JULIAN HAMMOND (SBN 268489)
jhammond@hammondlawpc.com
POLINA BRANDLER (SBN 269086)
pbrandler@hammondlawpc.com
ARI CHERNIAK (SBN 290071)
acherniak@hammondlawpc.com
HAMMONDLAW, P.C.
1201 Pacific Ave., Suite 600
Tacoma, WA 98402
(310) 601-6766
(310) 295-2385 (Fax)

MORRIS J. BALLER (SBN 048928)
mballer@gbdhlegal.com
155 Grand Ave., Suite 900
Oakland, CA 94162
(510) 763-9800
(510) 835-1417 (Fax)

Attorneys for Plaintiffs and the Putative Classes

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

DAN BECK and **BIENVENIDA SALAZAR,** individually and on behalf of all others similarly situated,

Plaintiffs,

vs.

UNIVERSITY OF SAN FRANCISCO, a California Corporation,

Defendant.

CASE NO. CGC21588930

THIRD AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT FOR:

(1) Failure to Pay Premium Wages for Overtime (Cal. Labor Code §§ 510, 1194, 1194.2, Wage Order No. 4-2001, § 3);
(2) Failure to Provide Compliant Meal Breaks and Pay Premium Pay for Missed Meal Breaks (Cal. Labor Code §§ 512, 226.7, Wage Order No. 4-2001, § 11);
(3) Failure to Permit and Authorize Rest Breaks and Pay Premium Pay for Missed Rest Breaks (Cal. Labor Code §§ 226.2, 226.7, Wage Order No. 4-2001, § 12);
(4) Failure to Issue Accurate Itemized Wage Statements (Cal. Labor Code §§ 226(a), (e);
(5) Failure to Reimburse Business Related Expenses (Cal. Labor Cod § 2802);

(6) Unfair, Unlawful, or Fraudulent Business Practices (Cal. Bus. & Prof. Code § 17200 *et seq.*); and

(7) Civil Penalties Pursuant to Private Attorneys General Act (Cal. Labor Code §§ 2698 *et seq.*)

DEMAND FOR JURY TRIAL ON CLASS CLAIMS

Plaintiffs Dan Beck and Bienvenida Salazar ("Plaintiffs"), on behalf of themselves and all others similarly situated, complain and allege on information and belief, except for their own acts and knowledge which are based on personal knowledge, the following:

INTRODUCTION

1. This is a class action pursuant California Code of Civil Procedure § 382 seeking damages for unpaid overtime wages, unpaid/missed rest breaks, and unpaid premium pay for missed meal and missed and/or unpaid rest breaks, unreimbursed expenses, restitution, statutory penalties, pre- and post-judgment interest, injunctive and equitable relief, and reasonable attorneys' fees and costs pursuant California Labor Code ("Labor Code") §§ 218.5, 226(a), (e), 226.7, 226.2, 510, 512, 1194, 2802, Wage Order No. 4-2001, §§ 3, 11, and 12, California Code of Civil Procedure § 1021.5, and California Business & Professions Code §§ 17200 *et seq.*

2. Plaintiffs bring this action on behalf of themselves and other individuals currently and formerly employed as part-time adjunct professors and/or instructors in any field of study by the University of San Francisco ("Defendant" or "USF") in California and who did not earn a monthly salary equivalent to no less than two times the state minimum wage for full time employment in at least one pay periods during the Class Period ("Class Members"). The class period is defined as from four years prior to the filing of the initial Complaint through to September 8, 2020 ("Class Period").

3. During the Class Period, Defendant misclassified Plaintiffs and Class Members as professionally exempt employees. However, Plaintiffs and Class Members were non-exempt under California law throughout the Class Period for two separate and alternative reasons. First, their compensation was less than the monthly salary equivalent of two times the state minimum wage for full time work. Second, their compensation was not a salary. Their compensation was not a salary because it was subject to reduction because of variations in the quality or quantity of the work performed, and it was not a salary because they are not paid any wages outside the time periods specified in their employment contracts even though they perform work outside those periods. Rather, Defendant pays Plaintiffs and Class Members a piece-rate because their compensation is a flat/ascertainable amount based on the number of "units" / credit hours taught. The more units / the more credit hours they teach, the more they are paid.

4. As non-exempt employees, Plaintiffs and Class Members were entitled to the minimum wage protections under the Labor Code, including overtime pay, meal breaks, rest breaks, and accurate itemized wage statements. Defendant, however, regularly scheduled Plaintiff Salazar and Class Members to work more than eight hours in a row, and they did work more than eight hours in a day, yet

Defendant maintained policies and/or practices of denying Plaintiff Salazar and Class Members daily overtime on those days, in violation of Labor Code §§ 510, 1194 and Wage Order No. 4, § 3. As a result, Plaintiff Salazar and Class Members are entitled to their unpaid overtime, liquidated damages, reasonable attorneys' fees and costs pursuant to Labor Code §§ 510, 1194, 1194.2, 218.5 and Wage Order No. 4, § 3.

5. Defendant also regularly scheduled Plaintiff Salazar and Class Members to work for five hours or more in a row and, particularly those who taught nursing instructors, up to 12 hours in a day, and they did work for five hours and up to 12 hours in a row, yet Defendant maintained policies and/or practices of failing to provide them with a duty-free thirty-minute meal break for the first five hours worked or a second meal break for work of 12 hours or more in a row (or premium payments in lieu of breaks) in violation of Labor Code § 512 and Wage Order No. 4, § 11.

6. Further, Defendant regularly scheduled Plaintiffs and Class Members to work 3.5 hours or more and, particularly those instructors who taught nursing students, up to 12 hours in a day, yet Defendant did not have a policy and/or practice of paying Class Members separately and hourly for rest break time as required under Labor Code § 226.2, and also maintained policies and/or practices of failing to provide Class Members with off-duty rest breaks (or premium payments in lieu of unpaid or missed breaks), in violation of Labor Code § 226.7 and Wage Order No. 4, § 12.

7. As a result, Plaintiffs and Class Members are entitled to premium pay of one hour of pay at their regular hourly rate for each missed meal and missed and/or unpaid rest break, and reasonable attorneys' fees and costs pursuant to Labor Code §§ 226.2, 226.7, 512, and Wage Order No. 4, §§ 11 and 12.

8. Plaintiffs also bring this action on behalf of themselves and other Class Members for the violation of Labor Code § 226(a), (e) ("Wage Statement Class Members"). There are two class periods that are relevant to these claims of the Wage Statement Class Members. Class Period 1 is from March 15, 2017 through January 3, 2020 (hereinafter, "Wage Statement Class Period 1"). Class Period 2, is from January 4, 2020 through to September 8, 2020 (hereinafter, "Wage Statement Class Period 2").

9. During Wage Statement Class Periods, Defendant misclassified Plaintiffs and Wage Statement Class Members as professionally exempt employees. During Class Periods 1 and 2, Defendant should have classified them as non-exempt as they did not earn the monthly salary equivalent of at least two times the state minimum wage for full-time employment. During Wage Statement Class Period 1 and 2, Defendant did not require Plaintiffs and Wage Statement Class Members to track their actual hours worked and did not include an accurate entry for the total hours worked or an applicable

hourly rate on their wage statements in violation of Labor Code § 226(a). Defendant's violation of Labor Code § 226(a) was knowing and intentional, and Plaintiffs and Wage Statement Class Members employed during Class Period 1 and 2 suffered injury as a result in that they could not ascertain from the wage statement alone the number of hours worked, or the applicable hourly rate earned. As a result, Plaintiffs and Wage Statement Class Members employed during Class Period 1 and 2 are entitled to statutory penalties and reasonable attorney's fees pursuant to Labor Code § 226(e).

10. The additional allegations relevant specifically to Wage Statement Class Period 1 are as follows. Plaintiff Salazar and Wage Statement Class Members employed during Wage Statement Class Period 1 were members of a certified class in an earlier filed class and representative action lawsuit styled *Gola v. University of San Francisco,* Case No. CGC-18-565018 (San Francisco Super. Cnty. Ct.) ("*Gola* Action"). Although they were members of the certified class pursuant to the Superior Court's class certification order entered on January 9, 2020 ("Certification Order"), in the *Gola* Action, their names were omitted from the class list provided by Defendant pursuant to the Certification Order ("Omitted Class Members") and they did not receive notice of class certification. After the class was certified in the *Gola* Action, the case proceeded to trial, following which the trial Court issued Judgment in favor of Gola and 1,350 of the certified class members, which did not include Omitted Class Members.[1] The class was certified and statutory penalties were awarded for the certified period, which was March 15, 2017 to January 3, 2020. Accordingly, as a matter of due process, Plaintiff Salazar and the Wage Statement Class Members who are Omitted Class Members are not bound by the Judgment and may seek to recover their statutory penalties in this case for the period of March 15, 2017 through January 3, 2020, the same period as certified in the *Gola* Action.

11. Plaintiffs and Wage Statement Class Members employed during Wage Statement Class Period 2 (January 4, 2020 through to September 8, 2020) by this complaint seek to recover statutory penalties for the identical wage statement violations that the trial Court in the *Gola* Action found Defendant had committed, as Defendant continued to commit those same violations following the certified class period end date of January 3, 2020.

12. Plaintiff Beck brings this action on behalf of himself and other current and former employees of Defendant ("Expense Reimbursement Class Members" or "ER Class Members") in California employed at any time from March 18, 2020 through the date of trial ("Expense

[1] The Judgment did include civil penalties pursuant to PAGA for the Omitted Class Members, but not statutory penalties.

Reimbursement Class Period" or "ER Class Period") for unreimbursed business expenses incurred by them during that period. During the ER Class Period, as a result of the COVID 19 pandemic, Defendant maintained a policy and/or practice of requiring Plaintiff and ER Class Members to work remotely. In order to carry out and perform their assigned work related duties remotely, Plaintiff and ER Class Members incurred and continue to incur expenses including but not limited to cost of internet service and telephone service (hereinafter, "home office expenses"). However, Defendant maintains a policy and/or practice of denying reimbursing Plaintiff and ER Class Members for these necessarily incurred home office expenses, in violation of Labor Code § 2802.

13. In consequence of the violations of Labor Code §§ 226.7, 226.2, 510, 1194, 512, and 2802, and IWC Wage Order No. 4-2001, §§ 3, 11, 12 Defendant also committed unfair, unlawful, and fraudulent business practices, in violation of California's Unfair Competition Law ("UCL"), Bus. & Prof. Code § 17200 *et seq.* Plaintiffs, on behalf of themselves, and members of all the Classes, seek restitution and other relief as prayed for below.

14. Plaintiff Salazar also brings this action as a representative action under the California Labor Code's Private Attorneys General Act ("PAGA"), Cal. Labor Code § 2698 *et seq*., for civil penalties on behalf of herself and Class Members employed by USF to teach nursing students from January 4, 2020 through to September 8, 2020 ("Nursing Aggrieved Employees") for the violations of Labor Code §§ 226.7, 510, 512, 1194 and IWC Wage Order No. 4-2001 §§ 3, 11 and 12 alleged herein; and on behalf of herself and Wage Statement Class Members employed by USF from January 4, 2020 through to September 8, 2020 ("Adjunct Aggrieved Employees") for the violations of Labor Code § 226(a)(2) and (a)(9).

15. Plaintiff Beck also brings this action as a PAGA representative action on behalf of himself and all ER Class Members employed by USF in California anytime from March 11, 2020 through to the date of trial in this case ("Aggrieved Employees") for the violation of Labor Code § 2802 alleged herein.

PARTIES

16. Plaintiff Bienvenida Salazar is an individual residing in Davis, California. Plaintiff Salazar has taught clinical courses in Defendant's Sacramento Nursing program in 2018, 2019, 2020, 2021, and 2022. Throughout the periods of her employment, Plaintiff Salazar was subject to Defendant's unlawful policies and conduct described herein.

17. Plaintiff Dan Beck is an individual residing in San Francisco, California. Plaintiff Beck has taught Behavioral Finance for Defendant in the Spring semesters in 2018, 2019, 2020, and Fall

semester in 2021. Plaintiff Beck taught courses at USF's main campus in San Francisco until approximately March 18, 2020 when Defendant began requiring all Expense Reimbursement Class Members to work remotely. Throughout the periods of his employment, Plaintiff Beck was subject to Defendant's unlawful policies and conduct described herein.

18. USF is a private not-for-profit Jesuit Catholic university. USF employs approximately 600 part-time adjunct instructors at any one time. Defendant has engaged in the Labor Code violations alleged herein throughout the Class Period and continues to do so at present.

JURISDICTION

19. This Court has jurisdiction over Plaintiff Salazar's claims for failure to pay overtime wages for work in excess of eight hours in a workday pursuant to Labor Code §§ 510, 1194, 1194.2 and Wage Order No. 4, § 3.

20. This Court has jurisdiction over Plaintiff Salazar's claims for failure to provide off-duty meal periods pursuant to Labor Code § 512 and Wage Order No. 4, § 11.

21. This Court has jurisdiction over Plaintiffs' claims for failure to permit and authorize paid off-duty rest breaks in violation of Labor Code §§ 226.2, 226.7 and Wage Order No. 4, § 12.

22. This Court has jurisdiction over Plaintiffs' claims for failure to issue accurate itemized wage statements pursuant to Labor Code § 226(a), (e).

23. This Court has jurisdiction over Plaintiff Beck's claims for failure to reimburse for all necessarily incurred business expenses under Labor Code § 2802.

24. This Court has jurisdiction over Plaintiffs' claims for reasonable attorneys' fees and costs pursuant to Labor Code §§ 218.5, 226(e), 1194 and 2802.

25. This Court has jurisdiction over the claims for restitution arising from Defendant's unlawful business practices under the UCL, Bus. & Prof. Code §§ 17203 and 17204.

26. This Court has jurisdiction over Plaintiffs' claims for civil penalties under Labor Code § 2699. On January 4, 2021 Plaintiffs provided PAGA Notice pursuant to Labor Code § 2699.3 to the California Labor & Workforce Development Agency ("LWDA") and Defendant. The LWDA has provided no notice to Plaintiffs within the period specified in Labor Code § 2699.3 regarding its intention to investigate or not investigate any other claims alleged in the PAGA Notice. Plaintiffs have therefore fully complied with the PAGA procedural requirements and may commence this representative action pursuant to Labor Code § 2699.

///

VENUE

27. Venue is proper in the Superior Court for the County of San Francisco pursuant to Cal. Civ. Proc. Code §§ 395(a) and 395.5. USF is a California corporation with its principal place of business at 2130 Fulton Street San Francisco, California, in the City and County of San Francisco.

FACTUAL BACKGROUND

28. Defendant is the largest non-profit institution of higher education in San Francisco. USF's annual operating budget in recent years has exceeded $400 million, total revenue exceeded $500 million in 2017, and total assets exceed $1 billion. USF's main campus is located in the heart of San Francisco, and it has six branch campuses located in Downtown San Francisco, Orange County, Pleasanton, Sacramento, San Jose, and Santa Rosa.

29. USF operates five schools – College of Arts and Sciences, School of Education, School of Law, School of Managements, and School of Nursing and Health Professions – and offers more than 230 undergraduate, graduate, professional, and certificate programs at its main campus and additional programs at its branch campuses. The total student enrollment within these programs is approximately 10,000 students. Each year, USF offers these programs on traditional fall and spring semester basis, with a winter intersession, and summer courses offered during three modules.

A. General Facts Supporting Claims for Unpaid Wages, Premium Pay and Inaccurate and Incomplete Wage Statements

30. USF employs Class Members to teach courses in its programs.

31. USF classifies Class Members as exempt from minimum wage provisions of the California Labor Code, and has done so at all times relevant hereto.

32. As stated above, however, Class Members were and are non-exempt because they do not earn a monthly salary equivalent of two times the state minimum wage for full-time employment, and also because they do not meet the requirements of Labor Code § 515.7, applicable as of September 9, 2020, because they are not paid on a salary basis.

33. Class Members are not paid a salary because their compensation is subject to reduction because of variations in the quality or quantity of the work performed. Class Members' compensation is subject to reduction because Defendant reserves the right to pay less than the contracted amount, pursuant to Article 18.8 of the CBA set out below, based on low student enrollment in adjunct-taught classes. Additionally, Defendant reserves the right to cancel courses, which results in reduction of compensation if a Class Member was contracted to teach two or three courses in the same semester as the cancelled classes.

34. Class Members' compensation is also not a salary because they are not paid any wages outside the time periods specified in their employment contracts even though they perform work during those periods, including but not limited to, syllabi preparation, and trainings.

35. Rather, Class Members are paid a piece-rate because they are paid on the basis of the number of units/credit hours taught. The more units/ credit hours they teach the more they are paid. Thus, the unit of production which is the "piece" for which Class Members were and are paid is a college course.

B. Facts Supporting Claims for Unpaid Overtime and Unpaid Premium Pay

1. Collective Bargaining Agreements

36. During the Class Period, the University of San Francisco Part Time Faculty Association and USF entered into two collective bargaining agreements (hereinafter, "CBAs"). Through the CBAs, the University recognized, the Association as the exclusive representative of the bargaining unit. See CBA Article 1.1. The bargaining unit included all adjunct professors, except those employed by the College of Law. The CBAs' stated purpose was "to set forth the wages, hours of employment, and other terms and conditions of employment" for the Plaintiff Salazar and other bargaining unit members.

37. Article 18 of both CBAs set out the compensation payable to Class Members. Article 18.1.1. of both CBAs provides that "Adjunct professors shall be assigned an appropriate rate of pay by the University" and Article 18.1.2 provides that "The salary schedule for adjunct professors shall be based on a per unit minimum rate of pay."

38. Article 18.8. also provides that: "Adjunct professors shall be compensated for assigned teaching of Directed Study courses and Reduced Enrollment Courses (REC) at the rates described below: 1/12 multiplied by the appropriate per unit minimum pay rate, the product of which is multiplied by the total number of units taught and the number of students taught. [Example: 1/12 ($1,918) x 4 units x 8 students = $5,115.]"

39. During the Class Period, the CBAs did not contain any express references regarding the provision for premium pay for overtime hours worked, off-duty thirty-minute meal breaks, paid or off-duty ten-minute rest breaks, or wage statements and their content.

2. USF Classified Class Members as Exempt Pursuant to the FLSA

40. During the Class Period, USF maintained a policy and/or practice that classified its employees as either non-exempt or exempt. USF's written policy provides that all of its employees are classified as either non-exempt or exempt according to the following definitions:

- "Non-exempt: Full-time or part-time employees who are subject to the payment of daily and weekly overtime as required by federal and state law based on job responsibilities and duties
- Exempt: Full-time and part-time employees who are exempt from overtime provisions of federal and state laws due to job responsibilities that meet the exemption criteria established under the U.S. Department of Labor's Fair Labor Standards Act (FLSA)"

(hereinafter "FLSA Exempt policy").[2]

41. During the Class Period, and in accordance with the FLSA Exemption policy and definition therein, USF classified Plaintiffs and Class Members as exempt employees. This classification was contrary to California law, under which Plaintiff and Class Members were non-exempt employees.

3. USF Maintained a Policy Denying Overtime to Employees Classified as Exempt

42. USF also maintained a written overtime policy that provided:

> "Overtime will be paid to all non-exempt, non-union employees for all hours worked over seven and a half (7.5) in one workday or thirty-seven and a half (37.5) in one workweek or for the first seven and a half (7.5) hours worked on the seventh consecutive day worked in a workweek. Overtime pay is paid at a rate of 1.5 times the non-exempt employee's regular hourly rate. Overtime hours in excess of twelve (12) in one workday or over seven and a half (7.5) on the seventh consecutive workday are paid at double-time; two (2) times the non-exempt employee's regular rate of pay.
> Overtime may be assigned to non-exempt employees by the University in its sole discretion. At this request, employees must discuss scheduling conflicts directly with supervisors. Employees who anticipate the need for overtime to complete assigned work must notify their supervisor in advance and obtain approval before working hours that extend beyond their normal schedule.
>
> Exempt employees are expected to work as much of each workday as necessary to complete their job responsibilities. No overtime, compensatory time, or additional compensation is provided to exempt employee.
>
> Union employees should refer to their collective bargaining agreement for information on overtime pay."

(hereinafter, "Overtime Policy").[3]

---

[2] *See* HR - Policies - Payroll Services and Pay Practices | myUSF (usfca.edu) (last accessed on March 11, 2022)

[3] Id.

43. As a result of the FLSA Exemption and the Overtime Policies, USF maintained policies and/or practices of denying daily overtime pay to those Class Members who worked more than eight hours in a workday.

4. USF Maintained a Policy and/or Practice of Denying Class Members Paid Rest Breaks

44. During the Class Period, USF maintained a written rest break policy that provided:

> "Non-exempt employees are permitted at minimum a 10-minute rest break for every 3.5-hour period of work. Non-exempt employees are not required to clock in and clock out for rest periods because this time is considered "time worked" and is compensable. *Exempt employees, as they are paid a weekly salary regardless of the hours they work, may choose to take breaks as needed.* Union employees should refer to their collective bargaining agreement for information on rest breaks." (emphasis supplied)

(hereinafter, "Rest Break Policy").[4]

45. The CBA contained no language regarding the provision of rest breaks or payment of premium pay for missed breaks.

46. Defendant also did not maintain any policy and/or practice of paying Class Members separately and hourly for their rest break time.

47. Defendant failed to provide Plaintiffs and Class Members rest breaks as required by law and the policy of Defendant that applied to non-exempt employees, and Plaintiffs and Class Members routinely did not have the opportunity to take such rest breaks.

48. As a result of the FLSA Exemption and Rest Break Policies, the absence of policies and/or practices permitting paid off-duty rest breaks, and Defendant's failure to provide lawful rest breaks to Plaintiffs and Class Members, Defendant maintained policies and/or practices of failing to permit and authorize lawful rest breaks.

