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Attorneys for Plaintiffs Raeyon Austell
and Ayla Espinoza

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

RAEYON AUSTELL and AYLA
ESPINOZA, individually, and on behalf of
other members of the general public
similarly situated, and as aggrieved
employees pursuant to the Private Attorneys
General Act ("PAGA"),

Plaintiffs,

vs.

THE BOYS & GIRLS CLUBS OF KERN
COUNTY, a California corporation; and
DOES 1 through 10, inclusive,

Defendants.

Case No.: BCV-24-103212

**FIRST AMENDED CLASS ACTION
COMPLAINT & ENFORCEMENT
ACTION UNDER THE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698, *ET
SEQ.***

- (1) Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 (Unpaid Minimum Wages);
- (2) Violation of California Labor Code §§ 510 and 1198 (Unpaid Overtime);
- (3) Violation of California Labor Code §§ 226.7, 516, and 1198 (Failure to Authorize and Permit Rest Periods);
- (4) Violation of California Labor Code §§ 226(a), 1174(d), and 1198 (Non-Compliant Wage Statements and Failure to Maintain Payroll Records);
- (5) Violation of California Labor Code §§ 201 and 202 (Wages Not Timely Paid Upon Termination);
- (6) Violation of California Labor Code § 204 (Failure to Timely Pay Wages During Employment);
- (7) Violation of California Labor Code § 2802 (Unreimbursed Business Expenses);
- (8) Civil Penalties for Violations of California Labor Code, Pursuant to PAGA, §§ 2698, *et seq.*;

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- (9) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unlawful Business Practices); and
- (10) Violation of California Business & Professions Code §§ 17200, *et seq.* (Unfair Business Practices)

Jury Trial Demanded

1 Plaintiffs Raeyon Austell and Ayla Espinoza, individually and on behalf of all other
2 members of the public similarly situated, and as aggrieved employees and on behalf of all
3 aggrieved employees, allege as follows.

4 JURISDICTION AND VENUE

5 1. This class action is brought pursuant to California Code of Civil Procedure
6 section 382 and California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil
7 penalties and any other available relief on behalf of Plaintiffs, the State of California, and
8 other current and former employees who worked for Defendants in California as non-exempt,
9 hourly paid employees and received at least one wage statement and against whom one or
10 more violations of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any
11 provision regulating hours and days of work in the applicable Industrial Welfare Commission
12 (“IWC”) Wage Order were committed, as set forth in this complaint. The monetary damages,
13 penalties, and restitution sought by Plaintiffs exceed the minimal jurisdiction limits of the
14 Superior Court and will be established according to proof at trial. This Court has jurisdiction
15 over this action pursuant to the California Constitution, Article VI, section 10. The statutes
16 under which this action is brought do not specify any other basis for jurisdiction. Plaintiffs’
17 share of damages, penalties, and other relief sought in this action do not exceed \$75,000.

18 2. This Court has jurisdiction over Defendants because Defendants are either
19 citizens of California, have sufficient minimum contacts in California, or otherwise
20 intentionally avail themselves of the California market so as to render the exercise of
21 jurisdiction over them by the California courts consistent with traditional notions of fair play
22 and substantial justice. There is no basis for federal diversity jurisdiction in this action
23 because there is no complete diversity, and this case falls within the statutory exceptions to
24 “minimal diversity” jurisdiction under the Class Action Fairness Act, 28 U.S.C. § 1332(d)(4).
25 Upon information and belief, two-thirds or more of the class members and Defendants are
26 citizens of California and/or (a) two-thirds of the class members and Defendants are citizens
27 of California; (b) the alleged wage and hour violations occurred in California; (c) significant
28 relief is being sought against Defendants whose violations of California wage and hour laws

1 form a significant basis for Plaintiffs' claims; and (d) no other class action has been filed
2 within the past three (3) years on behalf of the same proposed class against Defendants
3 asserting the same or similar factual allegations.

4 3. Venue is proper in this Court, because Defendants filed Statement of
5 Information forms with the California Secretary of State designating a principal place of
6 business in Bakersfield, County of Kern, in accordance with California Corporations Code
7 section 2105(a)(3). Cal. Code Civ. P. § 395.5. Venue is also proper in this Court because
8 Defendants employ persons in this county, and employed Plaintiffs in this county, and thus a
9 substantial portion of the transactions and occurrences related to this action occurred in this
10 county.

11 **THE PARTIES**

12 4. Plaintiff Raeyon Austell ("Plaintiff Austell") is a resident of Bakersfield, in
13 Kern County, California. Defendants employed Plaintiff Austell as an hourly paid, non-
14 exempt employee from approximately July 2023 to March 2024. Plaintiff Austell worked as
15 an Activity Leader for Defendants at their school location in Bakersfield, California. During
16 his employment, Plaintiff Austell typically worked four (4) hours or more per day, and five (5)
17 days or more per week. At the time Plaintiff Austell's employment with Defendants ended, he
18 was compensated approximately \$17.00 per hour. Plaintiff Austell's primary job duties
19 included, without limitation, teaching physical education, arts, and engineering, and assisting
20 students with homework.

21 5. Plaintiff Ayla Espinoza ("Plaintiff Espinoza") is a resident of Bakersfield, in
22 Kern County, California. Defendants employed Plaintiff Espinoza as an hourly paid, non-
23 exempt employee from approximately December 2022 to April 2024. Plaintiff Espinoza
24 worked as an Activity Leader for Defendants at their school location in Bakersfield,
25 California. During her employment, Plaintiff Espinoza typically worked six (6) hours or more
26 per day and five (5) days per week. At the time Plaintiff Espinoza's employment with
27 Defendants ended, she was compensated approximately \$18.67 per hour. Plaintiff Espinoza's
28 primary job duties included, without limitation, teaching science, technology, engineering, and

1 mathematics courses to students from 1st to 6th grade, preparing lessons, assisting students
2 with homework, and completing student attendance reports.

3 6. THE BOYS & GIRLS CLUBS OF KERN COUNTY was and is, upon
4 information and belief, a California corporation, and at all times hereinafter mentioned, an
5 employer whose employees are engaged throughout this county and the State of California.

6 7. Plaintiffs are unaware of the true names or capacities of the Defendants sued
7 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to
8 amend the complaint and serve such fictitiously named Defendants once their names and
9 capacities become known.

10 8. Plaintiffs are informed and believe, and thereon allege, that DOES 1 through 10
11 were the partners, agents, owners, or managers of THE BOYS & GIRLS CLUBS OF KERN
12 COUNTY at all relevant times.

13 9. Plaintiffs are informed and believe, and thereon allege, that each and all of the
14 acts and omissions alleged herein was performed by, or is attributable to, THE BOYS &
15 GIRLS CLUBS OF KERN COUNTY and/or DOES 1 through 10 (collectively, "Defendants"
16 or "BGCKC"), each acting as the agent, employee, alter ego, and/or joint venturer of, or
17 working in concert with, each of the other co-Defendants and was acting within the course and
18 scope of such agency, employment, joint venture, or concerted activity with legal authority to
19 act on the others' behalf. The acts of any and all Defendants were in accordance with, and
20 represent, the official policy of Defendants.

21 10. At all relevant times, Defendants, and each of them, ratified each and every act
22 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
23 and abetted the acts and omissions of each and all the other Defendants in proximately causing
24 the damages herein alleged.

25 11. Plaintiffs are informed and believe, and thereon allege, that each of said
26 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
27 omissions, occurrences, and transactions alleged herein.

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1 **GENERAL ALLEGATIONS**

2 12. Defendants are a nonprofit organization which provides academic enrichment,
3 physical fitness, nutritional, and life skill programs to children ages 5 to 18 from kindergarten
4 to high school. Upon information and belief, Defendants maintain a single, centralized
5 Human Resources (“HR”) department at their company headquarters in Bakersfield,
6 California, which is responsible for the recruiting and hiring of new employees, and
7 communicating and implementing Defendants’ company-wide policies, including timekeeping
8 policies and meal and rest period policies, to employees throughout California.

9 13. In particular, Plaintiffs and class members, on information and belief, received
10 the same standardized documents and/or written policies. Upon information and belief, the
11 usage of standardized documents and/or written policies, including new-hire documents,
12 indicate that Defendants dictated policies at the corporate level and implemented them
13 company-wide, regardless of their employees’ assigned locations or positions. Upon
14 information and belief, Defendants set forth uniform policies and procedures in several
15 documents provided at an employee’s time of hire.

16 14. Upon information and belief, Defendants maintain a centralized Payroll
17 department at their company headquarters in Bakersfield, California, which processes payroll
18 for all non-exempt, hourly paid employees working for Defendants at their various locations
19 in California, including Plaintiffs and class members. Based upon information and belief,
20 Defendants issue the same formatted wage statements to all non-exempt, hourly paid
21 employees in California, irrespective of their work locations. Upon information and belief,
22 Defendants process payroll for departing employees in the same manner throughout the State
23 of California, regardless of the manner in which each employee’s employment ends.

24 15. Defendants continue to employ non-exempt or hourly paid employees in
25 California.

26 16. Plaintiffs are informed and believe, and thereon allege, that at all times herein
27 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
28 and advisors knowledgeable about California labor and wage law, employment and personnel

practices, and about the requirements of California law.

17. Plaintiffs are informed and believe, and thereon allege, that Plaintiffs and other class members were not paid for all hours worked because all hours worked were not recorded.

18. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to receive at least minimum wages for compensation and that they were not receiving at least minimum wages for work that was required to be done off-the-clock. In violation of the California Labor Code, Plaintiffs and class members were not paid at least minimum wages for work done off-the-clock.

19. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiff Espinoza and class members were entitled to receive certain wages for overtime compensation and that they were not receiving certain wages for overtime compensation.

20. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to rest periods in accordance with the California Labor Code and applicable IWC Wage Order or payment of one (1) additional hour of pay at their regular rates of pay when they were not authorized and permitted to take a compliant rest period. In violation of the Labor Code, Plaintiffs and class members were not authorized and permitted to take compliant rest periods, nor did Defendants provide Plaintiffs and class members with payment of one (1) additional hour of pay at their regular rates of pay when they were not authorized and permitted to take a compliant rest period.

21. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or should have known that Plaintiffs and class members were entitled to receive complete and accurate wage statements in accordance with California law. In violation of the California Labor Code, Plaintiffs and class members were not provided complete and accurate wage statements.

1 22. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
2 should have known that they had a duty to maintain accurate and complete payroll records in
3 accordance with the California Labor Code and applicable IWC Wage Order, but willfully,
4 knowingly, and intentionally failed to do so.

5 23. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
6 should have known that Plaintiffs and class members were entitled to timely payment of all
7 wages earned upon termination of employment. In violation of the California Labor Code,
8 Plaintiffs and class members did not receive payment of all wages due, including, but not
9 limited to, minimum wages, overtime wages, and/or rest period premiums, within permissible
10 time periods.

11 24. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
12 should have known that Plaintiffs and class members were entitled to timely payment of
13 wages during their employment. In violation of the California Labor Code, Plaintiffs and
14 class members did not receive payment of all wages, including, but not limited to, minimum
15 wages, overtime wages, and/or rest period premiums, within permissible time periods.

16 25. Plaintiffs are informed and believe, and thereon allege, that Defendants knew or
17 should have known that class members were entitled to receive full reimbursement for all
18 business-related expenses and costs they incurred during the course and scope of their
19 employment and that they did not receive full reimbursement of applicable business-related
20 expenses and costs incurred.

21 26. Plaintiffs are informed and believe, and thereon allege, that at all times herein
22 mentioned, Defendants knew or should have known that Defendants had a duty to provide
23 Plaintiffs and class members with written notice of the material terms of their employment
24 with Defendants as required by the California Wage Theft Prevention Act, but failed to do so.

