

ENDORSED
FILED
ALAMEDA COUNTY

MAR 23 2009
CLERK OF THE SUPERIOR COURT
BY ERIN L. BOGEMAN, Deputy

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11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 IN AND FOR ALAMEDA COUNTY

13 PAGE NELSON and JANET
14 CHRISTENSEN, on behalf of themselves
15 and all others similarly situated,

16 Plaintiffs,

17 v.

18 CALIFORNIA STATE UNIVERSITY,
19 EAST BAY FOUNDATION, INC.,

20 Defendant.

Civil Case No.: RG09442869

CLASS ACTION COMPLAINT

DEMAND FOR JURY TRIAL

**UNLIMITED JURISDICTION - AMOUNT
DEMANDED OVER \$25,000**

21 Individual and Representative Plaintiffs Page Nelson and Janet Christensen, by
22 their undersigned attorneys, on behalf of themselves and all others similarly situated (collectively,
23 "Plaintiffs"), allege upon information and belief, except to the allegations that pertain to the
24 named plaintiffs and their counsel, which are based upon personal knowledge, against Defendant
25 California State University, East Bay Foundation, Inc. ("CSU-EB Foundation") as follows:

NATURE OF THE CASE

26 1. This class action is brought on behalf of all residents of the State of
27 California who, at any time during the previous four years, up to and including the present, were
28 employed by Defendant as teachers for the American Language Program ("ALP"), and who did
not receive compensation for all hours worked, as defined by California wage and hour law.

1 procedures provided for in these statutes, Plaintiffs, on behalf of themselves and proposed Class
2 Members, also seek restitution of all benefits Defendant has received from its failure to pay
3 compensation due for all hours worked and failure to maintain proper records of hours worked.

4 9. The "Class Period" is designated as the time from March 23, 2005, through
5 the trial date, based upon the allegation that the violations of California's wage and hour laws, as
6 described more fully below, have been ongoing for at least the four years prior to the filing of the
7 original complaint in this action. During the Class Period, Defendant has had a consistent policy
8 of (1) permitting, encouraging, and/or requiring Plaintiffs and proposed Class Members to
9 prepare for their classes without fully compensating them for these hours as required by
10 California state wage and hour laws and common law; (2) willfully failing to maintain and
11 provide Plaintiffs and Class Members with accurate records of the total number of hours each of
12 them worked and the applicable hourly rates in effect during the pay period; (3) willfully failing
13 to pay all compensation owing in a prompt and timely manner to those Class Members whose
14 employment with Defendant has terminated; and (4) willfully denying Class members the
15 Benefits package provided to other Foundation regular part-time employees.

16 **JURISDICTION AND VENUE**

17 10. Defendant is within the jurisdiction of this Court.

18 11. Defendant conducts business in and may be found within Alameda County.

19 12. Many of the acts, as well as the course of conduct alleged herein, occurred
20 within Alameda County.

21 13. This Court has jurisdiction over Plaintiffs' claim for failure to pay wages
22 due for all hours worked under Cal. Code Regs., Title 8, § 11040 et seq. and IWC Wage Order
23 No. 4.

24 14. This Court has jurisdiction over Plaintiffs' and Class Members' claims for
25 penalties for failure to pay wages of discharged or resigned employees under California Labor
26 Code §§ 202-203.

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1 teacher. Throughout her employment, Plaintiff Christensen was denied pay for some hours spent
2 preparing for classes, and was denied benefits offered to all other CSU-EB Foundation
3 employees. Additionally, upon termination of her employment, Plaintiff Christensen was not
4 compensated for her unpaid wages.

5 23. Defendant CSU-EB Foundation is a 501(c)(3) corporation headquartered at
6 25800 Carlos Bee Boulevard in Hayward, California 94542. CSU-EB Foundation operates ALP
7 in the State of California. CSU-EB Foundation is, and at all relevant times was, an employer
8 subject to the California Labor Code.

9 **CLASS ACTION ALLEGATIONS**

10 24. The Representative Plaintiffs bring this action individually and as a class
11 action on behalf of an opt-out class [the "Class"] defined as follows:

12 **All persons who, at any time during the period March 23, 2005**
13 **to the present, worked at the American Language Program**
located in the State of California as teacher.

14 This action is brought and may properly be maintained as a class action pursuant to California
15 Code of Civil Procedure section 382. This action presents questions of common interest and
16 satisfies the numerosity, typicality, adequacy, predominance, and superiority requirements of
17 those provisions.

18 25. The Class is so numerous that the individual joinder of all of its members is
19 impracticable. While the exact number and identities of Class members are unknown to Plaintiffs
20 at this time and can only be ascertained through appropriate discovery, Plaintiffs are informed and
21 believe that the Class includes at least fifty persons.

22 **Commonality:**

23 26. Common questions of fact and law exist as to all members of the Class that
24 predominate over any questions affecting only individual members of the Class. These common
25 legal and factual questions, which do not vary from Class member to Class member, and which
26 may be determined without reference to the individual circumstances of any Class member
27 include, but are not limited to, the following:
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1 a. whether Defendant, in violation of Cal. Code Regs., Title 8 § 11040
2 and California common law, failed to pay Plaintiffs and the Class for all of the work Defendant
3 required them to perform, thus breaching the implied contract with their employees to pay them
4 for all hours worked;

5 b. whether Defendant, in violation of Labor Code §§ 226 and 1174,
6 systematically failed to keep accurate records of all of the hours worked by Class members and
7 the applicable hourly rates;

8 c. whether Defendant, in violation of Labor Code §§ 201-203, failed
9 to timely pay Class members all wages due upon termination or resignation;

10 d. whether Plaintiffs and the Class are entitled to “waiting time”
11 penalties/wages pursuant to Labor Code § 203;

12 e. what amounts Plaintiffs and the Class are entitled to receive in
13 interest on unpaid compensation due and owing; and

14 f. whether Class members are entitled to restitution under Cal. Bus. &
15 Prof. Code § 17200 et. seq.