5. USF Maintained a Policy of Denying Class Members Meal Breaks

49. During the Class Period, USF maintained a written meal break policy that provided:

> "Non-exempt employees who work at least five (5) consecutive hours will be provided a meal break not to exceed 60 minutes. The meal period must be provided no later than the end of the employee's fifth hour of work. The meal period will not be included in the total hours of work per day and is not compensable.
>
> Non-exempt employees are to be completely relieved of all job duties while on meal breaks. Non-exempt employees can opt to waive the meal period if they do not work

[4] *Id.*

more than six (6) hours in the workday. Non-exempt employees who feel that they are unable to take their required breaks or meal period must contact their supervisor before the scheduled break or meal period…

**Employees can opt to waive the meal period if they do not work more than six (6) hours in the workday. Waiver must be written mutual agreement between employee and supervisor.*" (original emphasis)

(hereinafter, "Meal Break Policy").[5]

50. The CBA contained no language regarding the provision of meal breaks or payment of premium pay for missed breaks, and no language regarding waiver of meal breaks.

51. Defendant failed to provide Plaintiff Salazar and Class Members uninterrupted meal breaks as required by law and the policy of Defendant that applied to non-exempt employees, and Plaintiff Salazar and Class Members did not have the opportunity to take such meal breaks.

52. As a result of the FLSA Exemption and Meal Break Policies, and Defendant's failure to provide lawful rest breaks to Plaintiff Salazar and Class Members, Defendant maintained policies and/or practices of failing to permit and authorize lawful meal breaks.

6. Hours Caps Policy

53. During the Class Period, USF maintained the following Hours Caps for Part-Time Employees Policy:

"CALCULATION OF TEACHING HOURS

The number of work hours associated with an adjunct faculty member's teaching assignment must be calculated by the department when the position is established in USF's human capital management (HCM) system. For ACA reporting requirements only, the basis for calculating the hours of service per week is 2.5 hours for each unit taught (2.25 hours per unit for classroom teaching, including preparation and grading, plus .25 hours per unit for office hours). For example, 8 units of teaching is equivalent to 20 hours of work per week, per semester."[6]

54. Pursuant to Defendant's written Hours Caps Policy, Exempt Employees were not required to keep track of, and report time worked. The policy provided:

"A University employee who, based on duties performed and the manner of compensation, is exempt from the provisions of the Fair Labor Standards Act (FLSA). In general, exempt employees are paid a guaranteed minimum salary and perform exempt

---

[5] *Id.*

[6] *See* HR - Policies - Hours Caps for Part-Time Employees Policy | myUSF (usfca.edu) (last accessed on December 15, 2020)

job duties as defined under FLSA regulations. *Exempt employees are only required to report leave and not time worked.*" (emphasis supplied)

(hereinafter "Time Keeping Policy").[7]

7. USF Failed to Pay Overtime Pay to Class Members

55. During the Class Period, Plaintiff Salazar and Class Members earned less than the equivalent monthly salary of two times the state minimum wage for full time employment and did not meet the exemption requirements under Labor Code § 515.7 because they were not paid a salary, and as such they should have been classified as non-exempt employees. However, Defendant misclassified them as exempt employees.

56. As non-exempt employees, pursuant to Labor Code §§ 510, 1194 and Wage Order No. 4, § 3, Defendant was required to pay Plaintiff Salazar and the Class Members one-and-one-half times their regular hourly rate for hours worked in excess of eight in a day.

57. During the Class Period, Defendant regularly scheduled Plaintiff Salazar and Class Members to work more than eight hours in a day, and Plaintiff Salazar and Class Members did in fact work more than eight hours in a workday. For example, Defendant scheduled Plaintiff Salazar to work and teach Clinical Lab I: Adult Medical-Surgical Nursing in the spring semester of 2019, for 9 ½ consecutive hours, from 6:00 am to 3:30 pm.

58. No exception to the requirement contained in Labor Code § 514 for payment of premium wage rates for all overtime hours work applies to Defendant's employment of Class Members.

59. During the Class Period, in accordance with its Overtime Policy, Defendant did not pay Plaintiff and Class Members at one and one-half times their regularly hourly rate, for overtime hours worked in excess of eight in a workday.

60. As a result, Plaintiff Salazar and Class Members are entitled to unpaid wages for all overtime hours worked, pursuant to Labor Code §§ 510, 1194 and Wage Order No. 4, § 3, and liquidated damages pursuant to Labor Code § 1194.2.

8. USF Failed to Provide Off-Duty Meal Periods to Class Members

61. During the Class Period, as non-exempt employees, Plaintiff Salazar and Class Members were entitled to thirty-minute off-duty meal periods for work of five or more consecutive hours and to a second third-minute off-duty meal period for work for 10 or more consecutive hours.

[7] *Id.*

62. Defendant did not maintain a meal break policy and/or practice for Class Members that provided them with an off-duty meal break for work of five or more hours and a second meal break for work of 12 or more hours.. Defendant also did not maintain a policy and/or practice of paying premium pay for missed meal periods.

63. As a result of Defendant's Time Keeping Policy, Defendant did not keep track of the hours worked by Class Members, and did not keep track of the meal breaks taken, in violation of Wage Order No. 4, § 7(A).

64. During the Class Period, Defendant routinely scheduled Class Members to work five hours or more in a row without providing Class Members with a meal break before the end of the fifth hour, and routinely scheduled some Class Members, particular those who taught nursing courses, to work up to 12 hours, without providing them with a second meal break before the end of the tenth hour of work.

65. In addition to Defendant's lack of a meal break policy and/or practices providing Class Members with compliant meal periods, Class Members also routinely could not take off-duty 30-minute meal periods because the nature of their employment was such that they spent their classroom breaks answering students' questions, and USF required and/or expected them to do the same, i.e. make themselves available to students for questions before and after class, as well as during classroom breaks.

66. Class Members who taught clinical courses in the nursing program as part of which students are placed in clinical settings to apply and practice their skills could not take off-duty meal breaks because while they gave their students breaks, those breaks were staggered and Class Members themselves remained on duty during those times because they were required and/or expected to supervise the students who were not on breaks. These Class Members were also required and/or expected to always be available for questions and any issues that arose.

67. As a result, Defendant failed to provide compliant meal breaks in accordance with Labor Code § 512 and Wage Order No. 4-2001, § 11(A) thereby triggering an obligation to make premium payments under Labor Code § 226.7 and Wage Order No. 4-2001, § 11(B). However, Defendant did not make any such premium payments to Class Members entitled to them.

9. USF Failed to Permit and Authorize Paid Off-Duty Rest Breaks to Class Members

68. During the Class Period, as Plaintiffs and Class Members were non-exempt, in accordance with Labor Code § 226.7 and Wage Order No. 4, § 12, they were entitled to one 10-minute

off-duty rest break for shifts between 3.5 and 6 hours, two 10-minute rest breaks for shifts between 6 and 10 hours, and three 10-minute rest breaks for shifts between 10 and 12 hours.

69. As piece-rate workers, Plaintiffs and Class Members were also entitled to be paid separately and hourly for rest break time in accordance with Labor Code § 226.2.

70. Defendant misclassified Plaintiffs and Class Members as exempt employees, and had no policy and/or practice of providing them off-duty rest breaks. Nor did Defendant have any policy and/or practice of paying Plaintiffs and Class Members separately and hourly for rest breaks. They were members of a union, and Defendant, in accordance with its written Rest Break Policy, referred them to their CBA for information on rest breaks; however, the CBA, as cited in paragraph 45 above, and as applied to employees who were treated as exempt employees, misinformed Plaintiffs and Class Members, who were misclassified as exempt, and failed to correctly state what rights they had to off-duty rest breaks.

71. During the Class Period, Defendant routinely scheduled Plaintiffs and Class Members to work more than 3.5 hours and particularly Plaintiff Salazar and Class Members who taught nursing courses to work shifts of up to 12 hours, and Plaintiffs and Class Members routinely worked shifts of 3.5 hours or more.

72. However, as a result of its policies and/or practices and/or absence thereof, Defendant failed to pay Plaintiff s and Class Members separate from the course/unit rate and hourly for their rest break time.

73. Even if Class Members' pay were not considered a piece rate, as a result and consequence of Defendant's written FLSA Exemption and Rest Break Policies, its failure to make provision for off-duty rest breaks, and other written policies and/or practices, including the nature of Class Members' job duties, Defendant denied Class Members their legally mandated off-duty rest breaks, because the job duties Defendant imposed on them deprived them of the opportunity to take uninterrupted 10 minute breaks during their assigned shifts.

74. As a result of the policies, practices, including the job duties Defendant applied to Class Members and/or the nature of their employment, Defendant failed to authorize and permit compliant rest breaks in accordance with Wage Order No. 4-2001, § 12(A) thereby triggering an obligation to make premium payments under Labor Code § 226.7 and Wage Order No. 4-2001, § 12(B), which it also did not pay.

///

///

C. Facts Supporting the Wage Statement Claims

76. During the Wage Statement Class Periods 1 and 2, Defendant was required by law to issue accurate itemized wage statements to Plaintiffs and Wage Statement Class Members semimonthly or at the time of each payment of wages containing: (1) the total number of hours worked during each period, pursuant to subdivision (a)(2) of § 226(a) and (2) all applicable hourly rates in effect during the pay period and corresponding number of hours worked pursuant to subdivision (a)(9) of Labor Code § 226(a). During the Wage Statement Class Period 1 and 2, Defendant misclassified Wage Statement Class Members as exempt employees, and did not require them to track their actual hours worked. Moreover, Defendant failed to issue Wage Statement Class Members wage statements showing the actual hours worked by them and applicable hourly rates.

77. Defendant knew that it did not require Wage Statement Class Members to track their actual hours worked, that the wage statements it issued to them did not show the total hours actually worked, or an applicable hourly rate. As a result, Defendant's issuance of inaccurate wage statements was knowing and intentional.

78. Defendant's practice of furnishing Wage Statement Class Members with incomplete and/or inaccurate wage statements was not an isolated and unintentional payroll error due to a clerical or inadvertent mistake, but rather the result of Defendant's regular compensation policies and/or Defendant's policies of classifying all part-time adjunct instructors as exempt without regard to whether they earned enough to meet the minimum monthly salary equivalent required to be exempt under California law and/or willful refusal to bring its wage statements into compliance.

79. Plaintiffs and Wage Statement Class Members could not readily ascertain the number of total hours they worked in any given pay period, or an applicable hourly rate. As a result, Plaintiffs and Wage Statement Class Members suffered injury.

80. Defendant's policies and practices with regard to wage statements issued to Plaintiffs and Class Members violated their rights under Labor Code section 226(a)(2) and (9).

81. Plaintiffs and Class Members are entitled to statutory damages for the violation of their rights to lawful wage statements under Labor Code section 226(e).

1. Facts Supporting Equitable Tolling of Wage Statement Class Period 1 Claims

82. On January 30, 2018, Kelly Gola ("Gola") sent a PAGA notice to the Labor & Workforce Development Agency and, by certified mail, to Defendant. The PAGA Notice alleged that because adjunct professors' "monthly earnings were equivalent to less than two (2) times the prevailing state minimum wage for full-time employment," and because defendant "fail[ed] to issue accurate

itemized wage statements that included all hours worked [and] the applicable hourly rate," Defendant had violated Labor Code § 226(a). The PAGA Notice also specified that HammondLaw (Plaintiffs' counsel in this action) was representing Gola:

> "… on behalf of herself and all other similarly situated individuals who were employed by [USF] as instructors in California and who were paid based on a per unit minimum pay rate…and whose monthly earnings were equivalent to less than two (2) times the prevailing state minimum wage for full-time employment ("Aggrieved Employees") for the following labor code violations: … (c) failure to issue accurate itemized wage statements that included all hours worked, the applicable hourly rate, …in violation of Labor Code §[] 226(a)…"

83. On March 15, 2018, Gola filed a Complaint, relevantly alleging that Defendant failed to issue accurate itemized wage statements, and subsequently filed a First Amended Complaint ("FAC") on July 19, 2018. In her FAC, Gola relevantly alleged, on behalf of a class of non-exempt adjunct instructors, that Defendant's violation of Labor Code § 226(a)(2) and (a)(9), (e) by failing to include on their wage statements an entry for hours worked and hourly rates. A file stamped copy of the FAC filed in the *Gola* Action is attached hereto as **Exhibit A**.

84. The Court held a bifurcated bench trial on the issue of whether Plaintiff's claims were preempted under the LMRA, the Court ruled that Plaintiff's claims for unpaid wages and failure to pay wages on discharge are preempted. The Court ruled that Plaintiff's wage statement claim was not preempted, finding that "there are actually no provisions in the CBA on the issuance of paystubs."

85. The Court subsequently certified the following class for the Labor Code § 226(a) and (e) wage statement claim only:

> "All part-time adjunct instructors employed by USF at any time between March 15, 2017 and January 3, 2020 ("Class Period") who in 2017 earned less than $3,612 in any calendar month in which the instructor was paid wages; who in 2018 earned less than $3,784 in any calendar month in which the instructor was paid wages; who in 2019 earned less than $4,128 in any calendar month in which the instructor was paid wages; or who in 2020 earned (or will earn) less than $4,472 in any calendar month in which the instructor was paid wages ("Class")."

A copy of the parties Stipulation for Class Certification in the *Gola* Action is attached as **Exhibit B.** As relevant here, the Stipulation entered by the Court required notice to be sent to all Class members, informing them of their right to opt out of the class action.

86. On or about January 10, 2020, plaintiff's counsel in the *Gola* Action engaged Simpluris, a third-party notice administrator, to send out the class notice. On or about January 17, 2020, Defendant sent Simpluris two lists containing the names and mailing addresses, and other contact information of the certified class (hereinafter, the "Class List"). The Class List contained names and contact information for 1,350 members of the certified Class. However, upon information and belief, the

certified Class actually contained 1,635 class members, of whom 285 members of the certified Class were omitted from the Class List sent to the administrator by Defendant.

87. On February 3, 2020, class notice was sent to members of the certified Class who were on the Class List. The Omitted Class Members did not receive the Class Notice, and were thereby deprived of their due process right both to receive notice of pendency of the action and to opt out of it before trial if they chose to do so.

88. In March 2020, in correspondence with the Defendant and during a case management conference ("March CMC") proceeding, Gola's counsel raised the issue of the Omitted Class Members. During that March CMC proceeding, Defendant's counsel, Michael Vartain agreed to provide Gola's counsel with an updated spreadsheet.

89. Subsequently in late March and early June, Gola's counsel followed up with Defendant, and requested the updated Class List. Defendant never provided an updated Class List to Gola's counsel.

90. Following a bench trial on the wage statement claim, on August 10, 2020, the Court issued its Final Statement of Decision finding for Gola and the Class on their wage statement claims, and awarding them statutory and civil penalties. A copy of that decision is attached as **Exhibit C**. On August 20, 2020, the Court issued its Judgment in the *Gola* Action. A true and correct copy of the Judgment is attached as **Exhibit D.** On March 3, 2021, the Court issued its Judgment *Nunc Pro Tunc* awarding Plaintiff fees and costs in specified amounts. A true and correct copy of the Judgment *Nunc Pro Tunc* is attached as **Exhibit E**.

91. In its Judgment, the Court adopted as the amount of statutory damages awarded the amount calculated by Gola's damages expert, whose calculation of that amount was based on the 1,350 members of the class identified by Defendant to plaintiff's counsel, not including the additional 285 persons whom Defendant left off the class list it supplied to the administrator for the purpose of giving notice and whom Defendant failed to identify to class counsel.

92. Plaintiff Salazar is a member of the Certified Class in the *Gola* Action and was an Omitted Class Member. Plaintiff Salazar first learned of the *Gola* Action after the Judgment was entered, on or about August 20, 2020.

2. Additional Facts Supporting Wage Statement Class Periods 1 and 2 Claims

93. Defendant knew that it did not require Wage Statement Class Members to track their actual hours worked, that the wage statements it issued to the Wage Statement Class Members did not show the total hours actually worked, or an applicable hourly rate, and that it classified Wage Statement

Class Members according to the FLSA only. As a result, Defendant's issuance of inaccurate wage statements was knowing and intentional.

94. Defendant's practice of furnishing Wage Statement Class Members with incomplete and/or inaccurate wage statements was not an isolated and unintentional payroll error due to a clerical or inadvertent mistake, but rather the result of Defendant's regular compensation policies and/or Defendant's policies of classifying all part-time adjunct instructors as exempt without regard to whether they earned enough to meet the minimum monthly salary equivalent required to be exempt under California law and/or willful refusal to bring its wage statements into compliance.

95. The trial Court in the *Gola* Action found that Defendant's issuance of inaccurate wage statements was knowing and intentional and that the certified Class was injured as a result, and those findings apply equally to, and preclude Defendant from re-litigating the finding of violation on, the wage statement claim asserted for Wage Statement Class Periods 1 and 2.

96. Plaintiffs and Class Members are entitled to recovery of statutory damages from Defendant for violation of their wage statement rights in Class Periods 1 and 2. As to Class Period 1, Plaintiff Salazar and Class Members were neither included in the Court's calculation of the award of statutory damages, nor bound by the Judgment, because they were not included in the list of class members provided by Defendant to the administrator and to Plaintiff. As to Class Period 2, Class Members' claims were not included in the calculation of damages because the Class Period as defined by the Court in the *Gola* action ended on January 3, 2020.

D. Facts Supporting Unreimbursed Expense Claim

97. During the Expense Reimbursement Class Period, Defendant maintained and continues to maintain a written policy and/or practice of requiring Expense Reimbursement Class Members to perform work related duties remotely ("Temporary Telecommuting Remote Work Agreement").[8]

98. As a part of the Temporary Telecommuting Remote Work Agreement, Defendant required and expected Expense Reimbursement Class Members to be readily available by laptop computer, mobile phone, email, messaging application, videoconferencing, instant message, and/or text messaging. Defendant also expected and required Expense Reimbursement Class Members to maintain the same response times as if the Expense Reimbursement Class Members were at their regular USF location.

[8] Telecommuting-Agreement-and-Checklist (usfca.edu) (last accessed December 28, 2020)

99. As a result of working remotely, in direct consequence of carrying out their duties, or their obedience to the directions of the Defendant, Expense Reimbursement Class Members incurred home office expenses, as described above, including but not limited to charges for cellular phone service and internet service.

100. Defendant knew or should have known that Expense Reimbursement Class Members incurred those home office expenses.

101. However, during the Expense Reimbursement Class Period, Defendant maintained a personal equipment operating expense reimbursement expense policy and/or policies and/or practices that denied reimbursement for these expenses. That policy provided as follows:

- "Employees need to have a working telephone or cellphone at their remote location. Those employees who have already migrated to Jabber should ensure that incoming calls to their office phone are forwarded to their remote location phone or cellphone.
- The University is not responsible for operating costs of any personal equipment (including, but not limited to, computers, personal devices, cellular or standard telephones), home maintenance of personal equipment, or any other incidental costs (utility provider costs, telephone costs or for any supply costs used in the home) associated with the use of an employee's alternative work arrangement."[9]

102. As a result, Defendant's policies and/or practices required and/or with Defendant's knowledge thereof permit, ER Class Members to pay for their office business expenses including but not limited to internet and phone service in direct discharge of their job duties on behalf of Defendant, without reimbursement by Defendant in full or at all, for such expenses.

103. Defendant is aware that Plaintiff Beck and ER Class Members routinely incur business expenses in the discharge of their duties, as employees, without any reimbursement. Defendant nevertheless has, through the ER Class Period, failed and refused to reimburse Plaintiff Beck and ER Class Members for such expenses incurred by them in their work as they carry out their work duties for Defendant.

104. Defendant failed to implement and maintain a policy of reimbursing ER Class Members' necessarily-incurred business expenses, or substantially similar policies, throughout all of its campuses and across all of its employees and through the ER Class Period.

105. Plaintiff Beck and ER Class Members have been harmed by Defendant's unlawful lack of a reimbursement policy and/or practice in that they have not been paid for any of their expenses

[9] COVID-19 considerations for remote work 03.06.2020 .pdf (usfca.edu) (last accessed December 28, 2020)

incurred in carrying out their job duties for Defendant, thereby diminishing their agreed-upon compensation, in substantial amounts to be proved at trial.

106. As a result, Defendant violated Labor Code § 2802, and Plaintiff Beck and Expense Reimbursement Class Members are entitled to reimbursement for these home office expenses, and their reasonable attorney's fees and costs.

107. **Defendant's Labor Code Violations Were Unfair Business Practices**

108. From at least four years prior to the filing of this complaint, through the present, and/or during otherwise relevant periods set out above, Defendant has adopted and used unfair business practices to reduce compensation of the members of the Classes and increase profits. These unfair business practices include failing to authorize and permit timely off-duty rest periods and pay premium pay for missed rest breaks, failing to provide compliant meal periods, and failing to reimburse necessarily incurred business expenses in carrying out work duties for Defendant.

CLASS ACTION ALLEGATIONS

109. Plaintiffs bring this class action pursuant to Cal. Civ. Pro. Code. § 382 to seek relief on behalf of the Classes for the Defendant's violations of their rights as set forth above. Upon information and belief, there are at least 100 members in each of the Classes. Therefore, the members of each class seeking relief for those violations are so numerous that joinder of all members is impractical.

110. Plaintiffs' claims are typical of the claims of the members of the Class and the Wage Statement Class because Defendant applied a uniform policy applicable to all members of the Class and the Wage Statement Class that misclassified them as exempt professionally employees. Moreover, Defendant did not require Wage Statement Class Members and Class Members to track hours worked, while routinely scheduling Plaintiff Salazar and Class Members to work in excess of eight hours in a day, and maintained a uniform policy and/or practice of denying them overtime for worked performed in excess of eight hours in a day. Further, Defendant maintained uniform policies and/or practices applicable to Plaintiff Salazar and Class Members that denied them lawful meal breaks and did not pay them premium pay for missed meal breaks. Defendant also maintained uniform policies and/or practices applicable to Plaintiffs and Class Members that denied them lawful meal rest breaks and did not pay them premium pay for missed rest breaks. Defendant also maintained policies and/or practices of issuing inaccurate wage statements to Plaintiffs and Wage Statement Class Members that did not contain accurate entries for the total hours worked or an applicable hourly rate. Further, Defendant maintained a policy and/or practice of requiring Plaintiff Beck and ER Class Members to work from remotely, be accessible by means of mobile phone and internet connection, and maintained a policy

and/or practice applicable to all ER Class Members that denied full reimbursement or any reimbursement for their necessarily incurred business expenses.