25 27. Plaintiffs are informed and believe, and thereon allege, that at all times herein
26 mentioned, Defendants knew or should have known that they had a duty to compensate
27 Plaintiffs and class members for all hours worked, and that Defendants had the financial
28 ability to pay such compensation, but willfully, knowingly, and intentionally failed to do so,

1 and falsely represented to Plaintiffs and class members that they were properly denied wages,
2 all in order to increase Defendants' profits.

3 **PAGA REPRESENTATIVE ALLEGATIONS**

4 28. At all times herein set forth, PAGA provides that any provision of law under
5 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
6 assessed and collected by the Labor and Workforce Development Agency ("LWDA") for
7 violations of the California Labor Code and applicable IWC Wage Order may, as an
8 alternative, be recovered by aggrieved employees in a civil action brought on behalf of
9 themselves and other current or former employees pursuant to procedures outlined in
10 California Labor Code section 2699.3.

11 29. PAGA defines an "aggrieved employee" in Labor Code section 2699(c)(1) as
12 "any person who was employed by the alleged violator and personally suffered each of the
13 violations alleged."

14 30. Plaintiffs and other current and former employees of Defendants are "aggrieved
15 employees" as defined by Labor Code section 2699(c)(1) in that they are all Defendants'
16 current or former employees and each of the alleged violations were committed against them.

17 31. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
18 employee, including Plaintiffs, may pursue a civil action arising under PAGA after the
19 following requirements have been met:

- 20 (a) The aggrieved employee or representative shall give written notice by
21 online filing with the LWDA and by certified mail to the employer of
22 the specific provisions of the California Labor Code alleged to have
23 been violated, including the facts and theories to support the alleged
24 violation.
- 25 (b) An aggrieved employee's notice filed with the LWDA pursuant to
26 2699.3(a) and any employer response to that notice shall be
27 accompanied by a filing fee of seventy-five dollars (\$75).
- 28 (c) The LWDA shall notify the employer and the aggrieved employee or

1 representative by certified mail that it does not intend to investigate the
2 alleged violation (“LWDA Notice”) within sixty (60) calendar days of
3 the postmark date of the aggrieved employee’s notice. Upon receipt of
4 the LWDA Notice, or if no LWDA Notice is provided within sixty-five
5 (65) calendar days of the postmark date of the aggrieved employee’s
6 notice, the aggrieved employee may commence a civil action pursuant
7 to California Labor Code section 2699 to recover civil penalties.

8 32. Pursuant to California Labor Code section 2699.3(c), aggrieved employees,
9 through Plaintiffs, may pursue a civil action arising under PAGA for violations of any
10 provision other than those listed in Section 2699.5 after the following requirements have been
11 met:

- 12 (a) The aggrieved employee or representative shall give written notice by
13 online filing with the LWDA and by certified mail to the employer of
14 the specific provisions of the California Labor Code alleged to have
15 been violated (other than those listed in Section 2699.5), including the
16 facts and theories to support the alleged violation.
- 17 (b) An aggrieved employee’s notice filed with the LWDA pursuant to
18 2699.3(c) and any employer response to that notice shall be
19 accompanied by a filing fee of seventy-five dollars (\$75).
- 20 (c) The employer may cure the alleged violation within thirty-three (33)
21 calendar days of the postmark date of the notice sent by the aggrieved
22 employee or representative. The employer shall give written notice
23 within that period of time by certified mail to the aggrieved employee or
24 representative and by online filing with the LWDA if the alleged
25 violation is cured, including a description of actions taken, and no civil
26 action pursuant to Section 2699 may commence. If the alleged violation
27 is not cured within the 33-day period, the aggrieved employee may
28 commence a civil action pursuant to Section 2699.

1 33. On November 12, 2024, Plaintiff Austell provided written notice by online
2 filing to the LWDA and by Certified Mail to Defendants of the specific provisions of the
3 California Labor Code alleged to have been violated, including facts and theories to support
4 the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff
5 Austell’s written notice was accompanied with the applicable filing fee of seventy-five dollars
6 (\$75). The LWDA PAGA Administrator confirmed receipt of Plaintiff Austell’s written
7 notice and assigned Plaintiff Austell PAGA Case Number LWDA-CM-1061235-24. A true
8 and correct copy of Plaintiff Austell’s written notice to the LWDA and Defendants is attached
9 hereto as “Exhibit 1.”

10 34. On November 12, 2024, Plaintiff Espinoza provided written notice by online
11 filing to the LWDA and by Certified Mail to Defendants of the specific provisions of the
12 California Labor Code alleged to have been violated, including facts and theories to support
13 the alleged violations, in accordance with California Labor Code section 2699.3. Plaintiff
14 Espinoza’s written notice was accompanied with the applicable filing fee of seventy-five
15 dollars (\$75). The LWDA PAGA Administrator confirmed receipt of Plaintiff Espinoza’s
16 written notice and assigned Plaintiff Espinoza PAGA Case Number LWDA-CM-1061236-24.
17 A true and correct copy of Plaintiff Espinoza’s written notice to the LWDA and Defendants is
18 attached hereto as “Exhibit 2.”

19 35. As of the filing date of this complaint, over 65 days have passed since Plaintiffs
20 sent the notices described above to the LWDA, and the LWDA has not responded that it
21 intends to investigate Plaintiffs’ claims and Defendants have not cured the violations.

22 36. Thus, Plaintiffs have satisfied the administrative prerequisites under California
23 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
24 violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 516, 1174(d),
25 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

26 37. Labor Code section 558(a) provides “[a]ny employer or other person acting on
27 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
28 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. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid” Labor Code section 558(c) provides “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.”

38. Defendants, at all times relevant to this complaint, were employers or persons acting on behalf of an employer(s) who violated Plaintiffs’ and other aggrieved employees’ rights by violating various sections of the California Labor Code as set forth above.

39. As set forth below, Defendants have violated numerous provisions of both the Labor Code sections regulating hours and days of work as well as the applicable IWC Wage Order.

40. Pursuant to PAGA, and in particular, California Labor Code sections 1194.5, 2699(a), 2699(k), 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiffs, acting in the public interest as private attorneys general, seek assessment and collection of civil penalties and injunctive relief for themselves, all other aggrieved employees, and the State of California against Defendants for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

CLASS ACTION ALLEGATIONS

41. Plaintiffs bring this action on their own behalf, as well as on behalf of each and all other persons similarly situated, and thus seek class certification under California Code of Civil Procedure section 382.

42. All claims alleged herein arise under California law for which Plaintiffs seek relief authorized by California law.

43. Plaintiffs’ proposed class consists of and is defined as follows:

All persons who worked for Defendants as non-exempt, hourly paid employees in California, within four years prior to the filing of the initial complaint until the date of trial (“Class”).

44. Plaintiffs’ proposed subclass consists of and is defined as follows:

1 All persons who worked for Defendants as non-exempt, hourly
2 paid employees in California and who received at least one wage
3 statement within one (1) year prior to the filing of the initial
complaint until the date of trial ("Subclass").

4 45. Members of the Class and Subclass are referred to herein as "class members."

5 46. Plaintiffs reserve the right to redefine the Class and Subclass and to add
6 additional subclasses as appropriate based on further investigation, discovery, and specific
7 theories of liability.

8 47. There are common questions of law and fact as to class members that
9 predominate over questions affecting only individual members, including, but not limited to:

- 10 (a) Whether Defendants failed to pay Plaintiffs and class members at least
11 minimum wages for all hours worked;
- 12 (b) Whether Defendants required Plaintiff Espinoza and class members to
13 work over eight (8) hours per day, over twelve (12) hours per day, or
14 over forty (40) hours per week and failed to pay all legally required
15 overtime compensation to Plaintiff Espinoza and class members;
- 16 (c) Whether Defendants failed to authorize and permit Plaintiffs and class
17 members to take rest periods;
- 18 (d) Whether Defendants provided Plaintiffs and class members with
19 complete and accurate wage statements as required by California Labor
20 Code section 226(a);
- 21 (e) Whether Defendants maintained accurate payroll records as required by
22 California Labor Code section 1174(d);
- 23 (f) Whether Defendants failed to pay earned minimum wages, overtime
24 wages, and/or rest period premiums, due to Plaintiffs and class members
25 upon their discharge;
- 26 (g) Whether Defendants failed to timely pay minimum wages, overtime
27 wages, and/or rest period premiums, to Plaintiffs and class members
28 during their employment;

- 1 (h) Whether Defendants failed to reimburse Plaintiffs and class members
2 for necessary and required business-related expenditures and/or losses
3 incurred by them in the scope of their employment;
- 4 (i) Whether Defendants failed to provide written notice of information
5 material to Plaintiffs' and class members' employment with Defendants;
- 6 (j) Whether Defendants engaged in unlawful and unfair business practices
7 in violation of California Business & Professions Code sections 17200,
8 *et seq.*; and
- 9 (k) The appropriate amount of damages, restitution, or monetary penalties
10 resulting from Defendants' violations of California law.

11 48. There is a well-defined community of interest in the litigation and the class
12 members are readily ascertainable:

- 13 (a) Numerosity: The class members are so numerous that joinder of all
14 members would be unfeasible and impractical. The membership of the
15 entire class is unknown to Plaintiffs at this time; however, the class is
16 estimated to be greater than one hundred (100) individuals and the
17 identity of such membership is readily ascertainable by inspection of
18 Defendants' employment records.
- 19 (b) Typicality: Plaintiffs are qualified to, and will, fairly and adequately
20 protect the interests of each class member with whom they have a well-
21 defined community of interest, and Plaintiffs' claims (or defenses, if
22 any) are typical of all class members as demonstrated herein.
- 23 (c) Adequacy: Plaintiffs are qualified to, and will, fairly and adequately
24 protect the interests of each class member with whom they have a well-
25 defined community of interest and typicality of claims, as demonstrated
26 herein. Plaintiffs acknowledge that they have an obligation to make
27 known to the Court any relationship, conflicts or differences with any
28 class member. Plaintiffs' attorneys, the proposed class counsel, are

versed in the rules governing class action discovery, certification, and settlement. Plaintiffs have incurred, and throughout the duration of this action, will continue to incur costs and attorneys' fees that have been, are, and will be necessarily expended for the prosecution of this action for the substantial benefit of each class member.

(d) Superiority: The nature of this action makes the use of class action adjudication superior to other methods. A class action will achieve economies of time, effort, and expense as compared with separate lawsuits, and will avoid inconsistent outcomes because the same issues can be adjudicated in the same manner and at the same time for the entire class.

(e) Public Policy Considerations: Employers in the State of California violate employment and labor laws every day. Current employees are often afraid to assert their rights out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions because they believe their former employers might damage their future endeavors through negative references and/or other means. Class actions provide the class members who are not named in the complaint with a type of anonymity that allows for the vindication of their rights while simultaneously protecting their privacy.

FIRST CAUSE OF ACTION

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198—Unpaid Minimum Wages (Against all Defendants)

49. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

50. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage

1 to be paid to employees, and the payment of a wage less than the minimum so fixed is
2 unlawful. Compensable work time is defined in IWC Wage Order No. 4-2001 as “the time
3 during which an employee is subject to the control of an employer, and includes all the time
4 the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code
5 Regs. tit. 8, § 11040(2)(L) (defining “Hours Worked”).

6 51. During the relevant time period, Defendants had, and continue to have, a
7 company-wide policy and/or practice of requiring Plaintiffs and class members to perform
8 work off-the-clock before and after their scheduled shifts. Pursuant to this policy, on
9 information and belief, Defendants’ management would alter and/or falsify time records to
10 shave off time Plaintiffs and class members spent working to avoid payment of additional
11 wages. For example, Plaintiff Espinoza was required to work for approximately seven (7)
12 minutes and three (3) times per week after her scheduled shift-end times returning to the
13 classroom and completing cleaning duties, such as putting away materials and supplies.
14 Similarly, Plaintiff Austell was required to work for approximately 15-20 minutes before each
15 shift to prepare materials and lesson plans before students arrived for the day. When Plaintiffs
16 attempted to record this time spent working before and after their shifts, on information and
17 belief, Defendants’ managers adjusted their time records to shave off this time worked and
18 avoid the payment of additional wages.

