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Superior Court of California
County of Alameda
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Chad Finke, Executive Officer / Clerk of the Court
By: D. Drew Deputy

7 *Attorneys for Plaintiffs and the Putative Classes*
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10 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
11 **COUNTY OF ALAMEDA**

13 **HUGH BEHM-STEINBERG** and **ARTHUR**
KENZO, individually and on behalf of all others
14 similarly situated,

15 Plaintiffs,

16 vs.

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18 **CALIFORNIA COLLEGE OF THE ARTS**, a
California Non-Profit Corporation,

19 Defendant.
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CASE NO. RG20081590

SECOND AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT FOR:

- (1) FAILURE TO ISSUE ACCURATE ITEMIZED WAGE STATEMENTS (CAL. LABOR CODE §§ 226(a), 226(e), 226.2(a);
- (2) FAILURE TO PROVIDE PAID REST BREAKS (CAL. LABOR CODE § 226.2, 226.7 AND WAGE ORDER NO. 4-2001, § 12);
- (3) FAILURE TO PAY FOR ALL HOURS WORKED (CAL. LABOR CODE § 1194, 226.2, AND WAGE ORDER NO. 4-2001, § 4);
- (4) FAILURE TO PAY COMPENSATION DUE UPON DISCHARGE FROM EMPLOYMENT (CAL. LABOR CODE §§ 201-203);
- (4) FAILURE TO REIMBURSE NECESSARILY INCURRED BUSINESS EXPENSES (CAL. LABOR CODE § 2802);
- (5) UNFAIR UNLAWFUL, OR FRAUDULENT BUSINESS PRACTICES (CAL. BUS. & PROF. CODE § 17200); AND
- (6) CIVIL PENALTIES UNDER PRIVATE ATTORNEYS GENERAL ACT (CAL. LABOR CODE § 2699)

DEMAND FOR JURY TRIAL

1 Plaintiffs Hugh Behm-Steinberg and Arthur Kenzo (“Plaintiffs”), on behalf of themselves and all
2 others similarly situated, complain and allege the following:

3 **INTRODUCTION**

4 1. This is a class action under California Code of Civil Procedure § 382 seeking damages for
5 unpaid wages, unpaid premium pay, and unreimbursed expenses, statutory penalties, interest, injunctive
6 and other equitable relief, restitution, and reasonable attorneys’ fees and costs under California Labor
7 Code (“Labor Code”) §§ 226.2, 1194, 1194.2, 226(a), (e), (h), 226.2, 226.7, 201-203, and 2802, IWC
8 Wage Order No. 4-2001 (“Wage Order No. 4”), §§ 4, 12, California Civil Procedure Code § 1021.5, and
9 restitution under California’s Unfair Competition Law (“UCL”), Business & Professions Code §§ 17200
10 et seq. on behalf Plaintiffs and all other similarly situated individuals currently and formerly employed by
11 California College of the Arts (“CCA” or “Defendant”) in California as adjunct instructors or in a similar
12 capacity (“Adjunct Class Members”).

13 2. At all relevant times, Plaintiffs and Adjunct Class Members were non-exempt employees
14 because CCA paid them a set amount per course taught (“Course Rate”), which constitutes piece-rate pay,
15 and/or because they did not earn a monthly salary equivalent of two times the state minimum wage for
16 full-time employment, the minimum amount an employee must earn to be considered exempt under Labor
17 Code § 515 and IWC Wage Order No. 4-2001. As non-exempt piece-rate employees, Adjunct Class
18 Members were entitled to certain protections under the California Labor Code, which CCA did not comply
19 with.

20 3. Plaintiff Behm-Steinberg brings this action on behalf of himself and Adjunct Class
21 Members employed by Defendant from one year prior to the filing of this Complaint through to September
22 8, 2020 (“Wage Statement Class Period”) for Defendant’s failure to issue accurate itemized wage
23 statements containing entries for total hours worked, applicable hourly rate(s), and piece rate information,
24 in violation of Labor Code § 226(a)(2), (a)(3), and (a)(9), 226.2(a).

25 4. Plaintiff Kenzo brings this action on behalf of himself and Adjunct Class Members
26 employed by Defendant from four years prior to the filing of this Complaint through to September 8, 2020
27 (“Class Period”) for Defendant’s failure to pay hourly and separate from the piece (i.e., Course Rate) for
28 rest break time and/or failure to permit and authorize paid off-duty rest breaks and failure to pay for all
hours worked, in violation of Labor Code §§ 226.2, 226.7.

5. Plaintiffs also bring this action on behalf of themselves and Adjunct Class Members for
Defendant’s failure to pay them hourly and separate from the piece (i.e., Course Rate) for nonproductive

1 time and/or failure to pay for all hours worked during the Class Period, in violation of Labor Code §§
2 226.2, 1194, 1194.2.

3 6. Additionally, Plaintiff Kenzo brings this action on behalf of himself and Adjunct Class
4 Members who were employed by CCA during the Class Period pursuant to employment contracts for one
5 academic term at a time (“Adjunct Subclass Members”) employed during the period of three years prior
6 to the filing of the Complaint through to September 8, 2020 (“Waiting Time Penalties Period”) for
7 Defendant’s failure to pay all wages due and owing at the time of Adjunct Subclass Members’ discharge
8 from employment at the end of each academic term, in violation of Labor Code §§ 201-203.

9 7. Finally, Plaintiff Behm-Steinberg also brings this action on behalf of himself and all
10 current and former employees who worked for Defendant in California (“Class Members”) from March
11 16, 2020 through to the trial date (“Expense Reimbursement Class Period”) for Defendant’s failure to
12 reimburse them for their necessarily incurred business expenses resulting from Defendant requiring them
13 to work remotely from home during Covid-19 pandemic and from Defendant requiring them to use their
14 personal cell phones for work without reimbursement in violation of Labor Code § 2802.

15 8. As a result of violating Labor Code §§ 226.2, 226.7, 1194 and 2802, Defendant committed
16 unfair, unlawful, and fraudulent business practices, in violation of the UCL.