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

112. Common questions of law and fact exist as to the members of each class and predominate over any questions solely affecting individual members of the classes. Among the questions of law and fact common to the Plaintiffs and each class are the following:

a. Whether Plaintiffs, Class Members and Wage Statements Class Members employed during Class Period 1 and 2 who earned less than the monthly salary equivalent to two times the state minimum wage were non-exempt employees.

b. Whether Plaintiffs and Class Members are piece-rate workers.

c. Whether Defendant maintained a policy and/or practice of misclassifying Plaintiffs, Class Members and Wage Statement Class Members as exempt employees.

d. Whether Defendant required and/or suffered and permitted Class Members to work in excess of 8 hours in a day.

e. Whether Defendant maintained a policy and/or practice of denying Class Members overtime wages for work in excess of eight hours in a workday.

f. Whether Defendant failed to pay Class Members overtime wages for time worked in excess of 8 hours in a day in violation of Labor Code § 510 and Wage Order No. 4.

g. Whether Class Members were entitled to meal breaks pursuant to Labor Code § 512 and Wage Order No. 4.

h. Whether Defendant maintained a policy and/or practice of failing to provide Class Members meal breaks for work of 5 or more hours in a row, and second meal break for work of 12 hours or more.

i. Whether Defendant failed to track hours worked by Class Members and Wage Statement Class Members, and keep required meal break records.

j. Whether Class Members were entitled to rest breaks pursuant to Labor Code § 226.7 and Wage Order No. 4.

k. Whether Defendant maintained a policy and/or practice of failing to pay Class Members separately and hourly for rest breaks for shifts of 3.5 hours or more.

l. Whether Defendant maintained a policy and/or practice of failing to permit and authorize Class Members rest breaks on shifts of 3.5 hours or more.

m. Whether Defendant maintained a policy and/or practice of failing to pay premium pay for missed meal and rest breaks.

n. Whether Plaintiff Salazar and Wage Statement Class Members are entitled to recover statutory penalties for the inaccurate wage statements issued to them during Wage Statement Class Period 1.

o. Whether Defendant failed to issue accurate itemized wage statements to Plaintiffs and Wage Statement Class Members during Wage Statement Class Period 2.

p. The proper formula(s) for calculating statutory damages owed to Plaintiffs and the other Wage Statement Class Members for the violations of Labor Code § 226(a)(2), (a)(9) alleged in this Complaint.

q. Whether Defendant maintained a policy and/or practice of requiring and/or expecting Plaintiff Beck and ER Class Members to work remotely;

r. Whether Defendant maintained a policy and/or practices of requiring ER Class Members to stay in communication with Defendant while working remotely;

s. Whether ER Class Members incurred expenses as a direct consequence from working remotely, and staying in communication with Defendant;

t. Whether Defendant intended, suffer and/or permitted, and/or was aware that Plaintiff Beck and ER Class Members incurred such unreimbursed business expenses in the discharge of their duties as employees.

u. Whether Defendant maintained a policy and/or practice that denied ER Class Members for their expenses that they incurred in working remotely fully, or at all;

v. Whether Defendant violated Labor Code § 2802 by denying Plaintiff Beck and other ER Class Members reimbursement for their business expenses.

w. The proper formula(s) for calculating damages, interest, and restitution owed to Plaintiffs and members of the Classes.

x. Whether Plaintiffs and members of the Classes are entitled to restitution under Business & Professions Code § 17200 of the unpaid overtime, unpaid premium pay, and unreimbursed business expenses incurred by them.

113. Defendant's actions are generally applicable to the entire Class, Wage Statement Class, and ER Class. Prosecution of separate actions by individual members of the classes creates the risk of

inconsistent or varying adjudications of the issues presented herein, which, in turn, would establish incompatible standards of conduct for Defendant.

114. 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.

115. 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 individuals 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 all class es are readily identifiable from Defendant's employee rosters and/or payroll records.

FIRST CAUSE OF ACTION
Failure to Pay Overtime Wages
[Labor Code §§ 510, 1194 and Wage Order No. 4, § 3]
As to Plaintiff Salazar and the Class Members

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

117. During the Class Period, Defendant maintained a policy and/or practice of misclassifying Class Members as exempt employees. Moreover, during the Class Period, Defendant maintained a policy and/or practice of denying overtime pay to Plaintiff Salazar and Class Members who worked in excess of eight hours in workday.

118. During the Class Period, Defendant scheduled Plaintiff Salazar and Class Members to work more than eight hours in a workday, and they routinely did work more than eight hours in a workday.

119. California Labor Code § 510 and the applicable Wage Order require that an employer compensate all work performed by an employee in excess of eight (8) hours per workday and forty (40) hours per workweek, at one and one-half times the employee's regular rate of pay.

120. During all relevant times, Defendant knowingly and willfully failed to pay overtime earned and due to Plaintiff Salazar and Class Members. Defendant's conduct deprived Plaintiff Salazar and Class Members of payment for all overtime hours worked in violation of the California Labor Code.

121. As a result of Defendant's willful and unlawful failure to pay Plaintiff Salazar and Class Members all earned overtime wages, Plaintiff Salazar and Class Members are entitled to recover their unpaid overtime wages, and reasonable attorneys' fees and costs.

122. Plaintiff Salazar, on behalf of herself and the Class Members, requests relief as described below.

SECOND CAUSE OF ACTION
Failure to Provide Meal Periods
[Labor Code §§ 226.7, 512 and Wage Order No. 4, § 12]
As to Plaintiff Salazar and the Class Members

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

124. California Labor Code § 512(a) states in pertinent part: "[A]n employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, ..."

125. IWC Wage Order No. 4 § 11 states in pertinent part, "No employer shall employ any person for a work period of more than give (5) hours without a meal period of not less than 30 minutes. . . . If an employer fails to provide an employee a meal period in accordance with the applicable provision of this order, the employer shall pay the employee on (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided." Labor Code § 226.7(a) explains that "no employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission."

126. During the Class Period, Plaintiffs Salazar and Class Members routinely worked five (5) hours or more in a row, and particularly when teaching nursing clinical courses up to 12 hours in a row, without being provided a one-half hour meal period during which they are relieved of their duties, as required by Labor Code §§ 226.7 and 512 and Wage Order No. 4, § 11.

127. As a result of Defendant's willful and unlawful failure to provide Plaintiff Salazar and Class Members mandated meal periods, Plaintiff Salazar and Class Members are entitled to recover one (1) hour of pay at their regular rate of compensation for each workday that a meal period was not provided, plus interest thereon.

128. Plaintiff Salazar, on behalf of herself and the Class Members, requests relief as described below.

THIRD CAUSE OF ACTION
Failure to Authorize and Permit Off-Duty Rest Breaks
[Labor Code §§ 226.2, 226.7 and Wage Order No. 4]
As to Plaintiffs and the Class Members

129. Plaintiffs re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

130. IWC Wage Order No. 4, § 12 states in pertinent part, "Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized 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. . . . If any employer fails to provide and employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee on (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided."

131. Labor Code § 226.7(a) similarly states that "no employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission."

132. Labor Code § 226.2(a) provides that "[f]or employees compensated on a piece-rate basis during a pay period, …employees shall be compensated for rest and recovery periods… separate form any piece-rate compensation."

133. Labor Code § 226.7 also provides that if an employer fails to provide compliant rest breaks, "employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."

134. During the Class Period, Plaintiffs and Class Members routinely worked in excess of 3.5 hours a workday without being provided the requisite paid rest periods during which they are relieved of their duties, as required by Labor Code §§ 226.7, 226.2 and Wage Order No. 4, § 12.

135. As a result of Defendant's willful and unlawful failure to provide Plaintiffs and members of the Class mandated paid rest periods, Plaintiffs and member of the Class are entitled to recover one (1) hour of pay at their regular rate of compensation for each workday that a rest was not provided, plus interest thereon, attorneys' fees and costs.

136. Plaintiffs, on behalf of themselves, and the Class Members, request relief as described below.

///

///

FOURTH CAUSE OF ACTION
Failure to Issue Accurate Itemized Wage Statements
[Labor Code § 226(a), (e)]
As to Plaintiffs and the Wage Statement Class

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

138. Labor Code 226(a) provides:

> "Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of the hours worked at each hourly rate by the employee…"

139. Based on the allegations above, during the Wage Statement Class Periods, Defendant issued Plaintiffs and other Wage Statement Class Members employed in Class Period 1 and 2, wage statements which were inaccurate and/or incomplete in that they did not contain the total hours worked and all applicable hours rates in effect during the pay period and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee in violation of Labor Code § 226(a), (a)(2), and (a)(9), respectively.

140. Defendant did not require Plaintiffs and Wage Statement Class Members to track their hours worked, and classified them as exempt employees.

141. Defendant knew the wage statements it issued to Plaintiffs and Wage Statement Class Members did not contain any entries for the total hours worked, or the applicable hourly rate, and Defendant's failure to include the information was not an isolated and unintentional payroll error due to a clerical or inadvertent mistake. As such, Defendant knowing and intentionally violated Labor code § 226(a).

142. Plaintiffs and Wage Statement Class Members could not promptly and easily determine the total hours worked, or the applicable hourly rate from the wage statement alone, and, as such, they suffered injury as a result of Defendant's knowing and intentional failure to comply with Labor Code § 226(a).

143. Plaintiffs, on behalf of themselves and the Wage Statement Class Members, request relief as described below.

FIFTH CAUSE OF ACTION
Failure to Reimburse for Business Expenses
[Labor Code § 2802]
As to Plaintiff Beck and the Expense Reimbursement Class

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

145. Labor Code § 2802(a) provides that "[a]n employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequences of the discharges of his or her duties, or of his or her obedience to the directions of the employer."

146. As described above, on or about March 18, 2020, Defendant instituted a policy and/or practice of requiring it's all non-essential employees which included Plaintiff Beck and all faculty) to work remotely, away from the Defendant's premises. While working remotely, Defendant required and expected and continues to require and expect ER Class Members to be in communication through such means that included, but was not limited to email, mobile phone, videoconferencing, and text messaging.

147. As a result of the Defendant's Remote Work policy and/or practice, Plaintiff Beck and ER Class Members, in order to discharge their job duties for Defendant and or their obedience to the directions of the employer, Plaintiff Beck and other ER Class Members incurred expenses, that included, but was not limited to internet and mobile phone expenses.

148. However, Defendant maintained a policy and/or practice of denying Plaintiff Beck and ER Class Members full reimbursement, or any reimbursement for these office expenses.

149. Defendant's failure to pay for or reimburse the work-related business expenses of Plaintiff Beck and other ER Class Members violated non-waivable rights secured to Plaintiff Beck and other ER Class Members by Labor Code § 2802. Plaintiff Beck and ER Class Members are entitled to reimbursement for these necessary expenditures, plus interest and reasonable attorneys' fees and costs, under Labor Code § 2802.

150. Plaintiff Beck, on behalf of himself and ER Class Members, requests relief as described below.

SIXTH CAUSE OF ACTION
Unfair Competition Law Violation
[Business & Professions Code § 17200]
As to Plaintiffs, the Class, and Expense Reimbursement Class

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

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

153. Defendant committed, and continues to commit, acts of unfair competition, as defined in the UCL by, among other things, engaging in the acts and practices described above–to wit, wrongfully denying Class Members overtime pay, off-duty meal breaks, and paid off-duty rest breaks, and wrongfully denying ER Class Members reimbursement for their necessarily incurred office expense described above. Defendant's conduct as herein alleged has damaged and was substantially injurious to Plaintiffs, the Class, and the ER Class.

154. Defendant engaged in unfair competition in violation of the UCL by violating Labor Code §§ 226.2, 226.7, 510, 512, 2802 and IWC Wage Order No. 4, §§ 3, 11, 12. Defendant's course of conduct, act and practice in violation of the California law mentioned above constitutes violations of the UCL.

155. The harm to Plaintiffs and members of the Classes in being denied overtime compensation, compliant rest and meal breaks and premium pay for missed and/or unpaid breaks, and reimbursement for the necessarily incurred business expense in carrying out their duties for Defendant, 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.

156. The unlawful, unfair and fraudulent business practices and acts of Defendant, as described above, have injured Plaintiffs and the Classes, in that they were wrongfully denied overtime pay, compliant meal and rest breaks and premium pay for missed and/or unpaid breaks, and reimbursement for their necessarily incurred business expense in carrying out their duties for Defendant, and therefore was substantially injurious to Plaintiffs and the members of the Classes.

157. Plaintiffs, on behalf of themselves and other members of the Class and ER Class, request relief as described below.

///

///

///

SEVENTH CAUSE OF ACTION
Civil Penalties
[Cal. Labor Code § 2698 *et seq.*]

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

159. Plaintiffs are each "aggrieved employees" under PAGA because they were employed by Defendant during the applicable statutory period and suffered one or more of the Labor Code violations alleged herein. As such, Plaintiffs seek to recover, on behalf of themselves and all other aggrieved employees, civil penalties under PAGA, plus reasonable attorneys' fees and costs.

160. Plaintiffs seek to recover the PAGA penalties through a representative action as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court,* 46 Cal. 4th 969 (2009). Therefore, class certification of the PAGA claims is not required, but Plaintiffs may choose to seek certification of the PAGA claims.

161. Plaintiffs seek PAGA penalties on behalf of themselves, Nursing Aggrieved Employees, Adjunct Aggrieved Employees, and Aggrieved Employees, for the following violations:

Violation of Labor Code §§ 510, 1194 and IWC Wage Order No. 4-2001, § 3

162. During the relevant period (January 4, 2020 through September 8, 2020), Defendant failed to pay Nursing Aggrieved Employees overtime compensation for hours worked in excess of 8 in a day, as required under Labor Code §§ 510, 1194 and IWC Wage Order No. 4-2001, § 3.

163. Pursuant to Labor Code § 2699(f)(2), Plaintiff Salazar and Nursing 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.

Violation of Labor Code §§ 226.7 and 512

164. During the relevant period (January 4, 2020 through September 8, 2020), Defendant failed to provide off-duty meal periods to Nursing Aggrieved Employees pursuant to Labor Code §§ 512 and Wage Order No. 4, § 11, thereby triggering an obligation to make premium pay pursuant to Labor Code § 226.7, which Defendant also did not pay.

165. Pursuant to Labor Code § 2699(f)(2), Plaintiff Salazar and Nursing 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.

Violation of Labor Code § 226.7

166. During the relevant period (January 4, 2020 through September 8, 2020), Defendant

failed to permit and authorize Nursing Aggrieved Employees to take off-duty rest breaks pursuant to Wage Order No. 4, § 12, thereby triggering an obligation to make premium pay pursuant to Labor Code § 226.7, which Defendant also did not pay.

167. Pursuant to Labor Code § 2699(f)(2), Plaintiff Salazar and Nursing 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.

Violation of Labor Code § 226(a)

168. During the relevant period (January 4, 2020 through September 8, 2020) Defendant failed to issue Adjunct Aggrieved Employees accurate itemized wage statements containing entries for total hours worked and applicable hourly rate in effect during each pay period pursuant to Labor Code § 226(a)(2), (a)(9).

169. Pursuant to Labor Code § 226.3, Plaintiff Salazar and Adjunct Aggrieved Employees are entitled to two hundred fifty dollars ($250) for each initial violation of Labor Code § 226(a) and one thousand dollars ($1,000) for each subsequent violation of Labor Code § 226(a).

170. Alternatively, pursuant to Labor Code § 2699(f)(2), Plaintiff Salazar and Adjunct Aggrieved Employees are entitled to one hundred dollars ($100) for each initial violation of Labor Code § 226(a) and two hundred dollars ($200) for each subsequent violation of Labor Code § 226(a).

Violation of Labor Code § 2802

171. During the relevant period (March 11, 2020 through to the date of trial in this case), Defendant failed to reimburse Plaintiff Beck and Aggrieved Employees for their business expenses, incurred pursuant to Defendant's written policies and in carrying out Defendant's business. Plaintiff Beck and Aggrieved Employees have been harmed by Defendant's failure to reimburse their expenses in clear violation of Labor Code § 2802.

172. Pursuant to Labor Code § 2699(f)(2), Plaintiff Beck and Aggrieved Employees are entitled to one hundred dollars ($100) for each initial violation of Labor Code § 2802 and two hundred dollars ($200) for each subsequent violation of § 2802.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the members of the Class, the Wage Statement Class, and the ER Class, pray for judgment against Defendant and request the following relief:

A. That the Court order than this action may proceed and be maintained as a class action

under Code of Civil Procedure § 382; and that the Court define the Class, Wage Statement Class, and ER Class as specified above and appoint Plaintiffs as Class Representatives and HammondLaw as Class Counsel for those Classes.

B. On the First Cause of Action: That the Court find and declare that Defendant violated Labor Code §§ 510, 1194 and Wage Order No. 4-2001, § 3 by failing to pay Plaintiffs Salazar and Class Members overtime wages for work in excess of 8 hours in a day, and award Plaintiff Salazar and Class Members unpaid wages pursuant to Labor Code §§ 510, 1194 and Wage Order No. 4, § 3, and liquidated damages pursuant to Labor Code § 1194.2.

C. On the Second Cause of Action: That the Court find and declare that Defendant violated Labor Code §§ 226.7, 512 and Wage Order No. 4-2001, § 11 by failing to provide Plaintiff Salazar and Class Members with off-duty meal breaks, and award Plaintiffs Salazar and Class Members unpaid premium pay for missed meal periods pursuant to Labor Code § 226.7 and Wage Order No. 4, § 11.

D. On the Third Cause of Action: That the Court find and declare that Defendant violated Labor Code §§ 226.2, 226.7 and Wage Order No. 4-2001, § 12 by failing to pay Plaintiffs and Class Members separately and hourly for rest breaks, and by failing to permit and authorize them to take off-duty rest breaks, and award Plaintiffs and Class Members unpaid premium pay for missed/ unpaid rest breaks pursuant to Labor Code § 226.7.

E. On the Fourth Cause of Action: That the Court find and declare that Defendant has violated Labor Code §§ 226(a), (e), and award Plaintiffs and Wage Statement Class Members who worked for Defendant during the Wage Statement Class Periods 1 and 2 statutory penalties under Labor Code § 226(e).

F. On the Fifth Cause of Action: That the Court find and declare that Defendant violated Labor Code § 2802 by failing to reimburse Plaintiff Beck and ER Class Members for the home office expenses incurred in carrying out their work for Defendant during the ER Class Period, and award Plaintiff Beck and ER Class Members who worked during the ER Class Period their unreimbursed business expenses, that they are owed, pursuant to Labor Code § 2802, in the amount to be proved at trial; and

G. On the Sixth Cause of Action: That the Court find and declare that Defendant violated the UCL by failing to pay Class Members overtime compensation, by failing to provide them with paid rest breaks and off-duty meal and rest breaks and pay premium pay for missed breaks, and by failing to reimburse ER Class Members for their necessarily incurred business expenses; and award restitution to the Class in the amount of unpaid wages and premium pay and to the ER Class in the amount of their unreimbursed expenses.

H. That the Court award PAGA Civil Penalties, and attorneys' fees and costs, as provided under Labor Code § 2699.

I. That the Court award attorneys' fee and costs of suit to the extent permitted by law, including, but not limited to, Labor Code §§ 226(e), 1194, 218.5, 2802(c), 2699(g), and Cal. Civil Procedure Code § 1021.5.

J. That the Court award pre-judgment and post-judgment interest, including, but not limited to, pursuant to Labor Code §§ 218.6, 1194, 2802.

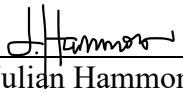
K. All other relief as this Court deems proper.

JURY DEMAND ON CLASS CLAIMS

Plaintiffs hereby demand trial by jury of the Class claims against Defendant alleged herein.

Dated: September 14, 2023

Respectfully submitted,
HAMMONDLAW, P.C.



Julian Hammond (SBN 268489)
HAMMONDLAW, P.C.
1201 Pacific Ave., Suite 600
Tacoma, WA 98402
Telephone: (310) 601-6766
Facsimile: (310) 295-2385
jhammond@hammondlawpc.com

Attorneys for Plaintiffs and the Putative Classes

EXHIBIT A

JULIAN HAMMOND (SBN 268489)
jhammond@hammondlawpc.com
POLINA BRANDLER (SBN 269086)
pbrandler@hammondlawpc.com
ARI CHERNIAK (SBN 290071)
acherniak@hammondlaw.com
HAMMONDLAW, P.C.
1829 Reisterstown Rd., Suite 410
Baltimore, MD 21208
(310) 601-6766
(310) 295-2385 (Fax)

Attorneys for Plaintiff and the Putative Classes

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

KELLY GOLA, individually and on behalf of all others similarly situated,

Plaintiff,

vs.

UNIVERSITY OF SAN FRANCISCO, a California Corporation,

Defendant.

CASE NO. CGC-18-565018

FIRST AMENDED CLASS AND REPRESENTATIVE ACTION COMPLAINT FOR:

(1) **Failure to Pay Minimum Wages for All Hours Worked (Cal. Labor Code §§ 1194, 1194.2 and IWC Wage Order No. 4, § 4);**
(2) **Failure to Issue Accurate Itemized Wage Statements (Cal. Labor Code §§ 226(a), (e));**
(3) **Failure to Pay All Wages Due Upon Termination (Cal. Labor Code §§ 201-203);**
(4) **Unfair, Unlawful, or Fraudulent Business Practices (Cal. Bus. & Prof. Code § 17200 *et seq.*).**
(5) **Private Attorneys General Act, (Cal. Lab. Code § 2698 et seq.)**

DEMAND FOR JURY TRIAL ON CLASS CLAIMS

Complaint filed: March 15, 2018

Plaintiff Kelly Gola ("Plaintiff"), on behalf of herself and all others similarly situated, complains and alleges the following:

INTRODUCTION

1. This is a class action under California Code of Civil Procedure § 382 seeking damages for unpaid wages, restitution, statutory penalties, civil penalties, interest, equitable relief, and reasonable attorneys' fees and costs under California Labor Code ("Labor Code") §§ 1194, 1194.2, 226(a) and (e), 201-203, and IWC Wage Order ("Wage Order") No. 4-2001 § 4, California Code of Civil Procedure § 1021.5, and California Business & Professions Code § 17200 *et seq.*

2. Plaintiff brings this action on behalf of herself and all other similarly situated individuals currently and formerly employed as part-time adjunct instructors or in a similar capacity by University of San Francisco ("Defendant" or "USF") in the State of California ("Class Members") from four years prior to the filing of this Complaint through the trial date ("Class Period"). Defendant's violations of California's wage and hour laws and unfair competition laws, as described more fully below, have been ongoing for at least the past four years, and are continuing at present.

