
or personnel records to produce because MR. CHOI has not been employed by TCC since March 7,
2022.”

18 122. Not only did CLAREMONT fail to comply with this request within 21 calendar days,
19 CLAREMONT completely ignored MR. CHOI’s Labor Code section 226 request, a request that is
20 uncapped and that was requested through a different attorney, i.e. Michelle Reynolds, for a different not-
yet-filed lawsuit.

21 123. CLAREMONT’s utter disregard of MR. CHOI’s Labor Code section 226 request violates
22 Labor Code § 226(b) and § 226(c). Given his own experience of being ignore in trying to request §
23 226(b) and § 1198.5 records, MR. CHOI believes CLAREMONT also violated the § 226(b) and §
24 226(c) rights of other CLAREMONT employees.

25 124. Under § 226(f), “A failure by an employer to permit a current or former employee to
26 inspect or receive a copy of records within the time set forth in subdivision (c) entitles the current or
former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty

1 from the employer.” MR. CHOI seeks the applicable \$750.00 statutory penalty for CLAREMONT’s
2 violation of Labor Code § 226(c).

3 **TENTH CAUSE OF ACTION AGAINST DEFENDANTS**
4 **Labor Code § 226.7(b) Violation and § 226.7(c) Premium Pay**
5 **(By The Premium Pay Class)**

6 125. MR. CHOI incorporates the above paragraphs as if fully alleged herein, and pleads the
7 following on behalf of himself and the Premium Pay Class against DEFENDANTS under Labor Code §
8 226.7 and/or under § 558.1(a) liability. Section 558.1(a), which states in relevant part “Any employer or
9 other person acting on behalf of an employer, who violates, or causes to be violated, any provision
10 regulating minimum wages or hours and days of work in any order of the Industrial Welfare
11 Commission, or violates, or causes to be violated, Section...226.7...may be held liable as the employer
12 for such violation.

13 126. According to Labor Code § 226.7(b), “An employer shall not require an employee to
14 work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable
15 regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health
16 Standards Board, or the Division of Occupational Safety and Health.”

17 127. Under Labor Code § 226.7(c) “If an employer fails to provide an employee a meal or rest
18 or recovery period in accordance with a state law, including, but not limited to, an applicable statute or
19 applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety
20 and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay
21 the employee one additional hour of pay at the employee’s regular rate of compensation for each
22 workday that the meal or rest or recovery period is not provided.”

23 128. Under Labor Code § 226.7(d), “A rest or recovery period mandated pursuant to a state
24 law, including, but not limited to, an applicable statute, or applicable regulation, standard, or order of the
25 Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of
26 Occupational Safety and Health, shall be counted as hours worked, for which there shall be no deduction
from wages. This subdivision is declaratory of existing law.

129. Under Labor Code § 226.7(e), “This section shall not apply to an employee who is
exempt from meal or rest or recovery period requirements pursuant to other state laws, including, but
not limited to, a statute or regulation, standard, or order of the Industrial Welfare Commission.

130. Though MR. CHOI was a security guard licensed by California’s Bureau of Security

1 and Investigative Services, the provisions of Labor Code § 226.7(f)¹ should not apply to this action
2 because CLAREMONT does not appear to be registered pursuant to the Private Security Services Act
3 (Chapter 11.5 (commencing with Section 7580) of Division 3 of the Business and Professions Code) as
4 a private patrol operator. Even if CLAREMONT is so registered, on information and belief,
5 CLAREMONT's employees are not covered by a valid collective bargaining agreement in compliance
6 with Labor Code § 226.7(f)(3). Moreover, subdivision (f) of Labor Code § 226.7 "does not apply to
existing cases [or claims] filed before January 1, 2021."

7 131. In seeking the statutory penalty under Labor Code § 226.7(c), this action is similar to
8 *Augustus v. ABM Security Services, Inc.*, in which California's Supreme Court confirmed Labor Code §
9 226.7 and IWC Wage Order No. 4 prohibits on-duty and on-call rest breaks. The same is true of meal
10 and recovery periods. "...[E]mployers must relieve their employees of all duties and relinquish any
11 control over how employees spend their break time." See *Brinker Restaurant Corp. v. Superior Court*
12 (2012) 53 Cal.4th 1004, 1038-1039 and *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257,
259. Employee meal, recovery, and rest periods are to be duty free, timely, and uninterrupted.

13 132. Similar to *ABM Security Services*, CLAREMONT failed to provide MR. CHOI and the
14 Premium Pay Class with legitimate opportunities to take Labor Code compliant meal (§ 512), recovery,
15 and rest (IWO 4-2001 § 12) breaks, especially meal, recovery and rest breaks for each applicable
16 workday because meal, recovery and/or rest breaks were interrupted, late, missed, on-call, and/or
17 untimely. CLAREMONT expected MR. CHOI and the Premium Pay Class who were/are Campus
18 Safety Officers, Corporals, Sergeants, and/or Dispatchers to stay on CLAREMONT premises during
19 meal, recovery, and/or rest breaks, remain on call and alert during meal, recovery, and/or rest breaks,
20 and monitor a radio or other communication device during meal, recovery, and/or rest breaks. According
21 to page 8 of CLAREMONT's Campus Safety Training Manual on Grooming – Uniform – Equipment,
under **Radio Hand-Mic/ Earpiece** pertaining to EQUIPMENT, "Unless otherwise directed, a

22 ¹ Labor Code § 226.7(f)(1) states, "An employee employed in the security services industry as a security officer who is
23 registered pursuant to the Private Security Services Act (Chapter 11.5 (commencing with Section 7580) of Division 3 of the
24 Business and Professions Code) and who is employed by a private patrol operator registered pursuant to that chapter, may be
25 required to remain on the premises during rest periods and to remain on call, and carry and monitor a communication device
26 during rest periods. If a security officer's rest period is interrupted, the security officer shall be permitted to restart the rest
period anew as soon as practicable. The security officer's employer satisfies that rest period obligation if the security officer
is then able to take an uninterrupted rest period. If on any workday a security officer is not permitted to take an uninterrupted
rest period of at least 10 minutes for every four hours worked or major fraction thereof, then the security officer shall be paid
one additional hour of pay at the employee's regular base hourly rate of compensation. Labor Code § 226.7(f)(2) states, "For
purposes of this subdivision, the term "interrupted" means any time a security officer is called upon to return to performing
the active duties of the security officer's post prior to completing the rest period, and does not include simply being on the
premises, remaining on call and alert, monitoring a radio or other communication device, or all of these actions."

1 department issued two-way radio hand-mic and earpiece shall be worn at all times. Personnel assigned
2 to Dispatch Center are exempt from wearing the earpiece, while at Dispatch.”

3 133. Moreover, CLAREMONT expected MR. CHOI and the Premium Pay Class who
4 were/are Campus Safety Officers, Corporals, Sergeants, and/or Dispatchers to not only keep their radios
5 powered on with audible volume but also respond to radio notices regardless of whether they were on a
6 rest or meal break; in other words, they were called upon to return to performing the active duties of the
security officer’s post prior to completing their meal, recovery, and/or rest period.

7 134. As another result, CLAREMONT violated Cal. Code Regs., tit. 8, § 11040, subdivision
8 7(A)(3), which states “Every employer shall keep accurate information with respect to each employee
9 including the following: (3) Time records showing when the employee begins and ends each work
10 period. *Meal periods, split shift intervals and total daily hours worked shall also be recorded* [emphasis
added]. Meal periods during which operations cease and authorized rest periods need not be recorded.”

11 135. As another result, DEFENDANTS are liable to the Premium Pay Class, including MR.
12 CHOI, for “one additional hour of pay at the employee’s regular rate of compensation for each workday
13 that the meal[, recovery,] or rest or recovery period [was/]is not provided.” This includes Class members
14 who are part of the Premium Pay Class who worked part-time and were entitled to meal, recovery
15 and/or Labor Code compliant meal, recovery, and/or rest breaks but did not receive from
16 CLAREMONT a legitimate opportunity to take such. Additionally, this includes Class members
17 who are part of the Premium Pay Class who worked over eight hours in a workday prior to the
18 date CLAREMONT implemented the results from its August 14, 2020 alternative workweek
19 election pursuant to Labor Code § 511 and did not have a legitimate opportunity to take a
20 single meal period of net 30-minutes and/or two 10-minutes net rest breaks timely and
21 uninterrupted. This also includes Class members who are part of the Premium Pay Class who
22 work/ed no more than 10 hours in a workday after CLAREMONT implemented an alternative
23 workweek schedule consisting of four days, ten hours per day, and did not have a legitimate
24 opportunity to take a single meal period of net 30-minutes and/or two 10-minutes net rest
25 breaks timely and uninterrupted. Lastly, this also includes Class members who are part of the
26 Premium Pay Class who work/ed over 10 hours in a workday after CLAREMONT implemented
an alternative workweek schedule consisting of four days, ten hours per day, and did not have
a legitimate opportunity to take a two meal periods of net 30-minutes unless a valid meal
period waiver exists and/or three 10-minutes net rest breaks timely and uninterrupted.

136. Lastly, regarding CLAREMONT’S violation Labor Code § 226.7, CLAREMONT failed

1 to provide the Premium Pay Class recovery periods. According to Labor Code § 226.7(a) “As used in
2 this section, “recovery period” means a cooldown period afforded an employee to prevent heat illness.”
3 During summers in the city of Claremont, California, the temperatures exceed 100 degrees Fahrenheit.
4 Despite this, CLAREMONT failed to provide TCC personnel that patrolled outside in the inclement
5 weather, including MR. CHOI and the Premium Pay Class, with recovery periods, and thus owes the 1-
6 hour of premium pay to these affected employees.

7 **ELEVENTH CAUSE OF ACTION AGAINST ONLY CLAREMONT**

8 **Labor Code § 432.5 Violation**

9 **(The Premium Pay Class, Which Includes MR. CHOI)**

10 137. MR. CHOI incorporates the above paragraphs as if fully alleged herein, and pleads the
11 following on behalf of himself and the Premium Pay Class against ONLY CLAREMONT:

12 138. Under Labor Code § 432.5 “No employer, or agent, manager...or officer thereof, shall
13 require any employee or applicant for employment to agree, in writing, to any term or condition which is
14 known by such employer, or agent, manager...or officer thereof to be prohibited by law.”

15 139. CLAREMONT’s employee handbook contains CLAREMONT’s meal and rest break
16 policies. Additionally, CLAREMONT’s Offer of Employment Letters that, if MR. CHOI’s memory is
17 correct, prospective employees sign reference certain policies of CLAREMONT, including on
18 information and belief CLAREMONT’s meal and rest break policies. CLAREMONT’s handbook and
19 Offer of Employment Letters is/are the writing(s) by which CLAREMONT used to require MR. CHOI
20 and the Premium Pay Class including but not necessarily limited to Campus Safety Officers, Corporals,
21 Sergeants, and Dispatchers to not only keep their radios powered on with audible volume but also
22 respond to radio notices regardless of whether they were on a rest or meal break.

23 140. This relevant policy stated that CLAREMONT would pay MR. CHOI and other Premium
24 Pay Class members through their lunches. However, the handbook failed to inform MR. CHOI and
25 Premium Pay Class members of their right to be paid premium wages for on-call/on-duty meal,
26 recovery, and/or rest breaks.

141. CLAREMONT required MR. CHOI and the Premium Pay Class—including but not
necessarily limited to Campus Safety Officers, Corporals, Sergeants, and Dispatchers—to sign an
acknowledgment of receipt of the aforementioned handbook, signature which signified to
CLAREMONT theses employees’ respective agreement to abide by the policies within
CLAREMONT’s handbook.

142. As a result, CLAREMONT violated Labor Code § 432.5 for requiring employees to

1 agree to forgo Labor Code compliant meal, recovery, and/or rest periods but receive less than the hour
2 premium pay that these employees who are part of the Premium Pay Class were/are lawfully entitled.

3 **TWELFTH CAUSE OF ACTION AGAINST DEFENDANTS**

4 **Labor Code § 510(a) Violation**

5 **(By The Non-Exempt Employees Wages, Liquidated Damages, and/or Treble Damages Class)**

6 143. MR. CHOI incorporates the above paragraphs as if fully alleged herein, and pleads the
7 following on behalf of himself and the Non-Exempt Employees Wages, Liquidated Damages, and/or
8 Treble Damages Class against DEFENDANTS.

9 144. Per Labor Code § 510(a), “Eight hours of labor constitutes a day’s work. Any work in
10 excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the
11 first eight hours worked on the seventh day of work in any one workweek shall be compensated at the
12 rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess
13 of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for
14 an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be
15 compensated at the rate of no less than twice the regular rate of pay of an employee...”

16 145. CLAREMONT operates 24 hour per day, 7 days per week and scheduled MR. CHOI and
17 the Non-Exempt Employees Wages, Liquidated Damages, and/or Treble Damages Class to worked
18 various full-time and part-time shifts.

19 146. MR. CHOI and Non-Exempt Employees Wages, Liquidated Damages, and/or Treble
20 Damages Class were expected to begin working promptly, which according to MR. CHOI meant being
21 dressed in uniform with radios, protective gear and other equipment, and ready for briefing the moment
22 their scheduled shift began. According to page 5 of CLAREMONT’s Campus Safety Training Manual
23 on Grooming –Uniform – Equipment, under Additional Guidelines pertaining to UNIFORM, “You
24 [meaning Campus Safety personnel] must be fully dressed and properly groomed **from the moment you**
25 **clock in**”, including equipment. According to page 7 of CLAREMONT’s Campus Safety Training
26 Manual on Grooming – Uniform –Equipment, under EQUIPMENT, “Campus Safety personnel are
responsible for the safekeeping and security of all department-issued equipment, such as two-way radio
and flashlight in their possession.” Under the header **Duty Belt/Gear**, “*Unless otherwise directed,*
personnel are to wear the department-issued duty belt and authorized gear at all times while on duty.
The placement of the gear items on the duty belt shall be in the following order, looking at the duty belt
from left to right: Belt Keeper—Key Pouch—Baton—Radio—Belt Keeper—Gloves—Belt Keeper—
Handcuffs—Flashlight—Mace—Metal Key Hook—Belt Keeper. Under **Special Note**, “Unless otherwise

1 directed by Direct of Campus Safety, personnel may not take the department-issued baton and pepper
2 spray off campus and must secure these items in their employee locker space upon departure from
3 campus.”

4 147. As evidenced by CLAREMONT’s Campus Safety Training Manual, CLAREMONT
5 intended for its Campus Safety Personnel to don their uniforms and equipment off-the-clock because
6 Campus Safety personnel “must be fully dressed and properly groomed **from the moment [they] clock**
7 **in.**” Campus Safety Personnel includes but is not necessarily limited to Campus Safety Officers,
8 Corporals, Sergeants, and Dispatchers who, like MR. CHOI, are members of the Non-Exempt
9 Employees Wages, Liquidated Damages, and/or Treble Damages Class. Likewise, CLAREMONT
10 expected MR. CHOI and the Non-Exempt Employees Wages, Liquidated Damages, and/or Treble
11 Damages Class to doff their uniform off-the-clock, including their duty belt and gear for “personnel may
12 not take the department-issued baton and pepper spray off campus and must secure these items in their
13 employee locker space upon departure from campus.” Thus, CLAREMONT intentionally did not pay
14 MR. CHOI and the Non-Exempt Employees Wages, Liquidated Damages, and/or Treble Damages Class
15 for donning and doffing their uniforms and equipment, off-the-clock work that remains uncompensated
16 to this day.

17 148. Additionally, CLAREMONT’s policy, procedure, and/or practice of utilizing an uneven
18 rounding system resulted in, over a period of time, CLAREMONT’s failure to compensate MR. CHOI
19 and the Non-Exempt Employees Wages, Liquidated Damages, and/or Treble Damages Class properly
20 for all the time they actually worked, including overtime.

21 149. Furthermore, on information and belief, CLAREMONT failed to abide by all of the
22 requirements of a valid alternative workweek schedule, including made misrepresentation to affected
23 employees regarding the consequences of a 4/10 workweek, and thus CLAREMONT does not actually
24 have a legal 4/10 alternative workweek schedule, owing all affected employees applicable wages.

25 150. As a result, CLAREMONT is liable to MR. CHOI and the Non-Exempt Employees
26 Wages, Liquidated Damages, and/or Treble Damages Class for unpaid wages, including regular wages
and overtime wages for any member of the Non-Exempt Employees Wages, Liquidated Damages,
and/or Treble Damages Class who worked over 8 hours in a workday, or over 10 hours in a workday for
those subject to CLAREMONTs alternative workweek schedule explained *infra.*, but only if such is
proven to be lawful.

Employees Whom CLAREMONT Misclassified As Salary Exempt

151. Generally, California workers are statutorily entitled to overtime compensation for

1 working in excess of an eight-hour workday or in excess of a 40-hour workweek, unless they are
2 properly classified as falling within one of the narrow exemption categories. See Labor Code § 510 and
3 § 515. The Industrial Wage Commission (IWC) promulgated numerous wage orders—one concerning
4 the state minimum wage and the balance covering workers employed in various industries. See
5 California Code of Regulations, title 8, §§ 11000-11170.

6 152. The California Industrial Welfare Commission Orders apply to all employees in the State
7 of California except those specifically exempted.

8 153. IWC wage order No. 4-2001 (Wage Order 4), codified at § 11040, governs workers
9 employed in the security industry such as the Campus Safety Officers, Corporals, Sergeants, and
10 Dispatchers at issue in this action.

11 154. Workers employed in an executive, administrative or professional capacity are exempt
12 from sections 3 through 12 of Wage Order 4, which include provisions concerning overtime pay, meal
13 and rest periods, and related recordkeeping requirements, among other things. Cal. Code Regs., tit. 8, §
14 11040, subd. 1.(A).

15 155. Exemptions are narrowly construed against the employer and their application is limited
16 to those employees plainly and unmistakably within their terms.” [Citation]. *Nordquist v. McGraw-Hill*
17 *Broadcasting Co.* (1995) 32 Cal. App. 4th 555, 562.

18 156. “The assertion of an exemption from the overtime laws is an affirmative defense and
19 the employer bears the burden of proving the employee’s exemption.” *Del Thibodeau v. ADT Security*
20 *Services* (2018) 3:16-cv-02680-GPC-AGS (S.D. California) citing *Nordquist*, 32 Cal. App. 4th at 562.

21 157. In order for an employee to legally be exempt from California’s overtime and double
22 time compensation laws, both a “duties test” and a “salary test” apply. The duties test focuses on the
23 duties actually performed, not on the job title or on the duties that an employer/joint employers write(s)
24 into a job description. “No bright-line rule can be established classifying everyone with a particular job
25 title as per se exempt or nonexempt—the regulations identify job duties, not job. “A job title alone is
26 insufficient to establish the exempt status of an employee. The exempt or nonexempt status of any
particular employee must be determined on the basis of whether the employee’s salary and duties meet
the requirements of the regulations...” Exemption depends “upon what an employee actually does on the
job”. Exemption must be based on how an employee actually spends his or her time, not on an idealized
job description.

Job Duties & Salary Test

158. According to IWO No. 4-2001 1.(A), “in determining whether an employee’s duties meet

1 the test to qualify for [the Executive] exemption, ...A person employed in an executive capacity means
2 any employee:

3 (a) Whose duties and responsibilities involve the management of the enterprise in which he/she is
4 employed or of a customarily recognized department or subdivision thereof; **and**

5 (b) Who customarily and regularly directs the work of two or more other employees therein; **and**

6 (c) Who has the authority to hire or fire other employees or whose suggestions and recommendations as
7 to the hiring or firing and as to the advancement and promotion or any other change of status of other
8 employees will be given particular weight; **and**

9 (d) Who customarily and regularly exercises discretion and independent judgment; **and**

10 (e) Who is primarily engaged in duties which meet the test of the exemption. The activities constituting
11 exempt work and non-exempt work shall be construed in the same manner as such items are construed
12 in the following regulations under the Fair Labor Standards Act effective as of the date of this order: 29
13 C.F.R. §§ 541.102, 541.104-111, and 541.115-116. Exempt work shall include, for example, all work
14 that is directly and closely related to exempt work and work which is properly viewed as a means for
15 carrying out exempt functions. The work actually performed by the employee during the course of the
16 workweek must, first and foremost, be examined and the amount of time the employee spends on such
17 work, together with the employer's realistic expectations and the realistic requirements of the job, shall
18 be considered in determining whether the employee satisfies this requirement.

19 (f) Such an employee must also earn a monthly salary equivalent to no less than two (2) times the state
20 minimum wage for full-time employment. Full-time employment is defined in Labor Code § 515(c) as
21 40 hours per week."

22 **Misclassified As Exempt Campus Safety Sergeants & Managerial Dispatch Equivalents**

23 159. Although MR. CHOI started as and remained an hourly-paid employee throughout his
24 employment with CLAREMONT and thus CLAREMONT did not misclassify MR. CHOI as non-
25 exempt

26 160. Yet, the community of interest requirement for certification does not mandate that class
members' claims be uniform or identical. MR. CHOI'S theories of liability do not depend on class
members having identical claims, nor does the law of class certification require such. (*Vasquez, supra*, 4
Cal.3d at p. 809, 94 Cal.Rptr. 796, 484 P.2d 964 [a community of interest does not depend upon an
identical recovery"]. *Sav-on Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 327.)

161. According to MR. CHOI, CLAREMONT pays and classifies Campus Safety Sergeants
and their managerial counterparts in Dispatch as salary exempt employees. These misclassified as

1 salary-exempt employees who are part of the Non-Exempt Employees Wages, Liquidated Damages,
2 and/or Treble Damages Class do not “customarily and regularly exercise discretion and independent
3 judgment” because these Employees’ actions, conduct, judgment, and thoughts are governed by
4 CLAREMONT’s policies, for example CLAREMONT’s General Orders. These Employees were also
5 outranked by Lieutenants and then Captains, whose judgment these Campus Safety Sergeants and their
6 counterparts in Dispatch had to follow. According to MR. CHOI, these misclassified as salary-exempt
7 Employees definitely lacked “the authority to hire or fire other employees”. The “suggestions and
8 recommendations as to the hiring or firing and as to the advancement and promotion or any other change
9 of status of other employees” by these misclassified as salary-exempt Employees would not be “given
10 particular weight”. These misclassified as salary-exempt Employees were outranked by Lieutenants and
11 then Captains, whose “suggestions and recommendations as to the hiring or firing and as to the
12 advancement and promotion or any other change of status of other employees” would overrule that of
13 Campus Safety Sergeants and their counterparts in Dispatch. These misclassified as salary-exempt
14 Employees therefore did not primarily engaged in duties which meet the test of the exemption.
Moreover, Campus Safety Sergeants were not primarily engaged in the duties of exemption because
they spent a minimum of 55% to approximately 80% of their time routinely patrolling as the Corporals
and Campus Safety Officers did.

15 162. Although MR. CHOI started and remained an hourly-paid employee throughout
16 his employment with TCC and thus TCC did not misclassify MR. CHOI as non-exempt, the community
17 of interest requirement for certification does not mandate that class members’ claims be uniform or
18 identical. MR. CHOI’S theories of liability does not depend on class members having identical claims,
19 nor does the law of class certification require such. (*Vasquez, supra*, 4 Cal.3d at p. 809, 94 Cal.Rptr.
20 796, 484 P.2d 964 [a community of interest does not depend upon an identical recovery]). *Sav-on Drug
Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 327.)

21 163. MR. CHOI and misclassified Sergeants are similarly situated because TCC required MR.
22 CHOI and Sergeants to don and doff their uniforms off the clock and respond to their radios regardless
23 of any meal, recovery, and/or rest breaks. If Sergeants are indeed misclassified, then MR. CHOI and
24 Sergeants are similarly situated pertaining to rights to unpaid minimum and overtime wages, as well as
premium and vacation pay that should have accrued, liquidated damages, and treble damages.