17 9. Plaintiff Behm-Steinberg also brings this action as a representative action under the Private
18 Attorneys General Act (“PAGA”), Cal. Labor Code § 2698 *et seq.*, for civil penalties on behalf of himself
19 and all other adjunct instructors employed by CCA in California (“Adjunct Aggrieved Employees”) from
20 December 8, 2019 through September 8, 2020 (“PAGA Period”) for the violation of Labor Code §§
21 226(a), 226.2, 226.7, 512, 1194 and IWC Wage Order Nos. 4, §§ 4, 11, 12, and on behalf of himself and
22 all other individuals employed by CCA in California (“Aggrieved Employees”) from March 11, 2020
23 through the present (“PAGA Period 2”) for the violation of Labor Code § 2802.

24 10. Defendant’s violations of California’s wage and hour laws, as described more fully below,
25 have been ongoing for at least the past four years, and are continuing at present.

26 **PARTIES**

27 11. Plaintiff Behm-Steinberg is a resident of Berkeley, California who has been employed by
28 Defendant as an adjunct instructor through separate and distinct contracts since September 1999.
Throughout his employment, Plaintiff has been subject to Defendant’s unlawful conduct described herein.

12. Plaintiff Arthur Kenzo is a resident of San Francisco, California who has been employed
by Defendant as an adjunct instructor through separate and distinct contracts during the Fall 2017 and Fall

1 2018 semesters. Throughout his employment, Plaintiff has been subject to Defendant's unlawful conduct
2 described herein.

3 13. Defendant is an art, design, architecture, and writing school with campus locations in San
4 Francisco, California and Oakland, California.

5 **JURISDICTION**

6 14. This Court has jurisdiction over Plaintiff Behm-Steinberg's and Adjunct Class Members'
7 claims for statutory penalties, and reasonable attorneys' fees and costs, pursuant to Labor Code §§ 226(a),
8 (e), 226.2(a).

9 15. This Court has jurisdiction over Plaintiff Kenzo's and Adjunct Class Members' claims for
10 failure to pay separately and hourly for rest break time and/or failure to permit and authorize paid rest
11 breaks pursuant to Labor Code §§ 226.2, 226.7 and Wage Order No. 4, § 12.

12 16. This Court has jurisdiction over Plaintiffs' and Adjunct Class Members' claims for failure
13 to pay separately and hourly for non-productive time and/or failure to pay wages for all hour worked
14 pursuant to Labor Code §§ 226.2, 1194, 1194.2 and Wage Order No. 4, § 4.

15 17. This Court has jurisdiction over Plaintiff Kenzo's and Adjunct Subclass Members' claims
16 for compensation due upon discharge from employment pursuant to Labor Code §§ 201-203.

17 18. This Court has jurisdiction over Plaintiff Behm-Steinberg's, Adjunct Class Members', and
18 Class Members' claims for reimbursement of business expenses, and interest, reasonable attorney's fees
19 and costs, pursuant to Labor Code § 2802.

20 19. This Court has jurisdiction over Plaintiff Behm-Steinberg's claims for civil penalties under
21 Labor Code § 2699. On December 8, 2020, Plaintiff Behm-Steinberg provided PAGA Notice pursuant
22 to Labor Code § 2699.3 to the California Labor & Workforce Development Agency ("LWDA") and
23 Defendant. The LWDA has provided no notice to Plaintiff within the period specified in Labor Code §
24 2699.3 regarding its intention to investigate or not investigate any other claims alleged in the PAGA
25 Notice. Plaintiff has therefore fully complied with the PAGA procedural requirements and may
26 commence this representative action pursuant to Labor Code § 2699.

27 **VENUE**

28 20. Venue is proper in the County of Alameda pursuant to Cal. Civ. Proc. Code §§ 395(a) and
395.5. Defendant is a California corporation with its headquarters located in Oakland, California. Venue
is therefore proper in Alameda County. The unlawful acts alleged herein have a direct effect on Plaintiff
and all employees within the State of California and Alameda County.

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1 **FACTUAL ALLEGATIONS**

2 ***Defendant’s Business and Class Members’ Role in Defendant’s Business Operations***

3 21. Defendant is a post-secondary education provider that offers undergraduate and graduate
4 degrees at its California campus locations and online. The programs and courses are scheduled based on
5 three academic terms (fall, spring, summer). Defendant employs approximately 2,000 Class Members at
6 any given point in time, and approximately 400 Adjunct Class Members to teach each semester.

7 ***Adjunct Class Members are Non-Exempt Piece-Rate Workers***

8 22. During the Class Period, Defendant classified Plaintiffs and other Adjunct Class Members
9 as exempt under California law. However, Plaintiffs and Adjunct Class Members were and are non-
10 exempt piece-rate employees.

11 23. Plaintiffs and Adjunct Class Members were and are piece-rate employees because they
12 were paid a set amount per course taught, which is a form of a piece rate. Defendant employed Adjunct
13 Class Members pursuant to standardized employment contracts which provided for compensation in form
14 of a set amount for teaching each course (or each “course line”). The more course lines an Adjunct Class
15 Member taught, the more s/he was paid. Additionally, Adjunct Class Members’ pay was subject to
16 reduction based on course cancellation and/or based on low enrollment, based on Defendant’s policy of
17 reducing pay in these instances. Such reductions are consistent with piece rate form of compensation.

18 24. Adjunct Class Members were also non-exempt because they earned less than a monthly
19 salary equivalent of two times the state minimum wage for full-time employment – a minimum amount
20 required for an employee in California to be considered exempt. *See* Labor Code § 515 and Wage Order
21 No. 4-2001, § 1(A).

22 ***Defendant Failed to Issue Accurate Itemized Wage Statements***

23 25. During the Wage Statement Class Period, because Plaintiff Behm-Steinberg and other
24 Adjunct Class Members were non-exempt, piece rate workers, Defendant was required to issue them
25 accurate itemized wage statements containing entries for the (1) total number of hours worked during
26 each pay period, pursuant to subdivision (a)(2) of § 226; (2) all applicable hourly rates in effect during
27 the pay period and corresponding number of hours worked pursuant to subdivision (a)(9) of Labor Code
28 § 226; and (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid
on a piece-rate basis pursuant to subdivision (a)(3) of § 226(a) and other piece rate information pursuant
to subdivision (a) of § 226.2.