3. During the Class Period, Defendant employed Plaintiff and Class Members on a semester by semester basis and compensated them a salary for an assigned term, beginning and ending on dates set in their appointment letters ("Assignment Period"). Assignment Periods typically began on, or sometime after, the first day of classes indicated on the Academic Calendar and typically ended on approximately the last day of classes, during the final examination period, or at the end of the final examination period. Defendant, however, expected and required Plaintiff and Class Members to work outside of their Assignment Periods. Specifically, Plaintiff and Class Members spent time working prior to the beginning of their Assignment Periods to prepare to teach their courses, including preparing syllabi, lectures outlines, written exams, and spent time working after the end of their Assignment Periods to, among other things, grade exams and assignments, submitting grades, and responding to any questions from students. The salary Defendant paid Plaintiff and Class Members covered work performed only during their Assignment Periods, Defendant failed to compensate Plaintiff and Class Members for all hours worked, namely the work they performed prior to the beginning of and after the end of their Assignment Periods, in violation of Labor Code §§ 1194, 1194.2 and/or Wage Order No. 4, § 4.

4. In addition, Plaintiff brings this action on behalf of a subclass of Class Members comprised of herself and all other part-time adjunct instructors employed by Defendant within the one year preceding the filing of this Complaint who earned less than a monthly salary equivalent to two

times the state minimum wage for full-time employment during any pay period and were therefore non-exempt employees ("Wage Statement Subclass Members"). *See* Wage Order No. 4, § 1(A)(3)(d). During the "Wage Statement Subclass Period" – designated as the period of one year prior to the filing of this Complaint through to the trial date – Defendant knew or should have known that as Plaintiff and the Wage Statement Subclass Members were non-exempt salaried employees, it was required to furnish them with accurate itemized wage statements, semimonthly, showing the total hours worked and all applicable hourly rates in effect during each pay period for the hours worked. However, Defendant furnished Plaintiff and members of the Wage Statement Subclass with wage statements only monthly, in violation of Labor Code § 226(a), and those wage statements were incomplete and/or inaccurate in that they failed to show the total hours worked each pay period, in violation of Labor Code § 226(a)(2), and the applicable hourly rate earned for the hours worked, in violation of Labor Code § 226(a)(9).

5. In addition, Plaintiff brings this action on behalf of a subclass of Class Members comprised of Plaintiff and all other individuals formerly employed by Defendant during the three year period prior to the filing of this Complaint ("Waiting Time Subclass Members"). During the "Waiting Time Penalty Subclass Period" – designated as the period from three years prior to the filing of this Complaint through the trial date – Defendant failed to pay all compensation (based on the violations described in paragraph 3, above) due and owing to Class Members upon discharge from employment, in violation of Labor Code §§ 201-203.

6. In consequence of the above Labor Code violations, Defendant also committed unfair, unlawful, and fraudulent business practices, in violation of California's Unfair Competition Law ("UCL"), Bus. & Prof. Code § 17200 *et seq.* Plaintiff, on behalf of herself and Class Members, seeks restitution and other relief as prayed for below.

7. Plaintiff, as an aggrieved employee, also brings this action as a representative action under the Labor Code Private Attorneys General Act ("PAGA"), Labor Code §§ 2698, et seq., for civil penalties on behalf of herself and other current and former instructors of Defendant ("Aggrieved Employees") for the Labor Code and Wage Order violations alleged herein, specifically Labor Code §§ 1194, 226(a), (a)(2) and (a)(9), 201-203, and Wage Order No. 4-2001 § 4.

8. The "PAGA Period" is designated as the period from one year prior to the postmark date of Plaintiff's notice of intent to seek PAGA penalties ("PAGA Notice") through to the trial date.

PARTIES

9. Plaintiff Kelly Gola is an individual residing in San Francisco, California who was employed by USF as an adjunct instructor at USF's main campus in San Francisco from approximately

January 2016 through June 2017. Throughout her employment as an adjunct instructor, Plaintiff Gola was subject to Defendant's unlawful policies and conduct described herein.

10. USF is a private not-for-profit Jesuit Catholic university. USF offers more than 230 undergraduate, graduate, and professional programs at its main campus in San Francisco, as well as programs at its seven branch campuses throughout California. USF employs numerous Class Members to teach its courses at each campus location. Defendant has engaged in the Labor Code violations alleged herein throughout the Class Period and continues to do so at present.

JURISDICTION

11. This Court has jurisdiction over Plaintiff's claims for failure to pay for all hours worked under Labor Code §§ 1194, 1194.2 and/or Wage Order No. 4-2001 § 4.

12. This Court has jurisdiction over Plaintiff's claims for failure to issue accurate wage statements pursuant to Labor Code § 226(a), (e).

13. This Court has jurisdiction over Plaintiff's claims for failure to pay all wages owed upon termination pursuant to Labor Code §§ 201-203.

14. This Court has jurisdiction over the claims for restitution arising from Defendant's unlawful business practices under the UCL, Bus. & Prof. Code §§ 17203 and 17204.

15. This Court has jurisdiction over Plaintiff's claims for civil penalties under Labor Code § 2699. On January 30, 2018 Plaintiff provided notice of her intent to seek PAGA penalties pursuant to Labor Code § 2699.3 ("PAGA Notice") to the California Labor & Workforce Development Agency ("LWDA") and Defendant. The LWDA has provided no notice to Plaintiff within the period specified in Labor Code § 2699.3 regarding its intentions to investigate or not to investigate Plaintiff's claims. Plaintiff has therefore fully complied with the PAGA procedural requirements and may commence this representative action pursuant to Labor Code § 2699. On April 16, 2018 Plaintiff provided her Amended PAGA Notice setting forth amended facts to support the previously alleged violations of Labor Code §§ 1194, 1194.2, 226(a), (a)(2) and (a)(9), and 201-203 and Wage Order No. 4, § 4.

16. The amount in controversy for Plaintiff, and for each individual Class Member, including claims for civil penalties and pro rata share of attorney's fees, is less than seventy-five thousand dollars ($75,000).

VENUE

17. Venue is proper in the County of San Francisco pursuant to Cal. Civ. Proc. Code §§ 395(a) and 395.5. USF is a California corporation with its principal place of business at 2130 Fulton Street San Francisco, California, in the City and County of San Francisco. Additionally, the unlawful

acts alleged herein had a direct effect on Plaintiff and other Class Members within the State of California, many of whom incurred uncompensated wages, while working for Defendant within San Francisco County.

FACTUAL BACKGROUND

18. USF is a 4-year private not-for-profit university in the State of California. USF's main campus is located in the heart of San Francisco, and it has six branch campuses located in Downtown San Francisco, Orange County, Pleasanton, Sacramento, San Jose, and Santa Rosa. USF operates five schools – College of Arts and Sciences, School of Education, School of Law, School of Managements, and School of Nursing and Health Professions – and offers more than 230 undergraduate, graduate, professional, and certificate programs at its main campus and additional programs at its branch campuses.

19. USF is on a semester system, with its academic year divided into 15-week fall and spring sessions, and their equivalent in terms of the number of credit hours, but shorter winter intersessions and summer sessions. Courses are typically taught by Class Members in 1 hour and 45 minutes to 3 hour 40 minute class sessions ranging from one to three days a week for different courses. Class Members typically teach 1 to 3 courses per semester for a total of 3 to 9 units per semester. In order to teach courses, Class Members are required to and do spend time working outside their Assignment Periods.

A. USF Failed to Compensate Plaintiff and Class Members For The Hours Worked Outside Their Assignment Period

20. USF employs Class Members as adjunct instructors to teach the curriculum offered at Defendant's main campus and each branch campus. USF assigns Class Members to teach on a term by term basis and issues new appointment letters each academic term. The appointment letters provide the Assignment Period, salary for the Assignment Period, and anticipated teaching assignment including days and hours of class meetings. The Assignment Period typically begins at, or sometime after, the first day of classes, as specified in the Academic Calendar, and ends on the last day of classes, during the final exam period, or at the end of the final exam period. However, Defendant expects and requires Plaintiff and other Class Members to prepare for their assigned class, and to submit course content for each class, one week prior to the first day of classes for approval to the dean or Program Assistant, including detailed syllabi, with a summary of course content, and copies of the written final exams. Defendant also requires Plaintiff and Class Members to grade exams and to submit an accurate and complete grade list for all students registered for the course to the dean within seven days after final examinations. Further, Plaintiff and Class Members were and are expected to and do respond to

students' emails with questions regarding their final grades, or other similar matters, after the grades are submitted. As a result, Plaintiff and Class Members worked before and after their Assignment Periods, for which USF does not pay them, in violation of Labor Code §§ 1194, 1194.2 and Wage Order No. 4-2001 § 4.

B. USF Failed to Issue Accurate Itemized Wages Statements

21. Defendant knew or should have known that as Plaintiff and Wage Statement Subclass Members were non-exempt salaried employees, it was required to furnish them with accurate itemized wage statements semimonthly, showing the total hours worked during the pay period, and all the applicable hourly rates in effect during the pay period for the hours worked.

22. However, rather than furnish Plaintiff and other Wage Statement Subclass Members with accurate itemized wage statements semimonthly, Defendant furnished Wage Statement Subclass Members with only monthly wage statements, which were also incomplete and/or inaccurate in that they failed to show total hours worked during each pay periods, and all applicable hourly rates in effect during each pay period for the hours worked (which is calculated by dividing the weekly compensation by the number of hours in a regular workweek).

23. Defendant's practice of furnishing Wage Statement Subclass Members with incomplete and/or inaccurate wage statements and only on a monthly basis was not an isolated and unintentional payroll error due to a clerical or inadvertent mistake, but rather the result of Defendant's regular compensation policies.

24. As a result of the above described violations, Plaintiff and other members of the Wage Statement Subclass did not receive semimonthly wage statements, and were unable to determine their total hours worked each semimonthly pay period and all applicable hourly rates and the corresponding number of hours worked at each hourly rate each semimonthly pay period from the wage statements they received. Plaintiff and Subclass Members have therefore suffered injury for purpose of Labor Code § 226(e).

C. USF Failed to Pay All Wages Due and Owing Upon Termination

25. During the Waiting Time Penalty Subclass Period, as a result of failing to pay Plaintiff and Waiting Time Subclass Members for the work performed prior to the beginning of their Assignment Periods and after the end of their Assignment Periods, Defendant failed to pay them all compensation due and owing at the time their employment terminated, at the end of each quarter, as required by Labor Code §§ 201 and 202.

///

D. Defendant's Labor Code Violations Were Unfair Business Practices

26. From at least four years prior to the filing this complaint, through the present, Defendant has adopted, and uses, unfair business practices to reduce its Class Members' compensation and increase its own profits. These unfair business practices include failing to pay Class Members for the work performed prior to and after their Assignment Periods, and failing to issue semimonthly complete and/or accurate itemized wage statements.

CLASS ACTION ALLEGATIONS

27. Plaintiff brings this class action pursuant to Cal. Civ. Pro. Code. § 382 to seek relief on behalf of the Class Members for the Defendant's violations of their rights as set forth above. Upon information and belief, there are at least 100 Class Members and at least 100 members of the Wage Statement Subclass and of the Waiting Time Penalties Subclass. Given Defendant's systemic failure to pay for the work performed outside Assignment Periods, failure to issue wage statement or failure to issue accurate itemized wage statements to Wage Statement Subclass Members, and failure to pay Waiting Time Subclass Members all wages due and owing upon termination of employment, the members of the Class seeking relief for those violations are so numerous that joinder of all members is impractical.

28. Plaintiff's claims are typical of the claims of the members of the Class and subclasses because they were adjunct instructors who sustained damages arising out of Defendant's failure during the Class Period to (a) pay for the work performed outside the Assignment Periods, (b) issue semimonthly complete and/or accurate itemized wage statements, and (c) pay Waiting Time Subclass Members all wages due and owing upon termination of employment.

29. Plaintiff will fairly and adequately represent the interests of the Class and subclasses. Plaintiff has no conflict of interest with any member of the Class or either subclass. Plaintiff has retained competent and experienced counsel in complex class action litigation. Plaintiff's counsel has the expertise and financial resources to adequately represent the interests of the Class.

30. Common questions of law and fact exist as to all members of the Class and subclass and predominate over any questions solely affecting individual members of the Class. Among the questions of law and fact common to the Plaintiff and the Class are the following:

a. Whether the salary Defendant paid to Plaintiff and Class Members compensated them for the work performed outside the Assignment Periods;

b. Whether Defendant violated Labor Code § 1194 and/or the applicable Wage Order by failing to pay Plaintiff and the members of the Class for all the hours worked to perform required duties outside their periods of appointments;

c. Whether Defendant is liable for liquidated damages to Plaintiff and the members of the Class under Labor Code § 1194.2 for its failures described in the preceding paragraph;

d. Whether Plaintiff and Class Members who earn less than the monthly salary equivalent to two times the state minimum wage are non-exempt employees;

e. Whether Defendant was required to issue wage statements semimonthly to Plaintiff and members of the Wage Statement Subclass;

f. Whether Defendant failed to issue complete and/or accurate semimonthly itemized wage statements to Plaintiff and members of the Wage Statement Subclass;

g. Whether Defendant failed to pay all wages due upon termination of employment to Waiting Time Subclass Members by virtue of failing to pay for the work performed outside the Assignment Periods;

h. Whether Defendant violated the UCL by failing to pay Plaintiff and the Class Members for the work performed outside the periods of appointment, and by failing to issue semimonthly completely and/or accurate wage statements to members of the Wage Statement Subclass;

i. Whether Plaintiff is entitled to restitution under Bus. & Prof. Code § 17200 *et seq.* for uncompensated wages; and

j. The proper formula(s) for calculating damages, interest, and restitution owed to Plaintiff and the Class Members for the violations alleged in this Complaint.

31. 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 individuals 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. Class Members are readily identifiable from Defendant's employee rosters and/or payroll records.

32. Defendant's actions are generally applicable to the entire Class. Prosecution of separate actions by individual members of the 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.

33. 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 the Class, while substantial, may not be sufficient to enable them to maintain separate suits against Defendant.

FIRST CAUSE OF ACTION
Failure To Pay Wages For Hours Worked Outside the Assignment Periods [Labor Code §§ 1194, 1194.2, and/or IWC Wage Order No. 4-2001 § 4] As to Plaintiff and the Class

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

35. Labor Code § 1194 provides, in relevant part:

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

Labor Code § 1194.2 provides, in relevant part:

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

36. Based on the allegations above, Plaintiff and Class Members were paid a salary by the Defendant only for their Assignment Periods. However, during the Class Period, Plaintiff and Class Members were required, as part of their job duties, to perform work before and after their Assignment Periods. Thus, Plaintiff and Class Members were not paid anything for the time spent working before and after their Assignment Periods.

37. Accordingly, pursuant to Labor Code §§ 1194 and 1194.2, and/or Wage Order No. 4 § 4 Plaintiff and Class Members are entitled to recover, at a minimum, their unpaid hourly wages, plus liquidated damages in an additional amount equal to the total amount minimum wages unlawfully withheld during the Class Period.

38. Plaintiff, on behalf of herself and all other Class Members, requests relief as described below.

///

///

///

SECOND CAUSE OF ACTION
Failure to Issue Accurate Itemized Wage Statements
[Labor Code § 226(a), (e)]
As to Plaintiff and Wage Statement Subclass

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

40. Labor Code 226(a) provides:

> Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, either as a detachable part of the check, draft, or voucher paying the employee's wages, or separately when wages are paid by personal check or cash, an accurate statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and his or her social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of the hours worked at each hourly rate by the employee…

41. Based on the allegations above, Defendant issued Plaintiff and Wage Statement Subclass Members wage statements on a monthly basis, instead of semimonthly, and which were inaccurate and/or incomplete itemized wage statements in that they did not contain the total hours worked and all applicable hours rate in effect during the pay period for the hours worked in violation of Labor Code § 226(a), (a)(2), and (a)(9), respectively.

42. Plaintiff and Wage Statement Subclass Members suffered injury as a result of Defendant's knowing and intentional failure to comply with Labor Code § 226(a).

43. Plaintiff, on behalf of herself and Wage Statement Subclass Members, requests relief as described below.

THIRD CAUSE OF ACTION
Failure to Pay Compensation at Time of Termination
[Labor Code §§ 201-203]
As to Plaintiff and Waiting Time Subclass Members

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

45. Labor Code §§ 201 and 202 require Defendant to pay all compensation due and owing to Plaintiff and formerly employed Class Members at the time employment was terminated. Labor Code § 203 provides that if an employer willfully fails to pay compensation promptly upon discharge or

resignation, as required under §§ 201 and 202, then the employer is liable for penalties in the form of continued compensation for up to thirty (30) work days.

46. Defendant willfully failed to pay Plaintiff and members of the Waiting Time Subclass all compensation due upon termination of employment as required under Labor Code §§ 201 and 202. As a result, Defendant is liable to such class members for penalties pursuant to Labor Code § 203.

47. Plaintiff, on behalf of herself and Waiting Time Subclass, requests relief as described below.

FOURTH CAUSE OF ACTION
Violation of Unfair Competition Laws
[Bus. & Prof. Code §§ 17200 *et seq.*]
As to Plaintiff and the Class

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

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

50. Beginning at least four years prior to the filing of this Complaint, Defendant committed, and continues to commit, acts of unfair competition, as defined in the UCL by, among other things, engaging in the acts and practices described above–to wit, wrongfully denying the Class Members payment for work performed outside the dates of their Assignment Periods, and failing to issue wage statements or failing to issue accurate itemized wage statements to the Wage Statement Subclass Members. Defendant's conduct as herein alleged has damaged and was substantially injurious to Plaintiff, the Class, and Subclasses.

51. Defendant engaged in unfair competition in violation of the UCL by violating Labor Code §§ 1194, 1194.2, 226, and § 4 of the applicable Wage Order. Defendant's course of conduct, act and practice in violation of the California law mentioned above constitutes a violation of the UCL.

52. The harm to Plaintiff and Class Members in being denied payment for all hours worked, in addition to being denied accurate wage statements on a semimonthly basis, 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.

53. The unlawful, unfair and fraudulent business practices and acts of Defendant, as described above, have injured Plaintiff and the Class, in that they were wrongfully denied payment for all hours worked, and were not able to determine from their wage statements their total hours worked and whether they were paid correctly, and therefore was substantially injurious to Plaintiff and the Class members.

54. Plaintiff, on behalf of herself, and all other Class Members, requests relief as described below.

FIFTH CAUSE OF ACTION
Civil Penalties
[Labor Code §§ 2698 *et seq.*]
As to Plaintiff and Aggrieved Employees

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

56. Plaintiff is an "aggrieved employee" under PAGA as she was employed by Defendant during the applicable statutory period and suffered one or more of the Labor Code violations alleged herein. As such, Plaintiff seeks to recover, on behalf of herself and all other currently and formerly employed aggrieved employees of Defendant, civil penalties provided by PAGA, plus reasonable attorneys' fees and costs.

57. Plaintiff seeks to recover the PAGA civil penalties through a representative action as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court,* 46 Cal. 4th 969 (2009). Therefore, class certification of the PAGA claims is not required, but Plaintiff may choose to seek certification of the PAGA claims.

58. Plaintiff seeks PAGA penalties on behalf of herself and Aggrieved Employees against Defendant for the following:

Violation of Wage Order No. 4, § 4, and Labor Code § 1194, 203

59. During the PAGA Period, Defendant failed to pay Plaintiff and Aggrieved Employees for all hours worked in violation of Wage Order No. 4, § 4 and Labor Code § 1194 as described above.

60. During the PAGA Period, Defendant failed to pay formerly employed Aggrieved Employees all wages due within 30 days of the separation of their employment from Defendant, in violation of Labor Code § 203.

61. Under Labor Code § 558 Plaintiff and Aggrieved Employees are entitled to penalties amounting to fifty dollars ($50) for each underpaid Aggrieved Employees for each pay period for which the employee was underpaid, and one hundred dollars ($100) for each underpaid Aggrieved Employees for each pay period for which the employee was underpaid for each subsequent violation, in addition to an amount sufficient recovery underpaid wages.

Violation of Labor Code § 226(a)

62. During the PAGA Period, Defendant failed to provide Plaintiff and Aggrieved Employees with accurate wage statements in violation of Labor Code § 226(a), (a)(2), and (a)(9), as described above.

63. Under Labor Code § 2699(f)(2), Plaintiff and Aggrieved Employees are entitled to a PAGA penalty equal to one hundred dollars ($100) per pay period per Aggrieved Employee for each initial violation of Labor Code § 226(a), (a)(2), and (a)(9), and two hundred dollars ($200) per pay period for each subsequent violation.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff, on behalf of herself and the members of the Class, prays for judgment against Defendant and request the following relief:

A. That the Court order than this action may proceed and be maintained as a class action under Code of Civil Procedure § 382; and that the Court define the Class and Subclasses as specified above and appoint Plaintiff as Class Representatives and her attorneys as Class Counsel for that Class.

B. On the First Cause of Action:

i. A declaratory judgment that Defendant violated Labor Code §§ 1194, 1194.2 and/or § 4 of the applicable IWC Wage Order by failing to pay Plaintiff and Class Members for work performed outside their Assignment Periods;

ii. An award to Plaintiff and Class Members in the amount of their unpaid wages owed to them, plus liquidated damages in an additional amount equal to the amount wages unlawfully withheld during the Class Period, as well as an award of costs, interest, and reasonable attorney's fees; and

iii. An award of reasonable attorneys' fees and costs pursuant to Labor Code § 1194, Cal. Civ. Pro. Code § 1021.5 and/or other state laws.