19 52. Moreover, Defendants required Plaintiffs and class members to complete
20 mandated training sessions relating to safety, instruction, and other procedures. Due to the
21 heavy workload and the need to constantly supervise their students, Plaintiffs were not always
22 able to complete these training sessions on the clock and were forced to complete them at
23 home on their own time. For example, Plaintiff Austell completed three (3) training sessions
24 regarding student interactions and policies, which took approximately four (4) hours each,
25 while at home. Plaintiff Espinoza also spent approximately 20 minutes each month
26 completing safety training quizzes while off-the-clock. As a result, Plaintiffs and class
27 members were subject to Defendants’ control outside of their shifts but were not compensated
28 for this time.

53. Defendants knew or should have known that as a result of these company-wide practices and/or policies, Plaintiffs and class members were performing their assigned duties off-the-clock before and after their shifts, and were suffered or permitted to perform work for which they were not paid. Accordingly, Defendants did not pay minimum wages for all hours worked by Plaintiffs and class members in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

54. Defendants' failure to pay Plaintiffs and class members minimum wages violates California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Pursuant to California Labor Code section 1194.2, Plaintiffs and class members are entitled to recover from Defendants liquidated damages in an amount equal to the wages unlawfully unpaid and interest thereon.

SECOND CAUSE OF ACTION

Violation of California Labor Code §§ 510 and 1198—Unpaid Overtime
(Against all Defendants)

55. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

56. Labor Code section 1198 makes it illegal to employ an employee under conditions of labor that are prohibited by the applicable wage order. California Labor Code section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

57. California Labor Code section 1198 and the applicable IWC Wage Order provide that it is unlawful to employ persons without compensating them at a rate of pay either time-and-one-half or two-times that person's regular rate of pay, depending on the number of hours worked by the person on a daily or weekly basis.

58. Specifically, the applicable IWC Wage Order provides that Defendants are and were required to pay Plaintiffs and class members working more than eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and one-half (1 ½) for all

1 hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a
2 workweek.

3 59. The applicable IWC Wage Order further provides that Defendants are and were
4 required to pay Plaintiffs and class members working more than twelve (12) hours in a day,
5 overtime compensation at a rate of two (2) times their regular rate of pay. An employee's
6 regular rate of pay includes all remuneration for employment paid to, or on behalf of, the
7 employee, including nondiscretionary bonuses and incentive pay.

8 60. California Labor Code section 510 codifies the right to overtime compensation
9 at one and one-half (1 ½) times the regular rate of pay for hours worked in excess of eight (8)
10 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
11 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
12 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
13 in a day on the seventh (7th) day of work.

14 61. During the relevant time period, Defendants willfully failed to pay all overtime
15 wages owed to Plaintiff Espinoza and class members. During the relevant time period,
16 Plaintiff Espinoza and class members were not paid overtime premiums for all of the hours
17 they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day,
18 and/or in excess of forty (40) hours in a week, because all hours worked were not recorded.

19 62. As stated above, Defendants had a company-wide policy and/or practice of
20 requiring Plaintiff Espinoza and class members perform various work-related tasks while off-
21 the-clock before and after their shifts, including, but not limited to, cleaning classrooms,
22 preparing materials and lesson plans, and completing training. Defendants failed to track this
23 time Plaintiff Espinoza and class members spent working off-the-clock, and Plaintiff Espinoza
24 and class members received no compensation for this time. As also stated, on information and
25 belief, due to Defendants' management altering and/or falsifying time records, Plaintiff
26 Espinoza and class members were prevented from recording the entire time worked outside of
27 their scheduled shifts, and thus were not paid for this time.

28 63. Defendants knew or should have known that, as a result of these company-wide

1 practices and/or policies, Plaintiff Espinoza and class members were performing their
2 assigned duties off-the-clock outside of their shifts, and were suffered or permitted to perform
3 work for which they were not paid. Because Plaintiff Espinoza and class members sometimes
4 worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of
5 this off-the-clock work qualified for overtime premium pay. Therefore, Plaintiff Espinoza and
6 class members were not paid overtime wages for all of the overtime hours they actually
7 worked.

8 64. Defendants' failure to pay Plaintiff Espinoza and class members the balance of
9 overtime compensation as required by California law, violates the provisions of California
10 Labor Code sections 510 and 1198. Pursuant to California Labor Code section 1194, Plaintiff
11 Espinoza and class members are entitled to recover from Defendants their unpaid overtime
12 compensation, as well as interest, costs, and attorneys' fees.

13 **THIRD CAUSE OF ACTION**

14 **Violation of California Labor Code §§ 226.7, 516, and 1198—Rest Period Violations** 15 **(Against all Defendants)**

16 65. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
17 and every allegation set forth above.

18 66. At all relevant times herein set forth, the applicable IWC Wage Order and
19 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiffs' and class
20 members' employment by Defendants.

21 67. At all relevant times, the applicable IWC Wage Order provides that "[e]very
22 employer shall authorize and permit all employees to take rest periods, which insofar as
23 practicable shall be in the middle of each work period" and that the "rest period time shall be
24 based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4)
25 hours or major fraction thereof" unless the total daily work time is less than three and one-half
26 (3 ½) hours.

27 68. At all relevant times, California Labor Code section 226.7 provides that no
28 employer shall require an employee to work during any rest period mandated by an applicable

1 order of the California IWC. To comply with its obligation to authorize and permit rest
2 periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an
3 employer must “relinquish any control over how employees spend their break time, and
4 relieve their employees of all duties—including the obligation that an employee remain on
5 call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services,*
6 *Inc.*, 2 Cal. 5th 257, 273 (2016). Pursuant to the applicable IWC Wage Order and California
7 Labor Code section 226.7(c), Plaintiffs and class members are entitled to recover from
8 Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a
9 required rest period was not authorized and permitted.

10 69. During the relevant time period, Defendants regularly failed to authorize and
11 permit Plaintiffs and class members to take a ten (10) minute rest period per each four (4)
12 hour period worked or major fraction thereof. Defendants had policies and/or practices of
13 staffing their programs such that there were too few employees on duty to provide continuous
14 supervision of students and provide rest period coverage to Plaintiffs and class members. As a
15 result, Plaintiffs and class members were not relieved of all duty in order to take compliant
16 rest periods. Defendants also failed to schedule rest periods, which, coupled with Defendants’
17 failure to provide adequate rest period coverage, further led to Plaintiffs and class members
18 not being authorized and permitted to take rest periods.

19 70. Furthermore, upon information and belief, Defendants maintained a company-
20 wide on-premises rest period policy, which mandated that Plaintiffs and class members remain
21 on the work premises during their rest periods. Because Plaintiffs and class members were
22 restricted from leaving the premises during rest periods, they were denied the ability to use
23 their rest periods freely for their own purposes, such as running personal errands. Thus,
24 Defendants effectively maintained control over Plaintiffs and class members during rest
25 periods.

26 71. As a result of Defendants’ practices and policies, Plaintiffs and class members
27 worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without
28 receiving all uninterrupted 10-minute rest periods to which they were entitled. For example,

1 Plaintiffs would have to forgo their rest periods altogether due to the lack of rest period
2 coverage.

3 72. Defendants also have engaged in a company-wide practice and/or policy of not
4 paying rest period premiums owed when compliant rest periods are not authorized and
5 permitted. Because of this practice and/or policy, Plaintiffs and class members have not
6 received premium pay for all missed rest periods. As a result, Defendants denied Plaintiffs
7 and class members rest periods and failed to pay them rest period premiums due, in violation
8 of Labor Code sections 226.7 and 516, and the applicable IWC Wage Order.

9 73. Defendants' conduct violates the applicable IWC Wage Order and California
10 Labor Code sections 226.7, 516, and 1198. Plaintiffs and class members are therefore entitled
11 to recover from Defendants one (1) additional hour of pay at the employee's regular rate of
12 compensation for each work day that a compliant rest period was not authorized and
13 permitted.

14 **FOURTH CAUSE OF ACTION**

15 **Violation of California Labor Code §§ 226(a), 1174(d), and 1198—Non-Compliant Wage** 16 **Statements and Failure to Maintain Accurate Payroll Records** 17 **(Against all Defendants)**

18 74. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
19 and every allegation set forth above.

20 75. At all relevant times herein set forth, California Labor Code section 226(a)
21 provides that every employer shall furnish each of his or her employees an accurate and
22 complete itemized wage statement in writing, including, but not limited to, the name and
23 address of the legal entity that is the employer, the inclusive dates of the pay period, total
24 hours worked, and all applicable rates of pay.

25 76. At all relevant times, Defendants have knowingly and intentionally provided
26 Plaintiffs and Subclass members with uniform, incomplete, and inaccurate wage statements.
27 For example, Defendants issued uniform wage statements to Plaintiffs and Subclass members
28 that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all

1 applicable hourly rates in effect during the pay period, including rates of pay for overtime
2 wages, and the corresponding number of hours worked at each hourly rate. Specifically,
3 Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

4 77. Because Defendants did not record the time Plaintiffs and Subclass members
5 spent working off the clock, Defendants did not list the correct amount of gross wages and net
6 wages earned by Plaintiffs and Subclass members in compliance with sections 226(a)(1) and
7 226(a)(5). For the same reason, Defendants failed to accurately list the total number of hours
8 worked by Plaintiffs and Subclass members, in violation of section 226(a)(2), and failed to list
9 the applicable hourly rates of pay in effect during the pay period and the corresponding
10 accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

11 78. The wage statement deficiencies also include, among other things, failing to list
12 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
13 a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period
14 for which employees were paid; failing to list the name of the employee and only the last four
15 digits of his or her social security number or an employee identification number other than a
16 social security number; failing to list the name and address of the legal entity that is the
17 employer; and/or failing to state all hours worked as a result of not recording or stating hours
18 worked off-the-clock.

19 79. California Labor Code section 1174(d) provides that “[e]very person employing
20 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
21 employed and the ages of all minors” and “[k]eep, at a central location in the state or at the
22 plants or establishments at which employees are employed, payroll records showing the hours
23 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
24 applicable piece rate paid to, employees employed at the respective plants or
25 establishments” Labor Code section 1174.5 provides that employers are subject to a
26 \$500 civil penalty if they fail to maintain accurate and complete records as required by section
27 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d),
28 Defendants willfully failed to maintain accurate payroll records for Plaintiffs and Subclass

1 members showing the daily hours they worked and the wages paid thereto as a result of failing
2 to record the off-the-clock hours that they worked.

3 80. California Labor Code section 1198 provides that the maximum hours of work
4 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
5 set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he
6 employment of any employees for longer hours than those fixed by the order or under
7 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
8 Wage Order, employers are required to keep accurate time records showing when the
9 employee begins and ends each work period and meal period. During the relevant time
10 period, Defendants engaged in company-wide practices and/or policies of failing to record
11 actual hours worked, and thereby failed to keep accurate records of work period start and end
12 times for Plaintiffs and Subclass members, in violation of section 1198.

13 81. Plaintiffs and Subclass members are entitled to recover from Defendants the
14 greater of their actual damages caused by Defendants’ failure to comply with California Labor
15 Code section 226(a), or an aggregate penalty not exceeding four thousand dollars (\$4,000) per
16 employee.

17 **FIFTH CAUSE OF ACTION**

18 **Violation of California Labor Code §§ 201 and 202—Wages Not Timely Paid Upon** 19 **Termination** 20 **(Against all Defendants)**

21 82. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
22 and every allegation set forth above.

23 83. This cause of action is dependent upon, and wholly derivative of, the minimum
24 wages, overtime wages, and/or rest period premiums that were not timely paid to Plaintiffs
25 and those class members no longer employed by Defendants upon their termination.