26. During the Wage Statement Class Period, however, Defendant did not require Adjunct
Class Members to keep track of their hours worked and did not issue wage statements to them containing

1 entries for their total hours worked, applicable hourly rates, and piece-rate information. Rather, the wage
2 statements Defendant issued to Adjunct Class Members listed “0” in the “Hours” column and a “0” in the
3 “Rate” column, and a lump sum earned during the pay period.

4 27. Defendant knew that it did not include the total number of hours worked during each pay
5 period and applicable hourly rates in effect during the pay period, and that it did not include piece-rate
6 information on its wage statements. Moreover, Defendant knew that it classified Adjunct Class Members
7 as professional exempt employees despite them not earning at least the monthly equivalent of two times
8 the state minimum wage for full-time employment and despite paying them on a piece-rate basis.
9 Defendant also knew that it did not require Adjunct Class Members to keep track of their hours worked.
10 As a result, Defendant’s failure to issue accurate itemized wage statements was knowing and intentional.

11 28. Plaintiff Behm-Steinberg and other Adjunct Class Members could not readily ascertain the
12 number of total hours they worked or their applicable hourly rate in any given pay period, from the wage
13 statement alone. As a result, Plaintiff Behm-Steinberg and Adjunct Class Members suffered injury.

14 ***Defendant’s Compensation Practices Applicable to Adjunct Class Members Violated***
15 ***California’s Rest Breaks***

16 29. During the Class Period, Plaintiff Kenzo and other Adjunct Class Members often worked
17 at least 3.5 hours or more on any given day (including teaching classes that 3.5 hours or longer and arriving
18 early to class, responding to students’ questions during class breaks, staying late after class, and/or hold
19 office hours). Defendant knew or should have known that Adjunct Class Members worked 3.5 hours or
20 more.

21 30. Pursuant to Labor Code § 226.2 and Wage Order No. 4 § 4, because Adjunct Class
22 Members were non-exempt piece-rate workers, Defendant was required to pay them at their average
23 hourly rate for their time spent on rest breaks separately and apart from the course pay, yet failed to do
24 so, thereby triggering an obligation to make premium payments to Adjunct Class Members under Labor
25 Code § 226.7 and Wage Order No. 4, § 12.

26 31. Alternatively, even if the Course Rate is not a piece rate, Defendant was required to permit
27 and authorize Adjunct Class Members to take 10-minute off-duty rest breaks for every 3.5 hours worked
28 straight pursuant to Labor Code § 226.7 and Wage Order No. 4. § 12. Adjunct Class Members routinely
worked 3.5 hours or more straight (including teaching time and time spent arriving to class early, staying
after class, and conducting office hours). However, Defendant maintained policies and/or practices that
impeded Class Members’ ability to take off-duty rest periods. These policies and/or practices included,
but were not limited to, expecting and/or requiring Adjunct Class Members to be available to students for

1 questions, including prior to class, during classroom breaks, and after class and/or holding office hours.
2 As a result, Defendant failed to authorize and permit compliant rest breaks in accordance with Wage Order
3 No. 4-2001, § 12(A) thereby triggering an obligation to make premium payments under Labor Code §
4 226.7 and Wage Order No. 4, § 12(B), which Defendant also did not pay.

5 ***Defendant's Compensation Practices Applicable to Adjunct Subclass Members Violated***
6 ***California's Minimum Wage Laws***

7 32. During the Class Period, Defendant employed Plaintiffs and other Class Members pursuant
8 to contracts that sets out the terms of Class Members' employment including the Contract Effective Date;
9 academic program of the course(s); the academic year, and semester(s) of the course(s); and the flat
10 Course Rate to be paid to the Class Member for each course line taught.

11 33. The contract defined the work and duties that were covered by the piece, and beginning in
12 or about fall 2019 the contracts began to include a specific number of hours per week that the piece
13 covered. However, Adjunct Class Members did work outside the contract and beyond the work that was
14 covered by the piece, for which Defendant did not pay them, as required under Labor Code §§ 226.2,
15 1194 and Wage Order No. 4-2001, § 4.

16 34. Alternatively, even if Class Members' compensation was not a piece-rate, Defendant was
17 still required to pay them for all hours worked, including all hours worked outside the contract, pursuant
18 to Labor Code §§ 1194, 1194.2 and Wage Order No. 4. § 4. However, Defendant did not pay Adjunct
19 Class Members anything for the time spent working outside their contracts.

20 ***Defendant Failed to Pay all Wages Owed to Adjunct Subclass Members Upon Termination***

21 35. During the Class Period, Defendant employed Plaintiff Kenzo and other Adjunct Subclass
22 Members pursuant to contracts that were for a limited duration and ended at a specific point in time.
23 Defendant's Faculty Handbook provided "Reappointment of adjunct faculty is not automatic and is tied
24 to program needs, performance, and/or other college considerations." The Faculty Handbook further
25 provided that "Employment with the college ends at the conclusion of a current appointment unless there
26 is by then written notice of reappointment." Thus, Adjunct Subclass Members whose contracts ended and
27 who did not receive written notice of appointment at the time their contracts ended, were discharged from
28 employment with Defendant on their contract end date.

36. Accordingly, each time Adjunct Subclass Members' contracts ended and they were
discharged, Defendant was required to pay them immediately all wages due and owing pursuant to Labor
Code § 201. However, Defendant did not pay them all compensation due to them when their employment
ended, including but not limited to, as a result of failing to pay separate and hourly pay for rest breaks

1 time and non-productive time and/or failure to pay premium pay for missed rest breaks and wages for all
2 hours worked. As a result, Adjunct Subclass Members did not receive all wages due upon termination;
3 nor did they receive these wages due within 30 days of the separation of their employment from
4 Defendant.