C. On the Second Cause of Action:

i. A declaratory judgment that Defendant willfully violated Labor Code § 226(a) by failing to issue semimonthly accurate itemized wage statements to Plaintiff and Wage

Statement Subclass Members that lacked, *inter alia*, total hours worked, and applicable hourly rates and corresponding hours worked at each hourly rate, and

ii. An award to Plaintiff and Wage Statement Subclass Members of statutory penalties and attorneys' fees and costs pursuant to Labor Code § 226(e).

D. On the Third Cause of Action:

i. A declaratory judgment that Defendant willfully failed to pay Plaintiff and Waiting Time Subclass Members all compensation due upon termination of employment in violation of Labor Code §§ 201 and 202.

ii. An award to Plaintiff and Waiting Penalties Subclass Members for waiting time penalties in the amount of thirty (30) days' wages per Waiting Time Subclass Members; and

iii. An award of reasonable attorneys' fees and costs pursuant to Cal. Civ. Pro. Code § 1021.5 and/or other state laws.

E. On the Fourth Cause of Action:

i. Restitution to the Class, including, but not limited to, the relief permitted by Labor Code § 1194; and

ii. An award to Plaintiff and Class Members of their attorneys' fees and costs of suit to the extent permitted by law, including to, but not limited to, Cal. Civ. Pro. Code § 1021.5.

F. All other relief as this Court deems proper.

WHEREFORE, Plaintiff, on behalf of herself and the Aggrieved Employees, prays for judgment against Defendant and requests the following relief:

A. On the Fifth Cause of Action:

i. Civil penalties pursuant to PAGA for failing to pay Plaintiff and Aggrieved Employees for all hours worked; failing to pay all wages upon termination; and failing to issue accurate itemized wage statements.

ii. Attorneys' fees and costs pursuant to Labor Code § 2699(g) and California Code of Civil Procedure § 1021.5; and

iii. All other relief as this Court deems appropriate.

///

///

///

JURY DEMAND ON CLASS CLAIMS

Plaintiff hereby demands trial by jury of Class claims against Defendant alleged herein.

Dated: July 19, 2018

Respectfully submitted,
HAMMONDLAW, P.C.

By: Julian Hammond (SBN 268489)
HAMMONDLAW, P.C.
1829 Reisterstown Rd. Suite 410
Baltimore, MD 21208
Telephone: (310) 601-6766
Facsimile: (310) 295-2385
jhammond@hammondlawpc.com

EXHIBIT B

JULIAN HAMMOND (SBN 268489)
jhammond@hammondlawpc.com
POLINA BRANDLER (SBN 269086)
pbrandler@hammondlawpc.com
ARI CHERNIAK (SBN 290071)
acherniak@hammondlaw.com
HAMMONDLAW, P.C.
1829 Reisterstown Rd., Suite 410
Baltimore, MD 21208
(310) 601-6766
(310) 295-2385 (Fax)

Attorneys for Plaintiff and the Putative Class

MICHAEL J. VARTAIN [SBN 92366]
KATHRYN J. BURKE [SBN 70324]
VARTAIN LAW GROUP, P.C.
601 Montgomery Street, Suite 780
San Francisco, CA 94111-2664
Telephone: [415] 391-1155
Facsimile: [415] 391-1177

Attorneys for Defendant
UNIVERSITY OF SAN FRANCISCO

SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

KELLY GOLA, individually and on behalf of all others similarly situated,

Plaintiff,

vs.

UNIVERSITY OF SAN FRANCISCO, a California Corporation,

Defendant.

CASE NO. CGC-18-565018

AMENDED STIPULATION AND ~~[PROPOSED]~~ ORDER FOR CLASS CERTIFICATION

Singly Assigned for All Purposes to Hon. Curtis Karnow, Dept. 611

1-3-20

WHEREAS, Plaintiff commenced the instant class and representative action lawsuit on March 15, 2018, alleging, among other things, that Defendant violated California Labor Code § 226(a) and (e) by failing to issue wage statements to its part-time adjunct instructors who earned less than a monthly salary equivalent of two times the state minimum wage for full time employment, defined as 40 hours per week (*see* IWC Wage Order No. 4, § 1(A)(3)(d)), that contained entries for total hours worked and applicable hourly rates and corresponding number of hours worked during each pay period.

WHEREAS, Defendant denies each allegation contained in the operative Complaint (the First Amended Complaint, filed on July 19, 2018) and asserts multiple affirmative defenses; and

WHEREAS, to avoid unnecessary motion practice, the parties have agreed to the following terms to certify a plaintiff class for the California Labor Code § 226(a) and (e) wage statements claims only;

IT IS HEREBY STIPULATED AND AGREED, by and between the undersigned, as follows:

1. That the Court, upon stipulation by the parties hereto, order the certification, pursuant to California Civil Procedure Code § 382, of the following class for the California Labor Code § 226(a) and (e) wage statements claims only:

> All part-time adjunct instructors employed by the University of San Francisco at any time between March 15, 2017 and January 3, 2020 ("Class Period") who in 2017 earned less than $3,612 in any calendar month in which the instructor was paid wages; who in 2018 earned less than $3,784 in any calendar month in which the instructor was paid wages; who in 2019 earned less than $4,128 in any calendar month in which the instructor was paid wages; or who in 2020 earned (or will earn) less than $4,472 in any calendar month in which the instructor was paid wages ("Class")

2. The Class is so numerous that joinder of all members is impracticable.

3. There are questions of law and fact common to the Class.

4. The claims or defenses of Plaintiff are typical of the claims or defenses of the Class because she seeks to recover relief (in form of statutory penalties) caused by the same course of conduct that purportedly injured all Class Members.

5. The Plaintiff will fairly and adequately protect the interests of the Class

because her interests are not antagonistic to those of other Class Members; her attorneys are qualified and experienced in the litigation of complex class action cases, particularly involving wage and hour violations including those alleged on behalf of adjunct instructors, and have more than ample resources available to be able to conduct the litigation.

6. The prosecution of separate actions by individual members of the Class would create a risk of inconsistent or varying adjudications for individual members of the Class and of establishing incompatible standards of conduct for Defendant.

7. Plaintiff alleges that Defendant has acted or refused to act on grounds that apply generally to the Class, so that final relief or judgment for the defendant is appropriate respecting the class as whole.

8. This Stipulation and [Proposed] Order is solely for the purpose of resolving class certification for the California Labor Code § 226(a) and (e) wage statements claims, and is without prejudice to the right of any party to raise any and all facts, arguments or defenses concerning the claims of Plaintiff and/or the Class, including but not limited to preemption because elements of the wage statement claim require resolution of competing interpretations of the Collective Bargaining Agreement and/or because of waiver by the Collective Bargaining Agreement.

9. Accordingly, it is stipulated and agreed between the Parties that on or about January 3, 2020, the Court issue an order that this action be certified as a class action as to the Second Cause of Action alleged in the First Amended Complaint pursuant to Labor Code § 226(a), (e) only and no other claim. The Class shall consist of all members who fall within the Class as defined above. Plaintiff Kelly Gola is hereby designated lead Plaintiff and Julian Hammond, Polina Brandler, and Ari Cherniak of HammondLaw, P.C. are hereby designated Class Counsel.

10. It is further stipulated and agreed between the Parties that Notice of Pending Action, in the form attached, be disseminated to all the Class Members by no later than February 3, 2020 (provided that the Court enters Order Granting this Stipulation on or before January 3, 2020).

11. The Parties propose Simpluris, Inc., as the third-party administrator to serve

notice of the pendency of this action to Class Members. The third-party administrator will handle all return mail. The third-party administrator shall perform a Skip Trace for all mail returned and not bearing a forwarding address. For all mail returned bearing a forwarding address, the third-party administrator will re-mail it to the forwarding address provided.

12. Defendant will provide the authorized third-party administrator with a comprehensive list of the names and last known contact of Class Members by no later than January 20, 2020 (provided that the Court enters Order Granting this Stipulation on or before January 3, 2020). The list shall identify each Class Member and provide all known contact information, including last known physical address, email address, and telephone number(s). When Defendant provides this list to the third-party administrator, and not earlier than then, Defendant will at the same time provide the list to Plaintiff's counsel. The Parties agree that they will not disclose the list or any information on the list to anyone other than the third-party administrator and the Parties' attorneys.

Dated: January 3, 2020

HAMMONDLAW, P.C.
Julian Hammond
Polina Brandler
1829 Reisterstown Rd., Suite 410
Baltimore, MD 21028
(310) 601-6766
(310) 295-2385 (Fax)
Attorneys for Plaintiff

By: _____
Julian Hammond

VARTAIN LAW GROUP, P.C.
Michael J. Vartain
Kathryn J. Burke
601 Montgomery Street, Suite 780
San Francisco, CA 94111
(415) 391-1155
(415) 391-1177 (Fax)
Attorneys for Defendant

By: _____
Michael J. Vartain

~~[PROPOSED]~~ ORDER

IT IS ORDERED that the Stipulation for Class Certification pursuant to Cal. Code of Civil Procedure § 382 is GRANTED.

Defendant shall provide the authorized third-party administrator with a comprehensive list of the names and last known physical address, email address, and telephone number(s) of Class Members within 15 days of this Order and the Class Notice process shall proceed as follows:

Event	Date
Stipulated Order Granting Class Certification	January 3, 2020
Deadline for Defendant to send Class List to Notice Administrator (15 days from date of Order)	January 20, 2020
Deadline for Notice Administrator to Mail Class Notice (30 days from date of Order)	February 3, 2020
Opt-out/Object Deadline (30 days after the mailing of the Notice)	March 4, 2020

11/9/20

SO ORDERED:

Hon. Curtis Karnow
Judge of the Superior Court

N

1-3-20

CALIFORNIA SUPERIOR COURT
FOR THE COUNTY OF SAN FRANCISCO

NOTICE OF PENDING CLASS ACTION

Kelly Gola v. University if San Francisco
Case No. CGC-18-565018

A California State Court authorized this Notice. This is not a solicitation from a lawyer.

To: All current and former part-time adjunct instructors employed by the University of San Francisco at any time between March 15, 2017 and [January 3, 2020] who in 2017 earned less than $3,612 in any calendar month in which the instructor was paid wages; who in 2018 earned less than $3,784 in any calendar month in which the instructor was paid wages; who in 2019 earned less than $4,128 in any calendar month in which the instructor was paid wages; or who in 2020 earned (or will have earned) less than $4,472 in any calendar month in which the instructor was paid wages

This Notice May Affect Your Rights. Please Read It Carefully.

This notice pertains to a class action lawsuit currently pending against University of San Francisco in the Superior Court for the State of California, San Francisco County, entitled *Kelly Gola v. University of San Francisco* (Case No. CGC-18-565018). You are receiving this Notice because you may be a member of the Class for whom monetary and other relief is being sought. This Notice is intended to advise you of the certification of the Class in this Action and of your right to exclude yourself from the Class. The Court has not decided yet whether University of San Francisco did anything wrong. There is no money available now, and no guarantee there will be. However, you now have a choice to make, which may affect your legal rights.

DO NOTHING	By doing nothing, you keep the possibility of getting money or benefits that may come from a trial or a settlement. But, you will be bound by any rulings of the Court applicable to the Class, including *adverse* rulings, and you give up any rights to sue University of San Francisco separately about the class action claim described in paragraph I below.
ASK TO BE EXCLUDED	If you ask to be excluded and money or benefits are later awarded, you won't share in those. But, you keep any rights to sue University of San Francisco separately about the same legal claims in this lawsuit.

I. DESCRIPTION OF CLASS ACTION CLAIM

On March 15, 2018, Plaintiff Kelly Gola ("Plaintiff") filed this Class Action Complaint alleging causes of action against University of San Francisco for, among other things, failure to issue accurate itemized wage statements that included entries for hours worked during the pay period and applicable hourly rates earned, in violation of Labor Code § 226(a), (e).

University of San Francisco strongly denies liability for this claim. Specifically, University of San Francisco contends that its policies are legally compliant, and that under the law and the collective bargaining agreement, it was not required to include information concerning hours worked and applicable hourly rates on the wage statements issued to its part-time adjunct instructors.

The Court has not decided whether the University of San Francisco or the Plaintiff is correct. By establishing the class and ordering the issuance of this Notice, the Court is not suggesting that the Plaintiff will win or lose this case. Plaintiff must prove her claims at a trial.

No money or benefits are available now because the Court has not decided that any party did anything wrong, and the two sides have not settled the case. There is no guarantee that money or benefits ever will be obtained. If they are, you will be notified about how to receive a share.

If recovery is obtained for the Class, Class Counsel will request from the Court an award for attorneys' fees and expenses as the law allows. Class Counsel may also ask the Court to approve a reasonable incentive award for the Class Representative. If approved as fair and reasonable, these fees and expenses and incentive award will either be paid from the recovery obtained for the Class or separately by the Defendant.

II. CLASS CERTIFICATION

On [January 3, 2020], the Court entered an Order certifying the Class, as defined below. This means that the Court has allowed this case to proceed on behalf of all University of San Francisco's part-time adjunct instructors who fall within the definition of the "Class" below. The Court has appointed Plaintiff Kelly Gola as the Class Representative for the following certified Class:

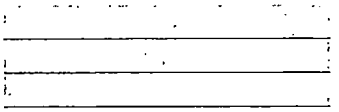
> **The "Class":** All current and former part-time adjunct instructors employed by the University of San Francisco at any time between March 15, 2017 and [January 3, 2020] who in 2017 earned less than $3,612 in any calendar month in which the instructor was paid wages; who in 2018 earned less than $3,784 in any calendar month in which the instructor was paid wages; who in 2019 earned less than $4,128 in any calendar month in which the instructor was paid wages; or who in 2020 earned (or will have earned) less than $4,472 in any calendar month in which the instructor was paid wages ("Class")

III. YOUR RIGHT TO BE INCLUDED IN THE CLASS

If you are a member of the Class as described above, you have the right to decide whether to remain a member of the Class or not.

If you choose to remain a member of the Class, you do not need to do anything at this time. If you do not request to be excluded from the Class by the exclusion deadline of March 4, 2020, you will automatically be included in the Class and you will be permitted to share in a recovery, if any, that may occur in this lawsuit, but you will also be bound by the proceedings in this lawsuit, including all past, present and future orders and judgments of the Court, whether favorable or unfavorable.

If you do not wish to remain a member of the Class, you must exclude yourself from the Class. If you ask to be excluded from the Class, you will not be bound by any order or judgment in the lawsuit, and you will not be eligible to receive a share of any money which might be recovered for the benefit of the Class. To exclude yourself from the Class, you must submit a written request for exclusion postmarked no later than March 4, 2020 to the Class Notice Administrator at the following address:



Your request must clearly be titled "REQUEST FOR EXCLUSION FROM UNIVERSITY OF SAN FRANCISCO CLASS."

IV. NO RETALIATION

No one may retaliate against you or treat you adversely because you are part of the Class or because you choose to be excluded from the Class. You are protected by law against any such retaliation.

V. CLASS COUNSEL

The following attorneys have been appointed as Class Counsel by the Court:

HAMMONDLAW, P.C.
Julian Hammond, Esq.
Polina Brandler, Esq.
Ari Cherniak, Esq.
1829 Reisterstown Rd. Suite 410
Baltimore, MD 21208
Telephone: (310) 601-6766
Facsimile: (310) 295-2385
jhammond@hammondlawpc.com

If you have questions or information regarding this lawsuit or this Notice, you may contact Class Counsel at (310) 601-6766. You will not have to individually pay the Class attorneys. You have the right to retain your own independent attorney, at your own expense, and to have him, her, or them enter an appearance in this lawsuit.

VI. CLASS NOTICE ADMINISTRATOR AND FURTHER INFORMATION

You may call the Class Notice Administrator at [Phone Number], or Class Counsel above, or write to the Class Notice Administrator at [Address] with questions regarding the litigation and class certification.

You may view court-filed documents relevant to this case, including the complaint, the statement of decision following a bench trial on the issue of Labor Management Relations Act preemption, and class certification order by visiting www._____.com.

You may also view the Court files in this case by going to www.sfsuperiorcourt.org or by going to the California Superior Court, San Francisco County, Civil Center Courthouse 400 McAllister Street San Francisco, CA 94102.

DO NOT contact the Court or any Court personnel with questions concerning this case.

CALIFORNIA SUPERIOR COURT
FOR THE COUNTY OF SAN FRANCISCO

NOTICE OF PENDING CLASS ACTION

Kelly Gola v. University if San Francisco
Case No. CGC-18-565018

A California State Court authorized this Notice. This is not a solicitation from a lawyer.

To: All current and former part-time adjunct instructors employed by the University of San Francisco at any time between March 15, 2017 and [January 3, 2020] who in 2017 earned less than $3,612 in any calendar month in which the instructor was paid wages; who in 2018 earned less than $3,784 in any calendar month in which the instructor was paid wages; who in 2019 earned less than $4,128 in any calendar month in which the instructor was paid wages; or who in 2020 earned (or will have earned) less than $4,472 in any calendar month in which the instructor was paid wages

This Notice May Affect Your Rights. Please Read It Carefully.

This notice pertains to a class action lawsuit currently pending against University of San Francisco in the Superior Court for the State of California, San Francisco County, entitled *Kelly Gola v. University of San Francisco* (Case No. CGC-18-565018). You are receiving this Notice because you may be a member of the Class for whom monetary and other relief is being sought. This Notice is intended to advise you of the certification of the Class in this Action and of your right to exclude yourself from the Class. The Court has not decided yet whether University of San Francisco did anything wrong. There is no money available now, and no guarantee there will be. However, you now have a choice to make, which may affect your legal rights.

DO NOTHING	By doing nothing, you keep the possibility of getting money or benefits that may come from a trial or a settlement. But, you will be bound by any rulings of the Court applicable to the Class, including *adverse* rulings, and you give up any rights to sue University of San Francisco separately about the class action claim described in paragraph I below.
ASK TO BE EXCLUDED	If you ask to be excluded and money or benefits are later awarded, you won't share in those. But, you keep any rights to sue University of San Francisco separately about the same legal claims in this lawsuit.

I. DESCRIPTION OF CLASS ACTION CLAIM

On March 15, 2018, Plaintiff Kelly Gola ("Plaintiff") filed this Class Action Complaint alleging causes of action against University of San Francisco for, among other things, failure to issue accurate itemized wage statements that included entries for hours worked during the pay period and applicable hourly rates earned, in violation of Labor Code § 226(a), (e).

University of San Francisco strongly denies liability for this claim. Specifically, University of San Francisco contends that its policies are legally compliant, and that under the law and the collective bargaining agreement, it was not required to include information concerning hours worked and applicable hourly rates on the wage statements issued to its part-time adjunct instructors.

The Court has not decided whether the University of San Francisco or the Plaintiff is correct. By establishing the class and ordering the issuance of this Notice, the Court is not suggesting that the Plaintiff will win or lose this case. Plaintiff must prove her claims at a trial.

No money or benefits are available now because the Court has not decided that any party did anything wrong, and the two sides have not settled the case. There is no guarantee that money or benefits ever will be obtained. If they are, you will be notified about how to receive a share.

If recovery is obtained for the Class, Class Counsel will request from the Court an award for attorneys' fees and expenses as the law allows. Class Counsel may also ask the Court to approve a reasonable incentive award for the Class Representative. If approved as fair and reasonable, these fees and expenses and incentive award will either be paid from the recovery obtained for the Class or separately by the Defendant.

II. CLASS CERTIFICATION

On [January 3, 2020], the Court entered an Order certifying the Class, as defined below. This means that the Court has allowed this case to proceed on behalf of all University of San Francisco's part-time adjunct instructors who fall within the definition of the "Class" below. The Court has appointed Plaintiff Kelly Gola as the Class Representative for the following certified Class:

> **The "Class":** All current and former part-time adjunct instructors employed by the University of San Francisco at any time between March 15, 2017 and [January 3, 2020] who in 2017 earned less than $3,612 in any calendar month in which the instructor was paid wages; who in 2018 earned less than $3,784 in any calendar month in which the instructor was paid wages; who in 2019 earned less than $4,128 in any calendar month in which the instructor was paid wages; or who in 2020 earned (or will have earned) less than $4,472 in any calendar month in which the instructor was paid wages ("Class")

III. YOUR RIGHT TO BE INCLUDED IN THE CLASS

If you are a member of the Class as described above, you have the right to decide whether to remain a member of the Class or not.

If you choose to remain a member of the Class, you do not need to do anything at this time. If you do not request to be excluded from the Class by the exclusion deadline of March 4, 2020, you will automatically be included in the Class and you will be permitted to share in a recovery, if any, that may occur in this lawsuit, but you will also be bound by the proceedings in this lawsuit, including all past, present and future orders and judgments of the Court, whether favorable or unfavorable.

If you do not wish to remain a member of the Class, you must exclude yourself from the Class. If you ask to be excluded from the Class, you will not be bound by any order or judgment in the lawsuit, and you will not be eligible to receive a share of any money which might be recovered for the benefit of the Class. To exclude yourself from the Class, you must submit a written request for exclusion postmarked no later than March 4, 2020 to the Class Notice Administrator at the following address:

_____

_____

_____

Your request must clearly be titled "REQUEST FOR EXCLUSION FROM UNIVERSITY OF SAN FRANCISCO CLASS."

IV. NO RETALIATION

No one may retaliate against you or treat you adversely because you are part of the Class or because you choose to be excluded from the Class. You are protected by law against any such retaliation.

V. CLASS COUNSEL

The following attorneys have been appointed as Class Counsel by the Court:

HAMMONDLAW, P.C.
Julian Hammond, Esq.
Polina Brandler, Esq.
Ari Cherniak, Esq.
1829 Reisterstown Rd. Suite 410
Baltimore, MD 21208
Telephone: (310) 601-6766
Facsimile: (310) 295-2385
jhammond@hammondlawpc.com

If you have questions or information regarding this lawsuit or this Notice, you may contact Class Counsel at (310) 601-6766. You will not have to individually pay the Class attorneys. You have the right to retain your own independent attorney, at your own expense, and to have him, her, or them enter an appearance in this lawsuit.

VI. CLASS NOTICE ADMINISTRATOR AND FURTHER INFORMATION

You may call the Class Notice Administrator at [Phone Number], or Class Counsel above, or write to the Class Notice Administrator at [Address] with questions regarding the litigation and class certification.