25 164. Consequently, DEFENDANTS violated Labor Code § 510 and are liable for earned but
26 unpaid overtime pay to misclassified employees, including but not necessarily limited to Campus
Safety Sergeants.

1 165. Under Labor Code § 558(a) “Any employer or other person acting on behalf of an
2 employer who violates, or causes to be violated, a section of this chapter [§§ 500-558.1] or any
3 provision regulating hours and days of work in any order of the Industrial Welfare Commission [IWO 4-
4 2001] shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for
5 each underpaid employee for each pay period for which the employee was underpaid in addition to an
6 amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars
7 (\$100) for each underpaid employee for each pay period for which the employee was underpaid in
8 addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this
9 section shall be paid to the affected employee.

10 **THIRTEENTH CAUSE OF ACTION AGAINST DEFENDANTS**

11 **Labor Code § 511 Violation**

12 **(By the Non-Exempt Employees Wages, Liquidated Damages, and/or Treble Damages Class)**

13 166. MR. CHOI incorporates the above paragraphs as if fully alleged herein, and pleads the
14 following on behalf himself and the other Non-Exempt Employees Wages, Liquidated Damages, and/or
15 Treble Damages Class against DEFENDANTS:

16 167. Under Labor Code § 511(a), “Upon the proposal of an employer, the employees of an
17 employer may adopt a regularly scheduled alternative workweek that authorizes work by the affected
18 employees for no longer than 10 hours per day within a 40-hour workweek without the payment to the
19 affected employees of an overtime rate of compensation pursuant to this section. A proposal to adopt an
20 alternative workweek schedule shall be deemed adopted *only if* it receives approval in a secret ballot
21 election by at least two-thirds of affected employees in a readily identifiable work unit. The regularly
22 scheduled alternative workweek proposed by an employer for adoption by employees may be a single
23 work schedule that would become the standard schedule for workers in the work unit, or a menu of work
24 schedule options, from which each employee in the unit would be entitled to choose. Notwithstanding
25 subdivision (c) of § 500, the menu of work schedule options may include a regular schedule of eight-
26 hour days that are compensated in accordance with subdivision (a) of § 510. Employees who adopt a
menu of work schedule options may, with employer consent, move from one schedule option to another
on a weekly basis.

168. According to a letter received by the Division of Labor Standards Enforcement
(DLSE) on September 9, 2020 that was signed by Devin Romanio, CLAREMONT’s Senior Human
Resources Business Partner, “Pursuant to Labor Code section 511 and the pertinent IWC Wage Order,
this letter provides notice [to the DLSE] of the results of [CLAREMONT’s] alternative workweek

1 election, which provides for a weekly four day, ten hours per day schedule applicable to affected
2 employees in the Campus Safety Department working at The Claremont Colleges, Inc., a company
3 providing a range of shared services for the Claremont Colleges, located at 101 South Mills Avenue,
4 Claremont, CA 91711-5053. A secret ballot election was held on August 14, 2020, for the purpose of
5 deciding whether employees would adopt the above-described alternative work schedule (four ten work
6 schedule). The results of the secret ballot election were as follows: YES: 26; NO: 2; SIZE OF WORK
7 UNIT: 28. On July 16th & 17th 2020 (*which must be a minimum of 14 days prior to the election*), a
8 meeting with the affected employees was held, as required by law, for the purpose of explaining the
9 effects of the new work schedule(s) on employee hours and pay, including benefits.”

10 169. Labor Code § 511(b) states, “An affected employee working longer than eight hours but
11 not more than 12 hours in a day pursuant to an alternative workweek schedule adopted pursuant to this
12 section shall be paid an overtime rate of compensation of no less than one and one-half times the regular
13 rate of pay of the employee for any work in excess of the regularly scheduled hours established by the
14 alternative workweek agreement and for any work in excess of 40 hours per week.”

15 170. MR. CHOI worked for CLAREMONT prior to, as well as after, the date it adopted its
16 alternative 4/10 workweek¹. Given his own experience in working overtime of a minimum of ten (10) to
17 fifteen (15) minutes every shift/workday to don and doff his required uniform, protective gear and other
18 equipment, all the way up to 1 hour certain workdays, but not compensated for such, on information and
19 belief, MR. CHOI believes the other Non-Exempt Employees Wages, Liquidated Damages, and/or
20 Treble Damages Class subject to CLAREMONT’s alternative workweek schedule continued to work
21 off-the-clock to don and doff their uniforms, protective gear and other equipment.

22 171. Consequently, DEFENDANTS violated Labor Code § 511 and are liable for unpaid
23 overtime pay to Non-Exempt Employees Wages, Liquidated Damages, and/or Treble Damages Class
24 members subject to CLAREMONT’s alternative workweek schedule, especially if such alternative
25 workweek schedule is invalid due to CLAREMONT’s failure to adhere to all requirements for an
26 alternative workweek schedule.

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¹ Although MR. CHOI started as and remained an hourly-paid employee throughout his employment with CLAREMONT and thus CLAREMONT did not misclassify MR. CHOI, the community of interest requirement for certification does not mandate that class members’ claims be uniform or identical. MR. CHOI’S theories of liability does not depend on class members having identical claims, nor does the law of class certification require such. (*Vasquez, supra*, 4 Cal.3d at p. 809, 94 Cal.Rptr. 796, 484 P.2d 964 [a community of interest does not depend upon an identical recovery].) *Sav-on Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 327.

1 **FOURTEENTH CAUSE OF ACTION AGAINST DEFENDANTS**

2 **Labor Code § 512 Meal Period Violations & § 226.7(c) Pay**

3 **(By The Premium Pay Class)**

4 172. MR. CHOI incorporates the above paragraphs as if fully alleged herein, and pleads the
5 following on behalf of himself and other Premium Pay Class members against DEFENDANTS pursuant
6 to Labor Code §§ 226.7, 512, and/or 558.1. Section 558.1(a) holds liable any employer or other person
7 —who is an owner, director, officer, or managing agent of the employer—acting on behalf of an
8 employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and
9 days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated,
10 Sections...226.7..., may be held liable as the employer for such violation.

11 173. Under Labor Code § 512(a), “An employer may not employ an employee for a work
12 period of more than five hours per day without providing the employee with a meal period of not less
13 than 30 minutes, except that if the total work period per day of the employee is no more than six hours,
14 the meal period may be waived by mutual consent of both the employer and employee. An employer
15 may not employ an employee for a work period of more than 10 hours per day without providing the
16 employee with a second meal period of not less than 30 minutes, except that if the total hours worked is
17 no more than 12 hours, the second meal period may be waived by mutual consent of the employer and
18 the employee only if the first meal period was not waived.”

19 174. CLAREMONT operates 24 hour per day, 7 days per week and scheduled MR. CHOI and
20 the Premium Pay Class to worked various full-time and part-time shifts. Though MR. CHOI and the
21 Premium Pay Class clocked out for a 30-minute meal period, CLAREMONT did not allow MR. CHOI
22 and the Premium Pay Class to turn off their radios.

23 175. This particular statutory penalty of premium pay, or rather the reason for such invokes
24 the holding in *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, in which California’s
25 Supreme Court confirmed Labor Code § 226.7 and IWC Wage Order No. 4 prohibits on-duty and on-
26 call rest periods. The same is true of meal periods. “...[E]mployers must relieve their employees of all
duties and relinquish any control over how employees spend their break time.” Employee meal and rest
periods are to be duty-free uninterrupted and timely. *Id.* at 259.

176. Similar to *ABM Security Services*, CLAREMONT failed to provide MR. CHOI and other
Premium Pay Class members with legitimate opportunities to take uninterrupted meal periods each
workday because meal periods were interrupted by the requirement to monitor radios.

177. CLAREMONT expected MR. CHOI and other Premium Pay Class members who were/

are Campus Safety Officers, Corporals, Sergeants, and/or Dispatchers to not only keep their radios powered on with audible volume but also respond to radio notices regardless of whether they were on meal period.

178. Furthermore, MR. CHOI and other Premium Pay Class members were expected to begin working promptly, which meant being dressed in uniform and protective gear and other equipment, and ready for briefing the moment their scheduled shift began. However, DEFENDANTS did not compensate MR. CHOI and the Non-Exempt Employees Wages, Liquidated Damages, and/or Treble Damages Class for donning and doffing their uniforms. Additionally, CLAREMONT's policy, procedure, and/or practice of utilizing an uneven rounding system that resulted in, over a period of time, CLAREMONT's failure to compensate MR. CHOI and other Non-Exempt Employee Wages Class members properly for all the time they actually worked, including overtime. These policies, procedures, and practices also mean MR. CHOI and other Premium Pay Class members did not receive from CLAREMONT a legitimate opportunity to take a meal period by the 5th hour worked.

179. On information and belief, other Premium Pay Class members who were/are subject to CLAREMONT's alternative work schedule of 4/10s and who worked over 10 hour days, were not given a legitimate opportunity to take a second meal period and/or third rest break after the 10th hour worked, such as prior to doffing their uniforms, protective gear and other equipment.

180. Thus, CLAREMONT violated § 512. Consequently, DEFENDANTS are liable to MR. CHOI and the Premium Pay Class for premium pay pursuant to § 226.7(c) which states, "If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."

FIFTEENTH CAUSE OF ACTION AGAINST DEFENDANTS

IWC ORDER 4-2001 § 12(A) Violation & IWC ORDER 4-2001 § 12(B) And § 226.7(c) Pay (By The Premium Pay Class)

181. MR. CHOI incorporates the above paragraphs as if fully alleged herein, and pleads the following on behalf of himself and other Premium Pay Class members against DEFENDANTS pursuant to § 12(A) and (B) of IWC Order 4-2001, Labor Code § 226.7(c), and/or Labor Code § 558.1(a) which holds liable any employer or other person—who is an owner, director, officer, or managing agent of the

1 employer—acting on behalf of an employer, who violates, or causes to be violated, any provision
2 regulating minimum wages or hours and days of work in any order of the Industrial Welfare
3 Commission, or violates, or causes to be violated, Sections...226.7..., may be held liable as the
4 employer for such violation.

5 182. Under Labor Code § 1198, “The maximum hours of work and the standard conditions
6 of labor fixed by the commission shall be the maximum hours of work and the standard conditions of
7 labor for employees. The employment of any employee for longer hours than those fixed by the order or
8 under conditions of labor prohibited by the order is unlawful.

9 183. Under IWC ORDER 4-2001 § 12, titled rest periods, “(A) Every employer shall authorize
10 and permit all employees to take rest periods, which in so far as practicable shall be in the middle of
11 each work period. The authorized rest period time shall be based on the total hours worked daily at the
12 rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period
13 need not be authorized for employees whose total daily work time is less than three and one-half (3 1/2)
14 hours. Authorized rest period time shall be counted as hours worked for which there shall be no
15 deduction from wages. (B) If an employer fails to provide an employee a rest period in accordance with
16 the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the
17 employee’s regular rate of compensation for each workday that the rest period is not provided.

18 184. CLAREMONT operates 24 hour per day, 7 days per week and scheduled MR. CHOI and
19 the Premium Pay Class to worked various full-time and part-time shifts. CLAREMONT did not allow
20 MR. CHOI and the Premium Pay Class to turn off their radios during rest breaks, meaning they were on-
21 duty and on-call rest breaks.

22 185. Labor Code § 226.7 and IWC Wage Order No. 4 prohibits on-duty and on-call rest
23 periods. *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257. “During required rest periods,
24 employers must relieve their employees of all duties and relinquish any control over how employees
25 spend their break time. (See *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1038-
26 1039...” *Augustus v. ABM Security Services, Inc.* at 259.

186. Similar to *ABM Security Services*, CLAREMONT failed to provide MR. CHOI and the
Premium Pay Class with legitimate opportunities to take uninterrupted rest breaks each workday
because rest breaks were interrupted by the requirement to monitor radios.

187. CLAREMONT expected MR. CHOI and the Premium Pay Class who were/are Campus
Safety Officers, Corporals, Sergeants, and/or Dispatchers to not only keep their radios powered on with
audible volume but also respond to radio notices regardless of whether they were on rest break.

1 188. On information and belief, the Premium Pay Class who were/are subject to
2 CLAREMONT's alternative work schedule of 4/10s and who worked over 10 hour days, were not given
3 a legitimate opportunity to take a third rest break due to being on-duty and on-call.

4 189. Thus, CLAREMONT violated IWC ORDER 4-2001 § 12(A). Consequently,
5 DEFENDANTS are liable to MR. CHOI and the Premium Pay Class for premium pay pursuant to IWC
6 ORDER 4-2001 § 12(B) and/or § 226.7(c) which states, "If an employer fails to provide an employee a
7 meal or rest or recovery period in accordance with a state law, including, but not limited to, an
8 applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the
9 Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the
10 employer shall pay the employee one additional hour of pay at the employee's regular rate of
11 compensation for each workday that the meal or rest or recovery period is not provided."

12 **SIXTEENTH CAUSE OF ACTION AGAINST ONLY CLAREMONT**

13 **Labor Code § 1182.12 Violation**

14 **(By The Non-Exempt Employees Wages, Liquidated Damages, and/or Treble Damages Class)**

15 190. MR. CHOI incorporates the above paragraphs as if fully alleged herein and pleads the
16 following against DEFENDANTS.

17 191. According to the relevant part(s) of Labor Code § 1182.12(a), "Notwithstanding any
18 other provision of this part, ...on and after January 1, 2016, the minimum wage for all industries shall be
19 not less than ten dollars (\$10) per hour.

20 192. According to the relevant part(s) of Labor Code § 1182.12(b), "Notwithstanding
21 subdivision (a), the minimum wage for all industries shall not be less than the amounts set forth in this
22 subdivision, except when the scheduled increases in paragraphs (1) and (2) are temporarily suspended
23 under subdivision (d).

24 (1) For any employer who employs 26 or more employees, the minimum wage shall be as follows:

25 (A) From January 1, 2017, to December 31, 2017, inclusive,—ten dollars and fifty cents (\$10.50) per
26 hour.

(B) From January 1, 2018, to December 31, 2018, inclusive,—eleven dollars (\$11) per hour.

(C) From January 1, 2019, to December 31, 2019, inclusive,—twelve dollars (\$12) per hour.

(D) From January 1, 2020, to December 31, 2020, inclusive,—thirteen dollars (\$13) per hour.

(E) From January 1, 2021, to December 31, 2021, inclusive,—fourteen dollars (\$14) per hour.

(F) From January 1, 2022, and until adjusted by subdivision (c)—fifteen dollars (\$15) per hour.

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1 193. According to the relevant part(s) of Labor Code § 1182.12(b)(3), “For purposes of this
2 subdivision, “employer” means any person who directly or indirectly, or through an agent or any other
3 person, employs or exercises control over the wages, hours, or working conditions of any person.

4 194. Though detailed earlier in this operative complaint, summarily DEFENDANTS failed to
5 pay MR. CHOI and the Non-Exempt Employees Wages, Liquidated Damages, and/or Treble Damages
6 Class members the applicable minimum wage rates enumerated in Labor Code § 1182.12 subdivisions
7 (a) and (b) from 2016 to at least 2020 for all hours worked by the MR. CHOI and the Non-Exempt
8 Employees Wages, Liquidated Damages, and/or Treble Damages Class members who donned and
9 doffed CLAREMONT required uniforms, protective gear, and other equipment on CLAREMONT
10 premises off-the-clock—such as Campus Safety Officers, Corporals, and misclassified Sergeants—
and/or who were not compensated California’s applicable minimum wage for all hours worked due to
CLAREMONT’s rounding policy.

11 **SEVENTEENTH CAUSE OF ACTION AGAINST DEFENDANTS**

12 **Labor Code § 1194(a) & Liquidated Damages Pursuant To Labor Code § 1194.2**

13 **(By The Non-Exempt Employees Wages, Liquidated Damages, and/or Treble Damages Class)**

14 195. MR. CHOI incorporates the above paragraphs of this complaint as if fully alleged herein
and pleads the following against DEFENDANTS.

15 196. Under Labor Code § 1194(a) “Notwithstanding any agreement to work for a lesser wage,
16 any employee receiving less than the legal minimum wage or the legal overtime compensation
17 applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of
18 this minimum wage or overtime compensation, including interest thereon, reasonable attorney’s fees,
and costs of suit.

19 197. “[S]ection 1194, subdivision (a) provides that any employee receiving “less than the
20 legal minimum wage” is entitled to recover the unpaid balance of the “full amount” owed. The
21 minimum wage applicable to [CLAREMONT] is set forth in Labor Code § 1182.12 (*supra*) and IWC
22 Order 4-2001 section 4(B), which currently provides: “Every employer shall pay to each employee, on
23 the established payday for the period involved, not less than the applicable minimum wage for all hours
24 worked in the payroll period, whether the remuneration is measured by time, piece, commission, or
otherwise.” This language expresses the intent to ensure that employees be compensated at least the
25 minimum wage for each hour worked. *Armenta v. Osmose, Inc.* (2005) 37 Cal.Rptr.3d 460, 467.

26 198. The applicable overtime compensation rates for the Non-Exempt Employees Wages
Class is one and a half (1.5) times each member’s varying contractually based regular hourly rate of pay.

1 199. Though detailed earlier in this operative complaint, summarily DEFENDANTS failed to
2 pay MR. CHOI and the Non-Exempt Employees Wages, Liquidated Damages, and/or Treble Damages
3 Class members the applicable minimum wage and/or overtime rates for all hours worked by the MR.
4 CHOI and the Non-Exempt Employees Wages, Liquidated Damages, and/or Treble Damages Class
5 members who donned and doffed CLAREMONT required uniforms, protective gear, and other
6 equipment on CLAREMONT premises off-the-clock—such as Campus Safety Officers, Corporals, and
7 misclassified Sergeants—and/or who were not compensated California’s applicable minimum wage
8 and/or overtime rates for all hours worked due to CLAREMONT’s rounding policy.

9 200. Consequently, DEFENDANTS are liable under Labor Code § 1194 to the Non-Exempt
10 Employees Wages Class including MR. CHOI for “the unpaid balance of the full amount of unpaid
11 minimum wage and/or overtime compensation, including interest thereon, reasonable attorney’s fees,
12 and costs of suit.”

13 201. According to the relevant language of Labor Code § 1194.2, “(a) In any action under
14 Section...1194...to recover wages because of the payment of a wage less than the minimum wage fixed
15 by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages
16 in an amount equal to the wages unlawfully unpaid and interest thereon. Nothing in this subdivision
17 shall be construed to authorize the recovery of liquidated damages for failure to pay overtime
18 compensation. A suit may be filed for liquidated damages at any time before the expiration of the statute
19 of limitations on an action for wages from which the liquidated damages arise.”

20 202. CLAREMONT did not have reasonable grounds for believing its failure to pay the Non-
21 Exempt Employees Wages, Liquidated Damages, and/or Treble Damages Class minimum wages was
22 not a violation of any provision of the Labor Code relating to minimum wage or an order of the
23 commission.

24 203. Pursuant to Labor Code § 1194.2, the Non-Exempt Employees Wages, Liquidated
25 Damages, and/or Treble Damages Class including MR. CHOI are entitled to recover liquidated damages
26 in an amount equal to the minimum wages unlawfully unpaid and interest thereon.

EIGHTEENTH CAUSE OF ACTION AGAINST DEFENDANTS

Labor Code § 1197 Violations & Civil Penalty Under Labor Code § 1197.1

(By The Non-Exempt Employees Wages, Liquidated Damages, and/or Treble Damages Class)

204. MR. CHOI incorporates the above paragraphs of this complaint as if fully alleged herein
and pleads the following against Defendants.

205. Under Labor Code § 1197, “The minimum wage for employees fixed by the commission

1 is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so
2 fixed is unlawful.”

3 206. Under Labor Code § 1197.1, “(a) Any employer or other person acting either individually
4 or as an officer, agent, or employee of another person, who pays or causes to be paid to any employee a
5 wage less than the minimum fixed by an applicable state or local law, or by an order of the commission,
6 shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and
7 any applicable penalties imposed pursuant to Section 203 as follows: (1) For any initial violation that is
8 intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period
9 for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover
10 underpaid wages, liquidated damages pursuant to Section 1194.2, and any applicable penalties imposed
11 pursuant to Section 203. (2) For each subsequent violation for the same specific offense, two hundred
12 fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is
13 underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in
14 addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section
15 1194.2, and any applicable penalties imposed pursuant to Section 203. (3) Wages, liquidated damages,
16 and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be
17 paid to the affected employee.”

18 207. According to the relevant portion of Labor Code § 1194.2(a), “In any action under
19 Section...1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed
20 by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages
21 in an amount equal to the wages unlawfully unpaid and interest thereon. Nothing in this subdivision
22 shall be construed to authorize the recovery of liquidated damages for failure to pay overtime
23 compensation. A suit may be filed for liquidated damages at any time before the expiration of the statute
24 of limitations on an action for wages from which the liquidated damages arise.

25 208. Though already explained, summarily, DEFENDANTS failed to pay the applicable
26 minimum wage to MR. CHOI and the Non-Exempt Employees Wages, Liquidated Damages, and/or
Treble Damages Class for off-the-clock and/or rounded work, and thus violated California’s minimum
wage law(s).

27 209. According to page 5 of CLAREMONT’s Campus Safety Training Manual on Grooming
– Uniform – Equipment, under Additional Guidelines pertaining to UNIFORM, “You [meaning Campus
Safety personnel] must be fully dressed and properly groomed **from the moment you clock in**”.
CLAREMONT’s own policy that requires the Non-Exempt Employees Wages, Liquidated Damages,

1 and/or Treble Damages Class to don and doff their uniforms and equipment off-the-clock demonstrates
2 CLAREMONT intentionally did not pay applicable Campus Safety Personnel for such off-the-clock
3 work.

4 **NINETEENTH CAUSE OF ACTION AGAINST DEFENDANTS**

5 **Labor Code § 1197.5(a) Equal Pay Violation And/Or Labor Code § 1197.5(b) Fair Pay Violation** 6 **& Labor Code § 210 Statutory Penalty**

7 **(By The Non-Exempt Employees Wages, Liquidated Damages, and/or Treble Damages Class)**

8 210. MR. CHOI incorporates the above paragraphs as if fully alleged herein and pleads the
9 following against DEFENDANTS.

10 211. Under Labor Code § 1197.5, an employer shall not pay any of its employees at wage
11 rates less than the rates paid to employees of the opposite sex (§ 1197.5(a)) or of another race or
12 ethnicity (§ 1197.5(b)) for substantially similar work, when viewed as a composite of skill, effort, and
13 responsibility, and performed under similar working conditions, except where the employer
14 demonstrates: (1) The wage differential is based upon one or more of the following factors: (A) A
15 seniority system. (B) A merit system. (C) A system that measures earnings by quantity or quality of
16 production. (D) A bona fide factor other than sex, such as education, training, or experience. This factor
17 shall apply only if the employer demonstrates that the factor is not based on or derived from a sex-based
18 or race- or ethnicity-based differential in compensation, is job related with respect to the position in
19 question, and is consistent with a business necessity. For purposes of this subparagraph, “business
20 necessity” means an overriding legitimate business purpose such that the factor relied upon effectively
21 fulfills the business purpose it is supposed to serve. This defense shall not apply if the employee
22 demonstrates that an alternative business practice exists that would serve the same business purpose
23 without producing the wage differential.

24 (2) Each factor relied upon is applied reasonably.

25 (3) The one or more factors relied upon account for the entire wage differential.

26 (4) Prior salary shall not justify any disparity in compensation. Nothing in this section shall be
interpreted to mean that an employer may not make a compensation decision based on a current
employee’s existing salary, so long as any wage differential resulting from that compensation decision is
justified by one or more of the factors in this subdivision.