5 ***Defendant Failed to Reimburse Class Members for Their Necessarily Incurred Business***
6 ***Expenses***

7 37. Upon information and belief, on or about March 11, 2020, Defendant announced that,
8 effective March 12, 2020, it was suspending all classes through to March 29, 2020, and instructed all staff
9 and faculty to use this period to develop alternative methods to deliver curriculum and managing
10 operations. On or about March 15, 2020, Defendant announced that following the conclusion of spring
11 break, all instruction would resume remotely, and that the term would be completed using distance
12 learning approaches. In addition, CCA announced that it was transitioning regular operations to a
13 primarily remote work environment for all staff, other than those whose presence on campus is essential
14 to the safety and well-being of its students, and continuity of basic operations.

15 38. In or about April 2020, CCA announced that it was continuing the suspension of in-person
16 instruction through the summer. On or about July 20, 2020, CCA announced that the fall semester would
17 also be conducted entirely remotely (online). On or about October 12, 2020, CCA announced that a
18 majority of the curriculum for the spring 2021 semester would be taught online.

19 39. As a result of the closing of campuses and moving instruction on-line, Plaintiff Behm-
20 Steinberg and other Class Members began to perform work-related duties at home. In order to discharge
21 their work-related duties, Plaintiff Behm-Steinberg and other Class Members incurred necessary
22 expenditures, including but not limited to home internet expenses, mobile-phone expenses, and printing
23 and paper expenses.

24 40. Defendant knew or should have known that Class Members were incurring home office
25 expenses. Yet, Defendant failed to implement a compliant Expense Reimbursement Policy that
26 reimbursed Class Members for all necessarily incurred business expenses incurred by them in direct
27 consequence of the discharge of their duties, and/or as result of their obedience to the directions of CCA.

28 41. In addition, in or approximately 2023, Defendant began requiring Class Members to use
their personal cell phones to access their information and tools, including but not limited to, their CCA
email accounts and Moodle, a learning management system used to connect with students.

42. Defendant knew or should have known that Class Members were incurring cell phones
expenses. Yet, Defendant failed to implement a compliant Expense Reimbursement Policy that

1 reimbursed Class Members for their necessarily incurred cell phone business expenses in direct
2 consequence of the discharge of their duties, and/or as result of their obedience to the directions of CCA

3 43. As a result, Plaintiff Behm-Steinberg and Class Members are entitled to damages for their
4 unreimbursed business expenses, interest, and reasonable attorney's fees and costs as provided by Labor
5 Code § 2802.

6 ***Defendant's Labor Code Violations Were Unfair Business Practices***

7 44. From at least four years prior to filing this complaint, through the present, Defendant has
8 adopted and used unfair business practices to reduce Plaintiffs' and Adjunct Class Members' and Adjunct
9 Subclass Members' compensation and increase profits. These unfair business practices included failing
10 to pay Class Members for rest break time, missed rest break premium pay, nonproductive time and/or
11 time outside the contract, and failing to reimburse for necessarily incurred business expenses.

12 ***Defendant Violated California's Meal Period Laws***

13 45. During the PAGA Period, Adjunct Aggrieved Employees often worked shifts of five hours
14 or more, including teaching classes that were scheduled to meet for 5 hours, or working shifts that were 5
15 hours or longer (including arriving early to classes, staying later after classes, and spending break time
16 with students). Defendant did not maintain a compliant meal break policy applicable to Adjunct
17 Aggrieved Employees. As a result, Adjunct Aggrieved Employees were not relieved of all duties for at
18 least 30 minutes before the end of their fifth hour of work, as required under Labor Code § 512(a) and
19 Wage Order No. 4-2001, § 11.

20 46. Thus, Defendant failed to provide compliant meal breaks in accordance with Wage Order
21 No. 4-2001, § 11(A) and Labor Code § 512, thereby triggering an obligation to make premium payments
22 to Plaintiff and Adjunct Aggrieved Employees pursuant to Labor Code § 226.7. However, Defendant did
23 not pay premium pay for missed meal breaks as required under Labor Code § 226.7.

24 **CLASS ACTION ALLEGATIONS**

25 47. Plaintiffs bring this class action pursuant to Cal. Civ. Pro. Code. § 382 on behalf of
26 themselves, the Adjunct Class, Adjunct Subclass, and the Class. Upon information and belief, there are
27 more than 400 Adjunct Class Members, and more than 1,000 Class Members. The members of the Classes
28 are so numerous that joinder of all members is impractical.

48. Plaintiff Behm-Steinberg's claims are typical of the claims of the Adjunct Class Members
and Class Members he seeks to represent because he (a) was issued inaccurate wage statements; (b) was
not paid separately and hourly for nonproductive time and/or time worked outside the contract, and (3)
was not reimbursed for business expenses that he incurred in the discharge of his duties for Defendant.

1 Plaintiff Kenzo's claims are typical of the claims of the Adjunct Class Members and Subclass Members
2 he seeks to represent because he (a) was not paid separately and hourly for rest break time and was not
3 permitted and authorized to take off-duty rest breaks, (b) was not paid separately and hourly for
4 nonproductive time and/or time worked outside the contract, and (c) was not paid all wages owed at the
5 time of discharge.

6 49. Plaintiffs will fairly and adequately represent the interests of the Classes. Plaintiffs have
7 no conflict of interest with any member of the Classes. Plaintiffs have retained competent and
8 experienced counsel in complex class action litigation. Plaintiffs' counsel has the expertise and financial
9 resources to adequately represent the interests of the Classes.