You may view court-filed documents relevant to this case, including the complaint, the statement of decision following a bench trial on the issue of Labor Management Relations Act preemption, and class certification order by visiting www. _____.com.

You may also view the Court files in this case by going to www.sfsuperiorcourt.org or by going to the California Superior Court, San Francisco County, Civil Center Courthouse 400 McAllister Street San Francisco, CA 94102.

DO NOT contact the Court or any Court personnel with questions concerning this case.

EXHIBIT C

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

KELLY GOLA, ET AL. Plaintiff, vs. UNIVERSITY OF SAN FRANCISCO, Defendant.	Case No. CGC – 18-565018 **STATEMENT OF DECISION**

Gola represents a Class of adjunct professors suing the University of San Francisco. Remaining are the Class' claims based on wage statements as not compliant with Labor Code § 226. The matter was the subject of a bench trial conducted on papers, including declarations subject to cross examination via deposition. The procedure allowed the University to assemble its evidence after reviewing Gola's evidence, and for Gola to prepare her rebuttal case after reviewing the University's evidence. After concluding briefs were filed (I refer below to the University's Brief and Gola's Brief), I heard closing argument July 9, and issued a proposed statement of decision on July 22, 2020. I have reviewed the parties' objections dated August 7, 2020.

Request for Judicial Notice

Gola filed a "Supplemental Request for Judicial Notice" dated July 2, 2020. My tentative ruling suggested some of the materials pertained to bills that were never enacted, but this isn't

right. All the materials in the Supplemental Request relate to either enacted legislation or opinion letters from the California Division of Labor Standards, and the University has provided no reason why I should not grant the request. It is granted.

Sealing

By papers dated April 29, 2020 Gola sought to seal documents. I then asked the parties whether sealing was required or whether, alternatively, the assertedly confidential materials could be withdrawn as unnecessary to my determination. At the July 9 argument the parties confirmed that the materials were unnecessary, they had not yet been filed, and Gola will file an amended set omitting assertedly confidential materials. The motion to seal was withdrawn formally on July 20, 2020.

Factual Background

Gola and the Class teach at the University part time. They are part time adjunct instructors or professors. The Class received wage statements which do not show the hours worked, or the hourly rate. The format is the same for all class members. The University issued two types of wage statements, one type up to 2019, and then a second type thereafter. The differences are immaterial: neither format shows hours or rate. Salaries for the Class are contracted on a per course basis. Trial Testimony/Decl. of D.J. Philpott For Bench Trial No.2 dated May 19, 2020 ("Philpott Decl.") ¶¶ 41, 43.

Business & Professions Code ¶ 17200 (UCL)

The University argues that the UCL claim has in effect been dropped; and at argument

plaintiffs' counsel did not disagree. Gola's trial brief does not argue on the basis of the UCL. Gola seeks neither restitution nor an injunction. The UCL claim has been abandoned.

Labor Code Section 226

To make out a claim under § 226 plaintiff must show:

- The employer did not furnish a wage statement showing (among other things):
  - "total hours worked by the employee, except as provided in subdivision (j)," (§ 226(a))

or

  - "all applicable hourly rates" (§ 226 (a) (9))
- The employee suffered injury (§ 226(e) (1))
  - The employee suffers injury if the wage statement does not include to total hours worked and the hourly rate, and if "the employee cannot promptly and easily determine from the wage statement alone" the total hours worked or the hourly rate. (§ 226 (e)(B))
    - "'promptly and easily determine' means a reasonable person would be able to readily ascertain the information without reference to other documents or information." § 226 (e)(C)
- The employer failure was "knowing and intentional" § 226 (e)(1)
  - A "'knowing and intentional failure' does not include an isolated and unintentional payroll error due to a clerical or inadvertent mistake." It is relevant "whether the employer, prior to an alleged violation, has adopted and is in compliance with a set of policies, procedures, and practices that fully comply with this section." § 226 (e)(3)

Subsection (j), which provides the exception to § 226(a), holds that total hours need not be in the wage statement if:

- "The employee's compensation is solely based on salary and the employee is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission,"

or

- The employee is exempt for various reasons including:

"(A) The exemption for persons employed in an executive, administrative, or professional capacity provided in any applicable order of the Industrial Welfare Commission."

Section 226 Liability

1. It is obvious that the wage statement does not contain the required information, hours worked or applicable rate.

2. It is clear that subsection (j) does not provide an exception. The University has made no argument that suggests the Class was actually exempt under Labor Code § 515(a) or some order of the Industrial Welfare Commission.[1] Its brief argues that I should indeed avoid addressing whether the Class is exempt. University Brief at 3:8-9; 8. Although the University discusses the notion of employees' exempt status, this is *solely* in the context of a 'good faith' defense (University Brief at 11 ff.). The University makes no argument that the instructors actually meet the definitions of § 515, and with good reason: The section requires among other things the IWC to have acted to establish the exemption, and that the monthly salary be at least twice the minimum wage, neither of which is true and neither of which the University argues is actually

[1] The University did suggest at argument an IWC order applied, but could not tell me which one. The University's argument on proration is discussed on the next page. But that argument, University Brief at 11-12, was made in the context of the good faith defense. See argument caption at University Brief at 10:18.

true.

> The Industrial Welfare Commission may establish exemptions from the requirement that an overtime rate of compensation be paid pursuant to Sections 510 and 511 for executive, administrative, and professional employees, if the employee is primarily engaged in the duties that meet the test of the exemption, customarily and regularly exercises discretion and independent judgment in performing those duties, and earns a monthly salary equivalent to no less than two times the state minimum wage for full-time employment.

Lab. C. § 515(a).

The parties have spent some time arguing whether the salary applicable to part time work could be extrapolated or prorated to generate a number which would apply if the instructor worked fulltime. For example if one were paid more than twice the minimum wage for one hour a month, might that be sufficient to meet the "earns a monthly salary equivalent to no less than two times the state minimum wage for full-time employment" test? The University notes there's nothing in § 515 that says the salary *can't* be prorated, University Brief at 11 n.3, and Gola cites an opinion from the Chief Legal Counsel of the Labor Commissioner suggesting otherwise. Gola Brief at 22. Gola has the better of this argument, based on the opinion[2] and e.g., *Kao v. Holiday*, 12 Cal. App. 5th 947, 958 (2017), but it doesn't matter: There is no IWC action[3] and the University doesn't make the argument that the Class is exempt.

3. The Class suffered injury. As I have found and as the parties conceded, the wage statements don't have the required information. And there is no way to figure it out from looking at the statement "alone" (with or without referring to other documents), which is the statutory test. The University's argument here is that the class is "highly educated and literate," University Brief at 9, which may well be true but is not in the record. The argument then continues to suggest these sorts of people can't be injured when they know full well they are paid

[2] "DLSE's interpretation is entitled to great weight and under established principles of statutory construction, unless it is clearly unreasonable, it will be upheld." *Skyline Homes, Inc. v. Dep't of Indus. Relations*, 165 Cal. App. 3d 239, 249 (1985), *disapproved of on separate grounds, Tidewater Marine W., Inc. v. Bradshaw*, 14 Cal. 4th 557 (1996).

[3] I directly asked the University's counsel about this at the July 9 argument but he was not able to cite an IWC order.

by the course, and not per hour. University Brief at 9. But this isn't the statutory test. The University never addresses the statutory test.

Raines v. Coastal Pac. Food Distributors, Inc., 23 Cal. App. 5th 667 (2018) doesn't help the University. It doesn't stand for the vague proposition advanced by the University at argument that one must be practical or reasonable in interpreting § 226, whatever that means. What the case stands for is that if words of the statute apply—if one *can* figure out the missing information from the four corners of the document, then there's no injury:

> Here, one can determine the hourly overtime rate "from the wage statement alone." (§ 226(e)(2)(B).) It can be "promptly and easily" determined by simple arithmetic. (Ibid.) The mathematical operation required is division, which is taught in grade school. Although many people cannot perform the calculation in their heads, it can be easily performed by use of a pencil and paper or a calculator; no additional documents or information are necessary. (§ 226(e)(2)(C).)

23 Cal. App. 5th at 677.

That's not the situation here.

The University cites two nonbinding federal trial court decisions in support of the notion that Gola must have viewed a wage statement before she can be harmed by the missing information. One of these cases does say that, *Holak v. K Mart Corp.*, No. 1:12-CV-00304-AWI-MJ, 2015 WL 2384895, at *7 (E.D. Cal. May 19, 2015) ("the employee must still have viewed the wage statement in question") but it just relies on the second case, *Nguyen v. Baxter Healthcare Corp.*, No. 8:10-CV-01436-CJC, 2011 WL 6018284, at *9 (C.D. Cal. Nov. 28, 2011). *Nguyen* does *not* say what *Holak* says it holds; instead, it finds that because the plaintiff wasn't really confused about any of the information required to be on the wage statement she suffered no injury. *Nguyen* at *9. And even *Holak* recognizes that the statute was amended as of 2013, probably to impose "a new objective standard by which a plaintiff need not even view a wage statement to be injured by allegedly contained therein," *Holak* at *7. (But the amendment

came too late to do the plaintiff any good in that case.) It does appear that the amendments, enacted in 2012, were done to make clear that the omission of the data is injury. See legislative history at Ex. K to Plaintiff's Supplemental Request for Judicial Notice.

Holak is worth no more than *Nguyen*, and *Nguyen* doesn't help the University.

4. The University has referred to the "knowing and intentional" test as a scienter requirement, and for convenience I will do the same. The central disagreement between the parties here has to do with the test, not the underlying facts. The University says the test is one of "good faith" so that a plausible but ultimately unconvincing position on whether the employees are exempt suffices. E.g., *Stafford v. Brink's, Inc.*, No. CV141352MWFPLAX, 2014 WL 12586066, at *6 (C.D. Cal. Aug. 5, 2014); *Harris v. Vector Mktg. Corp.*, 656 F. Supp. 2d 1128, 1146 (N.D. Cal. 2009) (suggesting "good faith" dispute is a defense). See also e.g., *Chavez v. Converse, Inc.*, No. 15-CV-03746-NC, 2020 WL 1233919, at *1 (N.D. Cal. Mar. 13, 2020) ("California law precludes the recovery of penalties when a good faith dispute exists as to whether wages are owed").

First, it is odd that while the University claims it honestly thought in good faith the Class was exempt (University Brief at 11-12 n.3), as I have noted the University is not able to actually articulate an argument that instructors were exempt under state law. Further, the evidence is not that the University had a good faith belief of this nature; the evidence is that they never thought about it. University PMK deposition at 98 ff., 101 ff. at pages 116-117, 119);[4] Philpott trial testimony at page 10. Philpott's testimony is not directly to the contrary: he implies, although he does not actually say, that the University's counsel approved paying the part time instructors

[4] "Pages" refers to the page numbers superimposed by Gola's counsel on the original material.

by the course. Philpott Decl.¶ 44.[5] But for reasons I detail below under "Other issues," the fact that pay is contracted one way or the other—by the piece, by commission, or otherwise--is not relevant to whether an employee is exempt and so is not relevant to whether the wage statements must include certain data.[6]

Secondly, the University implies it relied on the collective bargaining agreement (CBA) with a union which represents the Class. The University suggests the rights at issue are waivable (that is not clear), and understands that for a statutory right to be waived by a CBA, the waiver must be clear and unmistakable. University Brief at 12 n.4. E.g., *Mendez v. Mid-Wilshire Health Care Ctr.*, 220 Cal. App. 4th 534, 543 (2013). The University says that sort of waiver is found at Article 23 of the CBA. See e.g. Ex. B to Philpott Decl. That's obviously not true. Article 23 doesn't even mention wage statements. Subsection A says the parties must follow the law. Subsection B says the agreement, including the pay, is legal. Even if such a self-serving declaration were meaningful, it is patently not a clear and unmistakable statement that the wage statements need not have certain information.

Thirdly, the federal trial court decisions relied on the University, to the extent one considers them to be interpretations of the scienter requirement under § 226,[7] are probably not correct. There is no good faith defense. I am bound by state appellate authorities which use a

[5] Philpot does say, in the most general terms, that he considered California law. Philpott Decl. ¶ 58. I do not place weight on this post-hoc general statement; it is consistent with the consideration whether it was legal to have a contractual calculation by the piece, discussed next in the text.

[6] For these reasons, the University's suggestion, made for the first time in its suggested Principal Controverted Issues Nos. 19 and 20 (dated July 20, 2020) that CCR tit. 8 § 13520(a) proves a good faith defense doesn't work either. First, the University can't make a legal argument for the first time in these suggested Issues (the CCRs aren't mentioned in e.g., the University Brief 10-13, its discussions of good faith). And even if § 13520(a) applied, the University would still lose because "Defenses presented which, under all the circumstances, are unsupported by any evidence, are unreasonable....". The defense is not supported by evidence.

[7] Not all of them actually are. *Chavez v. Converse, Inc.*, for example, is about waiting time penalties, not the issue in this case, and where the rule is different, i.e., where good faith *does* have a role. *Kao v. Holiday*, 12 Cal. App. 5th 947, 963 (2017). See also *Caudle v. Sprint/United Mgmt. Co.*, No. C 17-06874 WHA, 2019 WL 2716291, at *3 (N.D. Cal. June 28, 2019); *Deluca v. Farmers Ins. Exch.*, 386 F. Supp. 3d 1235, 1266 (N.D. Cal. 2019). Another case relied on by the University is also about waiting time penalties. *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1201 (2008).

different test, which one might dub the 'predicate facts' test.

A violation exists if the employer "knew that facts existed that brought its actions or omissions within the provisions of [the statute]" (*Willner v. Manpower, Inc.* (N.D. Cal. 2014) 35 F.Supp.3d 1116, 1131) or, in other words, "was aware of the factual predicate underlying the violation," (*Novoa v. Charter Communications, LLC* (E.D. Cal. 2015) 100 F.Supp.3d 1013, 1028). Thus, an employer's knowledge that its wage statements did not contain the pay period's inclusive dates was held to be a knowing and intentional failure to comply with the statute. *Kao v. Holiday*, 12 Cal. App. 5th 947, 961 (2017). See also *Furry v. E. Bay Publ'g, LLC*, 30 Cal. App. 5th 1072, 1085 (2018); *Diaz v. Grill Concepts Servs., Inc.*, 23 Cal. App. 5th 859, 868 (2018). Other federal courts have recognized the state predicate facts test. E.g., *Fox v. Eclear Int'l CO. Ltd.*, No. CV 17-0865 AS, 2018 WL 6118525, at *9 (C.D. Cal. June 13, 2018); *Suarez v. Bank of Am. Corp.*, No. 18-CV-01202-MEJ, 2018 WL 3659302, at *11 (N.D. Cal. Aug. 2, 2018); *Mays v. Wal-Mart Stores, Inc.*, 354 F. Supp. 3d 1136, 1144 (C.D. Cal. 2019); *Bernstein v. Virgin Am., Inc.*, No. 15-CV-02277-JST, 2018 WL 3344316, at *6 (N.D. Cal. July 9, 2018).

The University makes no argument under the predicate facts test.

Here, the contents of the wage statements are undisputed: They don't have the required information. The instructors are not exempt, and the University does not actually argue that they are. The University knew all the facts needed to figure it out. The predicate facts are established and thus so is the scienter requirement.

The scienter requirement is not met where the problem is the result of for example, an "unintentional payroll error due to a clerical or inadvertent mistake." § 226 (e) (3). The University does not press this, and the evidence is to the contrary: There was no mistake. Philpott trial testimony at 31 (Ex A to Amended Decl. of P. Brandler (Rebuttal case) dated June 16,

2020.

The University does ask me to consider that it has "a set of policies, procedures, and practices that fully comply with this section." § 226 (e) (3). By this, the University means to point to its "Banner payroll system." University Brief at 10-11. This system we are told properly handles the wage statements of *other* employees which the University has treated as non-exempt. Id. The argument is baffling. It seems to be that the University has the systems to issue compliant wage statements, and does so for some employees, and that I should conclude therefore that it did not act knowingly and intentionally regarding the Class. But to the contrary: This is evidence that the University deliberately treated the instructors differently. The statutory language relied on by the University seems to be an extrapolation of the "clerical or inadvertence" language that precedes it, i.e., that the scienter requirement may not be met if the employer's *practice* was to issue legally required statements, but where, in fact, some non-compliant statements were, nevertheless, for some reason, issued.

This does not affect my conclusions on scienter.

The discussion of these four points completes the analysis of liability under § 226, and shows the University is liable.

Other issues

The University raises other issues which don't seem directly relevant to liability. The argument focuses on § 226 (a)'s requirement of "accurate" statements: because the Class' negotiated pay is on a per course basis, and not hourly, stating hours on the wage statement would be inaccurate. University Brief at 7-9. The argument then invokes legislative intent to support two closely related points: first, in support of the notion of accuracy, and second, that the

point of § 226 is not to make "mischief" or mislead, but to have transparency in reporting pay. Id. at 7-8. Because instructors know exactly how they are paid, and that it is done on a per course basis, the intent of the statute (transparency) is fulfilled.

I take these in reverse order.

First, the fact that the Class knows how it is paid is irrelevant. I assume most workers know how they are paid-- their rate for example, if not also the number of hours they work a week or a month. No authority suggests this moots the requirements of § 226. Courts do not conduct a factual inquiry into whether an employee knows his rate of pay before deciding his wage statement must contain that figure.

Second, legislative intent (a legal fiction at best) can be interesting but usually only in figuring ambiguous or otherwise problematic statutes. It starts with an identified ambiguous word or phrase. The analysis then often looks at extrinsic materials, such as legislative reports, debates, and so on, which pertain to the wording issue. E.g., *Coburn v. Sievert*, 133 Cal. App. 4th 1483, 1500 (2005). Here, the University's argument proceeds from the unambiguous language of the law, invokes intent, and then applies it to obviate the words of the statute. The statute does not say that transparency is required: It says that certain information such as hours and rate have to be on the wage statement. Using legislative intent to defeat the plain meaning of a statute is dubious work. E.g., *Bonome v. City of Riverside*, 10 Cal. App. 5th 14, 21 (2017); *Whaley v. Sony Computer Entm't Am.*, Inc., 121 Cal. App. 4th 479, 485 (2004).

The two cases quoted by the University are not useful, because in those cases there was a question of interpretation which does not exist here. *Ward v. United Airlines, Inc.*, 9 Cal. 5th 732, at *9 (2020) ("geographic scope of the labor protection in section 226"); *Soto v. Motel 6 Operating, L.P.*, 4 Cal. App. 5th 385, 390 (2016) (rejecting interpretation, contrary to statute's

wording, that "section 226 requires the monetary amount of earned vacation pay to be listed on each itemized wage statement"). The legislative intent which those two courts thought was pertinent doesn't necessary apply in this case where we're looking at a different language and different issues,[8] and where no ambiguity has been identified.

As an aside, I also reject Gola's legislative intent argument in support of the position that California did not pass legislation which if enacted would have made adjunct facility members exempt employee, all in an effort to suggest they are, therefore, non-exempt. Gola Brief at 10-11. "All we can know for certain is that speculation about why a later Congress declined to adopt new legislation offers a "particularly dangerous" basis on which to rest an interpretation of an existing law a different and earlier Congress did adopt." *Bostock v. Clayton Cty., Georgia*, __ U.S.__, 140 S.Ct. 1731, at *12 (2020).

Finally, we come to what may be at the heart of the University's position, which is that because the "basis for compensation" is not hourly, there is nothing to put in the wage statement. University Brief at 4:26 -5 ("There is no hourly rate of pay"); 8:18-20. Any data in that box would be inaccurate. Id. at 9. This argument by counsel tracks the same fallacy which guided his client: that one may not enter a number of hours or rate on the wage statement if the employee is not contracted to be paid by the hour. Philpott Decl. at e.g., ¶¶ 107-108. But all employees, no matter the basis of payment, and no matter how their contracts are phrased, are entitled to the § 226(a) types of data—unless excepted by e.g. subsection (j). One can imagine employees paid, as matter of contract, by the piece, by the month, by commission, or other measure; no matter.

[8] Here, for example, perhaps the legislative intent is that setting out the hourly rate is likely to lead to fewer violations of the state's minimum wage laws. E.g., *Magadia v. Wal-Mart Assocs., Inc.*, 384 F. Supp. 3d 1058, 1086 (N.D. Cal. 2019) ("While amending § 226(a), the California Legislature found that "California employers are 'chronic violators of wage and hour, safety, and tax laws.' " California Assembly Committee on Labor & Employment, Bill Analysis, A.B. 2509 (Steinberg), April 12, 2000. Given accurate wage information, employees would be more able to identify any violation of wage and hour laws, so California employers would be less likely to attempt to cheat employees.")

Insisting on the entry of the required data on the statement doesn't imply that any of those types of contracts are improper.

The other way of understanding the University here is that it is not *possible* to obtain the data to insert into the statements. For example, the instructors do their "thinking" at various times, and the University doesn't track that time. University Brief at 5:8 ff. If that were a valid impossibility excusing compliance with the statute, no wage statement could be accurate: it would be a rare employee indeed who never thought constructively about work except at the office or factory. There's no authority cited in support of the impossibility defense, and no good evidence of it. The University does not consider the feasibility of, for example, asking instructors to track their time, or that the University might limit their work time to a specific number of hours subject to an increase (or decrease), which, as it turns out, is exactly what the University does.[9] (See Letters of Appointment, Philpott Decl. ¶¶ 41, 42, referring to the Handbook, which refers to expected weekly hours of work, and the ability of the instructor to seek approval for more time. Philpot Decl., Ex E at 6 § 2.7 (Handbook); Ex F –H (Letters of Appointment).[10]

There is a slightly different way to phrase the University's position, which is that because the Class is paid by the course, and the University has thus not set an hourly rate, there simply is no "applicable" rate to put into the wage statements. The argument would rely on § 226(a)'s requirement to show "(9) all *applicable* hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate." (Emphasis supplied.) In this reading, "applicable" requires the existence of an actual hourly rate, and because the University

[9] The University's trial counsel provided a declaration, which might include either (or both) percipient or expert testimony, to the effect that the hours were only an artifact of the Affordable Care Act, essentially fake numbers. Decl. of M. Varian for Bench Trial No. 2, dated May 20, 2020 at ¶¶ 17 ff. Compare, CRPC Rule 3.7 (Lawyer as Witness). Even so, the mechanism seems reasonable, which is to state numbers of hours and allow for modifications.