26 84. At all times relevant herein set forth, California Labor Code sections 201 and
27 202 provide that if an employer discharges an employee, the wages earned and unpaid at the
28 time of discharge are due and payable immediately, and that if an employee voluntarily leaves

1 his or her employment, his or her wages shall become due and payable not later than seventy-
2 two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous
3 notice of his or her intention to quit, in which case the employee is entitled to his or her wages
4 at the time of quitting.

5 85. Defendants willfully failed to pay Plaintiffs and class members who are no
6 longer employed by Defendants the earned and unpaid wages set forth above, including but
7 not limited to, minimum wages, overtime wages, and/or rest period premiums, either at the
8 time of discharge, or within seventy-two (72) hours of their leaving Defendants' employ.

9 86. Defendants' failure to pay Plaintiffs and class members who are no longer
10 employed by Defendants their wages earned and unpaid at the time of discharge, or within
11 seventy-two (72) hours of their leaving Defendants' employ, violates Labor Code sections 201
12 and 202. Plaintiffs and class members are therefore entitled to recover from Defendants the
13 statutory penalty wages for each day they were not paid, at their regular rate of pay, up to a
14 thirty (30) day maximum pursuant to California Labor Code section 203.

15 **SIXTH CAUSE OF ACTION**

16 **Violation of California Labor Code § 204—Failure to Timely Pay Wages During** 17 **Employment** 18 **(Against all Defendants)**

19 87. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
20 and every allegation set forth above.

21 88. This cause of action is dependent upon, and wholly derivative of, the minimum
22 wages, overtime wages, and/or rest period premiums, that were not timely paid to Plaintiffs
23 and class members during their employment.

24 89. At all times relevant herein set forth, Labor Code section 204 provides that all
25 wages earned by any person in any employment between the first (1st) and the fifteenth (15th)
26 days, inclusive, of any calendar month, other than those wages due upon termination of an
27 employee, are due and payable between the sixteenth (16th) and the twenty-sixth (26th) day of
28 the month during which the labor was performed.

1 90. At all times relevant herein, Labor Code section 204 provides that all wages
2 earned by any person in any employment between the sixteenth (16th) and the last day,
3 inclusive, of any calendar month, other than those wages due upon termination of an
4 employee, are due and payable between the first (1st) and the tenth (10th) day of the following
5 month.

6 91. At all times relevant herein, Labor Code section 204 provides that all wages
7 earned for labor in excess of the normal work period shall be paid no later than the payday for
8 the next regular payroll period. Alternatively, at all times relevant herein, Labor Code section
9 204 provides that the requirements of this section are deemed satisfied by the payment of
10 wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than
11 seven (7) calendar days following the close of the payroll period.

12 92. During the relevant time period, Defendants willfully failed to pay Plaintiffs
13 and class members all wages due including, but not limited to, minimum wages, overtime
14 wages, and/or rest period premiums, within the time periods specified by California Labor
15 Code section 204.

16 93. Defendants' failure to pay Plaintiffs and class members all wages due violates
17 Labor Code section 204. Plaintiffs and class members are therefore entitled to recover from
18 Defendants the statutory penalty wages pursuant to California Labor Code section 210.

19 **SEVENTH CAUSE OF ACTION**

20 **Violation of California Labor Code § 2802—Unpaid Business-Related Expenses** 21 **(Against all Defendants)**

22 94. Plaintiffs incorporate and re-allege as if fully stated herein each and every
23 allegation set forth above.

24 95. At all times herein set forth, California Labor Code section 2802 provides that
25 an employer must reimburse employees for all necessary expenditures and losses incurred by
26 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
27 to prevent employers from passing off their cost of doing business and operating expenses on
28 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144

(2014). The applicable wage order, IWC Wage Order No. 4-2001, provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

96. First, during the relevant time period, Defendants, on a company-wide basis, required that Plaintiffs and class members use their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but failed to reimburse them for the costs of their work-related mobile device expenses. For example, Plaintiffs used their personal cellular phone and mobile data to download and use a mobile application, “ADP Mobile Solutions,” to clock in and out for their shifts and meal periods. As another example, Plaintiff Espinoza used her personal cellular phone to communicate with managers regarding work-related issues. Furthermore, Plaintiff Austell and class members were required to use their personal computers and/or home internet service plans in order to complete training sessions at home. Although Defendants required Plaintiffs and class members to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, Defendants failed to reimburse them for these costs.

97. Second, during the relevant time period, Defendants, on a company-wide basis, required that Plaintiffs and class members purchase supplies, tools, and/or equipment necessary for the performance of their duties, but failed to reimburse them for their out-of-pocket costs. For example, Plaintiff Austell spent approximately \$200 throughout his employment on supplies such as paint, crafts, and snacks, and Plaintiff Espinoza spent approximately \$15 per month on supplies such as pens, stickers, erasers, and pencils, because Defendants failed to provide them with the necessary supplies, tools, and/or equipment needed to complete their assigned duties. Although Defendants required Plaintiffs and class members to purchase supplies to carry out their work-related responsibilities, Defendants failed to reimburse them for their out-of-pocket cost.

98. Defendants could have provided Plaintiffs and class members with the actual equipment for use on the job, such as company mobile devices and supplies, tools, and/or equipment; or, Defendants could have reimbursed employees for the costs of their mobile device usage, internet usage, and supplies, tools, and/or equipment. Instead, Defendants passed these operating costs onto Plaintiffs and class members. At all relevant times, Plaintiffs did not earn at least two (2) times the minimum wage.

99. Defendants' company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred and passing on their operating costs to Plaintiffs and class members violates California Labor Code section 2802. Defendants have intentionally and willfully failed to reimburse Plaintiffs and class members for necessary business-related expenses and costs.

100. Plaintiffs and class members are entitled to recover from Defendants their business-related expenses incurred during the course and scope of their employment, plus interest.

EIGHTH CAUSE OF ACTION

For Civil Penalties Pursuant to California Labor Code §§ 2698, et seq.

(Against all Defendants)

101. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

102. California Labor Code §§ 2698, *et seq.* (“PAGA”) permits Plaintiffs to recover civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 204, 1174(d), and 1198. Labor Code section 2699.3(c) permits aggrieved employees, including Plaintiffs, to recover civil penalties for violations of those Labor Code sections not found in section 2699.5, including sections 226(a), 226.7, 510, 516, 1182.12, 1194, 1197, 1197.1, and 2810.5.

103. Defendants' conduct, as alleged herein, violates numerous sections of the California Labor Code, including, but not limited to, the following:

(a) Violation of Labor Code sections 1182.12, 1194, 1197, 1197.1, and

1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiffs and other aggrieved employees with at least minimum wages for all hours worked, as alleged herein;

(b) Violation of Labor Code sections 510 and 1198, and the applicable IWC Wage Order for Defendants' failure to compensate Plaintiff Espinoza and other aggrieved employees with all required overtime pay, as alleged herein;

(c) Violation of Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order for Defendants' failure to authorize and permit Plaintiffs and other aggrieved employees to take rest periods, as alleged herein;

(d) Violation of Labor Code sections 226(a) and 1198, and the applicable IWC Wage Order for failure to provide accurate and complete wage statements to Plaintiffs and other aggrieved employees, as alleged herein;

(e) Violation of Labor Code sections 1174(d) and 1198, and the applicable IWC Wage Order for failure to maintain payroll records, as alleged herein;

(f) Violation of Labor Code sections 201 and 202 for failure to pay all earned wages upon termination, as alleged herein;

(g) Violation of Labor Code section 204 for failure to pay all earned wages during employment, as alleged herein;

(h) Violation of Labor Code section 2802 for failure to reimburse Plaintiffs and other aggrieved employees for all business expenses necessarily incurred, as alleged herein; and

(i) Violation of Labor Code section 2810.5(a)(1)(A)-(C) for failure to provide written notice of information material to Plaintiffs' and other aggrieved employees' employment with Defendants, as set forth below.

1 104. At all relevant times herein, California's Wage Theft Prevention Act was
2 enacted to ensure that employers provide employees with basic information material to their
3 employment relationship at the time of hiring, and to ensure that employees are given written
4 and timely notice of any changes to basic information material to their employment. Codified
5 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
6 time of hiring, an employer must provide written notice to employees containing basic and
7 material payroll information, including, among other things, the rate(s) of pay and basis
8 thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise,
9 including any rates for overtime, the regular payday designated by the employer, and any
10 allowances claims as part of the minimum wage, including meal or lodging allowances. Labor
11 Code § 2810.5(a)(1)(A)-(C).

12 105. On information and belief, Defendants failed, on a company-wide basis, to
13 provide written notice to Plaintiffs and other aggrieved employees that lists all the requisite
14 information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Specifically, Defendants
15 failed to provide Plaintiffs and other aggrieved employees with the minimum and overtime
16 rate(s) of pay in violation of section 2810.5(a)(1)(A) and the regular payday designated by the
17 employer, in violation of section 2810.5(a)(1)(C). Instead, the wage theft form that
18 Defendants provided to Plaintiffs is blank where the aforementioned wage information should
19 be filled in. Defendants' failure to provide Plaintiffs and other aggrieved employees with
20 written notice of basic information regarding their employment with Defendants is in violation
21 of California Labor Code section 2810.5.

22 106. At all relevant times, on information and belief, Defendants failed, on a
23 company-wide basis, to provide written notice to Plaintiffs and other aggrieved employees
24 that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C).

25 107. Defendants' failure to provide Plaintiffs and other aggrieved employees with
26 written notice of basic information regarding their employment with Defendants is in violation
27 of Labor Code section 2810.5. Plaintiffs and other aggrieved employees are therefore entitled
28 to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (k).

1 **NINTH CAUSE OF ACTION**

2 **Violation of California Business & Professions Code §§ 17200, *et seq.* –**

3 **Unlawful Business Practices**

4 **(Against all Defendants)**

5 108. Plaintiffs incorporate by reference and re-allege as if fully stated herein each
6 and every allegation set forth above.

7 109. Defendants are “persons” as defined by California Business & Professions
8 Code section 17201, as they are corporations, firms, partnerships, joint stock companies,
9 and/or associations.

10 110. Defendants’ conduct, as alleged herein, has been, and continues to be, unfair,
11 unlawful and harmful to Plaintiffs, class members, and to the general public. Plaintiffs have
12 suffered injuries in fact and have lost money as a result of Defendants’ unlawful business
13 practices. Plaintiffs seek to enforce important rights affecting the public interest within the
14 meaning of Code of Civil Procedure section 1021.5.

15 111. Defendants’ activities, as alleged herein, are violations of California law, and
16 constitute unlawful business acts and practices in violation of California Business &
17 Professions Code sections 17200, *et seq.*

18 112. A violation of California Business & Professions Code sections 17200, *et seq.*
19 may be predicated on the violation of any state or federal law. In the instant case, Defendants’
20 policies and practices have violated state law in at least the following respects:

- 21 (a) Failing to pay at least minimum wage to Plaintiffs and class members in
22 violation of California Labor Code sections 1182.12, 1194, 1197,
23 1197.1, and 1198, and the applicable IWC Wage Order, as alleged
24 herein;
- 25 (b) Requiring non-exempt, hourly paid employees, including Plaintiff
26 Espinoza and class members, to work overtime without paying them
27 proper compensation in violation of California Labor Code sections 510
28 and 1198, and the applicable IWC Wage Order, as alleged herein;

- 1 (c) Failing to authorize and permit Plaintiffs and class members to take all
2 rest periods in violation of California Labor Code sections 226.7, 516,
3 and 1198, and the applicable IWC Wage Order, as alleged herein;
- 4 (d) Failing to provide Plaintiffs and class members with accurate wage
5 statements and failing to maintain accurate payroll records in violation
6 of California Labor Code sections 226(a), 1174(d), and 1198, and the
7 applicable IWC Wage Order, as alleged herein;
- 8 (e) Failing timely to pay all earned wages to Plaintiffs and class members in
9 violation of California Labor Code sections 204, as alleged herein;
- 10 (f) Failing to reimburse Plaintiffs and class members for all business
11 expenses necessarily incurred in violation of California Labor Code
12 section 2802, as alleged herein; and
- 13 (g) Failing to provide written notice of information material to Plaintiffs'
14 and class members' employment with Defendants in violation of
15 California Labor Code section 2810.5(a)(1)(A)-(C), as set forth below.