212. Under Labor Code § 1197.5(c), any employer who violates § 1197.5(a) and/or (b) is
liable to the employee affected in the amount of the wages, and interest thereon, of which the employee
is deprived by reason of the violation, and an additional equal amount as liquidated damages.

1 213. To prevail on his EPA claim, MR. CHOI has the burden to prove that CLAREMONT
2 pays different wages to employees of opposite sexes for “substantially similar work, when viewed as a
3 composite of skill, effort, and responsibility, and performed under similar working conditions”.

Campus Safety Officers

4 214. According to CLAREMONT’s written job description for a Campus Safety Officer
5 position, “[t]his position functions as the primary crime prevention and first responder entity within The
6 Claremont Colleges. The men and women serving in this position are committed to protect and serve
7 The Claremont Colleges community with courtesy and respect for every individual’s dignity and legal
8 rights.”

9 215. According to MR. CHOI was a Campus Safety Officer at all times during his
10 employment with CLAREMONT, despite first attempting to be promoted to Corporal in/around March
11 2016 (best estimate), and thereafter tried two other times between then and 2020. The ones who were
12 promoted at those times were Richard Welton, Christian Falcon, and Dan Hernandez to the best of MR.
13 CHOI’s recollection. According to MR. CHOI’s belief, CLAREMONT paid female Campus Safety
14 Officers and male Campus Safety Officers different wages for substantially similar work, when viewed
15 as a composite of skill, effort, and responsibility, and performed under similar working conditions.
16 CLAREMONT also paid Campus Safety Officers of another race or ethnicity different wages for
17 substantially similar work, when viewed as a composite of skill, effort, and responsibility, and
18 performed under similar working conditions.

19 216. The substantially similar work, when viewed as a composite of skill, effort, and
20 responsibility, and performed under similar working conditions are the essential functions of a
21 CLAREMONT Campus Safety Officer, which are as follows according to this same job description:
22 “crime prevention; conduct routine patrols; perform event security duties, including checking
23 identification, controlling the flow of alcohol in and out of an event, monitoring attendee’s behavior
24 along with other general safety issues; provide safety escorts to students, faculty, and staff; report crimes
25 and violations of CLAREMONT regulations verbally and in writing to proper authorities, conduct initial
26 investigations, write incident reports and law enforcement related initial crime reports; coordinate and
guide responding police and fire/paramedic units in person or via phone or wireless radio; perform other
duties as assigned.”

27 217. All Campus Safety Officers perform the aforementioned job duties regardless of their sex
and/or race or ethnicity.

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Campus Safety Corporals

218. According to CLAREMONT's job description for the role, Corporals perform functions as the primary crime prevention and first responder entity within The Claremont Colleges; provide a critical communication link for Campus Safety calls for service and assistance; perform as a lead officer, training and quality-control duties, under the direct supervision of a shift sergeant and the direction of the VP of Campus Safety and Captain, in order to create more effective crime prevention unit and enhance the quality of service; serve as a watch commander or supervisor in the absence of a Sergeant, Captain or the VP. The men and women serving in this position are committed to protect and serve The Claremont Colleges community with courtesy and respect for everyone's dignity and legal rights.

219. A pay disparity between employees of other races or ethnicities also occurred/s amongst Corporals for substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions. MR. CHOI does not know whether a pay disparity between employees of the opposite sex occurs between Corporals because MR. CHOI is unaware of any female who worked as a Corporal during the same time period MR. CHOI worked for CLAREMONT. On information and believe, MR. CHOI believes he was paid less than Amir Dennis, who is of a different race than MR. CHOI, when they were both Corporals.

220. The substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions are the essential functions of a CLAREMONT Campus Safety Corporal, which are as follows according to CLAREMONT's job description for the Corporal role: The position incumbent is designated as a Campus Security Authority, whose primary responsibility is to report allegations made in good faith to the reporting structure; supervise patrol officers, including effective field supervision of officers conducting patrols, to ensure the protection of and service to students, faculty and staff; supervise Campus Safety operation and personnel by assigning patrol areas, relay and explain written/oral directives, provide advice and assistance on patrol, etc.; provide in-service training to Campus Safety personnel; review reports and daily logs generated during the shift for completeness and accuracy; conduct quality control field inspections of staff; conduct shift briefings and effectively communicate relevant information to staff; evaluate the performance of staff and provide guidance, as needed; participate as appropriate in specialized and/or complex patrol or investigative assignments by directing activities of assigned Campus Safety staff, including interviewing of witnesses, apprehending and arresting suspects, and preparing and submitting written reports; in the absence of a Sergeant, performs as a watch commander and shift supervisor; in the absence of the VP of Campus Safety, assume duties of an emergency

1 preparedness representative in the event of an emergency, in accordance with the Emergency
2 Preparedness Plan; supervise and coordinate department's inventory control and equipment issuance
3 efforts; and perform other duties as assigned.

4 221. All Campus Safety Corporals perform the aforementioned job duties regardless of their
5 sex and/or race or ethnicity.

6 **Campus Safety Sergeants**

7 222. On information and belief due to his knowledge of Latinx female Campus Safety
8 Sergeant Desiree Flores, MR. CHOI believes there is an unlawful pay disparity between Mrs. Flores and
9 male Sergeants Amir Dennis, Raul Saucedo, and/or Jeff Chaimberlain, as well as an unlawful pay
10 disparity between Sergeants of different races or ethnicities for substantially similar work, when viewed
11 as a composite of skill, effort, and responsibility, and performed under similar working conditions
12 because all Sergeants performed the same essential job functions.

11 **Campus Safety Dispatch**

12 223. On information and belief due to his knowledge of the CLAREMONT's Campus Safety
13 Dispatch, MR. CHOI believes there is an unlawful pay disparity between male and female Dispatchers
14 were for substantially similar work, when viewed as a composite of skill, effort, and responsibility, and
15 performed under similar working conditions because all Dispatchers performed the same essential job
16 functions.

17 224. Having established a prima facie case under California's Equal Pay Act and Fair Pay Act,
18 the burden of proof shifts to CLAREMONT to demonstrate that the unequal pay is justifiable under
19 Labor Code § 1197.5(a)(1)-(4).

20 225. Under Labor Code § 1197.5(c), any employer who violates § 1197.5(a) and/or (b) is
21 liable to the employee affected in the amount of the wages, and interest thereon, of which the employee
22 is deprived by reason of the violation, and an additional equal amount as liquidated damages.

23 226. Under Labor Code § 1197.5(h), "An employee receiving less than the wage to which the
24 employee is entitled under this section may recover in a civil action the balance of the wages, including
25 interest thereon, and an equal amount as liquidated damages, together with the costs of the suit and
26 reasonable attorney's fees, notwithstanding any agreement to work for a lesser wage.

27 227. A civil action to recover wages under subdivision (a) or (b) may be commenced no later
28 than two years after the cause of action occurs, except that a cause of action arising out of a willful
29 violation may be commenced no later than three years after the cause of action occurs.

30 228. Therefore, MR. CHOI seeks to recover the balance of the wages, including interest

thereon, and an equal amount as liquidated damages, together with the costs of the suit and reasonable attorney's fees on behalf of himself and the Non-Exempt Employees Wages, Liquidated Damages, and/or Treble Damages Class.

Labor Code § 210 Statutory Penalty

229. Under Labor Code § 210(a), "In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections 201.3, 204, 204b, 204.1, 204.2, 204.11, 205, 205.5, and 1197.5, shall be subject to a penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

230. According to Labor Code § 210(c), "An employee is only entitled to either recover the statutory penalty provided for in this section or to enforce a civil penalty as set forth in subdivision (a) of Section 2699, but not both, for the same violation.

231. Therefore, MR. CHOI on behalf of himself and the Non-Exempt Employees Wages Class elects to pursue this penalty as a statutory penalty with the recovery paid to affected employees.

TWENTITH CAUSE OF ACTION AGAINST DEFENDANTS

Labor Code § 1198 Violation

(By The Non-Exempt Employees Wages, Liquidated Damages, and/or Treble Damages Class)

232. MR. CHOI incorporates the above paragraphs as if fully alleged herein, and pleads the following against DEFENDANTS:

233. Under Labor Code § 1198, "The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

234. As previously discussed, DEFENDANTS willfully failed to pay MR. CHOI and the Non-Exempt Employees Wages, Liquidated Damages, and/or Treble Damages Class all earned wages, including but not necessarily limited to minimum, regular, overtime, double time and/or premium wages as well as reporting time, sick leave, and/or vacation pay due to (a) working off-the-clock to don and doff their campus safety uniforms and protective gear such as a ballistics vest; (b) being on-call during rest and meal breaks because they did not have a legitimate opportunity to take such uninterrupted, especially Class members who were/are Campus Safety Officers, Corporals, and/or Sergeants expected to not only keep their radios powered on with audible volume but also respond to radio notices

1 regardless of whether they were on a rest or meal break; and (c) due to CLAREMONT's policy,
2 procedure, and/or practice of utilizing an uneven rounding system that resulted in, over a period of time,
3 DEFENDANTS' failure to compensate MR. CHOI and the Non-Exempt Employees Wages, Liquidated
4 Damages, and/or Treble Damages Class properly for all the time they actually worked.

5 235. Therefore, DEFENDANTS violated Labor Code § 1198.

6 **TWENTY-FIRST CAUSE OF ACTION AGAINST ONLY CLAREMONT**

7 **Lab. Code § 2802(a) Violation**

8 **(By The Reimbursement-Owed Class)**

9 236. MR. CHOI incorporates the above paragraphs as if fully alleged herein, and pleads the
10 following on behalf of himself and other Reimbursement-Owed Class members against ONLY
11 CLAREMONT.

12 237. Under Labor Code § 2802(a), "An employer shall indemnify his or her employee for
13 all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of
14 his or her duties, or of his or her obedience to the directions of the employer...(b) All awards made by a
15 court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures
16 under this section shall carry interest at the same rate as judgments in civil actions. Interest shall accrue
17 from the date on which the employee incurred the necessary expenditure or loss. (c) For purposes of this
18 section, the term "necessary expenditures or losses" shall include all reasonable costs, including, but not
19 limited to, attorney's fees incurred by the employee enforcing the rights granted by this section. Section
20 2802 is a nonwaivable right.

21 238. An employer generally satisfies this obligation by either reimbursing a given expense or
22 providing the employee with the equipment necessary to ensure he or she does not incur the expense in
23 the first place.

24 239. MR. CHOI and the Reimbursement-Owed Class used their personal cell phones for work
25 related purposes. For example, MR. CHOI and the Reimbursement-Owed Class, during every shift, had
26 to use their cellphones to take pictures of supporting evidence for incident reports and sometimes texted
such pictorial evidence to colleagues depending on the circumstances of the incident. Supporting
pictorial evidence included but was not limited to pictures of vehicles involved in accidents, pictures of
suspect(s), pictures of a location of an incident, pictures of vandalism, pictures of a break in for a
burglary, trespassed persons, i.e. any supporting photo that was required for the report.

240. However, CLAREMONT failed to reimburse MR. CHOI and other members of the

1 Reimbursement-Owed Class for the pro rata basis use of their cells phones to collect pictorial evidence
2 for work-related incident reports, as well as for non-short transmission calls to Dispatch, the on-duty
3 Watch Commander assigned to their shift, and/or to any upper management.

4 241. Employers must reimburse employees for work-related calls on their personal cellphones,
5 even when the employee has “unlimited minutes”. *Cochran v. Schwan's Home Service, Inc.* (2014) 228
6 Cal. App. 4th 1137.

7 242. In *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, the California Supreme
8 Court confirmed that the purpose of the statute is to “prevent employers from passing their operating
9 expenses on to their employees.”

10 243. Furthermore, according to CLAREMONT’s Campus Safety Training Manual on
11 Grooming – Uniform – Equipment, CLAREMONT required MR. CHOI and other Reimbursement-
12 Owed Class members, as part of their work uniform, “to wear plain black all-leather uniform
13 shoes/combat boots or a combination leather/canvas military boot. Personnel shall keep their shoes
14 neatly polished while on duty.” MR. CHOI and the Reimbursement-Owed Class had to pay for these
15 special shoes/boots and shoe polish for which CLAREMONT failed to reimburse them. As noted above,
16 CLAREMONT expected MR. CHOI and the Reimbursement-Owed Class to polish these shoes/boots on
17 their own time, i.e. off-the-clock. MR. CHOI, for example, performed a brush polish every day at a
18 maximum to every other day at a minimum taking 10-20 seconds per occurrence, and performed a shine
19 polish approximately once per week taking approximately 5 minutes. CLAREMONT Watch
20 Commanders occasionally performed uniform inspections where those whose uniforms were not up to
21 CLAREMONT standards would be verbally reprimanded, and could even be sent home.

22 244. In *Gattuso*, the California Court of Appeal concluded that California employers could
23 satisfy their California Labor Code section 2802 reimbursement obligations through separate
24 reimbursements, or paying California employees enhanced compensation. *Gattuso v. Harte-Hanks*
25 *Shoppers, Inc.*, 42 Cal. 4th 554, 559 (2007). The Court held that enhanced compensation could take the
26 form of increased base salary, increased commission rates, or both. *Id.* Where a California employee
receives enhanced compensation reimbursements, the employer must utilize an apportionment method
delineating between compensation for labor and reimbursement for business expenses. *Id.* Additionally,
the reimbursement amount must reimburse the California employee for all expenses incurred. *Gattuso* at
p. 575. Where an employer offering enhanced compensation for reimbursement fails to satisfy the
above-mentioned requirements, the California employee has a legal claim.

245. CLAREMONT did/does not pay enhanced compensation to MR. CHOI and other

1 Reimbursement-Owed Class members to satisfy CLAREMONT's California Labor Code section 2802
2 reimbursement obligations.

3 246. CLAREMONT failed to comply with § 2802 when CLAREMONT failed to reimburse
4 MR. CHOI and the Reimbursement-Owed Class for the pro rata use of their cellphones in taking
5 evidentiary pictures and conducting work-related calls, for work-related black shoes/boots
6 CLAREMONT required them to wear as part of their uniform, and for shoe polish.

7 247. Thus, CLAREMONT violated Labor Code § 2802(a) and owes reimbursement to MR.
8 CHOI and the Reimbursement-Owed Class for these necessary expenditures or losses incurred by them
9 in direct consequence of the discharge of their duties, or of their obedience to CLAREMONT's
10 directions. Under § 2802(b), CLAREMONT also owes MR. CHOI and the Reimbursement-Owed Class
11 "interest at the same rate as judgments in civil action. Interest shall accrue from the date on which the
12 employee incurred the necessary expenditure or loss." Per § 2802(c), this includes all reasonable costs,
13 including, but not limited to, attorney's fees incurred by the employee enforcing the rights granted by
14 this section.

15 **TWENTY-SECOND CAUSE OF ACTION AGAINST DEFENDANTS**

16 **Reporting Time Pay**

17 **(By The Non-Exempt Employees Wages, Liquidated Damages, and/or Treble Damages Class)**

18 248. MR. CHOI incorporates the above paragraphs as if fully alleged herein, and pleads the
19 following against DEFENDANTS.

20 249. Under IWC Order 4-2001, Section 5, "(A) Each workday an employee is required to
21 report for work and does report, but is not put to work or is furnished less than half said employee's
22 usual or scheduled day's work, the employee shall be paid for half the usual or scheduled day's work,
23 but in no event for less than two (2) hours nor more than four (4) hours, at the employee's regular rate of
24 pay, which shall not be less than the minimum wage. (B) If an employee is required to report for work a
25 second time in any one workday and is furnished less than two (2) hours of work on the second
26 reporting, said employee shall be paid for two (2) hours at the employee's regular rate of pay, which
shall not be less than the minimum wage.

27 250. As a former Corporal, MR. CHOI is aware CLAREMONT, in firing its employees,
28 would have soon-to-be terminated employees come into work on their last day but fail to furnish such
29 employees with at least half their regular working hours before firing them. Though MR. CHOI
30 resigned, he is still owed reporting time pay for the times CLAREMONT scheduled MR. CHOI for a
shift, usually due to an evening event such as a campus party, but failed furnish at least half the working

1 hours to MR. CHOI and/or pay him reporting time pay. MR. CHOI knows CLAREMONT did this to
2 other Non-Exempt Employees Wages, Liquidated Damages, and/or Treble Damages Class members,
3 typically to part-time workers, which MR. CHOI once was.

4 251. Therefore, on behalf of the Non-Exempt Employees Wages, Liquidated Damages, and/or
5 Treble Damages Class members, MR. CHOI seeks to recover reporting time pay CLAREMONT owes.

6 **TWENTY-THIRD CAUSE OF ACTION AGAINST ONLY CLAREMONT**

7 **I.W.C. Order 4-2001 § 20(A)**

8 **(By The Non-Exempt Employees Wages, Liquidated Damages, and/or Treble Damages Class)**

9 252. MR. CHOI incorporates the above paragraphs as if fully alleged herein and pleads the
10 following against CLAREMONT.

11 253. Under I.W.C. Order 4-2001 § 20(A), “In addition to any other civil penalties provided by
12 law, any employer or any other person acting on behalf of the employer who violates, or causes to be
13 violated, the provisions of this order, shall be subject to the civil penalty of: (1) Initial Violation —
14 \$50.00 for each underpaid employee for each pay period during which the employee was underpaid in
15 addition to the amount which is sufficient to recover unpaid wages. (2) Subsequent Violations —
16 \$100.00 for each underpaid employee for each pay period during which the employee was underpaid in
17 addition to an amount which is sufficient to recover unpaid wages. (3) The affected employee shall
18 receive payment of all wages recovered.

19 254. Due to CLAREMONT’s underpayment of wages to MR. CHOI and other Non-Exempt
20 Employees Wages, Liquidated Damages, and/or Treble Damages Class members, MR. CHOI—on
21 behalf of himself and the Non-Exempt Employees Wages, Liquidated Damages, and/or Treble Damages
22 Class—seeks additional penalties pursuant to I.W.C. Order 4-2001 § 20(A).

23 **TWENTY-FOURTH CAUSE OF ACTION AGAINST CLAREMONT**

24 **Breach of Contract, specifically the Implied Covenant of Good Faith and Fair Dealing**

25 **(By The Non-Exempt Employees Wages, Liquidated Damages, and/or Treble Damages Class)**

26 255. MR. CHOI incorporates the above paragraphs as if fully alleged herein and pleads the
following against CLAREMONT.

256. Each member of the Non-Exempt Employees Wages, Liquidated Damages, and/or Treble
Damages Class had written contracts of employment with CLAREMONT.

257. Implied in each of these contracts is the covenant of good faith and fair dealing.
CLAREMONT breach each contract, specifically the Implied Covenant of Good Faith and Fair Dealing,
in failing to pay affected employees all compensation per each one’s respective contract.

1 258. Therefore, MR. CHOI, on behalf of himself and the Non-Exempt Employees Wages,
2 Liquidated Damages, and/or Treble Damages Class seeks contractual damages from CLAREMONT
3 from four years from the date of MR. CHOI's initial Complaint, plus Judicial Council Emergency Rule
4 9 Tolling.

5 **TWENTY-FIFTH CAUSE OF ACTION AGAINST CLAREMONT**

6 **Violation Of Civil Code § 1572 and/or § 1573 (Fraud)**

7 **(By MR. CHOI, on behalf of himself and the Defrauded Class)**

8 259. MR. CHOI incorporates the above paragraphs as if fully alleged herein and pleads the
9 following against CLAREMONT.

10 260. Under California Civil Code section 1572, "[a]ctual fraud...consists in any of the
11 following acts, committed by a party to the contract, or with his connivance, with intent to deceive
12 another party thereto, or to induce him to enter into the contract:

- 13 1. The suggestion, as a fact, of that which is not true, by one who does not believe it to be true;
- 14 2. The positive assertion, in a manner not warranted by the information of the person making it,
15 of that which is not true, though he believes it to be true;
- 16 3. The suppression of that which is true, by one having knowledge or belief of the fact;
- 17 4. A promise made without any intention of performing it; or,
- 18 5. Any other act fitted to deceive.

19 261. "Fraud" means an intentional misrepresentation, deceit, or concealment of a material fact
20 with the intention of depriving the victim of property or of a legal right or otherwise to cause the victim
21 injury. CACI 3116.

22 262. These statutes provide no express exception for employers or employees." *Lazar v.*
23 *Superior Court* (1996) 12 Cal.4th 631, 644.

24 263. In an email titled "Question regarding don/doff time for new ballistic vests" dated April
25 3, 2017 to Crystal DeMatteo Rosetti, who held the title of CLAREMONT's HR Business Partner at the
26 time, as thus had the authority to communicate with CHOI on CLAREMONT's behalf, CHOI wrote as
follows:

"Good afternoon Crystal:

As you are probably aware, Campus Safety Officers have recently been issued ballistic ("bulletproof")
vests. Wearing of the vests is mandatory for all field personnel, as outlined in General Order 4, Part VI.

1 The vest consists of two parts, armor “panels” and a cloth “carrier”. Campus Safety employees are not
2 allowed to take the “panels” home, requiring that we put on the vest at work. Moreover, because the vest
3 must be worn underneath our uniforms, we are required to fully dress at work prior to our shift, and
4 undress to remove the vest after our shift. (I cannot find a written example of this policy, but it had been
5 articulated to me by numerous supervisors, including our Lieutenant [Rowland Smith] and Captain
6 [Ernie Didier].) We do not have the ability to show up to work fully “in uniform” and “ready to work.”
7 I estimate it reasonably takes between five (5) and ten (10) minutes to fully dress and properly adjust the
8 vest and be ready to work.

9 Also, the vest requires some maintenance, primarily of washing the “carrier”. This involves removing
10 the “panels” to take the carrier home, and inserting the “panels” upon returning to work. This process is
11 lengthened by the need to reattached all the straps of the vest, as they have to be removed prior to
12 washing, and takes approximately ten (10) to fifteen (15) minutes to adjust to a proper fit. Again, this
13 entire process must be done at on site, as we are not allowed to take the “panels” home. The
14 manufacturer further recommends that we periodically clean the “panels” with water and a mild soap,
15 and allow the panel to air dry on a flat surface. This is not feasible without leaving the panels in an
16 unsecured location (i.e., outside of our assigned lockers).

17 Campus Safety Officer are required to be “in full uniform/gear and ready for duty when they clock
18 in/out” (General Order 5, Part V, Section A-2-ii). Therefore, we are not compensated for the time we are
19 required to spend on site putting on and removing the vest.

20 So, with apologies for the lengthy preamble, my concern is that, since I am required to don and doff my
21 ballistic vest on site, due to the requirements of the employer, this appears to be time for which Campus
22 Safety Officers are eligible for compensation. Honestly, if I may put in the opinion of a non-Human
23 Resources layperson, it seems that the simplest solution to this dilemma would be to allow Campus
24 Safety Officers to take the armor panels off site, and don/doff the vest in the same manner as the rest of
25 our uniforms.

26 Thank you for your time.”

264. On April 4, 2017, Ms. Rosetti responded via email to CHOI, writing “Hi Richard, Thank
you for your email and the explanations provided. I have a bit of research to do before I can answer
your questions. But first off, have you talked to Stan, or [Captain] Ernie [Didier], about any of this?
Best, Crystal”. Stan refers to managing agent Stan Skipworth, who was CLAREMONT’s then Director

1 of Campus Safety and/or Assistant Vice President of TCCS Campus Safety. Ernie refers to managing
2 agent Ernie Didier, who was CLAREMONT's Assistant Director and Captain of Campus Safety.

3 265. On April 7, 2017, CHOI replied to Ms. Rosetti's inquiry about Stan or Ernie, stating
4 "Thank you Crystal, I have not spoken to Stan about anything related to the vests. I have spoken with
5 Captain Didier about taking the vests off site for specific purposes (such as being fitted for new
6 uniforms and plain clothes, and also cleaning/maintenance), but I did not specifically bring up the issue
7 of being required to be at work and on site to put on the vests."