10 50. Common questions of law and fact exist as to all members of the Classes and predominate
11 over any questions solely affecting individual members of the Classes. Among the questions of law and
12 fact common to the Plaintiffs and the Classes are the following:

- 13 a. Whether Adjunct Class Members were piece rate workers during the Class Period;
- 14 b. Whether Adjunct Class Members were non-exempt employees during the Class Period;
- 15 c. Whether Defendant violated Labor Code § 226(a)(2), (a)(3), and (a)(9) by failing to
16 issue itemized wage statements to Plaintiff and Adjunct Class Members;
- 17 d. Whether Defendant's violation of Labor Code § 226(a)(2), (a)(3), and (a)(9) was
18 knowing and intentional;
- 19 e. Whether Adjunct Class Members employed during the Wage Statement Class Period
20 suffered injury for the purposes of Labor Code § 226(e);
- 21 f. Whether Adjunct Class Members are entitled to separate and hourly pay for their rest
22 breaks under Labor Code §§ 226.2, 1194 and Wage Order No. 4, §§ 4, 12;
- 23 g. Whether Defendant violated Labor Code §§ 226.2, 1194 and Wage Order No. 4, §§ 4,
24 12 by failing to pay separately and hourly for rest breaks;
- 25 h. Whether Adjunct Class Members are entitled to be permitted and authorized to take
26 off-duty rest breaks under Labor Code § 226.7 and Wage Order No. 4, § 12;
- 27 i. Whether Defendant maintained policies and/or practices that prevented or impeded
28 Adjunct Class Members from taking compliant rest periods during the Class Period;
- 29 j. Whether Adjunct Class Members are entitled to separate and hourly pay for the time
30 spent on nonproductive activities under Labor Code §§ 226.2, 1194 and Wage Order
31 No. 4, §§ 4, 12;

- k. Whether Adjunct Class Members are entitled to pay for all hours worked including time spent working outside the contract under Labor Code § 1194 and Wage Order No. 4, § 4;
- l. Whether Defendant is liable for liquidated damages to Adjunct Class Members under Labor Code § 1194.2 for its failure to pay for their time spent on nonproductive time and/or time worked outside the contracts;
- m. Whether Defendant required Class Members to work from home;
- n. Whether Defendant required Class Members to use their personal cell phones for work;
- o. Whether Class Members incurred necessary expenditures in direct consequence of discharging their duties for Defendant as a result of working from home and/or as a result of having to use their cell phones for double authentication, and/or as a result of their obedience to the directions of the Defendant; Whether Defendant failed to maintain a compliant expense reimbursement policy;
- a. The proper formula(s) for calculating damages, business/expense reimbursement, statutory penalties, interest, and owed to Plaintiffs and the Classes;

51. Class action treatment is superior to any alternative to ensure the fair and efficient adjudication of the controversy alleged herein. Such treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without duplication of effort and expense that numerous individual actions would entail. No difficulties are likely to be encountered in the management of this class action that would preclude its maintenance as a class action, and no superior alternative exists for the fair and efficient adjudication of this controversy. Members of each Class are readily identifiable from Defendant's employee rosters and/or payroll records.

52. Defendant's actions are generally applicable to all members of each Class. Prosecution of separate actions by individual members of each Class creates the risk of inconsistent or varying adjudications of the issues presented herein, which, in turn, would establish incompatible standards of conduct for Defendant.

53. Because joinder of all members is impractical, a class action is superior to other available methods for the fair and efficient adjudication of this controversy. Furthermore, the amounts at stake for many members of each Class, while substantial, may not be sufficient to enable them to maintain separate suits against Defendant.

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1 **FIRST CAUSE OF ACTION**
2 **Failure to Issue Accurate Itemized Wage Statements**
3 **[Labor Code §§ 226(a), (e), 226.2(a)]**

4 54. Plaintiff Behm-Steinberg re-alleges and incorporates by reference each and every
5 allegation set forth in the preceding paragraphs.

6 55. During the Wage Statement Class Period, Defendant failed to furnish Plaintiff and Adjunct
7 Class Members with accurate itemized wage statements in violation of Labor Code § 226(a) by failing to
8 list on the wage statements (1) total hours worked, (2) the number of piece-rate units earned and any
9 applicable piece rate, and (3) all applicable hourly rates in effect during the pay period, and the
10 corresponding number of hours worked at each hourly rate, in violation of Labor Code §§ 226(a)(2),
11 (a)(3), and (9). Defendant also failed to furnish Plaintiff and Adjunct Class Members with itemized
12 statements by failing to list on the wage statements piece-rate information specified in § 226.2(a)(2).

13 56. Defendant knew that it did not track the hours worked by the Adjunct Class Members, and
14 that the wage statements it issued did not include total hours worked or applicable hourly rate. Moreover,
15 Defendant knew that it classified Adjunct Class Members as professional exempt employees despite them
16 not earning a monthly salary equivalent of two times the state minimum wage for full-time employment.
17 As a result, Defendant's issuance of inaccurate wage statements was knowing and intentional.

18 57. Plaintiff and Adjunct Class Members could not readily ascertain the total hours they
19 worked in any given pay period and the applicable hourly rate, from the wage statements alone. As a
20 result, Plaintiff and Class Members suffered injury.

21 58. As a result of Defendant's knowing and intentional violations of Labor Code § 226(a) and
22 § 226.2(a) described above, Adjunct Class Members are entitled to recover an initial penalty of \$50, and
23 subsequent penalties of \$100, for each incomplete and/or inaccurate wage statement issued to them, up to
24 an amount not exceeding an aggregate penalty of \$4,000 for each Adjunct Class Member, pursuant to
25 Labor Code § 226(e), and attorney's fees and costs.

26 59. Plaintiff Behm-Steinberg, on behalf of himself and all other Adjunct Class Members,
27 requests relief as described below.

28 **SECOND CAUSE OF ACTION**
Failure to Provide Paid Rest Breaks
[Cal. Labor code §§ 226.2, 226.7 and Wage Order No. 4, § 12]

60. Plaintiff Kenzo re-alleges and incorporates by reference each and every allegation set forth
in the preceding paragraphs.

1 61. Labor Code § 226.2(a)(1) states that “employees shall be compensated for rest and
2 recovery periods.... Separate from any piece-rate compensation.”