16 113. At all relevant times herein, California's Wage Theft Prevention Act was
17 enacted to ensure that employers provide employees with basic information material to their
18 employment relationship at the time of hiring, and to ensure that employees are given written
19 and timely notice of any changes to basic information material to their employment. Codified
20 at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the
21 time of hiring, an employer must provide written notice to employees containing basic and
22 material payroll information, including, among other things, the rate(s) of pay and basis
23 thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise,
24 including any rates for overtime, the regular payday designated by the employer, and any
25 allowances claims as part of the minimum wage, including meal or lodging allowances. Labor
26 Code § 2810.5(a)(1)(A)-(C).

27 114. During the relevant time period, Defendants failed to provide Plaintiffs and
28 class members with written notice that lists all the requisite information set forth in Labor

Code section 2810.5(a)(1)(A)-(C). Specifically, Defendants failed to provide Plaintiffs and class members with the minimum and overtime rate(s) of pay in violation of section 2810.5(a)(1)(A) and the regular payday designated by the employer, in violation of section 2810.5(a)(1)(C). Instead, the wage theft form that Defendants provided to Plaintiffs is blank where the aforementioned wage information should be filled in.

115. Defendants' failure to provide Plaintiffs and class members with written notice of basic information regarding their employment with Defendants is in violation of Labor Code section 2810.5.

116. As a result of the violations of California law herein described, Defendants unlawfully gained an unfair advantage over other businesses. Plaintiffs and class members have suffered pecuniary loss by Defendants' unlawful business acts and practices alleged herein.

117. Pursuant to California Business & Professions Code sections 17200, *et seq.*, Plaintiffs and class members are entitled to restitution of the wages withheld and retained by Defendants during a period that commences four years prior to the filing of the initial complaint; a permanent injunction requiring Defendants to pay all outstanding wages due to Plaintiffs and class members; and an award of attorneys' fees pursuant to California Code of Civil Procedure section 1021.5 and other applicable laws; and an award of costs.

TENTH CAUSE OF ACTION

Violation of California Business & Professions Code §§ 17200, *et seq.* –

Unfair Business Practices

(Against all Defendants)

118. Plaintiffs incorporate by reference and re-allege as if fully stated herein each and every allegation set forth above.

119. Defendants are "persons" as defined by California Business & Professions Code section 17201, as they are corporations, firms, partnerships, joint stock companies, and/or associations.

120. Defendants' conduct, as alleged herein, has been, and continues to be, unfair,

1 and harmful to Plaintiffs, class members, and to the general public. Plaintiffs have suffered
2 injuries in fact and have lost money as a result of Defendants' unfair business practices.
3 Plaintiffs seek to enforce important rights affecting the public interest within the meaning of
4 Code of Civil Procedure section 1021.5.

5 121. Defendants' activities, namely Defendants' company-wide practice and/or
6 policy of not paying Plaintiffs and class members all rest period premiums due to them under
7 Labor Code section 226.7, deprived Plaintiffs and class members of the compensation
8 guarantee and enhanced enforcement implemented by section 226.7. The statutory remedy
9 provided by section 226.7 is a "'dual-purpose' remedy intended primarily to compensate
10 employees, and secondarily to shape employer conduct." *Safeway, Inc. v. Superior Court*, 238
11 Cal. App. 4th 1138, 1149 (2015). The statutory benefits of section 226.7 were guaranteed to
12 Plaintiffs and class members as part of their employment with Defendants, and thus
13 Defendants' practice and/or policy of denying these statutory benefits constitutes an unfair
14 business practice in violation of California Business & Professions Code sections 17200, *et*
15 *seq. (Id.)*

16 122. A violation of California Business & Professions Code sections 17200, *et seq.*
17 may be predicated on any unfair business practice. In the instant case, Defendants' policies
18 and practices have violated the spirit of California's rest period laws and constitute acts
19 against the public policy behind these laws.

20 123. Pursuant to California Business & Professions Code sections 17200, *et seq.*,
21 Plaintiffs and class members are entitled to restitution for the class-wide loss of the statutory
22 benefits implemented by section 226.7 withheld and retained by Defendants during a period
23 that commences four years prior to the filing of the initial complaint; a permanent injunction
24 requiring Defendants to pay all statutory benefits implemented by section 226.7 due to
25 Plaintiffs and class members; an award of attorneys' fees pursuant to California Code of Civil
26 Procedure section 1021.5 and other applicable laws; and an award of costs.

27 **REQUEST FOR JURY TRIAL**

28 Plaintiffs request a trial by jury.

1 **PRAYER FOR RELIEF**

2 Plaintiffs, on behalf of all others similarly situated, pray for relief and judgment
3 against Defendants, jointly and severally, as follows:

4 1. For damages, unpaid wages, penalties, injunctive relief, and attorneys' fees in
5 excess of twenty-five thousand dollars (\$25,000), exclusive of interest and costs. Plaintiffs
6 reserve the right to amend their prayer for relief to seek a different amount.

7 **Class Certification**

8 2. That this case be certified as a class action;

9 3. That Plaintiffs be appointed as the representatives of the Class and Subclass;

10 4. That counsel for Plaintiffs be appointed as class counsel.

11 **As to the First Cause of Action**

12 5. That the Court declare, adjudge and decree that Defendants violated California
13 Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, and the applicable IWC Wage
14 Order by willfully failing to pay minimum wages to Plaintiffs and class members;

15 6. For general unpaid wages and such general and special damages as may be
16 appropriate;

17 7. For pre-judgment interest on any unpaid compensation from the date such
18 amounts were due, or as otherwise provided by law;

19 8. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
20 California Labor Code section 1194(a);

21 9. For liquidated damages pursuant to California Labor Code section 1194.2; and

22 10. For such other and further relief as the Court may deem equitable and
23 appropriate.

24 **As to the Second Cause of Action**

25 11. That the Court declare, adjudge, and decree that Defendants violated California
26 Labor Code sections 510 and 1198, and the applicable IWC Wage Order by willfully failing to
27 pay all overtime wages due to Plaintiffs and class members;

28 12. For general unpaid wages at overtime wage rates and such general and special

1 damages as may be appropriate;

2 13. For pre-judgment interest on any unpaid overtime compensation commencing
3 from the date such amounts were due, or as otherwise provided by law;

4 14. For reasonable attorneys' fees and for costs of suit incurred herein pursuant to
5 California Labor Code section 1194(a); and

6 15. For such other and further relief as the Court may deem equitable and
7 appropriate.

8 **As to the Third Cause of Action**

9 16. That the Court declare, adjudge and decree that Defendants violated California
10 Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order by willfully
11 failing to authorize and permit Plaintiffs and class members to take all rest periods;

12 17. That the Court make an award to the Plaintiffs and class members of one (1)
13 hour of pay at each employee's regular rate of pay for each workday that a rest period was not
14 authorized and permitted;

15 18. For all actual, consequential, and incidental losses and damages, according to
16 proof;

17 19. For premiums pursuant to California Labor Code section 226.7(c);

18 20. For pre-judgment interest on any unpaid rest period premiums from the date
19 such amounts were due, or as otherwise provided by law;

20 21. For attorneys' fees pursuant to California Code of Civil Procedure section
21 1021.5, or as otherwise provided by law; and

22 22. For such other and further relief as the Court may deem equitable and
23 appropriate.

24 **As to the Fourth Cause of Action**

25 23. That the Court declare, adjudge and decree that Defendants violated the
26 recordkeeping provisions of California Labor Code section 226(a) and the applicable IWC
27 Wage Order as to Plaintiffs and Subclass members, and willfully failed to provide accurate
28 itemized wage statements thereto;

1 24. For all actual, consequential, and incidental losses and damages, according to
2 proof;

3 25. For injunctive relief pursuant to California Labor Code section 226(h);

4 26. For statutory penalties pursuant to California Labor Code section 226(e);

5 27. For attorneys' fees and costs pursuant to California Labor Code section
6 226(e)(1); and

7 28. For such other and further relief as the Court may deem equitable and
8 appropriate.

9 **As to the Fifth Cause of Action**

10 29. That the Court declare, adjudge and decree that Defendants violated California
11 Labor Code sections 201 and 202 by willfully failing to pay minimum wages, overtime wages,
12 and/or meal and rest period premiums owed at the time of termination of the employment of
13 Plaintiffs and other terminated class members;

14 30. For all actual, consequential and incidental losses and damages, according to
15 proof;

16 31. For waiting time penalties according to proof pursuant to California Labor
17 Code section 203 for all employees who have left Defendants' employ;

18 32. For pre-judgment interest on any unpaid wages from the date such amounts
19 were due, or as otherwise provided by law;

20 33. For attorneys' fees pursuant to California Code of Civil Procedure section
21 1021.5, or as otherwise provided by law; and

22 34. For such other and further relief as the Court may deem equitable and
23 appropriate.

24 **As to the Sixth Cause of Action**

25 35. That the Court declare, adjudge and decree that Defendants violated California
26 Labor Code section 204 by willfully failing to timely pay Plaintiffs and class members
27 minimum wages, overtime wages, and/or meal and rest period premiums pay during their
28 employment;

36. For all actual, consequential and incidental losses and damages, according to proof;

37. For statutory penalties according to proof pursuant to California Labor Code section 210;

38. For pre-judgment interest on any unpaid wages from the date such amounts were due, or as otherwise provided by law;

39. For attorneys' fees pursuant to California Code of Civil Procedure section 1021.5, or as otherwise provided by law; and

40. For such other and further relief as the Court may deem equitable and appropriate.

As to the Seventh Cause of Action

41. That the Court declare, adjudge and decree that Defendants violated California Labor Code section 2802 by willfully failing to reimburse and/or indemnify all business-related expenses and costs incurred by Plaintiffs and class members;

42. For unpaid business-related expenses and such general and special damages as may be appropriate;

43. For pre-judgment interest on any unpaid business-related expenses from the date such amounts were due, or as otherwise provided by law;

44. For all actual, consequential, and incidental losses and damages, according to proof;

45. For attorneys' fees and costs pursuant to California Labor Code section 2802(c), or as otherwise provided by law; and

46. For such other and further relief as the Court may deem equitable and appropriate.

As to the Eighth Cause of Action

47. That the Court declare, adjudge and decree that Defendants violated the following California Labor Code provisions as to Plaintiffs and other aggrieved employees: 1182.12, 1194, 1197, 1197.1, and 1198 (by failing to pay at least minimum wages for all

hours worked); 510 and 1198 (by failing to pay all overtime compensation); 226.7, 516, and 1198 (by failing to authorize and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage statements and maintain accurate payroll records); 201 and 202 (by failing to timely pay all earned wages upon termination); 204 (by failing to timely pay all earned wages during employment); 2802 (by failing to reimburse business expenses); and 2810.5 (by failing to provide notice of material terms of employment);

48. For civil penalties pursuant to the California Labor Code, including sections 210, 226.3, 256, 558, 1174.5, 2699(a), (f), and (k), for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

49. For injunctive relief pursuant to California Labor Code sections 1194.5 and/or 2699(k) to bring Defendants into compliance with the requirements of California Labor Code sections 201, 202, 204, 226(a), 226.7, 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

50. For attorneys' fees and costs pursuant to California Labor Code section 2699(k)(1), and any and all other relevant statutes, for Defendants' violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5;

51. For pre-judgment and post-judgment interest as provided by law; and

52. For such other and further relief as the Court may deem equitable and appropriate.

As to the Ninth Cause of Action

53. That the Court declare, adjudge and decree that Defendants' conduct of failing to provide Plaintiffs and class members all minimum wages due to them, failing to provide Plaintiff Espinoza and class members all overtime wages due to them, failing to authorize and permit Plaintiffs and class members to take all rest periods, failing to provide Plaintiffs and class members accurate and complete wage statements, failing to maintain accurate payroll records for Plaintiffs and class members, failing to timely pay Plaintiffs and class members all

1 earned wages during employment, failing to reimburse Plaintiffs and class members for
2 business-related expenses, and failing to provide written notice of material terms of
3 employment, constitutes an unlawful business practice in violation of California Business and
4 Professions Code sections 17200, *et seq.*;

5 54. For restitution of unpaid wages to Plaintiffs and all class members and
6 prejudgment interest from the day such amounts were due and payable;

7 55. For the appointment of a receiver to receive, manage and distribute any and all
8 funds disgorged from Defendants and determined to have been wrongfully acquired by
9 Defendants as a result of violations of California Business & Professions Code sections
10 17200, *et seq.*;

11 56. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
12 California Code of Civil Procedure section 1021.5; and

13 57. For such other and further relief as the Court may deem equitable and
14 appropriate.