[10] The University's witness Mr. Philpott thought tracking time would reduce "morale and enthusiasm," Philpott Decl. ¶ 98. Maybe. Every lawyer who's tracked time for his or her entire professional career in six-minute increments will understand the testimony. It's not evidence of impossibility, unfortunately.

didn't set one, it doesn't exist. There are two sorts of problems with this reading. First, the logic allows an employer easily to devise a compensation system which undermines the statute; if the employer insists on paying by the week or other period, or every time there's a full moon, there would be under this logic no applicable hourly rate. This makes little sense. Compare *Skyline Homes, Inc. v. Dep't of Indus. Relations*, 165 Cal. App. 3d 239, 249 (1985) (calculating hourly rate based on work week), *disapproved of on separate grounds, Tidewater Marine W., Inc. v. Bradshaw*, 14 Cal. 4th 557 (1996). Secondly, § 226 was amended to *delete* the constraint that hourly rates had to be reported only for hourly workers, and opened it up to a requirement that applied to wage statement for *any* non-exempt employee. Plaintiff's Supplemental Request for Judicial Notice dated July 2, 2020, Ex. M, Legislative Counsel's Digest (AB 2509) at p.18 (showing redlines to older version of statute).

These arguments from the University do not affect liability.

Statutory Damages

The unchallenged evidence on damages calculation shows statutory damages are $1,621,600. Kriegler Decl. ¶ 22.

PAGA

1. *Liability*

The University's arguments against PAGA liability are these: (1) The underlying § 226 violation has not been established; (2) The PAGA notice was insufficient, (3) Gola is not "aggrieved" because she did not look at her pay stubs (wage statements). The first issue is disposed of above.

The notice was sufficient. While Gola sent a series of notice letters to the Labor & Workforce Development Agency (LWDA), counsel clarified at the July 9 hearing that he relied solely on the January 30, 2018 notice. Decl. A Cherniak, dated April 20, 2020, Ex. A at page 18. The University says that notice does not meet "specificity requirements," in that it just complains the adjunct instructors are not treated as "piece workers," which is not the issue litigated here. University Brief at 15. It's true the notice complains about the piece worker issue, but it also expressly, and repeatedly, cites § 226 and complains that the wage statements don't show the hours worked or the applicable rate, and provides factual support. In fact, the University does not argue that the notice doesn't sufficiently describe "facts and theories supporting the violation," *Brown v. Ralphs Grocery Co.*, 28 Cal. App. 5th 824, 835 (2018). Rather, the University's position is that the additional claims –the piece work issue—in effect voids the LWDA notice as to other issues. I am unaware of authority for the proposition that a PAGA plaintiff must prosecute every theory set out in a notice; and it would bad policy, encouraging useless litigation, if there were such authority. A notice with more than one theory still allows the LWDA "to decide whether to allocate scarce resources to an investigation" and "the employer to submit a response to the agency," *Williams v. Superior Court*, 3 Cal. 5th 531, 546 (2017). And that's the point of the notice.

As to the third issue—whether Gola is "aggrieved"—I note that the term is defined by law: an "aggrieved employee" means any person who was employed by the alleged violator and against whom one or more of the alleged violations was committed. *Williams v. Superior Court*, 237 Cal. App. 4th 642, 649 (2015), quoting Lab. C. § 2699 (c). One can cite cases without end, e.g., *Kim v. Reins Int'l California, Inc.*, 9 Cal. 5th 73, 82 (2020), but it won't change what is, at least in our context, a definition as straightforward as one could wish for. As noted above, the

University's notion that the pay stub has to be viewed before an employee could be the subject of a violation conjures an element of the offense which is not in the statute, and whether she did or not is immaterial. Having found above that the University is liable to Gola (and the Class) for violating § 226, it is impossible to me to also find that she was not aggrieved.[11]

2. *Penalties*

A. Parties' contentions

The parties agree I have substantial discretion in imposing penalties. The University argues the court's discretion on assessing penalties should be "fully exercised" to impose "only the most minute of PAGA penalties," University Brief at 18. The reasons are: the University had a Banner system which produces compliant wage statements; compensation was the result of negotiations with the union; the University's good faith; there was no injury (e.g., Gola proves no loss of wages); and penalties will reduce funds available for education of the students. University Brief 18-19.

There's no evidence a penalty will affect students' educations, and it's not self-evident. The University also invokes the good works of its students, University Brief at 19-20. I don't dispute this last point, but I put no more weight on students' good efforts than I would increase penalties because students behaved badly.

Gola seeks 100% of the potential penalties, i.e. $3,634,900. Gola Brief at 27; B. Kriegler Decl. dated April 17, 2020 at page 14). The University does not dispute this is the maximum penalty. Gola notes the University has never thought about compliance with state law such as §

[11] Indeed, I would have expected to see this argument set out in opposition to class certification, since it might pose a serious individual issue, blocking certification, to determine whether every member of a proposed class did or didn't view some or each of the paystubs. But the parties stipulated to certification, entailing an agreement that there are no such disqualifying individual issues.

226, i.e., made no serious attempt to comply with law; the University knows—at least now—that other universities understand their part time adjuncts to be non-exempt; the penalty would represent less than one half percent of total assets; and other cases have awarded penalties in about the same amount as the statutory damages. Gola Brief at 25 ff. To this day, the University has made no move to issue wage statements showing hours and rate.

B. *Authorities*

It is difficult to extract much guidance from the authorities, so I have taken the opportunity to examine the issues at some length.

1. *Basic rules*

I am to avoid an award that is unjust, arbitrary, oppressive, or confiscatory. Lab. C. § 2699(e) (2); CALIFORNIA CIVIL PRACTICE EMPLOYMENT LITIGATION § 5:3.50 (as of March 2020 Update), citing *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504 (2018); Leonora M. Schloss, Cari A. Cohorn, "Assessing the Amended Labor Code Private Attorneys General Act," *L.A. Law.*, 13, 16 (February 2006). The point is to "punish and deter employer practices that violate the rights of numerous employees," *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal. 4th 348, 384 (2014); see also *Villacres v. ABM Indus. Inc.*, 189 Cal. App. 4th 562, 581 (2010) (penalty "serves a public interest similar to that of other law enforcement statutes"). The Class here has by definition already been compensated by the award of statutory damages; the PAGA penalties are not imposed to benefit the employees, *Lopez v. Friant & Assocs., LLC*, 15 Cal. App. 5th 773, 780 (2017), and in that sense at least the Class has no interest in the amount imposed.

2. *Use of class action settlements*

Looking at settlements involving PAGA and class actions is useless. E.g., *Magadia v.*

Wal-Mart Assocs., Inc., 384 F. Supp. 3d 1058, 1101 (N.D. Cal. 2019). The parties in those cases, specifically plaintiffs (defendants don't care), have much incentive to allocate funds to the class claims and not to the PAGA claims, even when the possibility of substantial PAGA penalties is wielded during negotiations to argue for large settlements, because so much of the PAGA penalties go to the state. See generally, *Nordstrom Com. Cases*, 186 Cal. App. 4th 576, 589 (2010) (zero dollars to PAGA penalties); *O'Connor v. Uber Techs., Inc.*, 201 F. Supp. 3d 1110, 1134 (N.D. Cal. 2016); *Cotter v. Lyft, Inc.*, 176 F. Supp. 3d 930, 932, 941 (N.D. Cal. 2016); Matthew J. Goodman, "The Private Attorney General Act: How to Manage the Unmanageable," 56 *Santa Clara L. Rev.* 413, 440 (2016).

3. General factors

Factors may include the defendant's ability to pay (not raised here), whether there have been attempts to correct the violations before or after the suit was filed (not here); whether there were prior complaints (apparently here there were not), and whether employees suffered no injury, at least in the sense of no lost wages (which is the case here considering solely the § 226 claim). Kenneth D. Sulzer, Robert A. Escalante, "Uncertain Waivers While California Courts Follow Iskanian, Most Federal Courts Have Sharply Criticized Its Preemption Analysis," *L.A. Law.* 20, 24–26 (October 2015), citing on the last issue *Fleming v. Covidien Inc.*, No. (OPX), 2011 WL 7563047, at *4 (C.D. Cal. Aug. 12, 2011). *Fleming* thought it relevant that (as is may be true here) the defendant did not know it was violating the law, although unlike here the defendant in *Fleming* "took prompt steps to correct all violations once notified." *Fleming* issued a penalty of just under 18% of the maximum. *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 529 (2018) noted a reduction to 10%, apparently, based on "good faith attempts" to comply with meal break obligations and because the court found the violations were minimal.

Another reason to discount is the fact that employees can, from various sources (including their own memory and records, if they cared to keep them), figure out the rate, even if the wage statements are not compliant. E.g., *Aguirre v. Genesis Logistics*, No. SACV1200687JVSANX, 2013 WL 10936035, at *2 (C.D. Cal. Dec. 30, 2013), noting the adverse fact that the defendant there, like the one here, was still not in compliance.

The penalties may be reduced "for technical violations that cause no injury," and I should assess if the "violation was inadvertent." *Raines v. Coastal Pac. Food Distributors, Inc.*, 23 Cal. App. 5th 667, 681 (2018). One court considered the duplicative effect of statutory and PAGA penalties. *Aguirre v. Genesis Logistics*, No. SACV1200687JVSANX, 2013 WL 10936035 (C.D. Cal. Dec. 30, 2013).

4. Variance in cases

Some courts evaluate penalties as a discount from the maximum, some compare the penalties to the other damages (e.g. statutory damages) and consider the ratio, e.g. *Magadia v. Wal-Mart Assocs., Inc.*, 384 F. Supp. 3d 1058, 1101 (N.D. Cal. 2019). The cases vary widely. As *Magadia* noted, there are penalties of 30% of the maximum sought (where "defendants attempted to comply with the law"), 28%, and 18% (where defendants were not aware they were violating the law and took prompt steps to correct once notified). *Magadia* awarded 20% of the maximum, 384 F. Supp. 3d at 1104, and 36%, id. at 1100. A judge was affirmed in the award of 10% of the maximum penalty, because there were "'good faith attempts' to comply with meal break obligations and because the court found the violations were minimal." *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 529 (2018). Where there were very significant damages (over $45 million), a different judge awarded 75% of the requested penalties. *Bernstein v. Virgin Am., Inc.*, 365 F. Supp. 3d 980, 991, 992 (N.D. Cal. 2019) (appeal filed). In *Thurman v.*

Bayshore Transit Mgmt., Inc., 203 Cal. App. 4th 1112, 1136 (2012*), disapproved of on separate issue by ZB, N.A. v. Superior Court,* 8 Cal. 5th 175 (2019), the maximum was apparently reduced by 30 percent, i.e., it seemed to impose 70% of the maximum. Id. at 1135. There was a twist in *Aguirre v. Genesis Logistics*, No. SACV1200687JVSANX, 2013 WL 10936035 (C.D. Cal. Dec. 30, 2013). The underlying statutory award was $441,000. Id. at *2. The maximum PAGA penalties were $1.8 million. Id. The court appears to have imposed penalties of $500,000—over 100% of the statutory penalties—and threatened up to another $500,000 if the defendant did not come into compliance in the future. Id. at *3.

In each of these cases the selection of a specific percentage of the maximum penalty may be arbitrary, but despite that, as a whole they provide a range--one might say they create a market—of 10% to 100%.

5. Three approaches

As noted, some cases adjust the percentage of the maximum PAGA penalties (which is the direct statutorily prescribed procedure), others evaluate the propriety of the absolute number of dollars awarded, and others review the ratio of PAGA penalties to damages (statutory or actual). The three approaches are compatible, and some cases at least note more than one, even if they do not rely on all of them.

The approaches suggest this framework to evaluate PAGA penalties:

1. Absolute dollars. We may compare the absolute dollars of the penalty to the wealth or ability to pay of the defendant to avoid an "oppressive, or confiscatory" award. Lab. C. § 2699(e) (2). That's what we do in punitive damages cases, and these can provide insight. For example, they tend to look not at gross, but net, assets. "[T]he purpose of punitive damages is not served by financially destroying a defendant. The purpose is to deter, not to destroy."

Bankhead v. ArvinMeritor, Inc., 205 Cal. App. 4th 68, 78 (2012) (internal quotes removed). And on the other hand, "obviously, the function of deterrence ... will not be served if the wealth of the defendant allows him to absorb the award with little or no discomfort." Id. (internal quotes removed); *Baxter v. Peterson*, 150 Cal. App. 4th 673, 680 (2007). See e.g., *Little v. Stuyvesant Life Ins. Co.*, 67 Cal. App. 3d 451, 469 (1977) ("reasonable relationship to the net assets"). I don't know what the University's net assets are (Gola argues from its "total assets," Gola Brief at 4:20; 28:14), see Philpott Trial Testimony / Decl. dated May 19, 2020 at ¶ 24 and Ex. A at p.69 (2018 budget of $457 million, tuition income of $410 million, plus additional "tuition budget"), and total assets around $1 billion (Ex A at 65). The endowment provides substantial assistance to the operating budget. Id. at p.66. In any event, the University has not claimed that the PAGA penalties would be in this sense confiscatory or oppressive, so there is no further need to discuss this approach.

2. The ratio of damages (actual or statutory) to the PAGA penalties. This may be evaluated as a court determines if a penalty is "unjust" or "arbitrary". It is a proportionality analysis, and a similar operation (although with a very different set of accepted ratios) is undertaken in punitive damages cases. E.g., *Simon v. San Paolo U.S. Holding Co.*, 35 Cal. 4th 1159, 1183 (2005). A number of courts have approved penalties of 100% of the damages. E.g., *Magadia v. Wal-Mart Assocs., Inc.*, 384 F. Supp. 3d 1058, 1100 (N.D. Cal. 2019), cf., *Aguirre v. Genesis Logistics*, No. SACV1200687JVSANX, 2013 WL 10936035 (C.D. Cal. Dec. 30, 2013) (apparently in excess of 100% of damages). In some cases, there do not seem to have been any statutory or actual damages, so this type of calculation was not available. E.g., *Carrington v. Starbucks Corp.*, 30 Cal. App. 5th 504, 517 (2018); *Jordan v. NCI Grp., Inc.*, No. EDCV161701JVSSPX, 2018 WL 1409590, at *3 (C.D. Cal. Jan. 5, 2018). Generally, courts do

not seem to rely on the ratio approach, even when it is mentioned.

3. The "unjust" statutory test of Lab. C. § 2699(e) (2) seems to be best handled in the context of assessing the percentage of maximum penalty to award. I do so below. I have noted a spectrum of 10%-100%.

6. *Punishment & Deterrence*

I am to focus on punishment and deterrence, according to *Iskanian*.

Punishment is, I assume, proportional to the two related facets of culpability: severity of the offense and the defendant's scienter. Here, we have a failure to report numbers the Class itself could determine in some way, and no delay or cheating on wages, and no evidence that the wage statement issue was in aid of such a scheme. PAGA penalties rise rapidly with the number of employees affected, even when the employer has in effect made a single decision to e.g. leave out a number from the wage statement. That is understandable in the sense that many employees are affected, but the high penalties are not necessarily proportionate to the culpability of the employer.[12]

The scienter is moderate: worse than innocent error, better than deliberate. I conclude that punishment considerations warrant a penalty at the lower end of the spectrum.

Deterrence is a more delicate issue, and our commonsense notions of what it takes to deter either this University (specific deterrence), or others considering the penalties imposed (general deterrence), are not reliable guides. David A. Dana, "Rethinking the Puzzle of Escalating Penalties for Repeat Offenders," 110 *Yale L.J.* 733, 735 (2001); Eric Rasmusen, "How Optimal Penalties Change with the Amount of Harm," 15 *Int'l Rev. L. & Econ.* 101 (1995)

[12] E.g., assuming "the PAGA penalty of $200 per week is triggered; for one employee, a potential recovery of more than $40,000 would amount; this sum is then multiplied by 10,000 employees, and, the employer now faces a litigation risk of $400 million." Matthew J. Goodman, "The Private Attorney General Act: How to Manage the Unmanageable," 56 *Santa Clara L. Rev.* 413, 440 (2016) (note omitted).

(correlation of penalties and harm, which seems a matter of common sense, is often not correct). For example, it is unwise to presume that the maximum penalty should be exacted to secure maximum deterrence, as obvious as that might seem, because there are costs to over-deterrence. Those costs include:

- an equivalence of the culpability of trivial[13] and serious offenses, where the message is that e.g., murder is the same as jaywalking; which wrongly skews the moral weight of court judgments;
- encouraging the approach of 'might as well be hung for a sheep as lamb' where employers may calculate that the great benefits of serious offenses (such as e.g. outright wage theft or denying all breaks) are worth it, if they are to reap as serious consequences of more minor offenses with fewer benefits to the employer;[14]
- resources are misallocated in at least two ways:
    - plaintiffs and their lawyers have the same economic incentive to prosecute trivial offenses as serious offenses, and so will not pursue as often the more serious offenses such as (in the employment context) outright wage theft;[15] nor will they spend as much, if any, resources distinguishing between trivial and serious offenses; and
    - employers wishing to comply with law and faced with serious consequences for more trivial offenses may spend as many resources guarding against those as they do the more serious offenses, and where employers' resources are limited—and

[13] I use the word "trivial" and "minor" only as a rhetorical devices to contrast more serious offenses; I do not mean technical or other violations including those at stake in this case are actually trivial.

[14] See e.g., Peter D. Nestor, Comment, "When the Price Is Too High: Rethinking China's Deterrence Strategy for Robbery," 16 *Pac. Rim L & Pol'y J.* 525 (2007), available at: https://digitalcommons.law.uw.edu/wilj/vol16/iss2/9 (failures of China's death penalty and mass executions for robbery as well as more serious crimes such as murder).

[15] On wage theft, see e.g., Jennifer J. Lee, Annie Smith, "Regulating Wage Theft," 94 *Wash. L. Rev.* 759 (2019); Jeremy Blasi, "Using Compliance Transparency to Combat Wage Theft," 20 *Geo. J. on Poverty L. & Pol'y* 95, 96 (2012).

they always are—this can result in fewer resources to guard against serious offenses;

- in the context of PAGA, high PAGA penalties may confusingly skew class actions settlements in cases with both types of claims, as discussed above, and may result in the LWDA getting far less than it should;
- as stakes rise in a case, i.e., where very high penalties are available, the parties will spend more on litigation, and courts, under doctrines of proportionality, will permit high spending on discovery;[16] this may be a misallocation of resources (of the parties *and* the courts) when the subject matter of the suit is a relatively trivial offense. The impact on plaintiffs is not however the same as it is on defendants, because while defendants lose 100% of the penalties they pay, plaintiffs only get 25%. E.g., *Atempa v. Pedrazzani*, 27 Cal. App. 5th 809, 828 (2018).

For these reasons, we should be as alert to over-deterrence as under deterrence.

Typically, effective deterrence is a function of either (a) low-penalty-high-enforcement or (b) high-penalty-low-enforcement schemes. Michael W. Carroll, "When Congress Just Says No: Deterrence Theory and the Inadequate Enforcement of the Federal Election Campaign Act," 84 *Geo. L.J.* 551, 566 (1996). Research from other areas such as criminal penalties suggests that the severity of punishment is not as reliable a deterrence as certainly of punishment; to be more precise, the "certainty of apprehension" is a far more powerful deterrent. Daniel S. Nagin, "Deterrence in the Twenty-First Century," 42 *Crime & Just.* 199 (2013). This seems to suggest, again, that a low-penalty-high-enforcement scheme works. This is confirmed by other studies of corporate compliance:

[16] E.g., Weil & Brown, et al., CALIFORNIA PRACTICE GUIDE: CIVIL PROCEDURE BEFORE TRIAL ¶ 8:74.1 (Rutter: 2020); Fed. R. Civ. P. 26(b)(2)(C); Craig B. Shaffer, "The 'Burdens' of Applying Proportionality," 16 *Sedona Conf. J.* 55, 123 n.36 (2015).

> We find partial support for the certainty of detection as a predictor of both self-reported and officially recorded compliance but no support for the certainty or severity of sanctioning. The narrow range of sanctions available in the particular regulatory domain studied (regulation of nursing home quality) has enabled a fuller specification than was possible in previous studies of an expected utility model for all available sanctions. Managers' expected corporate disutility from all sanctions fails to explain compliance. Deterrence does not work significantly more effectively for chief executives (a) of for-profit versus nonprofit organizations, (b) who are owners compared with those who are not owners, (c) who say they think about sanctions more (sanction salience), (d) who may better fit the rational choice model in that they are low on emotionality, (e) who have a weaker belief in the law. Nor is deterrence more effective when compliance costs are low.

John Braithwaite et al., "Testing an Expected Utility Model of Corporate Deterrence," 25 *Law & Soc'y Rev.* 7 (1991) (emphasis supplied); see also id. at 35-36. See e.g., Alex Raskolnikov, "Crime and Punishment in Taxation: Deceit, Deterrence, and the Self-Adjusting Penalty," 106 *Colum. L. Rev.* 569 (2006) ("likelihood of detection" corelating with deterrence).

Given the qui tam nature of the PAGA action, together with the availability of attorney fees and statutory damages, we have a high enforcement scheme. This suggests a lower penalty scheme is probably sufficient to deter.[17] I also note that in this specific case, based on the patent absence of hours and rates on the wage statements, the likelihood of detection is very high (as opposed to other sorts of cases, such as wage theft, where it can be difficult to discover the offense).