8 266. On April 10, 2017, Ms. Rosetti then emailed CHOI and asked, "What guidance did
9 Captain Didier provide related to the questions you asked? I will be meeting with Stan later this week to
10 discuss, and would just like as much information beforehand. Thank you, Crystal.

11 267. According to CHOI, he responded to Ms. Rosetti's April 10, 2017 email, and she
12 eventually followed up with CHOI to close this issue, misrepresenting to CHOI that CLAREMONT did
13 not have to pay for donning and doffing.

14 268. On information and belief, MR. CHOI believes Ms. Rosetti either did not conduct or
15 recklessly conducted the "bit of research" she, as CLAREMONT's HR Business Partner, claimed she
16 was going to conduct prior to answering MR. CHOI's questions, and/or Mr. Didier, Mr. Skipworth,
17 and/or CLAREMONT's CEO Stig Lanesskog lied to Ms. Rosetti, and used her as the conduit of their
18 misrepresentations. Therefore CLAREMONT actually or constructively through recklessness knew of
19 the falsity of CLAREMONT's misrepresentations to MR. CHOI.

20 269. Ultimately, through Ms. Rosetti's April 2017 emails to MR. CHOI, Mr. Didier's, Mr.
21 Skipworth's, and/or CLAREMONT's CEO Stig Lanesskog's misrepresentations, CLAREMONT
22 defrauded MR. CHOI into believing CLAREMONT did not have to pay affected Campus Safety
23 employees for donning and doffing.

24 270. Ms. Rosetti's April 2017 emails, Mr. Didier's, Mr. Skipworth's, and/or Mr. Lanesskog's
25 proxy misrepresentation(s) (false statement(s), concealment(s), or false promise(s)) substantially
26 influenced MR. CHOI to continuing working as usual, without compensation for donning and doffing,
and refrained from seeking legal counsel for this issue, but would not have so done without
CLAREMONT's false statement(s), concealment(s), or false promise(s).

27 271. On information provided by CLAREMONT's former Lieutenant Roland Dean Smith that
28 MR. CHOI could not have possibly discovered until, at the earliest calendar year 2022 or 2023, MR
CHOI believes and asserts in good faith, on behalf of the Defrauded Class, that CLAREMONT has
known at least since calendar year 2002, that CLAREMONT recklessly, willfully, and/or intentionally

1 fails to properly compensate affected Campus Safety employees properly despite a 2002 workplace
2 investigation regarding wages, choosing to deliberately commit employer wage theft, deceive and
3 defraud its employees out of compensation to which they are lawfully entitled.

4 272. Due to CLAREMONT's fraud, MR. CHOI and the Defrauded Class are damaged,
5 including but not limited to being owed unpaid minimum, contractual/regular, overtime, and possible
6 double time wages; premium, possibly sick, and vacation pay; other benefits and statutory penalties.

7 **TWENTY-SIXTH CAUSE OF ACTION AGAINST DEFENDANTS**

8 **Violation Of Civil Code §§ 1708, 1709, 1710 (Deceit)**

9 **(By MR. CHOI, on behalf of himself and the Deceived Class)**

10 273. MR. CHOI incorporates the above paragraphs as if fully alleged herein and pleads the
11 following against CLAREMONT.

12 274. According to California Civil Code § 1708, "Every person is bound, without contract, to
13 abstain from injuring the person or property of another, or infringing upon any of his or her rights."

14 275. Under Civil Code § 1709, "One who willfully deceives another with intent to induce him
15 to alter his position to his injury or risk, is liable for any damage which he thereby suffers."

16 276. Per Civil Code § 1710, "A deceit, within the meaning of the last section, is either: 1. The
17 suggestion, as a fact, of that which is not true, by one who does not believe it to be true; 2. The assertion,
18 as a fact, of that which is not true, by one who has no reasonable ground for believing it to be true;
19 3. The suppression of a fact, by one who is bound to disclose it, or who gives information of other facts
20 which are likely to mislead for want of communication of that fact; or, 4. A promise, made without any
21 intention of performing it."

22 277. Pursuant to Civil Code § 1711, "One who practices a deceit with intent to defraud the
23 public, or a particular class of persons, is deemed to have intended to defraud every individual in that
24 class, who is actually misled by the deceit."

25 278. "These statutes provide no express exception for employers or employees." *Lazar v.*
26 *Superior Court* (1996) 12 Cal.4th 631, 644.

27 279. In an email titled "Question regarding don/doff time for new ballistic vests" dated April
28 3, 2017 to Crystal DeMatteo Rosetti, who held the title of CLAREMONT's HR Business Partner at the
29 time, as thus had the authority to communicate with CHOI on CLAREMONT's behalf, CHOI wrote as
30 follows:

31 "Good afternoon Crystal:

1 As you are probably aware, Campus Safety Officers have recently been issued ballistic (“bulletproof”) vests. Wearing of the vests is mandatory for all field personnel, as outlined in General Order 4, Part VI.

3 The vest consists of two parts, armor “panels” and a cloth “carrier”. Campus Safety employees are not
4 allowed to take the “panels” home, requiring that we put on the vest at work. Moreover, because the vest
5 must be worn underneath our uniforms, we are required to fully dress at work prior to our shift, and
6 undress to remove the vest after our shift. (I cannot find a written example of this policy, but it had been
7 articulated to me by numerous supervisors, including our Lieutenant [Rowland Smith] and Captain
8 [Ernie Didier].) We do not have the ability to show up to work fully “in uniform” and “ready to work.”
9 I estimate it reasonably takes between five (5) and ten (10) minutes to fully dress and properly adjust the
10 vest and be ready to work.

11 Also, the vest requires some maintenance, primarily of washing the “carrier”. This involves removing
12 the “panels” to take the carrier home, and inserting the “panels” upon returning to work. This process is
13 lengthened by the need to reattached all the straps of the vest, as they have to be removed prior to
14 washing, and takes approximately ten (10) to fifteen (15) minutes to adjust to a proper fit. Again, this
15 entire process must be done at on site, as we are not allowed to take the “panels” home. The
16 manufacturer further recommends that we periodically clean the “panels” with water and a mild soap,
17 and allow the panel to air dry on a flat surface. This is not feasible without leaving the panels in an
18 unsecured location (i.e., outside of our assigned lockers).

19 Campus Safety Officer are required to be “in full uniform/gear and ready for duty when they clock
20 in/out” (General Order 5, Part V, Section A-2-ii). Therefore, we are not compensated for the time we are
21 required to spend on site putting on and removing the vest.

22 So, with apologies for the lengthy preamble, my concern is that, since I am required to don and doff my
23 ballistic vest on site, due to the requirements of the employer, this appears to be time for which Campus
24 Safety Officers are eligible for compensation. Honestly, if I may put in the opinion of a non-Human
25 Resources layperson, it seems that the simplest solution to this dilemma would be to allow Campus
26 Safety Officers to take the armor panels off site, and don/doff the vest in the same manner as the rest of
our uniforms.

Thank you for your time.”

1 280. On April 4, 2017, Ms. Rosetti responded via email to CHOI, writing “Hi Richard, Thank
2 you for your email and the explanations provided. I have a bit of research to do before I can answer
3 your questions. But first off, have you talked to Stan, or [Captain] Ernie [Didier], about any of this?
4 Best, Crystal”. Stan refers to managing agent Stan Skipworth, who was CLAREMONT’s then Director
5 of Campus Safety and/or Assistant Vice President of TCCS Campus Safety. Ernie refers to managing
6 agent Ernie Didier, who was CLAREMONT’s Assistant Director and Captain of Campus Safety.

7 281. On April 7, 2017, CHOI replied to Ms. Rosetti’s inquiry about Stan or Ernie, stating
8 “Thank you Crystal, I have not spoken to Stan about anything related to the vests. I have spoken with
9 Captain Didier about taking the vests off site for specific purposes (such as being fitted for new
10 uniforms and plain clothes, and also cleaning/maintenance), but I did not specifically bring up the issue
11 of being required to be at work and on site to put on the vests.”

12 282. On April 10, 2017, Ms. Rosetti then emailed CHOI and asked, “What guidance did
13 Captain Didier provide related to the questions you asked? I will be meeting with Stan later this week to
14 discuss, and would just like as much information beforehand. Thank you, Crystal.

15 283. According to CHOI, he responded to Ms. Rosetti’s April 10, 2017 email, and she
16 eventually followed up with CHOI to close this issue, misrepresenting to CHOI that CLAREMONT did
17 not have to pay for donning and doffing.

18 284. On information and belief, MR. CHOI believes Ms. Rosetti either did not conduct or
19 recklessly conducted the “bit of research” she, as CLAREMONT’s HR Business Partner, claimed she
20 was going to conduct prior to answering MR. CHOI’s questions, and/or Mr. Didier, Mr. Skipworth,
21 and/or CLAREMONT’s CEO Stig Lanesskog lied to Ms. Rosetti, and used her as the conduit of their
22 misrepresentations. Therefore CLAREMONT actually or constructively through recklessness knew of
23 the falsity of CLAREMONT’s misrepresentations to MR. CHOI.

24 285. Ultimately, through Ms. Rosetti’s April 2017 emails to MR. CHOI, Mr. Didier’s, Mr.
25 Skipworth’s, and/or CLAREMONT’s CEO Stig Lanesskog’s deceitful misrepresentations,
26 CLAREMONT deceived MR. CHOI into believing CLAREMONT did not have to pay affected Campus
Safety employees for donning and doffing.

 286. Ms. Rosetti’s April 2017 emails, Mr. Didier’s, Mr. Skipworth’s, and/or Mr. Lanesskog’s
proxy misrepresentation(s) (false statement(s), concealment(s), or false promise(s)) substantially
influenced MR. CHOI to continuing working as usual, without compensation for donning and doffing,
and refrained from seeking legal counsel for this issue, but would not have so done without
CLAREMONT’s false statement(s), concealment(s), or false promise(s).

1 287. On information provided by CLAREMONT’s former Lieutenant Roland Dean Smith that
2 MR. CHOI could not have possibly discovered until, at the earliest calendar year 2022 or 2023, MR
3 CHOI believes and asserts in good faith, on behalf of the Deceived Class, that CLAREMONT has
4 known at least since calendar year 2002, that CLAREMONT recklessly, willfully, and/or intentionally
5 fails to properly compensate affected Campus Safety employees properly despite a 2002 workplace
6 investigation regarding wages, choosing to deliberately commit employer wage theft, deceive and
7 defraud its employees out of compensation to which they are lawfully entitled.

8 288. Due to CLAREMONT’s deceit, MR. CHOI and the Deceived Class are damaged,
9 including but not limited to being owed unpaid minimum, contractual/regular, overtime, and possible
10 double time wages; premium, possibly sick, and vacation pay; other benefits and statutory penalties.

11 **TWENTY-SEVENTH CAUSE OF ACTION AGAINST CLAREMONT**

12 **Treble Damages For Unfair Business Practices In Violation Of B & P Code § 17100**

13 **(By The Non-Exempt Employees Wages, Liquidated Damages, and/or Treble Damages Class)**

14 289. MR. CHOI incorporates the above paragraphs as if fully alleged herein and pleads the
15 following against CLAREMONT on behalf of the Non-Exempt Employees Wages, Liquidated
16 Damages, and/or Treble Damages Class:

17 290. An unlawful business practice is anything that can be called a business practice and that
18 at the same time is forbidden by federal, state or local law. (*Ticconi v. Blue Shiel of California Life &*
19 *Health Ins. Co.* (2008) 160 Cal.App.4th 528, 539.) A business practice is considered fraudulent if it is
20 likely to deceive the public. (*McKell v. Washington Mutual, Inc.* (2006) 142 Cal.App.4th 1457, 1471.)
21 An act or practice is unfair if “it violates established public policy or if it is immoral, unethical,
22 oppressive or unscrupulous and causes injury to consumers which outweighs its benefits. [Citations.]”
23 (*Id.* at p. 1473.) Moreover, a party who alleges an unfair practice must establish that the injury suffered
24 was not one that could have been reasonably avoided. (*Daugherty v. American Honda Motor Co.,*
25 *Inc.* (2006) 144 Cal.App.4th 824, 839.) “A plaintiff alleging unfair business practices under [the unfair
26 competition] statutes must state with reasonable particularity the facts supporting the statutory elements
of the violation. [Citations.]” (*Khoury v. Maly’s of California, Inc.* (1993) 14 Cal.App.4th 612, 619.)
The unfair business practices cause of action incorporates all prior allegations and further alleges: “The
acts and conduct alleged herein above constituted a fraudulent, unlawful and/or unfair business
practice.” This allegation is insufficient because it is not set forth with particularity.

 291. California Business & Professions Code section 17076 states, “In any action brought

1 under this chapter, where persons are employed or performing services for any person or in the conduct
2 of the business wherein such person is charged with a violation of this chapter, and are so employed or
3 performing such services without compensation or at a wage lower than that prevailing at the time and
4 place of the service for the particular services performed, such services shall be charged as an expense of
5 the business in which rendered and at the rate of the wage for the services rendered prevailing at the
6 time of the service at the place where rendered.

7 292. As noted in this Complaint, MR. CHOI and the putative class members performed labor
8 without compensation at times, i.e. performed off-the-clock work. Due to such, CLAREMONT violated
9 B&P § 17076.

10 363. Given this violation, MR. CHOI seeks treble damages under B&P Code section 17082, which
11 states, “In any action under this chapter, it is not necessary to allege or prove actual damages or the
12 threat thereof, or actual injury or the threat thereof, to the plaintiff. But, in addition to injunctive relief,
13 any plaintiff in any such action shall be entitled to recover three times the amount of the actual damages,
14 if any, sustained by the plaintiff, as well as three times the actual damages, if any, sustained by any
15 person who has assigned to the plaintiff his claim for damages resulting from a violation of this
16 chapter.”

17 **TWENTY-EIGHTH CAUSE OF ACTION AGAINST CLAREMONT**

18 **Restitution And Injunctive Relief For Unfair Competition In Violation Of B & P Code § 17200**

19 **(By The Restitution Class)**

20 293. MR. CHOI incorporates the above paragraphs as if fully alleged herein and pleads the
21 following against CLAREMONT on behalf of the Restitution Class:

22 294. Under California’s Business and Professions (B & P) Code § 17200, unfair competition
23 means and includes “any unlawful, unfair or fraudulent business act or practice and unfair, deceptive,
24 untrue or misleading advertising and any act prohibited by Chapter 1 (commencing with Section 17500)
25 of Part 3 of Division 7 of California’s Business and Professions Code.”

26 295. A business practice violates the “unlawful, unfair or fraudulent” prong if the practice is
prohibited by statutory or common law, including if the practice is against public policy. Almost any
violation of the law can serve as the basis for an unfair competition claim if, as a result of the unfair
competition consumer(s) are harmed or the business practice provides an unfair advantage to the business
over its competitors, making the practice essentially “unfair” in the market.

296. In this case, CLAREMONT violated the above numerated Labor Code sections through

business practices providing an unfair advantage to CLAREMONT over its competitors, especially other nonprofit corporations who must comply with state and federal law to maintain tax exempt status under Internal Revenue Code § 501(c).

Remedies For Bus. & Prof. Code § 17200

297. Notwithstanding Section 3369 of the Civil Code¹, specific or preventive relief may be granted to enforce a penalty, forfeiture, or penal law in a case of unfair competition. B & P Code § 17202.

298. Under B & P Code § 17203, “Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition. Any person may pursue representative claims or relief on behalf of others only if the claimant meets the standing requirements of Section 17204 and complies with Section 382 of the Code of Civil Procedure, but these limitations do not apply to claims brought under this chapter by the Attorney General, or any district attorney, county counsel, city attorney, or city prosecutor in this state.”

299. In compliance with B & P Code § 17203, MR. CHOI meets the standing requirements of B & P Code § 17204 because MR. CHOI is “a person who has suffered injury in fact and has lost money or property as a result of the unfair competition” engaged in by CLAREMONT, as detailed throughout this Complaint, including but not limited to by CLAREMONT enforcing the same unlawful employment policies at least over a four-year period prior to initiated this Action, likely prior to such time, and possibly up to the disposition date of this Action.

300. Therefore, on behalf of himself and all others similarly situated, i.e. the Restitution Class, MR. CHOI seeks restitution against CLAREMONT for its violation of California’s Unfair Competition Laws.

301. Furthermore, because MR. CHOI meets the standing requirements of B & P § 17204 and has complied with CCP § 382 as required by B & P Code § 17203, on behalf of himself and all CLASS members, MR. CHOI seeks injunctive relief against CLAREMONT and any other applicable DOE

¹ California Civil Code Section 3369 states, “Neither specific nor preventive relief can be granted to enforce a penalty or forfeiture in any case, nor to enforce a penal law, except in a case of nuisance or as otherwise provided by law.”

1 defendant(s) who engages, has engaged, or proposes to engage in unfair competition to prevent them
2 from use of or employment by any person of any practice which constitutes unfair competition, or as
3 may be necessary to restore to any person in interest any money or property, real or personal, which may
4 have been acquired by means of CLAREMONT's and/or any other applicable DOE defendant(s)' unfair
competition.

5 **TWENTY-NINTH CAUSE OF ACTION AGAINST CLAREMONT/DEFENDANTS**

6 **PAGA Civil Penalties**

7 **(By PAGA Aggrieved Employees)**

8 302. MR. CHOI incorporates the above paragraphs as if fully alleged herein and pleads the
9 following against CLAREMONT as an aggrieved former employee on behalf of himself and all other
10 Aggrieved Employees brought in the name of the People of the State of California and the Labor
11 Commissioner, as well as the Labor and Workforce Development Agency ("LWDA") or any of its
departments, divisions, commissions, boards, agencies, or employees:

12 303. MR. CHOI incorporates by reference his PAGA Notice, an accurate copy of which is
13 attached to this First Amended Complaint, and seeks all applicable PAGA civil penalties.

14 **JURY TRIAL DEMAND**

15 1. MR. CHOI, on behalf of himself and the CLASS, demands a jury trial on all legal issues so
16 triable.

17 **PRAYER**

18 WHEREFORE MR. CHOI prays for the following:

- 19 1. Judgment in his and the Class's favor against DEFENDANTS for any
20 and all causes of actions enumerated above for which each defendant is personally liable;
- 21 2. Compensatory damages according to proof, including but not limited to fraud and deceit, for a
22 minimum of \$10 million;
- 23 3. Punitive damages for fraud and deceit;
- 24 4. Statutory damages pursuant to California's Civil, Business and Professions, and Labor Codes;
- 25 5. Civil Penalties pursuant to California's Private Attorney General Act (PAGA);
- 26 6. Treble damages for failing to pay minimum wages in violation of California's Fair Practices Act;
7. Injunctive relief and restitution pursuant to California's UCL, enjoining DEFENDANTS from
violating California's Labor Code;
8. An award of attorneys' fees incurred in the investigation, filing and prosecution of this action

1 pursuant to CCP § 1021.5; Lab. Code §§ 218.51, 226(e)(1), 226(h), 11942, 1198.5(l), 2699(g),
2 2802(c), and any other applicable provision of law awarding attorneys' fees;

3 9. Costs of suit incurred per C.C.P. §§ 1032(b), 1033.5, 1034 and applicable Lab. Code sections;

4 10. Interest pursuant to Labor Code §§ 1194(a), 1194.2, and § 218.63 and any other applicable
5 provision of law awarding interest;

6 11. Tax neutralization; and

7 12. For such other and further relief as this Court may deem just and proper.

8 Dated: October 4, 2024

THE Legal Advocate

9 By: 
Michelle L. Reynolds, Esq.

10 Attorney for Plaintiff RICHARD CHOI

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21 ¹ Labor Code § 218.5 states in relevant part, “(a) In any action brought for the nonpayment of wages, fringe benefits, or
22 health and welfare or pension fund contributions, the court shall award reasonable attorney’s fees and costs to the prevailing
23 party if any party to the action requests attorney’s fees and costs upon the initiation of the action. ... (b) This section does not
24 apply to any cause of action for which attorney’s fees are recoverable under Section 1194.”

25 ² Labor Code § 1194 states in relevant part, “(a) Notwithstanding any agreement to work for a lesser wage, any employee
26 receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to
recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, including
interest thereon, reasonable attorney’s fees, and costs of suit.”

³ Labor Code § 218.6 states that in any action brought for the nonpayment of wages, the court shall award interest on all due
and unpaid wages at the rate of interest specified in Civil Code § 3289 (10% per annum), which shall accrue from the date
that the wages were due and payable.

September 16, 2024

Department of Industrial Relations Accounting Unit

Attn: PAGA Administrator

455 Golden Gate Avenue, 10th Floor

San Francisco, CA 94102

Filed online via <https://dir.govfa.net/308>

Attn: The Claremont Colleges, Inc. (TCC)

fka Claremont University Consortium (CUC)

aka The Claremont Colleges Services (TCCS)

Attn: Stig Lanesskog as Agent for Service of Process for TCC fka CUC aka TCCS,

Attn: Stig Lanesskog in his individual capacity as CEO of TCC and TCCS, and

DOES 1 through 10

101 South Mills Avenue

Claremont, CA 91711

Delivered via Certified Mail: _____

RE: Richard Choi, on behalf of himself and other Aggrieved Employees

PRIVATE ATTORNEY GENERAL ACT (PAGA) NOTICE & LABOR CODE § 211 DEMAND

PAGA provides a mechanism for an aggrieved employee to pursue civil penalties on behalf of herself or himself, other employees, and the State of California's Labor and Workforce Development Agency ("LWDA") or any of its departments, divisions, commissions, boards, agencies, or employees for an array of Labor Code violations. This document is Richard Choi's PAGA Notice against The Claremont Colleges, Inc. (TCC), fka Claremont University Consortium (CUC), aka The Claremont Colleges Services (TCCS) (all of which hereinafter are referred to collectively as "Claremont"); Claremont's Owners, Directors, Officers, And/Or Managing Agents Who Exercise Control Over The Nature And Structure Of Or Economic Control Over The Employment Relationship, Or Whose Action(s) Violate A Wage And Hour Law Or Result In A Wage And Hour Violation, including but not necessarily limited to Stig Lanesskog (hereinafter referred to as "Mr. Lanesskog"); and DOES 1 through 10, all of whom collectively hereinafter are referred to as "Defendants".

Pursuant to Lab. Code section 2699.3 et seq., Richard Choi ("Mr. Choi") hereby gives notice of the specific provisions of California's Labor Code that Defendants violated and committed against any aggrieved employee within the period prescribed under Section 340 of the Code of Civil Procedure. This PAGA Notice also includes the facts and theories to support the alleged violation. Under Lab. Code § 22, "violation" includes a failure to comply with any requirement of the Labor Code. Mr. Choi reserves the right to amend this PAGA notice.

Penalties Under PAGA (Lab. Code §§ 2699-2699.5)

Where the Labor Code *does* provide for a civil penalty and public enforcement, an aggrieved employee may still bring a suit and collect these penalties as an alternative to enforcement by the LWDA or any of its departments, divisions, commissions, boards, agencies, or employees. The penalties available under PAGA are those provided in the underlying Labor Code provision that is violated or, if no penalty is listed, those provided by PAGA itself, which can result in a civil penalty of two hundred dollars (\$200) for each aggrieved employee per pay period. Mr. Choi seeks any and all applicable civil penalties against Defendant.