15 **As to the Tenth Cause of Action**

16 58. That the Court declare, adjudge and decree that Defendants' conduct of denying
17 Plaintiffs and class members the statutory benefits guaranteed under section 226.7 constitutes
18 an unfair business practice in violation of California Business and Professions Code sections
19 17200, *et seq.*;

20 59. For restitution of the statutory benefits under section 226.7 unfairly withheld
21 from Plaintiffs and class members and prejudgment interest from the day such amounts were
22 due and payable;

23 60. For the appointment of a receiver to receive, manage and distribute any and all
24 funds disgorged from Defendants and determined to have been wrongfully acquired by
25 Defendants as a result of violations of California Business & Professions Code sections
26 17200, *et seq.*;

27 61. For reasonable attorneys' fees and costs of suit incurred herein pursuant to
28 California Code of Civil Procedure section 1021.5;

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62. For pre-judgment and post-judgment interest as provided by law; and
63. For such other and further relief as the Court may deem equitable and appropriate.

Dated: January 17, 2025

Respectfully submitted,
Capstone Law APC

By: Roxanna Tabatabaeepour
Roxanna Tabatabaeepour
Ryan Tish
Alexander Wallin

Attorneys for Plaintiffs Raeyon Austell and
Ayla Espinoza

EXHIBIT “1”



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November 12, 2024

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.govfa.net/308>)

Subject: *Raeyon Austell v. The Boys & Girls Clubs of Kern County*

Dear PAGA Administrator:

This office represents Raeyon Austell in connection with his claims under the California Labor Code. Mr. Austell was an employee of THE BOYS & GIRLS CLUBS OF KERN COUNTY ("BGCKC").

The employer may be contacted directly at the addresses below:

THE BOYS & GIRLS CLUBS OF KERN COUNTY
801 NILES STREET
BAKERSFIELD, CA 93305

THE BOYS & GIRLS CLUBS OF KERN COUNTY
PO BIN 5J
BAKERSFIELD, CA 93385

Mr. Austell intends to seek civil penalties, attorneys' fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Austell seeks relief on behalf of himself, the State of California, and other persons who are or were employed by BGCKC as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

BGCKC employed Mr. Austell as an hourly paid, non-exempt employee from approximately December 2022 to April 2024. Mr. Austell worked for BGCKC as an Activity Leader for BGCKC at its school location in Bakersfield, California. During his employment, Mr. Austell typically worked four (4) hours or more per day, and five (5) days or more per week. At the time Mr. Austell's employment with BGCKC ended, he earned approximately \$17.00 per hour. His job duties included, without limitation, teaching physical education, arts, and engineering, and assisting students with homework.

BGCKC committed each of the following Labor Code violations against Mr. Austell, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c)(1):¹

BGCKC’s Company-Wide and Uniform Payroll and HR Practices

THE BOYS & GIRLS CLUBS OF KERN COUNTY is a California nonprofit organization which provides academic enrichment, physical fitness, nutritional, and life skill programs to children ages 5 to 18 from kindergarten to high school. Upon information and belief, BGCKC maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Bakersfield, California, for all non-exempt, hourly paid employees working for BGCKC in California, including Mr. Austell and other aggrieved employees. At all relevant times, BGCKC issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Austell and other aggrieved employees, regardless of their location or position.

Upon information and belief, BGCKC maintains a centralized Payroll department at its corporate headquarters in Bakersfield, California, which processes payroll for all non-exempt, hourly paid employees working for BGCKC in California, including Mr. Austell and other aggrieved employees. Further, BGCKC issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees in California, including Mr. Austell and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, BGCKC utilized the same methods and formulas when calculating wages due to Mr. Austell and other aggrieved employees in California.

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the Industrial Welfare Commission (“IWC”). The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 4-2001 as “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.” Cal. Code Regs. tit. 8, § 11040(2)(K) (defining “Hours Worked”).

During the relevant time period, BGCKC had, and continues to have, a company-wide policy and/or practice of requiring Mr. Austell and other aggrieved employees to perform work off-the-clock before and after their scheduled shifts. Pursuant to this policy, on information and belief, BGCKC’s management would alter and/or falsify time records to shave off time Mr. Austell and other aggrieved employees spent working to avoid payment of additional wages. For example, Mr. Austell was required to work for approximately 15-20 minutes before each shift to prepare materials and

¹ These facts, theories, and claims are based on Mr. Austell’s experience and counsel’s review of those records currently available relating to Mr. Austell’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Austell reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

lesson plans before students arrived for the day. Similarly, other aggrieved employees were required to work after their scheduled shifts, returning to the classroom and completing cleaning duties, such as putting away materials and supplies used. When Mr. Austell and other aggrieved employees attempted to record this time spent working before and after their shifts, on information and belief, BGCKC's managers adjusted their time records to shave off this time worked to avoid payment of additional wages.

Moreover, BGCKC required Mr. Austell and other aggrieved employees to complete mandated training sessions relating to safety, instruction, and other procedures. Due to the heavy workload and the need to constantly supervise their students, Mr. Austell and other aggrieved employees were not always able to complete these training sessions on the clock and were forced to complete them at home on their own time. For example, Mr. Austell completed three (3) training sessions regarding student interactions and policies, which took approximately four (4) hours each, while at home. As a result, Mr. Austell and other aggrieved employees were subject to BGCKC's control outside of their shifts but were not compensated for this time.

BGCKC knew or should have known that as a result of these company-wide practices and/or policies, Mr. Austell and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts, and were suffered or permitted to perform work for which they were not paid. BGCKC did not pay minimum wages for all hours worked by Mr. Austell and other aggrieved employees in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, BGCKC regularly failed to pay at least minimum wages to Mr. Austell and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Austell and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring BGCKC into compliance with the applicable IWC Wage Order and Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

During the relevant time period, BGCKC regularly failed to authorize and permit Mr. Austell and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. BGCKC had policies and/or practices of staffing its programs such that there were too few employees on duty to provide continuous supervision of students and provide rest period coverage to Mr. Austell and other aggrieved employees. As a result, Mr. Austell and other aggrieved employees were not relieved of all duty in order to take compliant rest periods. BGCKC also failed to schedule rest periods, which, coupled with BGCKC's failure to provide adequate rest period coverage, further led to Mr. Austell and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, upon information and belief, BGCKC maintained a company-wide on-premises rest period policy, which mandated that Mr. Austell and other aggrieved employees remain on the work premises during their rest periods. Because Mr. Austell and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, BGCKC effectively maintained control over Mr. Austell and other aggrieved employees during rest periods.

As a result of BGCKC's practices and policies, Mr. Austell and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Mr. Austell would have to forgo his rest periods altogether due to the lack of rest period coverage.

BGCKC also has engaged in a company-wide practice and/or policy of not paying rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Austell and other aggrieved employees have not received all premium pay for missed rest periods.

Accordingly, BGCKC failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Austell and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring BGCKC into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, BGCKC has knowingly and intentionally provided Mr. Austell and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example,

BGCKC issued uniform wage statements to Mr. Austell and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, and the corresponding number of hours worked at each hourly rate. Specifically, BGCKC violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because BGCKC did not record the time Mr. Austell and other aggrieved employees spent working off-the-clock, BGCKC did not list the correct amount of gross wages and net wages earned by Mr. Austell and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, BGCKC failed to accurately list the total number of hours worked by Mr. Austell and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list 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; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), BGCKC willfully failed to maintain accurate payroll records for Mr. Austell and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, BGCKC engaged in company-wide practices and/or policies of failing to record actual hours worked and thereby failed to keep accurate records of work period start and end times for Mr. Austell and other aggrieved employees in violation of section 1198.

Because BGCKC failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Austell and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Austell and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine

whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Austell and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring BGCKC into compliance with the applicable IWC Wage Order and Labor Code sections 226(a), 1174(d), and 1198, pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (k).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that 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. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, BGCKC willfully failed to pay Mr. Austell and other aggrieved employees all wages due including, but not limited to, minimum wages and/or rest period premiums, within the time periods specified by California Labor Code section 204.

Mr. Austell and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring BGCKC into compliance with Labor Code section 204, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy two (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.

BGCKC willfully failed to pay Mr. Austell and other aggrieved employees who are no longer employed by BGCKC the earned and unpaid wages set forth above, including but not limited to, minimum wages and/or rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving BGCKC's employ.

Mr. Austell and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring BGCKC into compliance with Labor Code sections 201 and 202, pursuant to Labor Code sections 256 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 4-2001, provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

First, during the relevant time period, BGCKC, on a company-wide basis, required that Mr. Austell and other aggrieved employees use their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but failed to reimburse them for the costs of their work-related mobile device expenses. For example, Mr. Austell used his personal cellular phone and mobile data to download and use a mobile application, “ADP Mobile Solutions,” to clock in and out for his shifts and/or meal periods. Furthermore, Mr. Austell and other aggrieved employees were required to use their personal computers and/or home internet service plans in order to complete training sessions at home. Although BGCKC required Mr. Austell and other aggrieved employees to utilize their personal mobile devices, mobile data, and/or home internet service to carry out their work-related responsibilities, BGCKC failed to reimburse them for these costs.

Second, during the relevant time period, BGCKC, on a company-wide basis, required that Mr. Austell and other aggrieved employees purchase supplies, tools, and/or equipment necessary for the performance of their duties, but failed to reimburse them for their out-of-pocket costs. For example, Mr. Austell spent approximately \$200 throughout his employment on supplies such as paint, crafts, and snacks, because BGCKC failed to provide him with the necessary supplies, tools, and/or equipment needed to complete his assigned duties. Although BGCKC required Mr. Austell and other aggrieved employees to purchase supplies to carry out their work-related responsibilities, BGCKC failed to reimburse them for their out-of-pocket cost.

BGCKC could have provided Mr. Austell and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices and supplies, tools, and/or equipment; or, BGCKC could have reimbursed employees for the costs of their mobile device usage, home internet usage, and supplies, tools, and/or equipment. Instead, BGCKC passed these operating costs onto Mr. Austell and other aggrieved employees. At all relevant times, Mr. Austell did not earn at least two (2) times the minimum wage.

Thus, BGCKC had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Austell and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring BGCKC into compliance with the applicable IWC Wage Order and Labor Code section 2802, pursuant to Labor Code sections 2699(a), (f), and (k).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

On information and belief, BGCKC failed, on a company-wide basis, to provide written notice to Mr. Austell and other aggrieved employees that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Specifically, BGCKC failed to provide Mr. Austell and other aggrieved employees with the minimum and overtime rate(s) of pay in violation of section 2810.5(a)(1)(A) and the regular payday designated by the employer, in violation of section 2810.5(a)(1)(C). Instead, the wage theft form that BGCKC provided to Mr. Austell is blank where the aforementioned wage information should be filled in. BGCKC's failure to provide Mr. Austell and other aggrieved employees with written notice of basic information regarding their employment with BGCKC is in violation of California Labor Code section 2810.5.