The University has pointed me to the fact that it is an educational, nonprofit institution. The rights of the employees and need for enforcement, of course, are exactly the same as they are in any other context. The University does not point me to any authority on California's

[17] I note one court's view that $150,000 is a "substantial penalty" and "has a substantial deterrent effect on NCI and other California employers." *Jordan v. NCI Grp., Inc.*, No. EDCV161701JVSSPX, 2018 WL 1409590, at *3 (C.D. Cal. Jan. 5, 2018). Nothing except PAGA penalties was awarded in this PAGA settlement, the sum was some undisclosed % of the maximum but clearly under 33%, and it is not apparent why the court thought this sum had a deterrent effect. The sum was awarded in a case with allegations far more serious than those here, i.e., "(1) failure to provide meal periods; (2) failure to provide rest periods; (3) failure to issue itemized wage statements; (4) failure to pay wages due and payable twice each calendar month; (5) failure to pay wages due upon demand; (6) failure to issue notice of pay; and (7) failure to pay wages due upon termination." However, all of the employee portion of the penalties (i.e., 25%) went to one person, the plaintiff, suggesting only one person was aggrieved.

policy regarding penalties and nonprofits. I have found some vague support for the notion that penalties which would impact others might for that reason be reduced. Cf., *Notrica v. State Comp. Ins. Fund,* 70 Cal. App. 4th 911, 952 (1999) (punitive damages); Daniel A. Barfield, "Notes," 29 *Val. U. L. Rev.* 1193, 1222 (1995) (noting rationale that penalties could affect innocent donors to non-profits). But I also see arguments that some nonprofits may be more in need of constraints and deterrence than for-profit companies (which may have better oversight). E.g., Denise Ping Lee, "The Business Judgment Rule: Should It Protect Nonprofit Directors?," 103 *Colum. L. Rev.* 925, 935 (2003).

Finally, two other factors.

First, we want a penalty that exceeds the cost of compliance. Here, that is difficult to evaluate: the cost seems to be tracking time, and we don't know what that cost is; it might not be much, as the University already has the computer systems needed, and might for example just tell instructors to track their time. But there is insufficient evidence for me to consider this.

The last factor can be significant; but it too is not the subject of anything in the record. This is the role of competing norms. Corporate decision makers may be motivated by quarterly profits and advancement; not-for-profit officers may be motivated by various factors, and officers all stripes may be motivated by reputational interests such as efficiency, and saving money including low legal compliance costs, and so on. See generally, Jodi L. Short, "Competing Normative Frameworks and the Limits of Deterrence Theory: Comments on Baker and Griffith's Ensuring Corporate Misconduct," 38 *Law & Soc. Inquiry* 493, 504 (2013). But, as I say, there's nothing in the record to assist me in deciding how much of a penalty I must impose

to overcome competing norms.[18]

C. Calculations

The mandate to impose a 'just' penalty I take as a directive that I evaluate punishment and deterrence; and the mandate not to be 'arbitrary' is a directive to tailor the penalty to the facts of this case and have a reasonable basis for the adjustment that I make.

General Remarks on the University's role. While the University had a good faith argument, it is more akin to reckless ignorance of the law: the University seemed to think that if the Union did not raise a fuss, and the University's practices were consistent with its view of federal law, there was nothing to worry about. This is reckless. The defendant is not a small business suffering financial or other impediments in obtaining legal advice. But the University did not act with malice, or with an ulterior motive of cheating the Class; the Class did not suffer injury in the sense of lost or delayed wages as a result of the claim decided here; and –perhaps concomitantly—the Union saw no harm in the practice. The statutory penalties are already substantial, and together with the costs of suit—and plaintiffs intend to seek their attorneys' fees—substantial additional PAGA penalties in the range of $3.5 million won't impose materially more punishment and deterrence than would lesser penalties. But I note that the anticipated cost of suit, even after it was filed and the University was familiar with Gola's theory, was insufficient to deter the University: as I say, it has still not issued compliant wage statements.

Punishment. Moral culpability: this is low. There was no 'harm' in the sense of lost breaks or wages, or delayed compensation; there were no prior complaints; the Union was satisfied with the status quo, as far as we can tell; the Class could figure out the time and rate

[18] These last two factors, and perhaps some of the others, are difficult to ascertain and so likely would incur substantial discovery and other litigation costs to determine. It can be more efficient to gloss over some factors in favor of a rougher justice than to seek disproportionally costly precision.

from a variety of sources (such as their memories and records if they wished to keep them), even if not from the wage statements. Scienter: this is low, or moderate: it is either reckless, which is my view, or at least negligent. The University did not act in aid of scheme to injure the Class. Reviewing other cases imposing penalties, the punishment interests here could warrant something in the area of 10-30% of the maximum penalty.

Deterrence. In this particular case it is difficult to know what would have deterred the University (specific deterrence), as the University didn't think it had violated § 226, and as far as I can tell, still doesn't. One cannot deter with any kind of a fine a driver who thinks she's driving below the speed limit. But a penalty here will help the University think through what I have termed the fallacy at heart of its approach, which is to believe that only people who are contracted to be paid on an hourly basis are entitled to wage statements in full compliance with §226 (a). General deterrence is obviously furthered by a penalty. Given a scheme of high enforcement, already encouraged by attorneys' fees awards and statutory damages, and with the specific type of patent violation we have here, a lower penalty is warranted by these deterrence considerations.

I conclude that a penalty of 15% of the maximum, which is $545,235.00, is the appropriate penalty.

Conclusion

The University is liable for Labor Code § 226 violations, and must pay statutory damages of $1,621,600.00 for the period March 15, 2017 through and including January 3, 2020. PAGA penalties for the period March 15, 2017 through and including January 3, 2020 are an additional $545,235.00.

Plaintiffs' counsel should promptly prepare a proposed judgment, reflecting rulings of the court on each claim (and the proper allocation of penalties,[19]) present it to defense counsel allowing five days for comment, make such modifications as seem reasonable, and present the result to me together with any views from the University which Gola's counsel did not adopt.

I suggest the parties seek agreement on costs and fees before filing motions for those sums.

Dated: August 10, 2020

Curtis E.A. Karnow
Judge Of The Superior Court

[19] See e.g., *Moorer v. Noble L.A. Events, Inc.*, 32 Cal. App. 5th 736, 742 (2019); M. Chin, et al., CALIFORNIA PRACTICE GUIDE: EMPLOYMENT LITIGATION ¶ 17:760 (Rutter: 2019).

CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6(6) & CRC 2.260(g))

I, DANIAL LEMIRE, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On AUG 11 2020, I electronically served THE ATTACHED DOCUMENT via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: AUG 11 2020

T. Michael Yuen, Clerk

By: _____
DANIAL LEMIRE, Deputy Clerk

EXHIBIT D

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

KELLY GOLA, ET AL. Plaintiff, vs. UNIVERSITY OF SAN FRANCISCO, Defendant.	Case No. CGC – 18-565018 **Judgment**

The Court conducted a bench trial on Plaintiff Kelly Gola's Second and Fifth Causes of Action in her operative First Amended Complaint, alleging violations of California Labor Code § 226(a) and - (e) and the Private Attorneys General Act (Labor Code § 2698 et seq.) based on the alleged violations of Labor Code § 226(a). Prior to those proceedings, the Court conducted a bifurcated bench trial on Defendant's claim that various of Plaintiff's causes of action were barred by federal pre-emption.

Plaintiff Kelly Gola, the Class and Aggrieved Employees were represented by Julian Hammond, Polina Brandler, and Ari Cherniak of HammondLaw, P.C., and Morris J. Baller, Of Counsel to Goldstein, Borgen, Dardarian & Ho. Defendant University of San Francisco was represented by Michael J. Vartain and Kathryn Burke of Vartain Law Group, P.C.

The Court now enters this judgment:

1. That Plaintiff Kelly Gola and the Class, as defined in the Amended Stipulation and Order for Class Certification, dated January 9, 2020, have judgment on her Second Cause of Action against Defendant University of San Francisco in the sum of $1,621,600.00 for statutory

penalties for the Labor Code § 226(e) violations for the period of March 15, 2017 through January 3, 2020.[1]

2. That Plaintiff Kelly Gola, members of the Class, and the Aggrieved Employees, as defined in Plaintiff's PAGA Notice dated January 30, 2018, have judgment on her Fifth Cause of Action, to the extent based on the violations alleged in her Second Cause of Action, against Defendant University of San Francisco in the sum of $545,235.00 for PAGA penalties pursuant to Labor Code § 2699(f)(2) for the period of January 30, 2017 through January 3, 2020. Of this amount, 75% or $408,926.25 shall be paid to the California Labor Workforce and Development Agency (LWDA), and 25% or $136,308.75 shall be paid to Plaintiff Kelly Gola as an aggrieved employee and the other Aggrieved Employees, pro rata based on the number of pay periods worked between January 30, 2017 and January 3, 2020.

3. That Defendant University of San Francisco have judgment against Plaintiff on her First Cause of Action.

4. That Defendant University of San Francisco have judgment against Plaintiff on her Third Cause of Action.

5. That Defendant University of San Francisco have judgment against Plaintiff on her Fourth Cause of Action to the extent it is based on violations alleged in her First and Third Causes of Action, pursuant to the Ruling entered March 8, 2019.

6. That Defendant University of San Francisco have judgment against Plaintiff on her Fifth Cause of Action to the extent it is based on violations alleged in her First and Third Causes of Action, pursuant to the Ruling entered March 8, 2019.

[1] The Statement of Decision contains an error; the correct dates are in this Judgment.

7. That Defendant University of San Francisco have judgment against Plaintiff's Fourth Cause of Action to the extent it is based on the violations alleged in her Second Cause of Action, as Plaintiff abandoned the claim.

8. That Plaintiff Kelly Gola, as the prevailing party shall recover from Defendant University of San Francisco statutory costs in the amount of $__ by Memorandum of Costs, and reasonable attorneys' fees and costs in the amounts $___ by further proceedings as specified in the Statement of Decision filed on August 10, 2020. These costs and attorneys' fees, when determined, shall be incorporated into an amended judgment.

Dated: August 20, 2020

Curtis E.A. Karnow
Judge of the Superior Court

CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6(6) & CRC 2.260(g))

I, DANIAL LEMIRE, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On AUG 20 2020, I electronically served THE ATTACHED DOCUMENT via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: AUG 20 2020

T. Michael Yuen, Clerk

By: _____
DANIAL LEMIRE, Deputy Clerk

CM-010

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):
Julian Hammond (SBN 268489)
HammondLaw, P.C.
11780 W Sample Rd., Suite 103
Coral Springs, FL 33065
TELEPHONE NO.: (310) 601-6766 FAX NO.: (310) 295-2385
ATTORNEY FOR (Name): Dan Beck and Bienvenida Salazar

FOR COURT USE ONLY

FILED
Superior Court of California
County of San Francisco

JAN 05 2021

CLERK OF THE COURT
BY: Deputy Clerk
ROWMAN LIU

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco
STREET ADDRESS: 400 McAllister Street
MAILING ADDRESS:
CITY AND ZIP CODE: San Francisco 94102
BRANCH NAME: Civic Center Courthouse

CASE NAME:
Beck v. University of San Francisco

CIVIL CASE COVER SHEET

☑ **Unlimited** (Amount demanded exceeds $25,000) ☐ **Limited** (Amount demanded is $25,000 or less)

Complex Case Designation

☐ Counter ☐ Joinder

Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)

CASE NUMBER: CGC -21 -588930

JUDGE:

DEPT:

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:

Auto Tort
- ☐ Auto (22)
- ☐ Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
- ☐ Asbestos (04)
- ☐ Product liability (24)
- ☐ Medical malpractice (45)
- ☐ Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort
- ☐ Business tort/unfair business practice (07)
- ☐ Civil rights (08)
- ☐ Defamation (13)
- ☐ Fraud (16)
- ☐ Intellectual property (19)
- ☐ Professional negligence (25)
- ☐ Other non-PI/PD/WD tort (35)

Employment
- ☐ Wrongful termination (36)
- ☑ Other employment (15)

Contract
- ☐ Breach of contract/warranty (06)
- ☐ Rule 3.740 collections (09)
- ☐ Other collections (09)
- ☐ Insurance coverage (18)
- ☐ Other contract (37)

Real Property
- ☐ Eminent domain/Inverse condemnation (14)
- ☐ Wrongful eviction (33)
- ☐ Other real property (26)

Unlawful Detainer
- ☐ Commercial (31)
- ☐ Residential (32)
- ☐ Drugs (38)

Judicial Review
- ☐ Asset forfeiture (05)
- ☐ Petition re: arbitration award (11)
- ☐ Writ of mandate (02)
- ☐ Other judicial review (39)

Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403)
- ☐ Antitrust/Trade regulation (03)
- ☐ Construction defect (10)
- ☐ Mass tort (40)
- ☐ Securities litigation (28)
- ☐ Environmental/Toxic tort (30)
- ☐ Insurance coverage claims arising from the above listed provisionally complex case types (41)

Enforcement of Judgment
- ☐ Enforcement of judgment (20)

Miscellaneous Civil Complaint
- ☐ RICO (27)
- ☐ Other complaint *(not specified above)* (42)

Miscellaneous Civil Petition
- ☐ Partnership and corporate governance (21)
- ☐ Other petition *(not specified above)* (43)

2. This case ☑ is ☐ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
   a. ☐ Large number of separately represented parties
   b. ☑ Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
   c. ☑ Substantial amount of documentary evidence
   d. ☑ Large number of witnesses
   e. ☐ Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
   f. ☑ Substantial postjudgment judicial supervision
3. Remedies sought *(check all that apply)*: a. ☑ monetary b. ☑ nonmonetary; declaratory or injunctive relief c. ☐ punitive
4. Number of causes of action *(specify)*: six (6)
5. This case ☑ is ☐ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. *(You may use form CM-015.)*

BY FAX

The Related Action styled as Gola v. University of San Francisco, Case No. CGC-18-565018 (San Francisco Superior Cnty. Ct.) was assigned to, tried and decided by Hon. Curtis Karnow

Date: January 4, 2021
Julian Hammond
(TYPE OR PRINT NAME)

J. Hammond
(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE
- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Form Adopted for Mandatory Use
Judicial Council of California
CM-010 [Rev. July 1, 2007]

CIVIL CASE COVER SHEET

Cal. Rules of Court, rules 2.30, 3.220, 3.400–3.403, 3.740,
Cal. Standards of Judicial Administration, std. 3.10
www.courtinfo.ca.gov

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you must complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than $25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort
- Auto (22)–Personal Injury/Property Damage/Wrongful Death
- Uninsured Motorist (46) *(if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto)*

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
- Asbestos (04)
  - Asbestos Property Damage
  - Asbestos Personal Injury/Wrongful Death
- Product Liability *(not asbestos or toxic/environmental)* (24)
- Medical Malpractice (45)
  - Medical Malpractice–Physicians & Surgeons
- Other Professional Health Care Malpractice
- Other PI/PD/WD (23)
  - Premises Liability (e.g., slip and fall)
  - Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
  - Intentional Infliction of Emotional Distress
  - Negligent Infliction of Emotional Distress
  - Other PI/PD/WD

Non-PI/PD/WD (Other) Tort
- Business Tort/Unfair Business Practice (07)
- Civil Rights (e.g., discrimination, false arrest) *(not civil harassment)* (08)
- Defamation (e.g., slander, libel) (13)
- Fraud (16)
- Intellectual Property (19)
- Professional Negligence (25)
  - Legal Malpractice
  - Other Professional Malpractice *(not medical or legal)*
- Other Non-PI/PD/WD Tort (35)

Employment
- Wrongful Termination (36)
- Other Employment (15)

Contract
- Breach of Contract/Warranty (06)
  - Breach of Rental/Lease Contract *(not unlawful detainer or wrongful eviction)*
  - Contract/Warranty Breach–Seller Plaintiff *(not fraud or negligence)*
  - Negligent Breach of Contract/Warranty
  - Other Breach of Contract/Warranty
- Collections (e.g., money owed, open book accounts) (09)
  - Collection Case–Seller Plaintiff
  - Other Promissory Note/Collections Case
- Insurance Coverage *(not provisionally complex)* (18)
  - Auto Subrogation
  - Other Coverage
- Other Contract (37)
  - Contractual Fraud
  - Other Contract Dispute

Real Property
- Eminent Domain/Inverse Condemnation (14)
- Wrongful Eviction (33)
- Other Real Property (e.g., quiet title) (26)
  - Writ of Possession of Real Property
  - Mortgage Foreclosure
  - Quiet Title
  - Other Real Property *(not eminent domain, landlord/tenant, or foreclosure)*

Unlawful Detainer
- Commercial (31)
- Residential (32)
- Drugs (38) *(if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential)*

Judicial Review
- Asset Forfeiture (05)
- Petition Re: Arbitration Award (11)
- Writ of Mandate (02)
  - Writ–Administrative Mandamus
  - Writ–Mandamus on Limited Court Case Matter
  - Writ–Other Limited Court Case Review
- Other Judicial Review (39)
  - Review of Health Officer Order
  - Notice of Appeal–Labor Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)
- Antitrust/Trade Regulation (03)
- Construction Defect (10)
- Claims Involving Mass Tort (40)
- Securities Litigation (28)
- Environmental/Toxic Tort (30)
- Insurance Coverage Claims *(arising from provisionally complex case type listed above)* (41)

Enforcement of Judgment
- Enforcement of Judgment (20)
  - Abstract of Judgment (Out of County)
- Confession of Judgment *(non-domestic relations)*
- Sister State Judgment
- Administrative Agency Award *(not unpaid taxes)*
- Petition/Certification of Entry of Judgment on Unpaid Taxes
- Other Enforcement of Judgment Case

Miscellaneous Civil Complaint
- RICO (27)
- Other Complaint *(not specified above)* (42)
  - Declaratory Relief Only
  - Injunctive Relief Only *(non-harassment)*
  - Mechanics Lien
  - Other Commercial Complaint Case *(non-tort/non-complex)*
  - Other Civil Complaint *(non-tort/non-complex)*

Miscellaneous Civil Petition
- Partnership and Corporate Governance (21)
- Other Petition *(not specified above)* (43)
  - Civil Harassment
  - Workplace Violence
  - Elder/Dependent Adult Abuse
  - Election Contest
  - Petition for Name Change
  - Petition for Relief From Late Claim
  - Other Civil Petition

EXHIBIT E

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN FRANCISCO

KELLY GOLA, individually and on behalf of all others similarly situated, Plaintiff, vs. UNIVERSITY OF SAN FRANCISCO, a California Corporation, Defendant.	Case No. CGC-18-565018 ~~[Proposed]~~ **Amended Judgment** ***Nunc Pro Tunc*** **(Amending Judgment Entered August 20, 2020)**

The Court conducted a bench trial on Plaintiff Kelly Gola's Second and Fifth Causes of Action in her operative First Amended Complaint, alleging violations of California Labor Code § 226(a) and - (e) and the Private Attorneys General Act (Labor Code § 2698 et seq.) based on the alleged violations of Labor Code § 226(a). Prior to those proceedings, the Court conducted a bifurcated bench trial on Defendant's claim that various of Plaintiff's causes of action were barred by federal pre-emption. The Court entered Judgment on August 20, 2020, subject to further proceedings on costs and attorneys' fees.

Plaintiff Kelly Gola, the Class and Aggrieved Employees were represented by Julian Hammond, Polina Brandler, and Ari Cherniak of HammondLaw, P.C., and Morris J. Baller, Of Counsel to Goldstein, Borgen, Dardarian & Ho. Defendant University of San Francisco was represented by Michael J. Vartain and Kathryn Burke of Vartain Law Group, P.C.

The Court now enters this Amended Judgment, Nunc Pro Tunc:

1. That Plaintiff Kelly Gola and the Class, as defined in the Amended Stipulation and Order for

Class Certification, dated January 9, 2020, have judgment on her Second Cause of Action against Defendant University of San Francisco in the sum of $1,621,600.00 for statutory penalties for the Labor Code § 226(e) violations for the period of March 15, 2017 through January 3, 2020.[1]

2. That Plaintiff Kelly Gola, members of the Class, and the Aggrieved Employees, as defined in Plaintiff's PAGA Notice dated January 30, 2018, have judgment on her Fifth Cause of Action, to the extent based on the violations alleged in her Second Cause of Action, against Defendant University of San Francisco in the sum of $545,235.00 for PAGA penalties pursuant to Labor Code § 2699(f)(2) for the period of January 30, 2017 through January 3, 2020. Of this amount, 75% or $408,926.25 shall be paid to the California Labor Workforce and Development Agency (LWDA), and 25% or $136,308.75 shall be paid to Plaintiff Kelly Gola as an aggrieved employee and the other Aggrieved Employees, pro rata based on the number of pay periods worked between January 30, 2017 and January 3, 2020.

3. That Defendant University of San Francisco have judgment against Plaintiff on her First Cause of Action.

4. That Defendant University of San Francisco have judgment against Plaintiff on her Third Cause of Action.

5. That Defendant University of San Francisco have judgment against Plaintiff on her Fourth Cause of Action to the extent it is based on violations alleged in her First and Third Causes of Action, pursuant to the Ruling entered March 8, 2019.

6. That Defendant University of San Francisco have judgment against Plaintiff on her Fifth Cause of Action to the extent it is based on the violations alleged in her First and Third Causes of Action, pursuant to the Ruling entered March 8, 2019.

7. That Defendant University of San Francisco have judgment against Plaintiff on her Fourth Cause of Action to the extent it is based on the violations alleged in her Second Cause of Action, as Plaintiff has abandoned the claim.

8. That Plaintiff Kelly Gola, as the prevailing party shall recover from Defendant University of

[1] The Statement of Decision contains an error; the correct dates are in this Amended Judgment.

San Francisco reasonable attorneys' fees in the amount of $1,307,225.95, and statutory costs in the amount of $21,510.23. Plaintiff's requests for other costs are denied.

Dated: MAR 3 - 2021

Curtis E.A. Karnow
Judge of the Superior Court

Approved as to Form:

Julian Hammond

Attorney for Plaintiff

Michael Vartain

Attorney for Defendant

CERTIFICATE OF ELECTRONIC SERVICE
(CCP 1010.6(6) & CRC 2.260(g))

I, DANIAL LEMIRE, a Deputy Clerk of the Superior Court of the County of San Francisco, certify that I am not a party to the within action.

On MAR 3 - 2021, I electronically served THE ATTACHED DOCUMENT via File & ServeXpress on the recipients designated on the Transaction Receipt located on the File & ServeXpress website.

Dated: MAR 3 - 2021

T. Michael Yuen, Clerk

By: _____
DANIAL LEMIRE, Deputy Clerk