3 62. Wage Order No. 4, § 12(A) provides:

4 “(A) Every employer shall authorize and permit all employees to take rest periods, which
5 insofar as practicable shall be in the middle of each work period. The authorized rest period
6 time shall be based on the total hours worked daily at the rate of ten minutes net rest time
7 per four hours or major fraction thereof. However, a rest period need not be authorized for
8 employees whose total daily work time is less than three and one-half (3 1/2) hours.
9 Authorized rest period time shall be counted as hours worked for which there shall be no
10 deduction from wages.”

11 63. California Labor Code § 226.7(a) provides, “No employer shall require any employee
12 to work during any meal or rest period mandated by an applicable order of the Industrial Welfare
13 Commission.”

14 64. As set forth above, during the Class Period, Plaintiff Kenzo and Adjunct Class Members
15 regularly worked 3.5 consecutive hours or more in a workday.

16 65. Under the theory that Adjunct Class Members were piece-rate workers, Defendant violated
17 Labor Code 226.2, because it was required, but failed to compensate them for their time spent on rest
18 breaks separately and apart from the Course Rate. As a result, Defendant was required, but failed to pay
19 premium pay pursuant to Labor Code § 226.7 and Wage Order No. 4-2001, § 12.

20 66. Under the alternative theory that Plaintiff Kenzo and Adjunct Class Members were not
21 paid a piece-rate, because they were non-exempt employees, Defendant was required but failed to
22 authorize and permit them to take paid off-duty rest breaks because Defendant required and/or expected
23 all Adjunct Class Members to remain available to students for questions before, during and after class. As
24 a result, Defendant was required, but failed to pay premium pay pursuant to Labor Code § 226.7 and
25 Wage Order No. 4-2001, § 12.

26 67. Plaintiff Kenzo, on behalf of himself and all other Adjunct Class Members, requests relief
27 as described below.

28
THIRD CAUSE OF ACTION
Failure to Pay for All Hours Worked
[Labor Code § 226.2, 1194, 1194.2 and Wage Order No. 4, § 4]

68. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the
preceding paragraphs.

69. Labor Code § 226.2(a)(1) states that “employees shall be compensated for nonproductive
time separate from any piece-rate compensation.”

1 70. Labor Code § 1194 provides, in relevant part:

2 “Notwithstanding any agreement to work for a lesser wage, any employee receiving less
3 than the legal minimum wage ... applicable to the employee is entitled to recover in a civil
4 action the unpaid balance of the full amount of this minimum wage [...], including interest
5 thereon, reasonable attorney’s fees, and costs of suit.”

6 71. Labor Code § 1194.2 provides, in relevant part:

7 “In any action under ... Section 1194 to recover wages because of the payment of a wage
8 less than the minimum wage fixed by an order of the commission, an employee shall be
9 entitled to recover liquidated damages in an amount equal to the wages unlawfully unpaid
10 and interest thereon. ...”

11 72. As set forth above, during the Class Period, Plaintiffs and Adjunct Class Members were
12 paid a Course Rate which is a piece-rate, but Defendant did not compensate them for their time spent on
13 nonproductive time separately from the Course Rate, or at all.

14 73. Accordingly, pursuant to § 4 of the Wage Order and Labor Code §§ 226.2, 1194, and
15 1194.2, Plaintiffs and the Adjunct Class are entitled to recover, at a minimum, their unpaid hourly wages,
16 plus liquidated damages in an additional amount equal to the total amount of applicable minimum wages
17 unlawfully withheld during the Class Period for Adjunct Class Members’ time spent on nonproductive
18 tasks.

19 74. Alternatively, under the theory that Plaintiffs and Class Members were not piece-rate
20 employees, Defendant was required but failed to compensate Plaintiffs and Adjunct Class Members for
21 their time spent working outside their contracts. Accordingly, pursuant to § 4 of the Wage Order and
22 Labor Code §§ 1194, and 1194.2, Plaintiffs are entitled to recover, at a minimum, their unpaid hourly
23 wages, plus liquidated damages in an additional amount equal to the total amount of applicable minimum
24 wages unlawfully withheld during the Class Period for Adjunct Class Members’ unpaid nonproductive
25 time/ time spent working outside their contracts.

26 75. Plaintiffs, on behalf of themselves and all other Adjunct Class Members, request relief as
27 described below.

28 **FOURTH CAUSE OF ACTION**
Failure to Pay Compensation Due Upon Termination
[Cal. Labor Code §§ 201-203]

76. Plaintiff Kenzo re-alleges and incorporates by reference each and every allegation set forth
in the preceding paragraphs.

77. Labor Code §§ 201 and 202 require Defendant to pay all compensation due and owing to
Adjunct Class Members promptly after their employment was terminated. Labor Code § 203 provides

1 that if an employer willfully fails to pay compensation promptly upon discharge or resignation, as required
2 by §§ 201-202, then the employer is liable for penalties in the form of continued compensation up to 30
3 work days.

4 78. As alleged herein, Defendant failed to pay Plaintiff and other Adjunct Subclass Members
5 for their rest break time separately and hourly from the Course Rate or missed rest break premium pay,
6 failed to pay for Adjunct Subclass Members' time spent working outside the hours of classroom
7 instruction and/or outside their contracts separately and hourly from the Course Rate or at all, and as a
8 result failed to pay all wages due and owing to Plaintiff and Class Members upon their termination or
9 separation from employment with Defendant, as required by Labor Code §§ 201 and 202.

10 79. In light of the clear law requiring that Defendant pay for time spent on nonproductive tasks
11 and/or all hours worked, and for rest breaks hourly and separately from the Course Rate, and the clear law
12 requiring Defendant to authorize and permit Adjunct Subclass Members to take off-duty rest breaks and
13 pay premium pay for missed rest breaks, Defendant's failure to pay wages for such time and failure to
14 pay such wage upon termination was willful.

15 80. As a result, Defendant is liable to Plaintiff and Adjunct Subclass Members for waiting time
16 penalties amounting to thirty (30) days wages for each formerly employed Subclass Member pursuant to
17 Labor Code § 203.

18 81. Plaintiff Kenzo, on behalf of himself and all other Adjunct Subclass Members, requests
19 relief as described below.