Mr. Austell and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring BGCKC into compliance with Labor Code section 2810.5, pursuant to Labor Code sections 2699(a), (f), and (k).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter 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 . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid" Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." BGCKC, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Austell's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Austell seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699(k), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Austell acting in the public interest as a private attorney general, seeks assessment and

collection of civil penalties and injunctive relief for himself, all other aggrieved employees, and the State of California against BGCKC for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Mr. Austell seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Anthony Castillo
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,


Anthony Castillo

Copy: THE BOYS & GIRLS CLUBS OF KERN COUNTY (via U.S. Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067



7022 2410 0000 2265 0786

THE BOYS & GIRLS CLUBS
OF KERN COUNTY
801 NILES STREET
BAKERSFIELD, CA 93305

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.

THE BOYS & GIRLS CLUBS
OF KERN COUNTY
801 NILES STREET
BAKERSFIELD, CA 93305



9590 9402 8803 4005 5746 06

2. Article Number (Transfer from service label)

7022 2410 0000 2265 0786

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

ed Delivery

Domestic Return Receipt

7022 2410 0000 2265 0786

**U.S. Postal Service™
CERTIFIED MAIL® RECEIPT**
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail For

AUSTIN U.

Extra Services & Fees (Attach label and fee as appropriate)

☒ Return Receipt (hardcopy)

☐ Return Receipt (electronic)

☐ Certified Mail Restricted Delivery

THE BOYS & GIRLS CLUBS
OF KERN COUNTY
801 NILES STREET
BAKERSFIELD, CA 93305

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067



7022 2410 0000 2265 0793

THE BOYS & GIRLS CLUBS
OF KERN COUNTY
PO BIN 5J
BAKERSFIELD, CA 93385

U.S. Postal Service™
CERTIFIED MAIL® RECEIPT
Domestic Mail Only

For delivery information, visit our website at www.usps.com®.

OFFICIAL USE

Certified Mail Fee

AUSTELL, CA

Extra Services & Fees (check box, add fee as appropriate)

☒ Return Receipt (hardcopy)

\$ 13.34

Postmark

7022 2410 0000 2265 0793

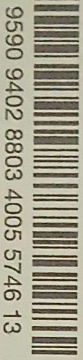
THE BOYS & GIRLS CLUBS
OF KERN COUNTY
PO BIN 5J
BAKERSFIELD, CA 93385

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.

1. THE BOYS & GIRLS CLUBS
OF KERN COUNTY
PO BIN 5J
BAKERSFIELD, CA 93385



9590 9402 8803 4005 5746 13

2. Article Number (PSN)
7022 2410 0000 2265 0793

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

Received by (Printed Name)

☐ Agent

☐ Addressee

C. Date of Delivery

Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Collect on Delivery
- ☐ Delivery Restricted Delivery

Priority Mail Express®

- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

(over \$500)

Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.

1. **THE BOYS & GIRLS CLUBS
OF KERN COUNTY
PO BIN 5J
BAKERSFIELD, CA 93385**



9590 9402 8803 4005 5746 13

2. Article Number (Transfer from service label)
7022 2410 0000 2265 0793

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

Received by (Printed Name)

Tess Freeman

☒ Agent
☐ Addressee

C. Date of Delivery

7/14/2024

Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Insurance Restricted Delivery (over \$500)

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.

**THE BOYS & GIRLS CLUBS
OF KERN COUNTY
801 NILES STREET
BAKERSFIELD, CA 93305**



9590 9402 8803 4005 5746 06

2. Article Number (Transfer from service label)

7022 2410 0000 2265 0786

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

B. Received by (Printed Name)

Tess Freeman

☒ Agent
☐ Addressee

C. Date of Delivery

7/14/2024

D. Is delivery address different from item 1? ☐ Yes

If YES, enter delivery address below: ☐ No

Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Insurance Restricted Delivery

Domestic Return Receipt

EXHIBIT “2”



1875 Century Park East, Suite 1000
Los Angeles, California 90067
310.556.4811 Main | 310.943.0396 Fax

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

November 12, 2024

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.govfa.net/308>)

Subject: *Ayla Espinoza v. The Boys & Girls Clubs of Kern County*

Dear PAGA Administrator:

This office represents Ayla Espinoza in connection with her claims under the California Labor Code. Ms. Espinoza was an employee of THE BOYS & GIRLS CLUBS OF KERN COUNTY ("BGCKC").

The employer may be contacted directly at the addresses below:

THE BOYS & GIRLS CLUBS OF KERN COUNTY
801 NILES STREET
BAKERSFIELD, CA 93305

THE BOYS & GIRLS CLUBS OF KERN COUNTY
PO BIN 5J
BAKERSFIELD, CA 93385

Ms. Espinoza intends to seek civil penalties, attorneys' fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Ms. Espinoza seeks relief on behalf of herself, the State of California, and other persons who are or were employed by BGCKC as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

BGCKC employed Ms. Espinoza as an hourly paid, non-exempt employee from approximately December 2022 to April 2024. Ms. Espinoza worked for BGCKC as an Activity Leader for BGCKC at its school location in Bakersfield, California. During her employment, Ms. Espinoza typically worked six (6) hours or more per day and five (5) days per week. At the time Ms. Espinoza's employment with BGCKC ended, she earned approximately \$18.67 per hour. Her job duties included, without limitation, teaching science, technology, engineering, and mathematics courses to

students from 1st to 6th grade, preparing lessons, assisting students with homework, and completing student attendance reports.

BGCKC committed each of the following Labor Code violations against Ms. Espinoza, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c)(1):¹

BGCKC’s Company-Wide and Uniform Payroll and HR Practices

THE BOYS & GIRLS CLUBS OF KERN COUNTY is a California nonprofit organization which provides academic enrichment, physical fitness, nutritional, and life skill programs to children ages 5 to 18 from kindergarten to high school. Upon information and belief, BGCKC maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Bakersfield, California, for all non-exempt, hourly paid employees working for BGCKC in California, including Ms. Espinoza and other aggrieved employees. At all relevant times, BGCKC issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Espinoza and other aggrieved employees, regardless of their location or position.

Upon information and belief, BGCKC maintains a centralized Payroll department at its corporate headquarters in Bakersfield, California, which processes payroll for all non-exempt, hourly paid employees working for BGCKC in California, including Ms. Espinoza and other aggrieved employees. Further, BGCKC issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees in California, including Ms. Espinoza and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, BGCKC utilized the same methods and formulas when calculating wages due to Ms. Espinoza and other aggrieved employees in California.

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the Industrial Welfare Commission (“IWC”). The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 4-2001 as “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.” Cal. Code Regs. tit. 8, § 11040(2)(K) (defining “Hours Worked”).

During the relevant time period, BGCKC had, and continues to have, a company-wide policy and/or practice of requiring Ms. Espinoza and other aggrieved employees to perform work off-the-clock before and after their scheduled shifts. Pursuant to this policy, on information and belief, BGCKC’s

¹ These facts, theories, and claims are based on Ms. Espinoza’s experience and counsel’s review of those records currently available relating to Ms. Espinoza’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Ms. Espinoza reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

management would alter and/or falsify time records to shave off time Ms. Espinoza and other aggrieved employees spent working to avoid payment of additional wages. For example, Ms. Espinoza was required to work for approximately seven (7) minutes and three (3) times per week after her scheduled shifts, returning to the classroom and completing cleaning duties, such as putting away materials and supplies. Similarly, other aggrieved employees were required to work before their scheduled shifts to prepare materials and lesson plans before students arrived for the day. When Ms. Espinoza and/or other aggrieved employees attempted to record this time spent working before and/or after their shifts, on information and belief, BGCKC's managers adjusted their time records to shave off this time worked and avoid the payment of additional wages.

Moreover, BGCKC required Ms. Espinoza and other aggrieved employees to complete mandated training sessions relating to safety, instruction, and other procedures. Due to the heavy workload and the need to constantly supervise their students, Ms. Espinoza and other aggrieved employees were not always able to complete these training sessions on the clock and were forced to complete them at home on their own time. For example, Ms. Espinoza spent approximately 20 minutes each month completing safety training quizzes while off-the-clock. As a result, Ms. Espinoza and other aggrieved employees were subject to BGCKC's control outside of their shifts but were not compensated for this time.

BGCKC knew or should have known that as a result of these company-wide practices and/or policies, Ms. Espinoza and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts, and were suffered or permitted to perform work for which they were not paid. BGCKC did not pay minimum wages for all hours worked by Ms. Espinoza and other aggrieved employees in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, BGCKC regularly failed to pay at least minimum wages to Ms. Espinoza and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Ms. Espinoza and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring BGCKC into compliance with the applicable IWC Wage Order and Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable IWC Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

During the relevant time period, BGCKC willfully failed to pay all overtime wages owed to Ms. Espinoza and other aggrieved employees. During the relevant time period, Ms. Espinoza and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours worked were not recorded.

As stated above, BGCKC had a company-wide policy and/or practice of requiring Ms. Espinoza and other aggrieved employees perform various work-related tasks while off-the-clock before and after their shifts, including, but not limited to, cleaning classrooms, preparing materials and lesson plans, and completing training. BGCKC failed to track this time Ms. Espinoza and other aggrieved employees spent working off-the-clock, and Ms. Espinoza and other aggrieved employees received no compensation for this time. As also stated, on information and belief, due to BGCKC's management altering and/or falsifying time records, Ms. Espinoza and other aggrieved employees were prevented from recording the entire time worked outside of their scheduled shifts, and thus were not paid for this time.

BGCKC knew or should have known that, as a result of these company-wide practices and/or policies, Ms. Espinoza and other aggrieved employees were performing their assigned duties off-the-clock outside of their shifts, and were suffered or permitted to perform work for which they were not paid. Because Ms. Espinoza and other aggrieved employees sometimes worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Ms. Espinoza and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

BGCKC's failure to pay Ms. Espinoza and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Ms. Espinoza and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring BGCKC into compliance with the applicable IWC Wage Order and Labor Code sections 510 and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof" unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

During the relevant time period, BGCKC regularly failed to authorize and permit Ms. Espinoza and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. BGCKC had policies and/or practices of staffing its programs such that there were too few employees on duty to provide continuous supervision of students and provide rest

period coverage to Ms. Espinoza and other aggrieved employees. As a result, Ms. Espinoza and other aggrieved employees were not relieved of all duty in order to take compliant rest periods. BGCKC also failed to schedule rest periods, which, coupled with BGCKC's failure to provide adequate rest period coverage, further led to Ms. Espinoza and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, upon information and belief, BGCKC maintained a company-wide on-premises rest period policy, which mandated that Ms. Espinoza and other aggrieved employees remain on the work premises during their rest periods. Because Ms. Espinoza and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, BGCKC effectively maintained control over Ms. Espinoza and other aggrieved employees during rest periods.

As a result of BGCKC's practices and policies, Ms. Espinoza and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, Ms. Espinoza would have to forgo her rest periods altogether due to the lack of rest period coverage.

BGCKC also has engaged in a company-wide practice and/or policy of not paying rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Ms. Espinoza and other aggrieved employees have not received all premium pay for missed rest periods.

Accordingly, BGCKC failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Espinoza and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring BGCKC into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, BGCKC has knowingly and intentionally provided Ms. Espinoza and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, BGCKC issued uniform wage statements to Ms. Espinoza and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, and

the corresponding number of hours worked at each hourly rate. Specifically, BGCKC violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because BGCKC did not record the time Ms. Espinoza and other aggrieved employees spent working off-the-clock, BGCKC did not list the correct amount of gross wages and net wages earned by Ms. Espinoza and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, BGCKC failed to accurately list the total number of hours worked by Ms. Espinoza and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list 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; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), BGCKC willfully failed to maintain accurate payroll records for Ms. Espinoza and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, BGCKC engaged in company-wide practices and/or policies of failing to record actual hours worked and thereby failed to keep accurate records of work period start and end times for Ms. Espinoza and other aggrieved employees in violation of section 1198.