I. Employer And Certain Employees Can Be Personally Liable For Wage And Hour Violations Under the PAGA, California’s Labor Code Sections 2698 – 2699.5

“In California, the Legislature has decided that both the employer and any “other person” who causes a violation of the overtime pay or minimum wage laws are subject to specified civil penalties. (§§ 558(a) [overtime], 1197.1(a) [minimum wage].) Neither of these statutes mentions the business structure of the employer, the benefits or protections of the corporate form, or any potential reason or basis for disregarding the corporate form. ...[T]he business structure of the employer is irrelevant; if there is evidence and a finding that a party other than the employer “violates, or causes to be violated” the overtime laws (§ 558(a)) or “pays or causes to be paid to any employee” less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties regardless of the identity or business structure of the employer.” *Atempa v. Pedrazzani* (2018) 27 Cal. App. 5th 809 at 820. Thus, California Courts are willing to hold personally liable for PAGA civil penalties a company’s owners, directors, officers, and managing agents who violate or cause to be violated certain Labor Code sections.

II. Aggrieved Employees: Richard Choi, An Aggrieved Employee, Has Standing To File This PAGA Notice Against Defendants On Behalf Of Himself And Other Aggrieved Employees

Richard Choi (“Mr. Choi”) worked for Claremont as a Campus Safety Officer employee from February 2004 to March 2022. On Friday, August 25, 2023, Mr. Choi, through legal counsel Michelle Reynolds, Esq., requested via an emailed letter from Claremont Mr. Choi’s employment records pursuant to California Labor Code sections 226, 432, and 1198.5. On September 12, 2023, counsel for Claremont send by email a letter refusing to fulfill Mr. Choi’s August 25, 2023 request for his employment records. However, Claremont had 21 calendar days to fulfill Mr. Choi’s Labor Code section 226 request, and up to 30 calendar days to fulfill Mr. Choi’s Labor Code section 1198.5 request.

Other aggrieved employees include current and/or former employees with the following *non-exhaustive* list of job title(s), whom along with Mr. Choi hereinafter shall be referred to collectively as “Aggrieved Employees”: (1) All non-exempt hourly employees including Campus Safety Officers, Corporal Campus Safety Officers and Campus Safety Dispatchers, as well as those employees Claremont misclassified as salary exempt including but not necessarily limited to Sergeant Campus Safety Officers because these salary employees did/do not (1) customarily and regularly exercise discretion and independent judgment; (2) were/are not primarily engaged in duties which meet the test of the exemption; (3) on information and believe, may not have been paid by Claremont the requisite salary to meet the salary test for any exemption. Additionally, Aggrieved Employees include any and all Claremont employees, within the period prescribed under Section 340 of the Code of Civil Procedure, who experienced any of the Labor Code violations enumerated within this PAGA Notice.

III. PAGA Procedures Followed

This PAGA Notice is pursuant to the procedures specified in Lab. Code §§ 2699 and 2699.3 by Mr. Choi, an aggrieved employee according to the applicable definition of aggrieved employee under Lab. Code § 2699(c), and on behalf of “other current or former employees”—whether full-time, part-time, temporary or volunteer employees, and/or misclassified as independent contractors or salaried exempt—employed by or working at/for Claremont who worked and/or are working anywhere within the boundaries of the State of California within the PAGA’s 1-year statute of limitations as it may be tolled by applicable law and going forward for the duration of litigation, and if applicable relating back to Mr. Choi’s LASC Case No. 24STCV11245.

IV. Specific Provisions Of The Labor Code Defendants Violated, Including The Facts And Theories To Support The Alleged Violation

Lab. Code § 201(a) Violation

Labor Code § 201(a) reads in relevant part “If an employer discharges an employee, the wages^[1] earned and unpaid at the time of discharge are due and payable immediately.” Mr. Choi was constructively discharged by Claremont. Furthermore, Mr. Choi knows Claremont discharged other Aggrieved Employees that Claremont failed to timely pay all wages upon separation. When Claremont discharged Mr. Choi and these other Aggrieved Employees, Claremont failed to timely pay the respective wages they earned—including but not limited to minimum, regular, overtime, and double-time wages; premium pay for interrupted, missed, on-call, and/or untimely recovery, rest, and/or meal breaks; sick pay, supplemental COVID pay; travel time pay; vacation pay that should have accrued; and/or reporting time pay. These wages were earned by Aggrieved Employees but remained unpaid by Claremont at the time of discharge, wages which became due and payable immediately upon this type of separation of employment.

Claremont is an employer that requires its Campus Safety Officers, Corporals, and Sergeants to work off the clock several minutes (10-15) to don and then an additional several minutes (10-15) to doff uniforms on a regular basis or as a regular feature of the job but off-the-clock. However, Claremont failed to immediately pay relevant discharged Aggrieved Employees all earned and unpaid wages at the time of discharge, unpaid wages certain Aggrieved Employees earned working off-the-clock every workday to don and doff their Claremont-required work uniforms on Claremont’s premises, protective gear such as a ballistic vest, and other work-related equipment. “The relevant statutes and wage order do not allow employers to require employees to routinely work for minutes off the clock without compensation.” *Troester v. Starbucks Corp.* (2018) 5 Cal.5th 829, 848. Claremont’s off-the-clock donning and doffing policy, procedure, and/or practice resulted in Claremont not complying with Labor Code § 201 because Claremont failed to compensate relevant former Aggrieved Employees for such off-the-clock work. Thus, Claremont failed to immediately pay, upon separation of employment, all wages earned by donning/doffing Aggrieved Employees who Claremont discharged.

Also, Claremont failed to immediately pay relevant discharged Aggrieved Employees all earned and unpaid premium pay due to these employees being on-call during meal, recovery, and/or rest breaks because these Aggrieved Employees did not have a legitimate opportunity to take meal/recovery/rest breaks, took such untimely, and/or such meal/rest breaks were interrupted or missed, especially Aggrieved Employees who were/are Campus Safety Officers, Corporals, Sergeants, and/or Dispatchers expected to not only keep their radios powered on with audible volume but also respond to radio notices regardless of whether they were on a meal/recovery/rest break. Furthermore, on information and belief, at all times relevant to this PAGA Notice, Claremont’s written policies did not authorize legitimate off-duty meal and/or rest breaks for Campus Safety Officers, Corporals, Sergeants, and/or Dispatchers. “[T]he remedy provided in Labor Code section 226.7 constitutes a wage or premium pay and is governed by a three-year statute of limitations...”. See *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal. 4th 1094.

As explained towards the end of this PAGA Notice, on information and belief, Claremont and/or Defendants also failed to pay reporting time pay to discharged Aggrieved Employees. On information and

¹ According to Labor Code §200(a) “‘Wages’ includes all amounts for labor performed by employees of every description, whether the amount is fixed or ascertained by the standard of time, task, piece, commission basis, or other method of calculation. Under § 200(b) “Labor” includes labor, work, or service whether rendered or performed under contract, subcontract, partnership, station plan, or other agreement if the labor to be paid for is performed personally by the person demanding payment.

belief, certain Aggrieved Employees reported for work at Claremont but were not put to work or were furnished less than half these employees' usual or scheduled day's work, yet Claremont failed to pay these Aggrieved Employees the requisite reporting time pay. Reporting time pay constitutes wages. See *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal. 4th 1094. Thus, failure to pay all reporting time pay due at the time of employment termination is a basis for waiting time penalties pursuant to Labor Code § 203, and thus is also a basis for PAGA civil penalties for Claremont's Labor Code § 201 violation.

Additionally, due to the time Aggrieved Employees spent off-the-clock donning and doffing, these Aggrieved Employees should have accrued additional vacation time. However, Claremont did not properly credit vacation time to Aggrieved Employees and did not pay them upon discharge.

Lastly, Claremont failed to allow and pay certain Aggrieved Employees sick pay and/or COVID Supplemental Sick Pay, as well as travel time pay for transporting ballistic vests.

Consequently, Claremont violated Labor Code § 201 and is liable to relevant Aggrieved Employees for applicable PAGA penalties. Furthermore, Claremont and other defendant(s) who meet the elements under Lab. Code § 558.1 are liable for statutory waiting time penalties under Labor Code § 203 (*supra*), for which Mr. Choi is already suing Defendants on a putative class action basis.

Lab. Code § 202(a) Violation

Under Labor Code § 202(a) "If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting..." On information and belief, Mr. Choi believes Defendants did not timely pay Aggrieved Employees who quit all earned and unpaid wages within 72 hours of quitting,

Claremont is an employer that requires its Campus Safety Officers, Corporals, and Sergeants to work off the clock several minutes (10-15) to don and then an additional several minutes (10-15) to doff uniforms on a regular basis or as a regular feature of the job but off-the-clock. However, Claremont failed to immediately pay relevant Aggrieved Employees who quit all earned and unpaid wages upon separation, unpaid wages certain Aggrieved Employees earned working off-the-clock every workday to don and doff their Claremont-required work uniforms on Claremont's premises, protective gear such as a ballistic vest, and other work-related equipment. "The relevant statutes and wage order do not allow employers to require employees to routinely work for minutes off the clock without compensation." *Troester v. Starbucks Corp.* (2018) 5 Cal.5th 829, 848. Claremont's off-the-clock donning and doffing policy, procedure, and/or practice resulted in Claremont not complying with Labor Code § 201 because Claremont failed to compensate relevant former Aggrieved Employees for such off-the-clock work. Thus, Claremont failed to immediately pay, upon separation of employment, all wages earned by donning/doffing Aggrieved Employees who quit working for Claremont.

Also, Claremont failed to immediately pay relevant Aggrieved Employees who quit all earned and unpaid premium pay due to these employees being on-call during meal, recovery, and/or rest breaks because these Aggrieved Employees did not have a legitimate opportunity to take meal/recovery/rest breaks, took such untimely, and/or such meal/rest breaks were interrupted or missed, especially Aggrieved Employees who were/are Campus Safety Officers, Corporals, Sergeants, and/or Dispatchers expected to not only keep their radios powered on with audible volume but also respond to radio notices regardless of whether they were on a meal/recovery/rest break. Furthermore, on information and belief, at all times relevant to this PAGA Notice, Claremont's written policies did not authorize legitimate off-duty meal and/or rest breaks for Campus Safety

Officers, Corporals, Sergeants, and/or Dispatchers. “[T]he remedy provided in Labor Code section 226.7 constitutes a wage or premium pay and is governed by a three-year statute of limitations...”. See *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal. 4th 1094.

As explained towards the end of this PAGA Notice, on information and belief, Claremont and/or Defendants also failed to pay reporting time pay to Aggrieved Employees who quit. On information and belief, certain Aggrieved Employees reported for work at Claremont but were not put to work or were furnished less than half these employees’ usual or scheduled day’s work, yet Claremont failed to pay these Aggrieved Employees the requisite reporting time pay. Reporting time pay constitutes wages. See *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal. 4th 1094. Thus, failure to pay all reporting time pay due at the time of employment separation is a basis for waiting time penalties pursuant to Labor Code § 203, and thus is also a basis for PAGA civil penalties for Claremont’s Labor Code § 201 violation.

Additionally, due to the time Aggrieved Employees spent off-the-clock donning and doffing, these Aggrieved Employees should have accrued additional vacation time. However, Claremont did not properly credit vacation time to Aggrieved Employees and did not pay them in a timely manner after they quit.

Lastly, Claremont failed to allow and pay certain Aggrieved Employees sick pay and/or COVID Supplemental Sick Pay, as well as travel time pay for transporting ballistic vests.

Consequently, Claremont violated Labor Code § 202(a) and is liable to relevant Aggrieved Employees for applicable PAGA penalties. Furthermore, Claremont and other defendant(s) who meet the elements under Lab. Code § 558.1 are liable for statutory waiting time penalties under Labor Code § 203 (*supra*), for which Mr. Choi is already suing Defendants on a putative class action basis.

Lab. Code § 203 Civil Penalties Due For Lab. Code §§ 201 And 202 Willful Violations

California’s public policy favors the full and prompt payment of wages due an employee. To ensure that employers comply with the laws governing the payment of wages when an employment relationship ends, California’s Legislature enacted Labor Code § 203 to provide for the assessment of a statutory penalty against the employer when there is a willful failure to pay wages due the employee at conclusion of the employment relationship. Labor Code § 203(a) states in pertinent part, “If an employer willfully fails to pay, without abatement or reduction, in accordance with sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days. According to Labor Code § 203(b), “Suit may be filed for these penalties at any time before the expiration of the statute of limitations on an action for the wages from which the penalties arise, which is three (3) years.

All compensation is considered in determining if all wages due were paid as prescribed by law, including the following wages/pay Claremont/Defendants failed to pay Mr. Choi and Aggrieved Employees (1) minimum, regular, overtime, and/or possible double time wages due to working off-the-clock hours to don and doff a required uniform, protective gear including ballistic vest, and other work-related equipment; (3) all accrued, but unused, vacation or vacation that should have accrued but was not credit by Claremont and remained unused; (4) reporting time pay in violation of IWO 4-2001, and (5) failing to pay premium pay per Labor Code § 226.7.

Mr. Choi knows for himself, and believes in good faith for other Aggrieved Employees, that Defendants willfully failed to timely pay them all of their earned wages upon separation of employment. The settled meaning of “willful,” as used in section 203, is that an employer has intentionally failed or refused to perform an act which was required to be done. (*Barnhill v. Robert Saunders & Co.* (1981) 125 Cal.App.3d 1, 7-8; *Davis v. Morris* (1940) 37 Cal.App.2d 269, 274) “[T]he employer’s refusal to pay need not be based on a deliberate evil purpose to defraud workmen of wages which the employer knows to be due.” (*Barnhill, supra*, 125 Cal.App.3d at p. 7; see *Davis v. Morris, supra*, 37 Cal.App.2d at p. 274.)” *Amaral v. Cintas Corp.* (2008) 163 Cal.App.4th 1157, 1201. “[T]o be at fault within the meaning of [section 203], the employer’s refusal to pay need not be based on a deliberate evil purpose to defraud workmen of wages which the employer knows to be due. As used in section 203, ‘willful’ merely means that the employer intentionally failed or refused to perform an act which was required to be done.” *Gonzalez v. Downtown LA Motors, LP* (2013) 215 Cal.App.4th 36, 54. “In civil cases the word ‘willful’ as ordinarily used in courts of law, does not necessarily imply anything blameable, or any malice or wrong toward the other party, or perverseness or moral delinquency, but merely that the thing done or omitted to be done, was done or omitted intentionally. It amounts to nothing more than this: That the person knows what he is doing, intends to do what he is doing, and is a free agent.” *Nishiki v. Danko Meredith, P.C.* (2018) 25 Cal.App.5th 883, 891.

On April 3, 2017, Mr. Choi sent Crystal Rosetti—who was then Claremont’s HR Business Partner, and is Claremont’s current Chief Human Resources Officer—the following email:

“As you are probably aware, Campus Safety Officers have recently been issued ballistic(“bulletproof”) vests. Wearing of the vests is mandatory for all field personnel, as outlined in General Order 4, Part VI.

The vest consists of two parts, armor “panels” and a cloth “carrier”. Campus Safety employees are not allowed to take the “panels” home, requiring that we put on the vest at work. Moreover, because the vest must be worn underneath our uniforms, we are required to fully dress at work prior to our shift, and undress to remove the vest after our shift. (I cannot find a written example of this policy, but it had been articulated to me by numerous supervisors, including our Lieutenant and Captain.) We do not have the ability to show up to work fully “in uniform” and “ready to work.” I estimate it reasonably takes between five (5) and ten (10) minutes to fully dress and properly adjust the vest and be ready to work.

Also, the vest requires some maintenance, primarily of washing the “carrier”. This involves removing the “panels” to take the carrier home, and inserting the “panels” upon returning to work. This process is lengthened by the need to reattached all the straps of the vest, as they have to be removed prior to washing, and takes approximately ten (10) to fifteen (15) minutes to adjust to a proper fit. Again, this entire process must be done at on site, as we are not allowed to take the “panels” home. The manufacturer further recommends that we periodically clean the “panels” with water and a mild soap, and allow the panel to air dry on a flat surface. This is not feasible without leaving the panels in an unsecured location (i.e., outside of our assigned lockers).

Campus Safety Officer are required to be “in full uniform/gear and ready for duty when they clock in/out” (General Order 5, Part V, Section A-2-ii). Therefore, we are not compensated for the time we are required to spend on site putting on and removing the vest.

So, with apologies for the lengthy preamble, my concern is that, since I am required to don and doff my ballistic vest on site, due to the requirements of the employer, this appears to be time for which Campus Safety Officers are eligible for compensation. Honestly, if I may put in the opinion of a non-Human Resources layperson, it seems that the simplest solution to this dilemma would be to allow Campus

Safety Officers to take the armor panels off site, and don/doff the vest in the same manner as the rest of our uniforms.”

On April 4, 2017, Ms. Rosetti replied via email to Mr. Choi, writing “Thank you for your email and the explanations provided. I have a bit of research to do before I can answer your questions. But first off, have you talked to Stan, or Ernie, about any of this?”

On April 7, 2017, Mr. Choi responded to Ms. Rosett’s question as follows: “I have not spoken to Stan about anything related to the vests. I have spoken with Captain Didier about taking the vests off site for specific purposes (such as being fitted for new uniforms and plain clothes, and also cleaning/maintenance), but I did not specifically bring up the issue of being required to be at work and on site to put on the vests.

On April 10, 2017, Ms. Rosetti email Mr. Choi, asking “ What guidance did Captain Didier provide related to the questions you asked? I will be meeting with Stan later this week to discuss, and would just like as much information beforehand.”

Ultimately, Claremont failed to pay relevant Aggrieved Employees for donning and doffing their uniforms despite Mr. Choi’s inquiry in April of 2017. On information and belief, Claremont not only willfully failed to compensate Aggrieved Employees for donning and doffing mandatory uniforms, also deliberately lied to Aggrieved Employees about this issue, and fraudulently, maliciously, and/or oppressively cheated Aggrieved Employees of compensation, misrepresenting to Aggrieved Employees their right to compensation for donning and doffing, as well as with regard to Aggrieved Employees’ rights to premium pay for being on-call.

To this day, Claremont/Defendants still do not compensate Aggrieved Employees for donning and doffing required uniforms, now, on information and belief, making them transport their ballistic vests to and from work and home. Defendants’ knowingly utter disregard of Mr. Choi’s and other Aggrieved Employees right to unpaid wages is ample evidence Defendants willfully failed to pay, without abatement or reduction, in accordance with Labor Code sections 201 and 202 any wages owed to applicable Aggrieved Employees Claremont discharged, including but not limited to Mr. Choi whom Claremont constructively discharged, as well as other Aggrieved Employees who quit. To this date, Mr. Lanesskog has yet to order the payment of all of Mr. Choi’s earned yet unpaid wages. Mr. Choi believes this be true for other Aggrieved Employees. Not only do Mr. Choi’s wages continue under Lab. Code § 203 as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages do not continue for more than 30 days, PAGA penalties also attached for Defendants’ failure to pay waiting time penalties to Aggrieved Employees. Given Mr. Choi’s last day of work was in March of 2022, clearly 30 days have elapsed.

With regard to violating Lab. Code § 203 and PAGA penalties for so doing, Mr. Choi and other Aggrieved Employees, according to page 5 of Claremont’s Campus Safety Training Manual on Grooming – Uniform – Equipment, under Additional Guidelines pertaining to UNIFORM, had to “...be fully dressed and properly groomed **from the moment [they] clock in**”, including equipment. According to page 7 of Claremont’s Campus Safety Training Manual on Grooming – Uniform –Equipment, under EQUIPMENT, “Campus Safety personnel are responsible for the safekeeping and security of all department-issued equipment, such as two-way radio and flashlight in their possession.” Under the header **Duty Belt/Gear**, “*Unless otherwise directed, personnel are to wear the department-issued duty belt and authorized gear at all times while on duty. The placement of the gear items on the duty belt shall be in the following order, looking at the duty belt from left to right: Belt Keeper—Key Pouch—Baton—Radio—Belt Keeper—Gloves—Belt Keeper—Handcuffs—Flashlight —Mace—Metal Key Hook—Belt Keeper.* Under **Special Note**, “Unless otherwise directed by Direct of Campus Safety, personnel may not take the department-issued baton and pepper spray off campus and must

secure these items in their employee locker space upon departure from campus.” Thus, Claremont not only knew but also intended, as demonstrated by Claremont’s Campus Safety Training Manual, its Campus Safety Personnel—including but not necessarily limited to Campus Safety Officers, Corporals, Sergeants, and Dispatchers—to don their uniforms and equipment prior to clocking in, i.e. off-the-clock —because Campus Safety personnel “must be fully dressed and properly groomed **from the moment [they] clock in.**” Likewise, Claremont not only knew but also intended, as demonstrated by Claremont’s Campus Safety Training Manual, its Campus Safety Personnel—including but not necessarily limited to Campus Safety Officers, Corporals, Sergeants, and Dispatchers—to doff their uniforms and equipment after to clocking out, i.e. off-the-clock—because Campus Safety “personnel may not take the department-issued baton and pepper spray off campus and must secure these items in their employee locker space upon departure from campus.” Therefore, Claremont owes waiting time penalties and applicable Aggrieved Employees for knowing and intending for them to don and doff their uniforms and equipment off-the-clock, and more importantly for knowing and intending to not compensate Mr. Choi and applicable Aggrieved Employees for off-the-clock donning and doffing.

Thus, Defendants violated and continue to violate Labor Code § 203. As a result, Defendants are not only liable for statutory waiting time penalties, but also are liable for the attendant PAGA penalties to Mr. Choi and Aggrieved Employees.

Labor Code § 204, § 204(a) & § 204(b)(1) Violations

Labor Code § 204(a) reads in relevant part “All wages, other than those mentioned in Section 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month...” Per Labor Code § 204(b)(1), “Notwithstanding any other provision of this section, all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Under Labor Code § 204(b)(2), “An employer is in compliance with the requirements of subdivision (a) of § 226 relating to total hours worked by the employee, if hours worked in excess of normal work period during the current pay period are itemized as corrections on the paystub for the next regular pay period. Any corrections set out in a subsequently issued paystub shall state the inclusive dates of the pay period for which the employer is correcting its initial report of hours....” Labor Code § 204(d) further explains “The requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

Despite the mandates of § 204, Claremont did not abide by § 204(a) because Claremont did not pay twice during each calendar month “[a]ll wages, other than those mentioned in § 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment...on days designated in advance by the employer as the regular paydays.” Though Claremont paid Mr. Choi and other Aggrieved Employees wages twice during each calendar month, Claremont failed to timely pay **all** applicable wages earned by Aggrieved Employees, including Mr. Choi. Claremont also did not abide by § 204(b) because Claremont neither paid Aggrieved Employees, including Mr. Choi, for the hours they worked in excess of the normal work period no later than the payday for the next regular payroll period, nor itemized as corrections these hours and pay on the paystub for the next regular pay period. So, the payment of these earned wages to Aggrieved Employees certainly was not made within seven calendar days following the close of the payroll period because these earned wages remain unpaid. These unpaid wages include but are not necessarily limited to minimum, regular, overtime, double time and/or premium wages as well as reporting time, requested sick leave, and/or vacation pay due to (a) working off-the-

clock to don and doff their campus safety uniforms and protective gear such as a ballistics vest; (b) being on-call during rest and meal breaks because Aggrieved Employees did not have a legitimate opportunity to take such uninterrupted, especially Aggrieved Employees who were/are Campus Safety Officers, Corporals, Sergeants, and/or Dispatchers expected to not only keep their radios powered on with audible volume but also respond to radio notices regardless of whether they were on a rest or meal break; (c) reporting to work but not being furnished at least half a day worth of work; and (d) any other unknown Defendant policy, procedure, and/or practice resulting in Defendants failure to compensate Aggrieved Employees properly for all the time they actually worked and/or should have otherwise been paid.

Labor Code § 204, § 204(a), and § 204(b) is not just about the frequency by which an employer pays its employees, it is also about the accuracy of those wages periodically paid. Therefore, Claremont violated Labor Code § 204, § 204(a), and § 204(b) and is subject to PAGA penalties for Claremont violating each section and subsection under Labor Code § 2699.3(a) and § 2699.5.