20 **FIFTH CAUSE OF ACTION**
21 **Failure to Reimburse Business Expenses**
22 **[Cal. Labor Code § 2802]**

23 82. Plaintiff Behm-Steinberg re-alleges and incorporates by reference each and every
24 allegation set forth in the preceding paragraphs.

25 83. Labor Code § 2802 provides: “[a]n employer shall indemnify his or her employee for all
26 necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his
27 or her duties.”

28 84. In order to discharge their duties for Defendant and/or to obey the directions of the
Defendant, Plaintiff and Class Members incurred necessary expenditures, which included home office
expenses and cell phone expenses.

85. Although Defendant was aware, or should have been aware, that Plaintiff and Class
Members incurred these expenses in direct consequence of the discharge of their job duties and/or at a

1 result of their obedience to its directions, because Defendant required and/or expected them to work from
2 home and because Defendant required and/or expected them to use their personal cell phones for double
3 authentication, Defendant did not reimburse them for their home office expenses, as required by Labor
4 Code § 2802.

5 86. Defendant failed to implement and maintain a compliant Expense Reimbursement Policy
6 that reimbursed Class Members for these home office expenses.

7 87. Plaintiff and Class Members are entitled to reimbursement for these business expenses,
8 plus interest and attorneys' fees and costs, under Labor Code § 2802.

9 Plaintiff Behm-Steinberg, on behalf of himself, and the Class Members requests relief as described below.

10 **SIXTH CAUSE OF ACTION**
11 **Violation of Unfair Competition Laws**
12 **[Cal. Bus. & Prof. Code §§ 17200 *et seq.*]**

13 88. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the
14 preceding paragraphs.

15 89. The UCL prohibits any unlawful, unfair, or fraudulent business practices. Labor Code §
16 90.5(a) states that it is the public policy of California to vigorously enforce minimum labor standards in
17 order to ensure employees are not required to work under substandard and unlawful conditions, and to
18 protect employers who comply with the law from those who attempt to gain competitive advantage at the
19 expense of their workers by failing to comply with minimum labor standards. Through its actions alleged
20 herein, Defendant has engaged in unfair competition within the meaning of the UCL, because Defendant's
21 conduct has violated state wage and hour laws as herein described.

22 90. Beginning at least four years prior to the filing of this Complaint, Defendant committed,
23 and continues to commit, acts of unfair competition, as defined in the UCL by wrongfully denying Adjunct
24 Class Members all wages earned, including missed break premium pay, in violation of Labor Code §§
25 226.2, 1194, 226.7, and Wage Order No. 4-2001, §§ 4, 11, 12, and denying Class Members reimbursement
26 for their necessarily incurred business expenses in violation of Labor Code § 2802.

27 91. By its actions and omissions, Defendant has substantially injured Plaintiffs, Adjunct Class
28 Members, Subclass Members, and the Class Members. Defendant's conduct as herein alleged has
damaged Plaintiffs and the Classes and was substantially injurious to them.

92. The harm to Plaintiffs and the Classes resulting from Defendant's labor code violations
outweighs the utility, if any, of Defendant's policies and practices. Therefore, Defendant's actions
described herein constitute an unfair business practice or act within the meaning of the UCL.

1 93. Plaintiffs, on behalf of themselves and all other members of the Classes, request relief as
2 described below.

3 **SEVENTH CAUSE OF ACTION**

4 **Civil Penalties**

5 **[Labor Code §§ 2698 *et seq.*]**

6 94. Plaintiff Behm-Steinberg re-alleges and incorporates by reference each and every
7 allegation set forth in the preceding paragraphs.

8 95. Plaintiff seeks PAGA penalties on behalf of Adjunct Aggrieved Employees and Aggrieved
9 Employees, for the following violations:

10 ***Violation of Labor Code §§ 226.2 and 1194***

11 96. During the PAGA Period, Defendant did not compensate Adjunct Aggrieved Employees
12 for their time spent working prior to the start date of their contracts, separately from the Course Rate, or
13 at all, in violation of Labor Code §§ 226.2 and 1194, and Wage Order No. 4-2001, § 4.

14 97. Pursuant to Labor Code § 2699(f)(2), Plaintiff and Adjunct Aggrieved Employees are
15 entitled to one hundred dollars (\$100) per pay period for each initial violation of Labor Code §§ 226.2
16 and 1194, and two hundred dollars (\$200) per pay period for each subsequent violation.

17 ***Violation of Labor Code §§ 226.7 and IWC Wage Order No. 4-2001 § 12***

18 98. During the PAGA Period, Defendant failed to pay Adjunct Aggrieved Employees for their
19 time spent on rest breaks separately and apart from the Course Rate, in violation of Labor Code § 226.2.
20 Defendant also failed to authorize and permit paid rest breaks and pay missed rest break premiums in
21 violation of Labor Code § 226.7 and IWC Wage Order No. 4-2001 § 12.

22 99. Pursuant to Labor Code § 2699(f)(2), Plaintiff and Adjunct Aggrieved Employees are
23 entitled to one hundred dollars (\$100) per pay period for each initial violation of Labor Code §§ 226.2
24 and 226.7, and two hundred dollars (\$200) per pay period for each subsequent violation.

25 ***Violation of Labor Code §§ 226.7 and 512 and IWC Wage Order 4-2001, § 11***

26 100. During the PAGA Period, Defendant failed to provide off-duty meal breaks in violation of
27 Labor Code § 512, and failed to pay missed meal break premiums in violation of IWC Wage Order No.
28 4-2001 § 11 and Labor Code § 226.7.

101. Pursuant to Labor Code § 2699(f)(2), Plaintiff and Adjunct Aggrieved Employees are
entitled to one hundred dollars (\$100) per pay period for each initial violation and two hundred dollars
(\$200) per pay period for each subsequent violation.