Because BGCKC failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Espinoza and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Ms. Espinoza and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Ms. Espinoza and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring BGCKC into compliance with the applicable IWC Wage Order and Labor Code sections 226(a), 1174(d), and 1198, pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (k).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that 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. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, BGCKC willfully failed to pay Ms. Espinoza and other aggrieved employees all wages due including, but not limited to, minimum wages, overtime wages, and/or rest period premiums, within the time periods specified by California Labor Code section 204.

Ms. Espinoza and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring BGCKC into compliance with Labor Code section 204, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy two (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.

BGCKC willfully failed to pay Ms. Espinoza and other aggrieved employees who are no longer employed by BGCKC the earned and unpaid wages set forth above, including but not limited to, minimum wages, overtime wages, and/or rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving BGCKC's employ.

Ms. Espinoza and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring BGCKC into compliance with Labor Code sections 201 and 202, pursuant to Labor Code sections 256 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 4-2001, provides that: “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft.”

First, during the relevant time period, BGCKC, on a company-wide basis, required that Ms. Espinoza and other aggrieved employees use their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but failed to reimburse them for the costs of their work-related mobile device expenses. For example, Ms. Espinoza used her personal cellular phone and mobile data to download and use a mobile application, “ADP Mobile Solutions,” to clock in and out for her shifts and/or meal periods. As another example, Ms. Espinoza used her personal cellular phone to communicate with managers regarding work-related issues. Furthermore, Ms. Espinoza and other aggrieved employees were required to use their personal computers and/or home internet service plans in order to complete training sessions at home. Although BGCKC required Ms. Espinoza and other aggrieved employees to utilize their personal mobile devices, mobile data, and/or home internet service to carry out their work-related responsibilities, BGCKC failed to reimburse them for these costs.

Second, during the relevant time period, BGCKC, on a company-wide basis, required that Ms. Espinoza and other aggrieved employees purchase supplies, tools, and/or equipment necessary for the performance of their duties, but failed to reimburse them for their out-of-pocket costs. For example, Ms. Espinoza spent approximately \$15 per month on supplies such as pens, stickers, erasers, and pencils, because BGCKC failed to provide her with the necessary supplies, tools, and/or equipment needed to complete her assigned duties. Although BGCKC required Ms. Espinoza and other aggrieved employees to purchase supplies to carry out their work-related responsibilities, BGCKC failed to reimburse them for their out-of-pocket cost.

BGCKC could have provided Ms. Espinoza and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices and supplies, tools, and/or equipment; or, BGCKC could have reimbursed employees for the costs of their mobile device usage, home internet usage, and supplies, tools, and/or equipment. Instead, BGCKC passed these operating costs onto Ms. Espinoza and other aggrieved employees. At all relevant times, Ms. Espinoza did not earn at least two (2) times the minimum wage.

Thus, BGCKC had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Ms. Espinoza and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring BGCKC into compliance with the applicable IWC Wage Order and Labor Code section 2802, pursuant to Labor Code sections 2699(a), (f), and (k).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California’s Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer’s written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

On information and belief, BGCKC failed, on a company-wide basis, to provide written notice to Ms. Espinoza and other aggrieved employees that lists all the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). Specifically, BGCKC failed to provide Ms. Espinoza and other aggrieved employees with the minimum and overtime rate(s) of pay in violation of section 2810.5(a)(1)(A) and the regular payday designated by the employer, in violation of section 2810.5(a)(1)(C). Instead, the wage theft form that BGCKC provided to Ms. Espinoza is blank where the aforementioned wage information should be filled in. BGCKC’s failure to provide Ms. Espinoza and other aggrieved employees with written notice of basic information regarding their employment with BGCKC is in violation of California Labor Code section 2810.5.

Ms. Espinoza and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring BGCKC into compliance with Labor Code section 2810.5, pursuant to Labor Code sections 2699(a), (f), and (k).

California Labor Code § 558(a)

California Labor Code section 558(a) provides “[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter 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 (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid” Labor Code section 558(c) provides that “[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law.” BGCKC, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Espinoza’s and other aggrieved employees’ rights by violating various sections of the California Labor Code.

Accordingly, Ms. Espinoza seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 1194.5, 2699(a), 2699(k), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Espinoza acting in the public interest as a private attorney general, seeks assessment

and collection of civil penalties and injunctive relief for herself, all other aggrieved employees, and the State of California against BGCKC for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Ms. Espinoza seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

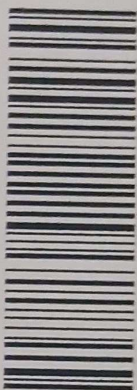
Anthony Castillo
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,


Anthony Castillo

Copy: THE BOYS & GIRLS CLUBS OF KERN COUNTY (via U.S. Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA. 90067



7022 2410 0000 2265 0809

THE BOYS & GIRLS CLUBS
OF KERN COUNTY
801 NILES STREET
BAKERSFIELD, CA 93305

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.

THE BOYS & GIRLS CLUBS
OF KERN COUNTY
801 NILES STREET
BAKERSFIELD, CA 93305



9590 9402 8803 4005 5745 90

2. Article Number (Transfer from service label)

7022 2410 0000 2265 0809

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

B. Received by (Printed Name)

☐ Agent
☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

C. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail
- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail™ Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation™ Restricted Delivery
- ☐ Restricted Delivery

Domestic Return Receipt

U.S. Postal Service™
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ES81405211

EXTRA SERVICES & FEES (check box, add fee as appropriate)

Return Receipt (hardcopy)

Return Receipt (electronic)

Postmark

1536

THE BOYS & GIRLS CLUBS

OF KERN COUNTY

801 NILES STREET

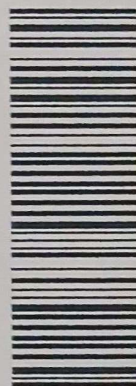
BAKERSFIELD, CA 93305

7022 2410 0000 2265 0809

PS Form 3800, April 2015 PSN 7530-02-000-9047 See Reverse for Instructions

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA, 90067

7022 2410 0000 2265 0816



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Certified Mail Fee

ESR/05/04 11

Extra Services & Fees (check box, add fee as appropriate)
Return Receipt (hardcopy) \$ 5.50

Insurance (check box, add fee as appropriate) \$

Signature Confirmation™ (check box, add fee as appropriate) \$

Postage Total \$

Postage Total \$

Postage Total \$

Postage Total \$

Postage Total \$

Postage Total \$

Postage Total \$

PS Form 3800, April 2015 PSN 7530-02-000-9053

See Reverse for Instructions

THE BOYS & GIRLS CLUBS
OF KERN COUNTY
PO BIN 5J
BAKERSFIELD, CA 93385

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.

THE BOYS & GIRLS CLUBS
OF KERN COUNTY
PO BIN 5J
BAKERSFIELD, CA 93385



9590 9402 8803 4005 5745 83

2. Article Number (Transfer from service label)

7022 2410 0000 2265 0816

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

☐ Agent

B. Received by (Printed Name)

☐ Addressee

D. Is delivery address different from item 1? ☐ Yes
If YES, enter delivery address below: ☐ No

3. Service Type

☐ Adult Signature

☐ Priority Mail Express®

☐ Adult Signature Restricted Delivery

☐ Registered Mail™

☐ Certified Mail®

☐ Registered Mail Restricted Delivery

☐ Certified Mail Restricted Delivery

☐ Signature Confirmation™

☐ Collect on Delivery

☐ Signature Confirmation Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.

**THE BOYS & GIRLS CLUBS
OF KERN COUNTY
PO BIN 5J
BAKERSFIELD, CA 93385**



9590 9402 8803 4005 5745 83

2. Article Number (Transfer from service label)

7022 2410 0000 2265 0816

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

B. Received by (Printed Name)

Tress Freeman

☒ Agent
☐ Addressee

C. Date of Delivery

 D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☒ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery

- ☐ Priority Mail Exp
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Restricted Delivery

Domestic Return Receipt

SENDER: COMPLETE THIS SECTION

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.

**THE BOYS & GIRLS CLUBS
OF KERN COUNTY
801 NILES STREET
BAKERSFIELD, CA 93305**



9590 9402 8803 4005 5745 90

2. Article Number (Transfer from service label)

7022 2410 0000 2265 0809

PS Form 3811, July 2020 PSN 7530-02-000-9053

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X

B. Received by (Printed Name)

Tress Freeman

☒ Agent
☐ Addressee

C. Date of Delivery

 D. Is delivery address different from item 1? ☒ Yes
 If YES, enter delivery address below: ☐ No

3. Service Type

- ☐ Adult Signature
- ☐ Adult Signature Restricted Delivery
- ☒ Certified Mail®
- ☐ Certified Mail Restricted Delivery
- ☐ Collect on Delivery
- ☐ Collect on Delivery Restricted Delivery
- ☐ Insured Mail

- ☐ Priority Mail Express®
- ☐ Registered Mail™
- ☐ Registered Mail Restricted Delivery
- ☐ Signature Confirmation™
- ☐ Signature Confirmation Restricted Delivery

Restricted Delivery

Domestic Return Receipt

PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000 Los Angeles, California 90067.

On **January 17, 2025**, I served the document described as: **FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ** on the interested parties in this action by sending [] the original [or] [✓] a true copy thereof [✓] to interested parties as follows [or] [] as stated on the attached service list:

The Boys & Girls Club of Kern County
Registered Agent – Zane Smith
801 Niles Street
Bakersfield, CA 93305

[X] **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

[] **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via One Legal eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **January 17, 2025**, at Los Angeles, California.

Joan Morris

Type/Print Name



Signature

PROOF OF SERVICE

I am employed in the State of California, County of Los Angeles. I am over the age of 18 and not a party to the within suit; my business address is 1875 Century Park East, Suite 1000 Los Angeles, California 90067.

On **January 22, 2025**, I served the document described as: **FIRST AMENDED CLASS ACTION COMPLAINT & ENFORCEMENT ACTION UNDER THE PRIVATE ATTORNEYS GENERAL ACT, CALIFORNIA LABOR CODE §§ 2698, ET SEQ.** on the interested parties in this action by sending ☐ the original [or] ☒ a true copy thereof ☒ to interested parties as follows [or] ☐ as stated on the attached service list:

Daniel K. Klingenberger
dklingenberger@lebeauthelen.com
Matthew Dobbs
mdobbs@lebeauthelen.com
Sissy Rucker, Paralegal
srucker@lebeauthelen.com
Jennifer Chamberlain, Secretary
jchamberlain@lebeauthelen.com
Sabrina Rodriguez, Assistant
srodriguez@lebeauthelen.com
LeBeau Thelen, LLP
5001 E. Commercenter Drive, Suite 300
Bakersfield, CA 93309
(661)325-8962
(661)325-1127

Attorneys for Defendant:
The Boys & Girls Clubs of Kern County

☐ **BY MAIL (ENCLOSED IN A SEALED ENVELOPE):** I deposited the envelope(s) for mailing in the ordinary course of business at Los Angeles, California. I am “readily familiar” with this firm’s practice of collection and processing correspondence for mailing. Under that practice, sealed envelopes are deposited with the U.S. Postal Service that same day in the ordinary course of business with postage thereon fully prepaid at Los Angeles, California.

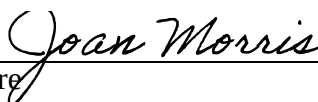
☒ **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known e-mail address or e-mail of record in this action.

☐ **BY PERSONAL SERVICE:** I delivered the document, enclosed in a sealed envelope, by hand to the counsel for Defendant.

☐ **BY ELECTRONIC SERVICE:** I caused the document(s) to be transmitted electronically via One Legal eService to the individuals listed above, as they exist on that database. This will constitute service of the document(s).

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on **January 22, 2025**, at Los Angeles, California.

Joan Morris
Type/Print Name


Signature