Labor Code § 210 Penalties Due To § 204 And § 1197.5 Violations

Labor Code § 210 states, “(a) In addition to, and entirely independent and apart from, any other penalty provided in this article, **every person** who fails to pay the wages of each employee as provided in §§ 201.3, **204, 204b**, 204.1, 204.2, 204.11, 205, 205.5, and **1197.5**, shall be subject to a penalty as follows: (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld. (b) The penalty shall either be recovered by the employee as a statutory penalty pursuant to § 98...(c) An employee is only entitled to either recover the statutory penalty provided for in this section or to enforce a civil penalty as set forth in subdivision (a) of § 2699, but not both, for the same violation.

Due to Claremont’s violations of § 204 and § 204(b) (*supra*) and § 1197.5 (*infra*), Claremont is subject to civil penalties under § 210(a). Mr. Choi has yet to decide whether to pursue § 210 penalties statutorily under § 98 or as a civil penalty pursuant to PAGA because at this time he does not know whether the civil or statutory penalty is higher. Therefore, Mr. Choi, on behalf of himself and other Aggrieved Employees, reserves their rights to seek § 210 penalties for Claremont’s violations of § 204, § 204(b), and § 1197.5 under PAGA, while reserving the right to alternatively pursue such as a statutory penalty pursuant to § 98 instead.

According to Labor Code § 211, a demand is a prerequisite to the bringing of any action under Labor Code § 210 or § 211. This document also serves as the demand required by Labor Code § 211 in which Mr. Choi demands, on behalf of himself and other Aggrieved Employees, that Claremont pay the highest calculatable penalties under § 210, as well as Claremont pay all wages due to Mr. Choi and Aggrieved Employees under § 204 and/or § 1197.5 that Claremont has failed to pay.

Labor Code § 211 Demand

According to Labor Code § 211, “A demand is a prerequisite to the bringing of any action under this section or Section 210. The division on behalf of the state may accept and receipt for any penalties so paid, with or without suit.” This document as serves as Mr. Choi’s Labor code § 211 Demand on behalf of himself and other Aggrieved Employees, that Claremont pay the highest calculatable penalties under § 210, along with all wages due to Aggrieved Employees, including Mr. Choi, under § 204 and/or § 1197.5 Claremont has failed to pay.

Labor Code § 206 Violations And Penalties

Labor Code § 206(a) states, “In case of a dispute over wages, the employer shall pay, without condition and within the time set by this article, all wages, or parts thereof, conceded by him[/her/it] to be due, leaving to the employee all remedies he[/she] might otherwise be entitled to as to any balance claimed. A ‘good faith dispute’ that any wages are due occurs when an employer presents a defense, based in law or fact, which, if successful, would preclude any recovery on the part of the employee...Defenses presented which, under all the circumstances, are unsupported by any evidence, are unreasonable, or are presented in bad faith, will preclude a finding of a ‘good faith dispute. 8 C.C.R. § 13520(a).

§ 206(a) Violation

On April 3, 2017, Mr. Choi sent Crystal Rosetti—who was then Claremont’s HR Business Partner, and is Claremont’s current Chief Human Resources Officer—the following email:

“As you are probably aware, Campus Safety Officers have recently been issued ballistic(“bulletproof”) vests. Wearing of the vests is mandatory for all field personnel, as outlined in General Order 4, Part VI.

The vest consists of two parts, armor “panels” and a cloth “carrier”. Campus Safety employees are not allowed to take the “panels” home, requiring that we put on the vest at work. Moreover, because the vest must be worn underneath our uniforms, we are required to fully dress at work prior to our shift, and undress to remove the vest after our shift. (I cannot find a written example of this policy, but it had been articulated to me by numerous supervisors, including our Lieutenant and Captain.) We do not have the ability to show up to work fully “in uniform” and “ready to work.” I estimate it reasonably takes between five (5) and ten (10) minutes to fully dress and properly adjust the vest and be ready to work.

Also, the vest requires some maintenance, primarily of washing the “carrier”. This involves removing the “panels” to take the carrier home, and inserting the “panels” upon returning to work. This process is lengthened by the need to reattached all the straps of the vest, as they have to be removed prior to washing, and takes approximately ten (10) to fifteen (15) minutes to adjust to a proper fit. Again, this entire process must be done at on site, as we are not allowed to take the “panels” home. The manufacturer further recommends that we periodically clean the “panels” with water and a mild soap, and allow the panel to air dry on a flat surface. This is not feasible without leaving the panels in an unsecured location (i.e., outside of our assigned lockers).

Campus Safety Officer are required to be “in full uniform/gear and ready for duty when they clock in/out” (General Order 5, Part V, Section A-2-ii). Therefore, we are not compensated for the time we are required to spend on site putting on and removing the vest.

So, with apologies for the lengthy preamble, my concern is that, since I am required to don and doff my ballistic vest on site, due to the requirements of the employer, this appears to be time for which Campus Safety Officers are eligible for compensation. Honestly, if I may put in the opinion of a non-Human Resources layperson, it seems that the simplest solution to this dilemma would be to allow Campus Safety Officers to take the armor panels off site, and don/doff the vest in the same manner as the rest of our uniforms.”

On April 4, 2017, Ms. Rosetti replied via email to Mr. Choi, writing “Thank you for your email and the explanations provided. I have a bit of research to do before I can answer your questions. But first off, have you talked to Stan, or Ernie, about any of this?”

On April 7, 2017, Mr. Choi responded to Ms. Rosett's question as follows: "I have not spoken to Stan about anything related to the vests. I have spoken with Captain Didier about taking the vests off site for specific purposes (such as being fitted for new uniforms and plain clothes, and also cleaning/maintenance), but I did not specifically bring up the issue of being required to be at work and on site to put on the vests.

On April 10, 2017, Ms. Rosetti email Mr. Choi, asking "What guidance did Captain Didier provide related to the questions you asked? I will be meeting with Stan later this week to discuss, and would just like as much information beforehand."

Ultimately, Claremont failed to pay relevant Aggrieved Employees for donning and doffing their uniforms despite Mr. Choi's inquiry in April of 2017. On information and belief, Claremont not only willfully failed to compensate Aggrieved Employees for donning and doffing mandatory uniforms, also deliberately lied to Aggrieved Employees about this issue, and fraudulently, maliciously, and/or oppressively cheated Aggrieved Employees of compensation, misrepresenting to Aggrieved Employees their right to compensation for donning and doffing, as well as with regard to Aggrieved Employees' rights to premium pay for being on-call.

Furthermore, on March 5, 2015, in LWDA case no. LWDA-CM-301358-17, Barbara Erwin filed a PAGA Notice against Claremont University Consortium (CUC) apprising CUC, the name by which Claremont is formerly known, of its unlawful conduct that violated numerous Labor Code sections enumerated within that PAGA Notice. Approximately 2 years and 7 months later, on October 6, 2017, Lance Gregory Leach did the same in LWDA case no. LWDA-CM-339861-17 and the operative complaint for the LEACH lawsuit. Thereafter, Shawn Butler, another former Claremont Safety Campus employee filed both a PAGA Notice and putative class action complaint, notifying it and complaining about Claremont's wage and hour violations. These three PAGA claims/case(s), in combination with LEACH's, BUTLER's and MR. CHOI's lawsuits demonstrate Claremont cannot dispute in good faith the fact Claremont owes Aggrieved Employees wages.

However, to this date, Claremont either unreasonably or in bad faith, has yet to pay Mr. Choi and, on information and belief, has also yet to pay Aggrieved Employees all of their undisputed wages, including but not limited to those earned when donning and doffing their uniform on Claremont's premises off-the-clock, as well as being on-call, for example during meal, recovery, and/or rest breaks.

§ 206(b) Penalty

Under § 206(b) "If, after an investigation and hearing, the Labor Commissioner has determined the validity of any employee's claim for wages, the claim is due and payable within 10 days after receipt of notice by the employer that such wages are due. Any employer having the ability to pay who willfully fails to pay such wages within 10 days shall, **in addition to any other applicable penalty**, pay treble the amount of any damages accruing to the employee as a direct and foreseeable consequence of such failure to pay." Pursuant to Labor Code § 2699(a), "Notwithstanding any other provision of law, any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency **or** any of its departments, divisions, **commissions**, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.

Mr. Choi, on behalf of himself and other Aggrieved Employees, through this PAGA Notice steps into the role of the Labor Commission to pursue civil penalties on behalf of the LWDA, Labor Commission, and/or the State of California, and through discovery will investigate the claims alleged in his operative complaint. Upon determining the validity of any employee's claim for wages, i.e. Mr. Choi's and that of other Aggrieved Employees, should Claremont fail to pay Aggrieved Employees their owned yet unpaid wages within 10 days

after judgment, Mr. Choi on behalf of Aggrieved Employees shall motion upon the court to order Claremont to pay the **penalty** of treble the amount of any “damages accruing to” Aggrieved Employees including Mr. Choi, as a direct and foreseeable consequence of such failure to timely pay such wages. According to its most recent 2022 I.R.S. 990 Form, filed in 2023, Claremont (TCC) is an established non-profit public benefit corporation employing roughly 450 employees and net assets worth nearly \$124 million. Clearly, Claremont is able to pay Mr. Choi and Aggrieved Employees the wages owed to them.

Due to Claremont’s violation of Labor Code § 206(a) explained above, Claremont is subject to PAGA penalties under Labor Code § 2699.3(a) and § 2699.5 in accordance with § 2699.3(f)(2), i.e. the civil penalty is one 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.

Labor Code § 206.5 Violation

Labor Code § 206.5(a) states in relevant part, “(a) An employer shall not require the execution of a release of a claim or right on account of wages due, or to become due...unless payment of those wages has been made. A release required or executed in violation of the provisions of this section shall be null and void as between the employer and the employee...(b) For purposes of this section, “execution of a release” includes requiring an employee, as a condition of being paid, to execute a statement of the hours he or she worked during a pay period which the employer knows to be false. “Section 206.5 prohibits an employer from requiring an employee to release a claim for wages that are due and unpaid unless it has paid those wages. (§ 206.5, subd. (a).) Section 206.5 thus provides an exception to a general release of wage claims—known or unknown. That exception is limited, however. Wages are not considered “due” under the statute if the employer and employee have “a bona fide dispute” as to whether they are owed. (*Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal.App. 4th 796, 803 (*Chindarah*).) Section 206.5 therefore does not preclude an employer and employee from “compromis[ing] a bona fide dispute over wages.” (*Chindarah*, at pp. 801, 803 [finding release valid and explaining that, although statutory right to receive overtime is unwaivable, no statute prevents an employee from releasing “his claim to past overtime wages as part of a settlement of a bona fide dispute over those wages”].) Accordingly, an employer may obtain a valid release as part of a compromise of an employee’s wage claim, without paying the full amount of wages claimed, if the employer has a good faith dispute that it does not owe the unpaid wages. (*Watkins v. Wachovia Corp.* (2009) 172 Cal.App.4th 1576, 1587 (*Watkins*).)”

Claremont specifically required the execution of a release of a claim or right on account of unpaid wages due to Claremont’s unlawful rounding system in its settlement in *Leach v. The Claremont Colleges, Inc.* (TCC), Los Angeles Superior Court case number BC686451 (“LEACH”). However, Mr. Choi, on behalf of himself and Aggrieved Employees contends that although Claremont disputed whether Claremont owed the Leach Class additional wages due to its rounding policy, Claremont disputed such in bad faith, and thus a bona fide dispute over the unpaid wages in the LEACH case did/does not exist. Therefore, the LEACH settlement requiring the execution of a release of a claim or right on account of wages due, or to become due, is null and void as between the employer, Claremont in that case, and the employee(s) in the LEACH case because payment of those wages was not made by Claremont. In conjunction with Labor Code § 206.5, under C.C.P. § 473(d), “The court may, upon motion of the injured party, or its own motion, correct clerical mistakes in its judgment or orders as entered, so as to conform to the judgment or order directed, and may, on motion of either party after notice to the other party, set aside any void judgment or order.” Mr. Choi intends to bring such a motion under C.C.P. § 473(d) when so allowed by this Court.

On information and belief, Claremont has also unlawfully required the execution of a release of a claim or right on account of unpaid wages due that are not part of the *Leach* case, but of other Claremont former employees who threatened to sue Claremont, but did not actual so do.

Claremont's Labor Code § 206.5 violation means Claremont is also liable to Mr. Choi and other Aggrieved Employees for attendant PAGA penalties.

Labor Code § 208 Violation and § 2699(f)(2) Penalties

Labor Code § 208 mandates "Every employee who is discharged shall be paid at the place of discharge, and every employee who quits shall be paid at the office or agency of the employer in the county where the employee has been performing labor. **All payments shall be made in the manner provided by law.**" Given the plain meaning of the mandatory language "[a]ll payments shall be made in the manner provided by law", California's Legislator did not intent Labor Code § 208 to narrowly pertain only to the place at which an employer pays final wages to its employees. Otherwise, California's Legislature would have drafted Labor Code § 208 to state "All payments shall be made in the manner provided by this section" or "All payments shall be made at the location provided by this section." Instead, Labor Code § 208 pertains generally to Chapter 1 of California's Labor Code titled Payment of Wages, i.e. Labor Code §§ 200-273. Therefore, the "manner" of payment encompasses time, place, and accuracy or inaccuracy such as underpayment of wages Mr. Choi and Aggrieved Employees suffered due to Claremont's conduct because the law provides for such in which the payment of wages is done or happens.

Although Mr. Choi does not know whether Claremont paid other employees at the appropriate place(s) enumerated in Labor Code § 208, due to the other wage payment(s) violations detailed in this operative complaint, for example 201, 202, 203, 226, etc., Claremont nevertheless failed to make all payments "in the manner provided by law", including timely, accurate and complete payments, for example the 0.75 overtime hours for which Mr. Choi's former colleague Shawn Butler specifically requested payment of on July 29, 2019, in addition to the wages owed to applicable Aggrieved Employees for the reasons already detailed above.

As a result of failing to provide "all payments" to Aggrieved Employees "in the manner provided by law", Claremont violated Labor Code § 208 and is liable to Mr. Choi and other Aggrieved Employees for attendant PAGA penalties.

Labor Code § 213(d) Violation

Mr. Choi and Aggrieved Employees seek PAGA penalties pursuant to Labor Code § 2699.3, as well as § 2699.5 which specifically enumerates § 213(d) under PAGA. Under Labor Code § 213(d), an employer is not prohibited "from depositing wages due or to become due or an advance on wages to be earned in an account in any bank, savings and loan association, or credit union of the employee's choice with a place of business located in this state, provided that the employee has voluntarily authorized that deposit. If an employer discharges an employee or the employee quits, the employer may pay the wages earned and unpaid at the time the employee is discharged or quits by making a deposit authorized pursuant to this subdivision, **provided that the employer complies with the provisions of this article relating to the payment of wages upon termination or quitting of employment.**", i.e. for purposes of this action, Labor Code §201 and § 202 as follows:

Labor Code § 201: "(a) If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately"; Labor Code § 202: (a) If an employee not having a written

contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

On information add belief, Mr. Choi's believes, due to Claremont's direct deposit authorization form Claremont's employees complete, that Claremont made direct deposits of final wages to Aggrieved Employees who quit or Claremont discharged, however such deposits did not comply with Labor Code § 201 and § 202 as explained above (*supra*) because Claremont failed to pay the wages earned and unpaid at the time Claremont discharged Aggrieved Employees or at the time the Aggrieved Employees quit. As a result, Claremont violated Labor Code § 213 and is liable to Aggrieved Employees for attendant PAGA civil penalties.

Labor Code § 216 Violation

Under Labor Code § 216, "In addition to any other penalty imposed by this article, any person, or an agent, manager, superintendent, or officer thereof is guilty of a misdemeanor, who: (a) Having the ability to pay, willfully refuses to pay wages due and payable after demand has been made. (b) Falsely denies the amount or validity thereof, or that the same is due, with intent to secure for himself, his employer or other person, any discount upon such indebtedness, or with intent to annoy, harass, oppress, hinder, delay, or defraud, the person to whom such indebtedness is due." Though Mr. Choi and other Aggrieved Employees cannot prosecute Claremont for a misdemeanor under Labor Code § 223 for subsection (a) and/or (b), this component of Mr. Choi's PAGA Notice is to establish standing for Mr. Choi and other Aggrieved Employees to pursue penalties pursuant to Labor Code § 225.5. In April 2017, Mr. Choi inquired of Claremont as to whether Claremont was legally required to pay Mr. Choi and other Aggrieved Employees for donning and doffing. More shockingly though, Claremont falsely denies the amount or validity of wages owed to Mr. Choi and Aggrieved Employees, or that the same is due, with intent to secure for Claremont any discount upon such indebtedness, or with intent to annoy, harass, oppress, hinder, delay, or defraud Mr. Choi and Aggrieved Employees, the persons to whom such indebtedness is due as demonstrated by, in information and belief, a workplace investigation Claremont conducted in 2002. However, Claremont willfully refused to compensate Aggrieved Employees for donning and doffing even though Claremont clearly has the ability to pay because Claremont has net assets worth nearly \$124 million. As a result, Claremont is liable to Mr. Choi and other Aggrieved Employees for attendant PAGA civil penalties.

Labor Code § 223 Violation

Under Labor Code § 223² "Where any statute or contract requires an employer to maintain the designated wage scale, it shall be unlawful to secretly pay a lower wage while purporting to pay the wage designated by statute or by contract." Under California law, Mr. Choi and other Aggrieved employees was/were entitled to compensation for all hours worked. In this case, Claremont was both statutorily required to pay at

² Under Labor Code § 225.5, "In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of Section 212, 216, 221, 222, or 223 shall be subject to a civil penalty as follows: (a) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. (b) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld. The penalty shall be recovered by the Labor Commissioner as part of a hearing held to recover unpaid wages and penalties or in an independent civil action. The action shall be brought in the name of the people of the State of California and the Labor Commissioner and attorneys thereof may proceed and act for and on behalf of the people in bringing the action. Twelve and one-half percent of the penalty recovered shall be paid into a fund within the Labor and Workforce Development Agency dedicated to educating employers about state labor laws, and the remainder shall be paid into the State Treasury to the credit of the General Fund.

least minimum wage pursuant to Labor Code § 1182.12, as well as obligated to pay Mr. Choi and other Aggrieved Employees their contractually agreed upon wages which were above minimum wage. Claremont was contractually obligated to pay Mr. Choi and other Aggrieved Employees agreed rates in excess of California's minimum wage for all hours worked. However, in requiring its Campus Safety Officers, Corporals, and Sergeants to don and doff their uniform and equipment off-the-clock, Claremont effectively unlawfully secretly paid a lower hourly wage for all hours worked than to which these employees were contractually entitled. Furthermore, Claremont's policy, procedure, and/or practice of utilizing an unlawful rounding system (which Mr. Choi learned of only through the LEACH lawsuit after Mr. Choi quit Claremont's employment) resulted in, over a period of time, Claremont's failure to compensate Mr. Choi and Aggrieved Employees, properly for all the time they actually worked. Thus, Claremont secretly paid Mr. Choi and Aggrieved Employees a lower wage while purporting to pay the wage scale designated by statute, i.e. California's minimum wage statute and overtime wage statute(s), or by contract. See *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314.

The combined force of California Labor Code sections 221, 222, and 223 clearly prohibits an employer from receiving from the employee, withholding from the employee, or secretly paying to the employee, some amount less than the employee's contractual or statutory wages for work performed by the employee. *Armenta v. Osmose, Inc.* (2005) 37 Cal.Rptr.3d 460, 465. Because Mr. Choi and other Aggrieved Employees were employed at agreed rates in excess of California's minimum wage (Labor Code § 1182.12), Claremont effectively 'reduce' or 'withhold' a portion of an employees' contractual or statutory wages through the simple device of requiring work in excess of the daily or weekly hours Claremont actually compensated them without additional compensation. California Labor Code sections 221, 222, and 223 prevent Claremont from using any part of the wage payments that are required under contract for activities that are compensated in an amount that equals or exceeds the minimum wage, as a credit for satisfying minimum wage obligations for those activities that are compensated at less than the minimum wage or under contractual rates. Thus, Claremont violated Labor Code § 223 and is subject to PAGA penalties for so doing pursuant to Labor Code § 225.5.

§ 225.5 Penalty For Violating The Provisions Of §§ 216 And 223

Under Labor Code § 225.5, "In addition to, and entirely independent and apart from, any other penalty provided in this article, every person who unlawfully withholds wages due any employee in violation of § 212, 216, 221, 222, or 223 shall be subject to a civil penalty as follows: (a) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee. (b) For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld. The penalty shall be recovered by the Labor Commissioner as part of a hearing held to recover unpaid wages and penalties or in an independent civil action. The action shall be brought in the name of the people of the State of California and the Labor Commissioner and attorneys thereof may proceed and act for and on behalf of the people in bringing the action. Twelve and one-half percent of the penalty recovered shall be paid into a fund within the Labor and Workforce Development Agency dedicated to educating employers about state labor laws, and the remainder shall be paid into the State Treasury to the credit of the General Fund.

Mr. Choi and Aggrieved Employees, in the name of the people of the State of California and the Labor Commissioner, seek the civil penalty under § 225.5. As explained, Claremont violated § 223 (*supra*). Mr. Choi and Aggrieved Employees seek to recover these civil penalties in an independent civil action brought in the name of the people of the State of California and the Labor Commissioner with 12.5% of the penalty recovered paid into a fund within the LWDA dedicated to educating employers about state labor laws, and the remainder, minus Mr. Choi's and other Aggrieved Employees' 25% under the PAGA, paid into the State Treasury to the credit of the General Fund.

Labor Code § 226(a) Violation

Under Labor Code § 226(a) “Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when 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...(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...(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 and ...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. For purposes of this subdivision, “copy” includes a duplicate of the itemized statement provided to an employee or a computer-generated record that accurately shows all of the information required by this subdivision.”

Mr. Choi’s and, on information and belief, that of other Aggrieved Employees’ pay records reconciled against their Kronos/Workday time records, plus on-call work though meal and rest breaks, as well as off-the-clock work for donning and doffing their mandatory equipment and uniforms, combined with Claremont’s use of an unlawful rounding system that resulted in, over a period of time, Defendants’ failure to compensate Mr. Choi and other Aggrieved Employees properly for all the time they actually worked prove Defendants failed to provide Mr. Choi and other Aggrieved Employees with accurately written itemized statements 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...[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” because Defendants failed to accurately pay Mr. Choi and other Aggrieved Employees all earned and unpaid wages, including but not necessarily limited to minimum, regular, overtime, and/or double time wages; premium wages; reporting time pay; requested but denied sick leave pay; and/or unpaid accrued or should have been accrued vacation pay due to (a) working off-the-clock to don and doff their campus safety uniforms and equipment like protective gear including a ballistic vest; (b) being on-call during rest and meal breaks because Mr. Choi and other Aggrieved Employees did not have a legitimate opportunity to take such uninterrupted, especially employees who were/are Campus Safety Officers, Corporals, Sergeants, and/or Dispatchers expected to not only keep their radios powered on with audible volume but also monitor and respond to radio notices regardless of whether they were on a rest or meal break; and (c) due to any other Claremont policy, procedure, and/or practice that resulted in Defendants’ failure to compensate Mr. Choi and other Aggrieved Employees properly for all the time they actually worked. Additionally, Mr. Choi and other Aggrieved Employees were injured due to Claremont listing TCCS instead of TCC or CUC prior to January 1, 2018 as the name of the legal entity that is the employer. On information and belief, Claremont still utilizes TCCS, an unregistered fictitious business name as the alleged employer on its itemized wage statements.