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1 ***Violation of Labor Code §§ 226(a) and 226.2(a)***

2 102. During the PAGA Period, Defendant failed to issue accurate itemized wage statements by
3 failing to include the total number of hours worked each pay period, and the applicable hourly rates and
4 the corresponding number of hours worked at each rate, in violation of Labor Code § 226(a)(2) and (9).

5 103. Defendant also failed to itemize the total number of hours of compensable rest periods, the
6 rate of compensation, and the gross wages paid for those periods during the pay period; and the total hours
7 of other nonproductive time, the rate of compensation, and the gross wages paid for that time during the
8 pay period, as required under Labor Code § 226(a)(1), (a)(3), and (a)(5) and § 226.2(a)(2).

9 104. Pursuant to Labor Code § 226.3, Plaintiff and Adjunct Aggrieved Employees are entitled
10 to \$250 for each initial pay period with a violation and \$1,000 for each subsequent pay period with a
11 violation.

12 105. Alternatively, under Labor Code § 2699(f)(2), Plaintiff and Adjunct Aggrieved Employees
13 are entitled to a PAGA penalty equal to one hundred dollars (\$100) per pay period per Aggrieved
14 Employee for each initial violation and two hundred dollars (\$200) per pay period for each subsequent
15 violation.

16 ***Violation of Labor Code § 2802 on behalf of Aggrieved Employees***

17 106. During the PAGA Period 2, Aggrieved Employees incurred unreimbursed expenses in
18 carrying out their job duties for Defendant from home, including but are not limited to home office
19 expenses including internet cost, home or mobile telephone expenses, ink toner/cartridges and paper and
20 other expenses associated with working from home. Defendant knew or should have known that
21 Aggrieved Employees incurred these expenses because Defendant required and/or expected Adjunct
22 Aggrieved Employees to work remotely. Defendant did not reimburse these expenses in violation of
23 Labor Code § 2802.

24 107. Pursuant to Labor Code § 2699(f)(2), Plaintiff and Aggrieved Employees are entitled to
25 one hundred dollars (\$100) per pay period for each initial violation and two hundred dollars (\$200) per
26 pay period for each subsequent violation.

27 **PRAYER FOR RELIEF**

28 **WHEREFORE**, Plaintiffs, on behalf of themselves, the Classes, and Aggrieved Employees,
pray for the following relief:

 A. An Order that this action may proceed and be maintained as a class action, with the
Classes as designated and defined in this Complaint, and that the Plaintiffs and their counsel be certified
as representatives and Counsel for the Classes, respectively.

1 B. On the First Cause of Action: That the Court find and declare that Defendant violated
2 Labor Code §§ 226(a) and 226.2(a); award Plaintiff and Adjunct Class Members who worked for
3 Defendant during the Wage Statement Class Period statutory penalties under Labor Code § 226(e); and
4 award reasonable attorneys' fees and costs under Labor Code § 226(e);

5 C. On the Second Cause of Action: That the Court find and declare that Defendant violated
6 Labor Code §§ 226.2, 226.7 and Wage Order No. 4-2001, § 12 by failing to pay Plaintiff Kenzo and
7 Adjunct Class Members for their time spent on rest breaks separately and apart from the Course Rate,
8 and/or that Defendant violated Labor Code § 226.7 and Wage Order No. 4-2001, § 12 by failing to
9 authorize and permit timely off-duty rest breaks, and award Plaintiff and the Adjunct Class unpaid
premium pay for missed rest breaks.

10 D. On the Third Cause of Action: That the Court find and declare that Defendant violated
11 Labor Code §§ 226.2, Wage Order No. 4-2001, § 4 and/or Labor Code §§ 1194, 1194.2 and Wage Order
12 No. 4-2001, § 4, by failing to pay Plaintiff Kenzo and Subclass Members for their time spent on
13 nonproductive tasks separately and apart from the Course Rate, or at all, and award Plaintiff and the
14 Adjunct Subclass the amount of their unpaid minimum wages owed to them for nonproductive, plus
15 liquidated damages in an additional amount equal to the amount of wages unlawfully withheld during the
Class Period.

16 E. On the Fourth Cause of Action: That the Court find and declare that Defendant has violated
17 §§ 201-203 of the California Labor Code, and award Plaintiff Kenzo and Adjunct Subclass Members
18 penalties in the amount of 30 days' wages per Subclass Member.

19 F. On the Fifth Cause of Action: That the Court find and declare that Defendant's business
20 expense policies and/or practices violated Labor Code § 2802, and award to Plaintiff Behm-Steinberg and
21 Class Members all business expenses, and interest thereon, that they are owed, pursuant to Labor Code
22 § 2802, in an amount to be proved at trial; and reasonable attorney's fees and costs pursuant to Labor
Code § 2802(c);

23 G. On the Sixth Cause of Action: The Court find and declare Defendant has violated the UCL
24 by failing to pay Adjunct Class Members for their rest breaks separately and apart from the Course Rate,
25 or by failing to authorize and permit compliant rest breaks and failing to pay premium pay for missed rest
26 breaks; by failing to pay Adjunct Subclass Members wages for all hours worked; and by failing to
27 reimburse Class Members for their necessarily incurred business expenses, and award restitution to the
28 Adjunct Class, Adjunct Subclass, and the Class restitution in the amount of unpaid wages, including
premium pay, and unreimbursed expenses, as applicable; and that the Court enjoin Defendant from

1 continuing to enforce policies and practices that violate Labor Code §§ 226.2, 226.7, 1194, and 2802 and
2 Wage Order No. 4, §§ 4, 12.

3 H. On the Seventh Cause of Action: That the Court award PAGA Civil Penalties, and
4 attorneys' fees and costs, as provided under Labor Code § 2699.

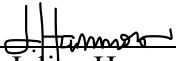
5 I. All other relief as this Court deems proper.

6 **JURY DEMAND**

7 Plaintiffs hereby demand trial by jury of all claims against Defendant alleged herein.

8 Dated: September 28, 2023

Respectfully submitted,

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10
11 
12 By: Julian Hammond
13 HAMMONDLAW, P.C.

14 *Attorneys for Plaintiffs and the Putative Classes*