Labor Code § 226(e) Remedy For Violation of Labor Code § 226(a)

Under Labor Code § 226(e)(1) “An employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is 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 to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorney's fees."

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).
 - (ii) Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period. Nothing in this subdivision alters the ability of the employer to aggregate deductions consistent with the requirements of item (4) of subdivision (a).
 - (iii) The name and address of 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 during the pay period.
 - (iv) 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.
- (C) 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.

Mr. Choi and other current and former Aggrieved Employees have suffered injury pursuant to § 226(e)(2)(B) because, per § 226(e)(2)(B)(i), Claremont failed "to provide accurate and complete information as required by any one or more of items (1) to (9), inclusive, of" § 226(a) (*supra*) and Mr. Choi and the other Aggrieved Employees could not/cannot promptly and easily determine from the wage statement alone the amount of the gross wages and/or net wages paid to them during the pay period or any of the other information required to be provided on the itemized wage statement pursuant § 226(a), specifically "(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...[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."

Mr. Choi and other Aggrieved Employees must refer to other documents and information to reconstruct the time they worked to account for their unpaid work, including but not necessarily limited to (1) their inaccurate time (clock-in and clock-out) records; (2) the average amount of time it took/takes Mr. Choi and other Aggrieved Employees to don and doff their respective uniforms; (3) on-call work during rest and meal breaks because Aggrieved Employees did not have a legitimate opportunity to take such uninterrupted, especially Aggrieved Employees who were/are Campus Safety Officers, Corporals, Sergeants, and/or Dispatchers expected to not only keep their radios powered on with audible volume but also respond to radio notices regardless of whether they were on a rest or meal break; and (4) if still applicable, determine the amount of time Claremont's rounding system, over a period of time, shorted Mr. Choi and other Aggrieved Employees of time and thus of compensation.

Furthermore, Mr. Choi and other current and former Aggrieved Employees have suffered injury pursuant to § 226(e)(2)(B) because, per § 226(e)(2)(B)(iii), Claremont failed to list the legal name of the employer. The name of the employer listed on Mr. Choi's, and on information and belief, the other Aggrieved Employees' itemized wage statements is "The Claremont Colleges Services" or "TCCS" when the legal name of the employer is "The Claremont Colleges, Inc." fka "Claremont University Consortium". Mr. Choi could not and other Aggrieved Employers cannot "promptly and easily determine" the Claremont name because they had

to, like other reasonable persons would have to, reference other documents or information because the employer's name is not readily ascertainable without referring to public court records and/or to California State Secretary records.

Therefore, in addition to the § 226(e) statutory penalties for violating § 226(a), Claremont are also liable to Mr. Choi and other Aggrieved Employees for attendant PAGA penalties.

Labor Code § 226(c) Violation and Labor Code § 226(f) Penalty

Under Labor Code § 226(b) "An employer that is required by this code or any regulation adopted pursuant to this code to keep the information required by subdivision (a) shall afford current and former employees the right to inspect or receive a copy of records pertaining to their employment, upon reasonable request to the employer..." Under subsection (c) "An employer who receives a written or oral request to inspect or receive a copy of records pursuant to subdivision (b) pertaining to a current or former employee shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request..."

On Friday, August 25, 2023, Mr. Choi, through legal counsel Michelle Reynolds, Esq., requested via an emailed letter from Claremont Mr. Choi's employment records pursuant to California Labor Code sections 226, 432, and 1198.5. On September 12, 2023, counsel for Claremont send by email a letter refusing to fulfill Mr. Choi's August 25, 2023 request for his employment records under Labor Code section 226. However, Claremont had 21 calendar days to fulfill Mr. Choi's Labor Code section 226 request but did not waiver. Claremont's legal counsel's letter states in relevant part, "In response to your request for records, please note that a former employee's right to inspect his personnel file under section 1198.5 ceases once he files a lawsuit that "relates to a personnel matter against his ... former employer." Cal. Labor Code §§1198.5(n), (o). In any event, your co-counsel Mr. Kim previously requested Mr. Choi's records on May 12, 2022. TCCS provided the requested documents at that time. Even assuming your request was proper in light of the pending litigation, there are no additional payroll or personnel records to produce because Mr. Choi has not been employed by TCC since March 7, 2022."

Not only did Claremont fail to comply with this request within 21 calendar days, Claremont completely ignored Mr. Choi's Labor Code section 226 request, a request that is uncapped and that was requested through a different attorney, i.e. Michelle Reynolds. Claremont's utter disregard of Mr. Choi's Labor Code section 226 request violates Labor Code § 226(b) and § 226(c). Given his own experience of being ignore in trying to request § 226(b) and § 1198.5 records, Mr. Choi believes Claremont also violated the § 226(b) and § 226(c) rights of other Aggrieved Employees. Even if other Aggrieved Employees have not, Claremont is nevertheless liable for attendant PAGA penalties in addition to owing Mr. Choi the penalty under Labor Code § 226(f) for non-compliance with § 226(b) and § 226(c).

Under § 226(f), "A failure by an employer to permit a current or former employee to inspect or receive a copy of records within the time set forth in subdivision (c) entitles the current or former employee or the Labor Commissioner to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer." On information and belief, Claremont has similarly acted with other Aggrieved Employees, in particular with those Aggrieved Employees who have sued or desire to sue Claremont.

Civil Penalty Under Labor Code § 226.3 For Violation and § 226(a) Violation

Under Labor Code § 226.3 "Any employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial

citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the records required in subdivision (a) of Section 226. The civil penalties provided for in this section are in addition to any other penalty provided by law. In enforcing this section, the Labor Commissioner shall take into consideration whether the violation was inadvertent, and in his or her discretion, may decide not to penalize an employer for a first violation when that violation was due to a clerical error or inadvertent mistake.”

Though Claremont provided Mr. Choi and other Aggrieved Employees with a wage deduction statement, such wage deduction statements were inaccurate. Furthermore, Claremont “fail[ed] to keep the records required in subdivision (a) of Section 226” because Claremont’s Section 226 records are inaccurate. Thus Mr. Choi, on behalf of himself and other Aggrieved Employees, seeks § 226.3 penalties.

Labor Code § 226.7(b) Violation and § 226.7(c) Premium Pay

According to Labor Code § 226.7(b), “An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.” Under Labor Code § 226.7(c) “If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.” Under Labor Code § 226.7(d), “A rest or recovery period mandated pursuant to a state law, including, but not limited to, an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, shall be counted as hours worked, for which there shall be no deduction from wages. This subdivision is declaratory of existing law. Under Labor Code § 226.7(e), “This section shall not apply to an employee who is exempt from meal or rest or recovery period requirements pursuant to other state laws, including, but not limited to, a statute or regulation, standard, or order of the Industrial Welfare Commission.

Though Mr. Choi was a security guard licensed by California’s Bureau of Security and Investigative Services from September 20, 2006 to September 30, 2024, the provisions of Labor Code § 226.7(f)³ should not apply to this action because Claremont does not appear to be registered pursuant to the Private Security Services Act (Chapter 11.5 (commencing with Section 7580) of Division 3 of the Business and Professions Code) as a private patrol operator. Even if Claremont is so registered, on information and belief, Claremont’s employees

³ Labor Code § 226.7(f)(1) states, “An employee employed in the security services industry as a security officer who is registered pursuant to the Private Security Services Act (Chapter 11.5 (commencing with Section 7580) of Division 3 of the Business and Professions Code) and who is employed by a private patrol operator registered pursuant to that chapter, may be required to remain on the premises during rest periods and to remain on call, and carry and monitor a communication device during rest periods. If a security officer’s rest period is interrupted, the security officer shall be permitted to restart the rest period anew as soon as practicable. The security officer’s employer satisfies that rest period obligation if the security officer is then able to take an uninterrupted rest period. If on any workday a security officer is not permitted to take an uninterrupted rest period of at least 10 minutes for every four hours worked or major fraction thereof, then the security officer shall be paid one additional hour of pay at the employee’s regular base hourly rate of compensation. Labor Code § 226.7(f)(2) states, “For purposes of this subdivision, the term “interrupted” means any time a security officer is called upon to return to performing the active duties of the security officer’s post prior to completing the rest period, and does not include simply being on the premises, remaining on call and alert, monitoring a radio or other communication device, or all of these actions.”

are not covered by a valid collective bargaining agreement in compliance with Labor Code § 226.7(f)(3). Also, subdivision (f) of Labor Code § 226.7 “does not apply to existing cases filed before January 1, 2021.” Therefore, on information and belief, Labor Code § 226.7(f) is inapplicable.

In seeking the statutory penalty under Labor Code § 226.7(c), this case is similar to *Augustus v. ABM Security Services, Inc.*, in which California’s Supreme Court confirmed Labor Code § 226.7 and IWC Wage Order No. 4 prohibits on-duty and on-call rest periods. The same is true of meal periods. “[E]mployers must relieve their employees of all duties and relinquish any control over how employees spend their break time.” See *Brinker Restaurant Corp. v. Superior Court* (2012) 53 Cal.4th 1004, 1038-1039 and *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, 259. Employee meal and rest periods are to be duty free, timely, and uninterrupted. Similar to *ABM Security Services*, Claremont failed to provide Mr. Choi and other Aggrieved Employees with legitimate opportunities to take Labor Code compliant meal (§ 512) and rest (IWO 4-2001 § 12) breaks each workday because meal, recovery and/or rest breaks were interrupted, late, and/or missed. Claremont expected Mr. Choi and other Aggrieved Employees who were/are Campus Safety Officers, Corporals, Sergeants, and/or Dispatchers to stay on Claremont premises during recovery/rest breaks, remain on call and alert during meal, recovery, and/or rest breaks, and monitor a radio or other communication device during such breaks. According to page 8 of Claremont’s Campus Safety Training Manual on Grooming – Uniform – Equipment, under **Radio Hand-Mic/ Earpiece** pertaining to EQUIPMENT, “Unless otherwise directed, a department issued two-way radio hand-mic and earpiece shall be worn at all times. Personnel assigned to Dispatch Center are exempt from wearing the earpiece, while at Dispatch.” Moreover, Claremont expected Mr. Choi and other Aggrieved Employees who were/are Campus Safety Officers, Corporals, Sergeants, and/or Dispatchers to not only keep their radios powered on with audible volume but also respond to radio notices regardless of whether they were on a break; in other words, they were called upon to return to performing the active duties of the security officer’s post prior to completing their meal/recovery/rest period.

As another result, Claremont violated Cal. Code Regs., tit. 8, § 11040, subdivision 7(A)(3), which states “Every employer shall keep accurate information with respect to each employee including the following: (3) Time records showing when the employee begins and ends each work period. *Meal periods, split shift intervals and total daily hours worked shall also be recorded* [emphasis added]. Meal periods during which operations cease and authorized rest periods need not be recorded.”

As another result, Defendants are liable to Mr. Choi and other Aggrieved Employees for “one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal break and/or rest or recovery period [was/]is not provided.” This includes Aggrieved Employees who worked part-time and were entitled to meal and/or Labor Code compliant meal and/or rest breaks but did not receive from Claremont a legitimate opportunity to take such. Additionally, this includes Aggrieved Employees who worked over eight hours in a workday prior to the date Claremont implemented the results from its August 14, 2020 alternative workweek election pursuant to Labor Code § 511 and did not have a legitimate opportunity to take a single meal period of net 30-minutes and/or two 10-minutes net rest breaks timely and uninterrupted. This also includes Aggrieved Employees who work/ed no more than 10 hours in a workday after Claremont implemented an alternative workweek schedule consisting of four days, ten hours per day, and did not have a legitimate opportunity to take a single meal period of net 30-minutes and/or two 10-minutes net rest breaks timely and uninterrupted. Lastly, this also includes Aggrieved Employees who work/ed over 10 hours in a workday after Claremont implemented an alternative workweek schedule consisting of four days, ten hours per day, and did not have a legitimate opportunity to take a two meal periods of net 30-minutes unless a valid meal period waiver exists and/or three 10-minutes net rest breaks timely and uninterrupted.

Most importantly for purposes of this PAGA Notice, Defendants are also liable to Mr. Choi and other Aggrieved Employees for attendant PAGA penalties.

Violation Of California’s Healthy Workplaces, Healthy Families Act of 2014 (L.C. §§ 245-249)

California’s Healthy Workplaces, Healthy Families Act of 2014 (L.C. §§ 245-249) went into effect on July 1, 2015. On information and belief, Claremont did not always comply with the paid sick leave requirements of Labor Code §§ 246, 246.5, 247, 247.5, and 248.5 with regard to any and all Claremont employees during the relevant time period for this PAGA Notice. This also includes pay under any law, ordinance, regulation and/or statute pertaining to pay relating to COVID, such as “COVID-19 supplemental paid sick leave”, which is applicable given the number of employees Claremont employs. The evidence for this is reconciliation between Aggrieved Employee’s requested sick leave and that actually properly paid by Claremont. Claremont’s failure to provide paid sick leave to Claremont employees is/was not an isolated and unintentional payroll error or written notice error that is a clerical or an inadvertent mistake regarding the accrual or available use of paid sick leave. Also, on information and believe, Claremont does/did not have a policy that satisfied the accrual, carryover, and use requirements of L.C. section 246.

California’s Healthy Workplaces, Healthy Families Act of 2014 mandates that an employer provide employees with “Paid sick days”, which means time that is compensated at the same wage as the employee normally earns during regular work hours and is provided by an employer to an employee for the purposes described in Section 246.5. *See* L.C. section 245.5(e).

Pursuant to L.C. section 248.5(e), “The Labor Commissioner or the Attorney General may bring a civil action in a court of competent jurisdiction against the employer or other person violating this article and, upon prevailing, shall be entitled to collect legal or equitable relief on behalf of the aggrieved as may be appropriate to remedy the violation, including reinstatement, backpay, the payment of sick days unlawfully withheld, the payment of an additional sum, not to exceed an aggregate penalty of four thousand dollars (\$4,000), as liquidated damages in the amount of fifty dollars (\$50) to each employee or person whose rights under this article were violated for each day or portion thereof that the violation occurred or continued, plus, if the employer has unlawfully withheld paid sick days to an employee, the dollar amount of paid sick days withheld from the employee multiplied by three; or two hundred fifty dollars (\$250), whichever amount is greater; and reinstatement in employment or injunctive relief; and further shall be awarded reasonable attorney’s fees and costs, provided, however, that any person or entity enforcing this article on behalf of the public as provided for under applicable state law shall, upon prevailing, be entitled only to equitable, injunctive, or restitutionary relief, and reasonable attorney’s fees and costs.”

The provisions of California’s Healthy Workplaces, Healthy Families Act of 2014 are in addition to and independent of any other rights, remedies, or procedures available under any other law and do not diminish, alter, or negate any other legal rights, remedies, or procedures available to an aggrieved person. L.C. section 245. Thus, Claremont is also liable to Mr. Choi and other Aggrieved Employees for attendant PAGA penalties for any applicable violations of Labor Code §§ 245-249.

Labor Code § 432.5 Violation

Under Labor Code § 432.5 “No employer, or agent, manager...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...or officer thereof to be prohibited by law.” Claremont’s employee handbook

contains Claremont's meal and rest break policies. Additionally, Claremont's Offer of Employment Letters that, if Mr. Choi's memory is correct, prospective employees sign reference certain policies of Claremont, including on information and belief Claremont's meal and rest break policies. Claremont's handbook and Offer of Employment Letters is/are the writing(s) by which Claremont used to unlawfully require Mr. Choi and other Aggrieved Employees, including but not necessarily limited to Campus Safety Officers, Corporals, Sergeants, and Dispatchers to not only keep their radios powered on with audible volume but also respond to radio notices regardless of whether they were on a meal/recovery/rest break, but with Claremont failing to pay the requisite premium pay. This/These relevant policy/ies also informed Mr. Choi and other Aggrieved Employees that Claremont would pay Mr. Choi and other Aggrieved Employees through their lunches. However, the handbook failed to inform Mr. Choi and other Aggrieved Employees of or agreed to pay Mr. Choi and other Aggrieved Employees premium wages for being on-call and/or on-duty meal/recovery/rest breaks. Claremont required Mr. Choi and other Aggrieved Employees—including but not necessarily limited to Campus Safety Officers, Corporals, Sergeants, and Dispatchers—to sign an acknowledgment of receipt of the aforementioned handbook, signature which signified to Claremont these employees' respective agreement to abide by the policies within Claremont's handbook. As a result, Claremont violated Labor Code § 432.5 for requiring employees to agree in writing to forgo Labor Code compliant meal, recovery, and/or rest periods and receive less than the hour premium pay to which Mr. Choi and other Aggrieved Employees were/are lawfully entitled. Therefore, Claremont is liable to Mr. Choi and other Aggrieved Employees for attendant PAGA penalties pursuant to the applicable Labor Code sections, including § 2699.5.

Labor Code § 510(a) Violation

Per Labor Code § 510(a), "Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee..." Claremont operates 24 hour per day, 7 days per week and scheduled Mr. Choi and other Aggrieved Employees to worked various full-time and part-time shifts. Mr. Choi and other Aggrieved Employees were expected to begin working promptly, which meant being dressed in uniform and protective gear and other equipment, and ready for briefing the moment their scheduled shift began. However, Claremont did not compensate Mr. Choi and other Aggrieved Employees for donning and doffing their uniforms. Additionally, Claremont's policy, procedure, and/or practice of Campus Safety officers taking home their uniforms, especially their ballistics vests, resulted in Claremont failing to compensate Mr. Choi and other Aggrieved Employees properly for all the time they actually worked, including but not limited to overtime. As a result, Claremont is/are liable to Mr. Choi and other Aggrieved Employees for attendant PAGA penalties.

Aggrieved Employees Whom Claremont/Defendants Misclassified As Salary Exempt

Generally, California workers are statutorily entitled to overtime compensation for working in excess of an eight-hour workday or in excess of a 40-hour workweek, unless they are properly classified as falling within one of the narrow exemption categories. See Labor Code § 510 and § 515. The Industrial Wage Commission (IWC) promulgated numerous wage orders—one concerning the state minimum wage and the balance covering workers employed in various industries. See California Code of Regulations, title 8, §§ 11000-11170. IWC wage order No. 4-2001 (Wage Order 4), codified at § 11040, governs workers employed in the security industry. Workers employed in an executive, administrative or professional capacity are exempt from sections 3 through 12 of Wage Order 4, which include provisions concerning overtime compensation, meal and

rest periods, and related recordkeeping requirements, among other things. Cal. Code Regs., tit. 8, § 11040, subd. 1.(A). According to IWO 9 1.(A), “in determining whether an employee’s duties meet the test to qualify for [the Executive] exemption,...A person employed in an executive capacity means any employee:

(a) Whose duties and responsibilities involve the management of the enterprise in which he/she is employed or of a customarily recognized department or subdivision thereof; **and**

(b) Who customarily and regularly directs the work of two or more other employees therein; **and**

(c) Who has the authority to hire or fire other employees or whose suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees will be given particular weight; **and**

(d) Who customarily and regularly exercises discretion and independent judgment; **and**

(e) Who is primarily engaged in duties which meet the test of the exemption. The activities constituting exempt work and non-exempt work shall be construed in the same manner as such items are construed in the following regulations under the Fair Labor Standards Act effective as of the date of this order: 29 C.F.R. Sections 541.102, 541.104-111, and 541.115-116. Exempt work shall include, for example, all work that is directly and closely related to exempt work and work which is properly viewed as a means for carrying out exempt functions. The work actually performed by the employee during the course of the workweek must, first and foremost, be examined and the amount of time the employee spends on such work, together with the employer’s realistic expectations and the realistic requirements of the job, shall be considered in determining whether the employee satisfies this requirement.

(f) Such an employee must also earn a monthly salary equivalent to no less than two (2) times the state minimum wage for full-time employment. Full-time employment is defined in Labor Code Section 515(c) as 40 hours per week.”

Job Duties Test

Exemptions are applicable only to those employees “plainly and [unmistakably] within their terms and spirit.”⁴ “[U]nder California law, exemptions from statutory mandatory overtime provisions are narrowly construed.”⁵ Moreover, exemptions are affirmative defenses, and therefore, *the employer bears the burden of proving an employee is properly designated as exempt*.⁶ In order for an employee to legally be exempt from California’s overtime and double time compensation laws, both a “duties test” and a “salary test” apply.

The duties test focuses on the duties actually performed, not on the job title or on the duties that an employer/joint employers write(s) into a job description. “No bright-line rule can be established classifying everyone with a particular job title as per se exempt or nonexempt—the regulations identify job duties, not job titles.”⁷ “A job title alone is insufficient to establish the exempt status of an employee. The exempt or

⁴ *Bothell v. Phase Metrics, Inc.* (9th Cir. 2002) 299 F.3d 1120, 1125; accord, *Nordquist v. McGraw-Hill Broadcasting Co.* (1995) 32 Cal.App.4th 555, 562.

⁵ *Ramirez v. Yosemite Water Co.* (1999) 20 Cal.4th 785, 794).

⁶ *Taylor v. United Parcel Service, Inc.* (2010) 190 Cal.App.4th 1001, 1010.

⁷ *Taylor v. United Parcel Service, Inc.* (2010) 190 Cal.App.4th 1001, 1015.

nonexempt status of any particular employee must be determined on the basis of whether the employee's salary and duties meet the requirements of the regulations..."⁸ Exemption depends "upon what an employee actually does on the job".⁹ Exemption must be based on how an employee actually spends his or her time, not on an idealized job description.¹⁰

Facts And Theories To Support The § 510(a) Violation

Mr. Choi started as and remained an hourly-paid employee throughout his employment with Claremont, therefore Claremont did not misclassify Mr. Choi. However, according to Mr. Choi, Claremont pays and classifies Campus Safety Sergeants and their counterparts in Dispatch as salary exempt employees. However, according to Mr. Choi, these misclassified as salary-exempt Aggrieved Employees do not "customarily and regularly exercise discretion and independent judgment" because these Aggrieved Employees' actions, conduct, judgment, and thoughts are governed by Claremont's policies, for example Claremont's General Orders. These Aggrieved Employees were also outranked by Lieutenants and then Captains, whose judgment these Campus Safety Sergeants and their counterparts in Dispatch had to follow.

According to Mr. Choi, these misclassified as salary-exempt Aggrieved Employees definitely lacked "the authority to hire or fire other employees". It is also unlikely that the "suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees" of these misclassified as salary-exempt Aggrieved Employees would be "given particular weight". These misclassified as salary-exempt Aggrieved Employees, again, were outranked by Lieutenants and then Captains, whose "suggestions and recommendations as to the hiring or firing and as to the advancement and promotion or any other change of status of other employees" would overrule that of Campus Safety Sergeants and their counterparts in Dispatch. These misclassified as salary-exempt Aggrieved Employees therefore did not primarily engaged in duties which meet the test of the exemption.

As a result, Claremont violated Labor Code § 432.5 and are liable to applicable Aggrieved Employees for attendant PAGA penalties pursuant to Lab Code §2699.3 and § 2699.5.

Labor Code § 511 Violation

Under Labor Code § 511(a), "Upon the proposal of an employer, the employees of an employer may adopt a regularly scheduled alternative workweek that authorizes work by the affected employees for no longer than 10 hours per day within a 40-hour workweek without the payment to the affected employees of an overtime rate of compensation pursuant to this section. A proposal to adopt an alternative workweek schedule shall be deemed adopted *only if* it receives approval in a secret ballot election by at least two-thirds of affected employees in a readily identifiable work unit. The regularly scheduled alternative workweek proposed by an employer for adoption by employees may be a single work schedule that would become the standard schedule for workers in the work unit, or a menu of work schedule options, from which each employee in the unit would be entitled to choose. Notwithstanding subdivision (c) of § 500, the menu of work schedule options may include a regular schedule of eight-hour days that are compensated in accordance with subdivision (a) of § 510. Employees who adopt a menu of work schedule options may, with employer consent, move from one schedule option to another on a weekly basis.

⁸ 29 C.F.R. § 541.2.

⁹ *Mies v. Sephora U.S.A., Inc.* (2015) 234 Cal.App.4th 967, 978.

¹⁰ *Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal. 4th 319, 330.

According to a letter received by the Division of Labor Standards Enforcement (DLSE) on September 9, 2020 that was signed by Devin Romanio, Claremont's Senior Human Resources Business Partner, "Pursuant to Labor Code section 511 and the pertinent IWC Wage Order, this letter provides notice [to the DLSE] of the results of [Claremont's] alternative workweek election, which provides for a weekly four day, ten hours per day schedule applicable to affected employees in the Campus Safety Department working at The Claremont Colleges, Inc., a company providing a range of shared services for the Claremont Colleges, located at 101 South Mills Avenue, Claremont, CA 91711-5053. A secret ballot election was held on August 14, 2020, for the purpose of deciding whether employees would adopt the above-described alternative work schedule (four ten work schedule). The results of the secret ballot election were as follows: YES: 26; NO: 2; SIZE OF WORK UNIT: 28. On July 16th & 17th 2020 (*which must be a minimum of 14 days prior to the election*), a meeting with the affected employees was held, as required by law, for the purpose of explaining the effects of the new work schedule(s) on employee hours and pay, including benefits."

Labor Code § 511(b) states, "An affected employee working longer than eight hours but not more than 12 hours in a day pursuant to an alternative workweek schedule adopted pursuant to this section shall be paid an overtime rate of compensation of no less than one and one-half times the regular rate of pay of the employee for any work in excess of the regularly scheduled hours established by the alternative workweek agreement and for any work in excess of 40 hours per week."

Mr. Choi was subject to what he asserts was Claremont's unlawful alternative 4/10 workweek schedule until his constructive discharge in March 2022. Mr. Choi believes Claremont's alternative work schedule is unlawful because it did not abide by the procedure to establish such and does not operate in the manner proscribed by law. Given Mr. Choi's own experience in working overtime of ten (10) to fifteen (15) minutes every shift/workday to don and doff his required uniform, protective gear and other equipment but not compensated for such, Mr. Choi knows—because he witnessed such—that other Aggrieved Employees subject to Claremont's alternative workweek schedule continued to work off-the-clock to don and doff their uniforms, protective gear and other equipment. Consequently, Defendants violated Labor Code § 511 and are liable for unpaid overtime pay to Aggrieved Employees subject to Claremont's alternative workweek schedule. Having violated Labor Code § 511, Defendants are also liable to Aggrieved Employees for attendant PAGA penalties pursuant to Labor Code § 2699.3(a) and § 2699.5 in the applicable amount(s) specified per § 558(a), i.e. (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages or (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.

Labor Code § 512 Violations and § 226.7(c) Pay

Under Labor Code § 512(a), "An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived."

Claremont operates 24 hour per day, 7 days per week and scheduled Mr. Choi and other Aggrieved Employees to work various full-time and part-time shifts. Though Mr. Choi and other Aggrieved Employees

clocked out for a 30-minute meal period, Claremont did not allow Mr. Choi and other Aggrieved Employees to turn off their radios. This particular PAGA penalty and premium pay, or rather the reason for such invokes the holding in *Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th 257, in which California's Supreme Court confirmed Labor Code § 226.7 and IWC Wage Order No. 4 prohibits on-duty and on-call rest periods. The same is true of meal periods. "...[E]mployers must relieve their employees of all duties and relinquish any control over how employees spend their break time." Employee meal and rest periods are to be duty-free uninterrupted and timely. *Id.* at 259. The same is true for recovery periods.

Similar to *ABM Security Services*, Claremont failed to provide Mr. Choi and other Aggrieved Employees with legitimate opportunities to take Labor Code compliant meal periods each workday because meal periods were interrupted, late, missed and/or on-call due to Claremont's requirement regarding monitoring radios. Claremont expected Mr. Choi and other Aggrieved Employees who were/are Campus Safety Officers, Corporals, Sergeants, and/or Dispatchers to not only keep their radios powered on with audible volume but also respond to radio notices regardless of whether they were on a meal period. Furthermore, Mr. Choi and other Aggrieved Employees were expected to begin working promptly, which meant being dressed in uniform and protective gear and other equipment, and ready for briefing the moment their scheduled shift began. However, Claremont did not account for this worked time, and thus Mr. Choi's and/or other Aggrieved Employees' respective meal periods were late/untimely, or not enough as they were entitled to an additional meal period after working 10 hours in a day. Claremont's policies, procedures, and practices also mean Mr. Choi and other Aggrieved Employees did not receive from Claremont a legitimate opportunity to take a meal period by the 5th hour worked. On information and belief, other Aggrieved Employees who were/are subject to Claremont's alternative work schedule of 4/10s and who worked over 10 hour days, were not given a legitimate opportunity to take a second meal period after the 10th hour worked, such as prior to doffing their uniforms, protective gear and other equipment.

Thus, Claremont violated § 512. Consequently, Defendants are liable to Mr. Choi and other Aggrieved Employees for premium pay pursuant to § 226.7(c) which states, "If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided." More importantly for purposes of this PAGA Notice, Defendants are also liable to Mr. Choi and other Aggrieved Employees for attendant PAGA penalties pursuant to Lab Code § 2699.3(a) and § 2699.5 for violating Labor Code § 512 and § 226.7(c) in the applicable amount(s) prescribed by Labor Code § 558(a) (*infra*).

Labor Code § 558 Civil Penalties and § 218.6 Interest

Under Labor Code § 558(a) "Any employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter [§§ 500-558] or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected employee. (d) The civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law. In violating Labor Code section §§ 510, 511, 512 (*supra*), and the applicable Industrial Wage Order, Employers are liable for § 558 civil

penalties in addition to an amount sufficient to recover underpaid wages for Aggrieved Employees, as well as PAGA penalties for violating § 558(a).

Claremont and/or Defendants did not compensate Mr. Choi and other Aggrieved Employees for donning and doffing their uniforms. As previously mentioned, Claremont and/or Defendants willfully failed to pay Mr. Choi and other Aggrieved Employees all earned wages, including but not necessarily limited to minimum, regular, overtime, double time and/or premium wages as well as reporting time, sick leave, and/or vacation pay due to (a) working off-the-clock to don and doff their campus safety uniforms and protective gear such as a ballistics vest; (b) being on-call during rest and meal breaks because Aggrieved Employees did not have a legitimate opportunity to take such uninterrupted, especially Aggrieved Employees who were/are Campus Safety Officers, Corporals, and/or Sergeants expected to not only keep their radios powered on with audible volume but also respond to radio notices regardless of whether they were on a rest or meal break; and (c) due to Defendants' policy, procedure, and/or practice of utilizing any other policy, procedure and/or practice that resulted in Defendants' failure to compensate Aggrieved Employees properly for all the time they actually worked.

Defendants, including Claremont and its CEO, are liable under § 558 for violating, or causing to be violated, a section of this chapter [§§ 500-558] or any provision regulating hours and days of work in IWO No. 4 as above (supra), as well as liable to pay interest on these unpaid wages because under Labor Code § 218.6, in any action brought for the nonpayment of wages, the court shall award interest on all due and unpaid wages at the rate of interest specified in subdivision (b) of Section 3289 of the Civil Code [10 percent per annum], which shall accrue from the date that the wages were due and payable as provided in Part 1 (commencing with Section 200) of Division 2. Defendants, including Claremont and its CEO, are also liable for PAGA penalties pursuant to Labor Code § 2699.3 and § 2699(f) (supra).

Labor Code § 558.1 Civil Penalties

Under Labor Code § 558.1(a) "Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation. (b) For purposes of this section, 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. (c) Nothing in this section shall be construed to limit the definition of employer under existing law.

Claremont and/or Defendants did not compensate Mr. Choi and other Aggrieved Employees for donning and doffing their uniforms. As previously mentioned, Claremont and/or Defendants willfully failed to pay Mr. Choi and other Aggrieved Employees all earned wages, including but not necessarily limited to minimum, regular, overtime, double time and/or premium wages as well as reporting time, sick leave, and/or vacation pay due to (a) working off-the-clock to don and doff their campus safety uniforms and protective gear such as a ballistics vest; (b) being on-call during rest and meal breaks because Aggrieved Employees did not have a legitimate opportunity to take such uninterrupted, especially Aggrieved Employees who were/are Campus Safety Officers, Corporals, and/or Sergeants expected to not only keep their radios powered on with audible volume but also respond to radio notices regardless of whether they were on a rest or meal break; and (c) due to any other policy, procedure, and/or practice that resulted in Defendants' failure to compensate Aggrieved Employees properly for all the time they actually worked. Therefore Defendants, including Claremont and its CEO, are liable under § 558.1 for violating, or causing to be violated, any provision regulating minimum wages

or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802. Defendants, including Claremont and its CEO, are also liable for PAGA penalties pursuant to Labor Code § 2699.3 and § 2699(f) (*supra*).

Labor Code § 1174(d) Violation & Labor Code § 1174.5 Civil Penalty

Under Labor Code § 1174(d) “Every person employing labor in this state shall... 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...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 three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.” Under state law, employers must maintain and preserve accurate records showing, *inter alia*, when the employee begins and ends work each day; the total number of hours worked on a daily basis; and all meal periods and split shift intervals. *See* Labor Code § 1174(d) and IWC Wage Order 4-2001 § 7. Under California law, “[h]ours worked means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” IWC Wage Order 4-2001 § 2(K). This includes donning and doffing required uniforms, protective gear, and other equipment off-the-clock. California law does not permit *any* time to be uncompensated. *Carrillo v. Schneider Logistics, Inc.*, 823 F. Supp. 2d 1040, 1044 (C.D. Cal. 2011) citing *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 317, 324.

Due to Defendant(s)’ violation of Labor Code § 226(a) (*supra*), there is no doubt Claremont failed to maintain and make available accurate payroll records showing the hours worked daily by and the wages paid to Mr. Choi and Aggrieved Employees at its corporate and only office located at 101 S. Mills Ave., Claremont, CA 91711. Claremont has not kept the required payroll or production records and did not make those records available to Mr. Choi upon his August 25, 2023 request. Thus, Claremont failed to maintain and make available accurate records as required by Labor Code § 1174.

There is no private right of action under Labor Code § 1174. Because § 1174 does not provide for direct means of recovery by employees, a right of action to recover civil penalties under this statute only exists under PAGA. *Noe v. Superior Court* (2015) 237 Cal. App. 4th 316, 339. Therefore, in violating § 1174(d), Claremont is liable to Mr. Choi and other Aggrieved Employees for attendant PAGA civil penalties pursuant to Labor Code § 2699.3(a) and § 2699.5 in the amount enumerated in Labor Code § 1174.5. Labor Code § 1174.5 states, “Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Labor Code § 1182.12 & PAGA Civil Penalties Pursuant To Labor Code § 2699.3(c)

According to the relevant part(s) of Labor Code § 1182.12(a), “Notwithstanding any other provision of this part, ...on and after January 1, 2016, the minimum wage for all industries shall be not less than ten dollars (\$10) per hour. According to the relevant part(s) of Labor Code § 1182.12(b), “Notwithstanding subdivision (a), the minimum wage for all industries shall not be less than the amounts set forth in this subdivision, except when the scheduled increases in paragraphs (1) and (2) are temporarily suspended under subdivision (d).

(1) For any employer who employs 26 or more employees, the minimum wage shall be as follows:

(A) From January 1, 2017, to December 31, 2017, inclusive,—ten dollars and fifty cents (\$10.50) per hour.

- (B) From January 1, 2018, to December 31, 2018, inclusive,—eleven dollars (\$11) per hour.
- (C) From January 1, 2019, to December 31, 2019, inclusive,—twelve dollars (\$12) per hour.
- (D) From January 1, 2020, to December 31, 2020, inclusive,—thirteen dollars (\$13) per hour.
- (E) From January 1, 2021, to December 31, 2021, inclusive,—fourteen dollars (\$14) per hour.
- (F) From January 1, 2022, and until adjusted by subdivision (c)—fifteen dollars (\$15) per hour.

According to the relevant part(s) of Labor Code § 1182.12(b)(3), “For purposes of this subdivision, “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. Though detailed earlier in this PAGA Notice, Defendants failed to pay Mr. Choi and other Aggrieved Employees the applicable minimum wage rates enumerated in Labor Code § 1182.12 subdivisions (a) and (b) for all hours worked because Mr. Choi and other Aggrieved Employees who donned and doffed Claremont-required uniforms, protective gear, and other equipment on Claremont premises off-the-clock—such as Campus Safety Officers, Corporals, and misclassified Sergeants—and/or who were not compensated California’s applicable minimum wage for all hours worked due to Claremont’s off-the-clock donning/ and doffing policy, procedure, and/or practice. Consequently, Claremont violated Labor Code § 1182.12 and is liable to Mr. Choi and other Aggrieved Employees for PAGA penalties.

Labor Code §§ 1194(a) and 1197 Violations, And Additional Remedy Under § 1197.1

Under Labor Code § 1194(a) “Notwithstanding any agreement to work for a lesser wage, any employee receiving less than the legal minimum wage or the legal overtime compensation applicable to the employee is entitled to recover in a civil action the unpaid balance of the full amount of this minimum wage or overtime compensation, *including interest thereon, reasonable attorney’s fees, and costs of suit.* Under Labor Code § 1197 “The minimum wage for employees fixed by the commission is the minimum wage to be paid to employees, and the payment of a less wage than the minimum so fixed is unlawful.”

As explained above, Claremont failed to compensate overtime pay to Aggrieved employees and failed to pay Aggrieved Employees minimum wage, let alone their actual regular hourly wages, for off-the-clock work, thus violating minimum wage and over-time compensation laws. Accordingly, Claremont and/or Defendants is/are liable for the unpaid balance of the full amount of this minimum wage and/or overtime compensation, including interest thereon, reasonable attorney’s fees, and costs of suit.

Under Labor Code § 1197.1(a) “Any employer or other 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 by an order of the commission shall be subject to a civil penalty, restitution of wages, liquidated damages payable to the employee, and any applicable penalties imposed pursuant to Section 203 as follows: (1) For any initial violation that is intentionally committed, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee is underpaid. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section 1194.2¹¹, and any applicable penalties imposed pursuant to Section 203. (2) For each subsequent violation for the same specific offense, two hundred fifty dollars (\$250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. This amount shall be in addition to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section

¹¹ Pursuant to Labor Code § 1194.2(a) In any action under Section 98, 1193.6, 1194, or 1197.1 to recover wages because of the payment of a wage less than the minimum wage fixed by an order of the commission or by statute, an employee shall be entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid *and interest thereon...*”

1194.2, and any applicable penalties imposed pursuant to Section 203. (3) Wages, liquidated damages, and any applicable penalties imposed pursuant to Section 203, recovered pursuant to this section shall be paid to the affected employee.” In light of Claremont’s and/or Defendants’ multiple Labor Code violations noticed above, Mr. Choi and other Aggrieved Employees seek the additional remedy provided under § 1197.1 and attendant PAGA penalties pursuant.

Labor Code § 1197.5(b) Violation

Labor Code § 1197.5(b) states in pertinent part, “An employer shall not pay any of its employees at wage rates less than the rates paid to employees of another race or ethnicity for substantially similar work, when viewed as a composite of skill, effort, and responsibility, and performed under similar working conditions...” Under Labor Code § 1197.5(c), any employer who violates § 1197.5(b) is liable to the employee affected in the amount of the wages, and interest thereon, of which the employee is deprived by reason of the violation, and an additional equal amount as liquidated damages.

Given Claremont’s industry of security that is male dominated, Mr. Choi believes Aggrieved Employees who are females or other minorities employed by Claremont are paid less than their male or other race counterparts. Due to discriminatory unequal pay due to gender and/or race, Mr. Choi will bring such action under § 1197.5(g) and seek the following under § 1197.5(h): “...wages, including interest thereon, and an equal amount as liquidated damages, together with the costs of the suit and reasonable attorney’s fees, notwithstanding any agreement to work for a lesser wage, and seek attendant PAGA penalties pursuant to Labor Code § 2699.3 and § 2699.5.

Labor Code § 1198 Violation

Under Labor Code § 1198 “The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” As discussed above, Claremont and/or Defendants did not compensate Mr. Choi and other Aggrieved Employees for donning and doffing their uniforms. As previously mentioned, Claremont and/or Defendants willfully failed to pay Mr. Choi and other Aggrieved Employees all earned wages, including but not necessarily limited to minimum, regular, overtime, double time and/or premium wages as well as reporting time, sick leave, and/or vacation pay due to (a) working off-the-clock to don and doff their campus safety uniforms and protective gear such as a ballistics vest; (b) being on-call during rest and meal breaks because Aggrieved Employees did not have a legitimate opportunity to take such uninterrupted, especially Aggrieved Employees who were/are Campus Safety Officers, Corporals, and/or Sergeants expected to not only keep their radios powered on with audible volume but also respond to radio notices regardless of whether they were on a rest or meal break; and (c) due to any other policy, procedure, and/or practice that resulted in Defendants’ failure to compensate Aggrieved Employees properly for all the time they actually worked. Therefore, Claremont additionally violated Labor Code § 1198 and is liable for attendant PAGA penalties pursuant to Labor Code § 2699.3 and § 2699.5.

Lab. Code § 2802(a) Violation

Under Labor Code § 2802(a), “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...(b) All awards made by a court or by the Division of Labor Standards Enforcement for reimbursement of necessary expenditures under this section shall carry

interest at the same rate as judgments in civil actions. Interest shall accrue from the date on which the employee incurred the necessary expenditure or loss. (c) For purposes of this section, the term “necessary expenditures or losses” shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section. Section 2802 is a nonwaivable right.

Mr. Choi and Aggrieved Employees constantly worked while using their personal cell phones for work related purposes. However, Claremont and/or Defendants failed to reimburse Aggrieved Employees for the pro rata basis of their cells phones as dictated by *Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal. App. 4th 1137, which ruled that employers must reimburse employees for work-related calls on their personal cellphones, even when the employee has “unlimited minutes”. Furthermore, Claremont and/or Defendants expected Mr. Choi and other Aggrieved Employees to wear round-toe boots but did not reimburse them for this required part of their uniform. Lastly, Claremont and/or Defendants failed to reimburse Mr. Choi and other Aggrieved Employees for mileage in using their personal vehicles for business traveled and errands, including but not limited to transporting Claremont equipment, specifically ballistic vests, to and from Claremont and their homes, and due to such, Aggrieved Employees are entitled to unreimbursed mileage and travel time pay.

Claremont and/or Defendants failed to comply with § 2802 when Claremont and/or Defendants failed to accurately reimburse Aggrieved Employees, including Mr. Choi, for all miles driven, for the pro rata cost of employee’s respective cell phone plans for necessary work-related calls, for required uniform including but not limited to shoes. Thus, Claremont and/or Defendants violated Labor Code § 2802(a) and owes PAGA penalties in addition to interest and attorneys’ fees.

Reporting Time Pay

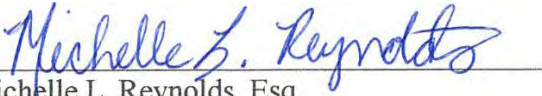
On information and belief, Claremont and/or Defendants also failed to pay reporting time pay in violation of the applicable Industrial Wage Order No. 4.¹² Under Section 5 of Industrial Wage Order (IWO) 4-2001, titled Reporting Time Pay, “(A) Each workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than the minimum wage. (B) If an employee is required to report for work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting, said employee shall be paid for two (2) hours at the employee’s regular rate of pay, which shall not be less than the minimum wage. Certain Aggrieved Employees reported for work at Claremont but were not put to work or were furnished less than half these employees’ usual or scheduled day’s work, yet Claremont failed to pay these Aggrieved Employees the requisite reporting time pay. Reporting time pay constitutes wages. See *Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal. 4th 1094. Thus, failure to pay all reporting time pay due at the time of employment termination is a basis for waiting time penalties pursuant to Labor Code § 203, and thus is also a basis for PAGA civil penalties for Claremont’s Labor Code § 201 violation.

¹² “Although the employee has the burden of proving that he performed work for which he was not compensated, public policy prohibits making that burden an impossible hurdle for the employee. . . . ‘In such situation . . . an employee has carried out his burden if he proves that he has in fact performed work for which he was improperly compensated and if he produces sufficient evidence to show the amount and extent of that work as a matter of just and reasonable inference. The burden then shifts to the Employers to come forward with evidence of the precise amount of work performed or with evidence to negative the reasonableness of the inference to be drawn from the employee’s evidence. If the Employers fails to produce such evidence, the court may then award damages to the employee, even though the result be only approximate.’” (*Hernandez, supra*, 199 Cal.App.3d at p. 727, internal citation omitted.)

V. Conclusion

All of the above constitutes Mr. Choi's PAGA Notice to Claremont and other Defendants, and to the PAGA Administrator/LWDA.

Respectfully submitted,

By: 
Michelle L. Reynolds, Esq.

THE Legal Advocate...Assert Your Employment Rights!

Employment Law Experienced in DFEH complaints, DIR-DLSE hearings, EDD appeals, & LWDA PAGA claims for both employees and employers.

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PROOF OF SERVICE

STATE OF CALIFORNIA

I am employed in the county of Sacramento, state of California. I am over the age of 18 and not a party to the within action. My business address is 2110 K Street, 124 Sacramento, CA 95816.

On September 16, 2024, I served the following document(s) on the interested party/parties in this action as follows:

(1) PAGA NOTICE

Constangy, Brooks, Smith & Prophete, LLP
Attn: Richard E. Bromley
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E-mail: TImara@constangy.com
and/or
E-mail: RBromley@constangy.com

Attorney(s) for Defendant(s) The Claremont Colleges, Inc.

☒ ONLY BY ELECTRONIC MAIL/SERVICE under CCP § 1010.6 and CRC, Rule 2.251 in accordance with CRC, Rule 3.1362, I caused a true copy of said document(s) to be sent in electronic (PDF or DOCX) format only by e-mailing the document(s) to the persons at the e-mail address(es) listed above, which I declare is the email address for the attorney(s) of record for the Defendant(s) served. During the Coronavirus (Covid-19) pandemic, all counsel and staff will be working remotely, not able to send physical mail as usual, and are therefore using only electronic mail. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

I declare under penalty of perjury under the laws of the state of California that the above is true and correct. Executed September 16, 2024, in the city of Sacramento, California.

By: Michelle L. Reynolds
Michelle L. Reynolds, Esq.

**PROOF OF SERVICE
STATE OF CALIFORNIA**

I am over the age of 18 and not a party to the within action. I am employed in the counties of Orange and Sacramento, both located in the state of California. My Orange County business address is 2030 East 4th Street, Suite 204, Sacramento, CA 92703. My Sacramento County business address is 2110 K Street, 124 Sacramento, CA 95816.

On October 4, 2024, I served the foregoing document(s) for **LASC Case No. 24STCV11245** on the interested party/parties in this action as follows: **FIRST AMENDED COMPLAINT**

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☒ ONLY BY ELECTRONIC MAIL/E-SERVICE under CCP § 1010.6 and CRC, Rule 2.251 in accordance with CRC, Rule 3.1362, I caused a true copy of said document(s) to be sent in electronic (PDF or DOCX) format only by e-mailing the document(s) to the persons at the e-mail address(es) listed above, which I declare is the email address for the attorney(s) of record for the Defendant(s) served. No electronic message or other indication that the transmission was unsuccessful was received within a reasonable time after the transmission.

I declare under penalty of perjury under the laws of the state of California that the above is true and correct. Executed October 4, 2024, in the city of Sacramento, California.

By: Michelle L. Reynolds
Michelle L. Reynolds, Esq.