16 **Typicality:**

17 27. Representative Plaintiffs’ claims are typical of the claims of the Class.
18 Representative Plaintiffs and all members of the Class sustained injuries and damages arising out
19 of and caused by Defendant’s common course of conduct in violation of law as alleged herein.

20 **Numerosity:**

21 28. A class action is the only available method for the fair and efficient
22 adjudication of this controversy. The members of the Class are so numerous that joinder of all
23 members is impractical, if not impossible, insofar as the Representative Plaintiffs are informed
24 and believe and, on that basis, allege that the total number of Class members is at least fifty
25 individuals. Membership in the Class will be partially determined upon analysis of, inter alia,
26 employee and payroll records maintained by Defendant.

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1 **Adequacy of Representation:**

2 29. The Representative Plaintiffs in this class action are adequate
3 representatives of the Class in that the Representative Plaintiffs' claims are typical of those of the
4 Class. The Representative Plaintiffs have the same interests in the litigation of this case as the
5 Class members. The Representative Plaintiffs are committed to vigorous prosecution of this case
6 and have retained competent counsel experienced in class action and wage and hour litigation of
7 this nature. The Representative Plaintiffs are not subject to any individual defenses unique from
8 those conceivably applicable to the Class as a whole. The Representative Plaintiffs anticipate no
9 management difficulties in this litigation.

10 **Superiority of Class Action:**

11 30. A class action is superior to other available methods for the fair and
12 efficient adjudication of this controversy, because individual litigation of the claims of all Class
13 members is impracticable. Even if every Class member could afford individual litigation, the
14 court system could not. It would be unduly burdensome to the courts in which individual
15 litigation of numerous cases would proceed. Individualized litigation would also present the
16 potential for varying, inconsistent, or contradictory judgments and would magnify the delay and
17 expense to all parties and to the court system resulting from multiple trials of the same complex
18 factual issues. Moreover, individual actions by Class members would establish inconsistent
19 standards of conduct for Defendant. By contrast, the conduct of this action as a class action, with
20 respect to some or all of the issues presented herein, presents fewer management difficulties,
21 conserves the resources of the parties and of the court system, and protects the rights of each
22 Class member.

23 31. Defendant has acted or refused to act in respects generally applicable to the
24 Class, thereby making appropriate relief with regard to the members of the Class as a whole, as
25 requested herein.

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1 **FIRST CAUSE OF ACTION**
2 **(Breach of Contract for Failure to Pay Compensation for all Hours Worked)**

3 32. Plaintiffs, individually and on behalf of all employees similarly situated,
4 refer to and hereby incorporate by reference the preceding paragraphs as though fully set forth
5 herein.

6 33. Pursuant to Labor Code §§ 218, Plaintiffs may bring a civil action for
7 unpaid wages due directly against the employer in Plaintiff's name without first filing a claim
8 with the Department of Labor Standards Enforcement.

9 34. Throughout the Class period until sometime during March 2009, Plaintiffs
10 and Class Members were required to spend substantial time preparing for their classes ("prep
11 time") at the behest of Defendant without compensation for those hours worked. Up until the
12 date on which Defendant begin paying Class Members for some of their prep time, Defendant has
13 not fully compensated Class Members for all of their prep time.

14 35. At all times herein relevant, IWC Wage Order No. 4-2001, California Code
15 of Regulations Title 8, § 11040, applied and continues to apply to Plaintiffs' employment with
16 Defendant. IWC Wage Order No. 4-2001, California Code of Regulations Title 8, § 11040 states
17 that "every employer shall pay to each employee wages . . . for all hours worked." Ca. Code
18 Regs., tit. 8, § 11040(4)(A).

19 36. "Hours worked" is defined at California Code of Regulations Title 8,
20 § 11040(2)(L) as "the time during which an employee is subject to the control of an employer,
21 and includes all the time the employee is suffered or permitted to work, whether or not required to
22 do so." Under this definition of "hours worked" the hours spent by Class members in preparation
23 of classes, grading time, and office hours (or "advising time") are "hours worked" and must be
24 compensated.

25 37. By the conduct alleged above, Defendant breached an implied agreement
26 with Class Plaintiffs to pay them for all hours worked as understood and required under
27 California law. Defendant's failure to perform its part of the contract by paying their employees
28 for all of their hours worked is unjustified and unexcused and constitutes a breach of contract.

1 **THIRD CAUSE OF ACTION**
2 **(Record-Keeping Violations)**

3 45. Plaintiffs incorporate by reference in this cause of action each allegation of
4 the preceding paragraphs as though fully set forth herein.

5 46. Defendant knowingly and intentionally failed to maintain and provide
6 timely, accurate, itemized wage statements including, inter alia, hours worked, to Plaintiffs and
7 the Class in accordance with Labor Code § 226(a) and the IWC Wage Orders. At all times
8 relevant herein, Defendant has willfully failed to maintain records of all hours worked and
9 applicable hourly rates as required under Labor Code § 1174(d).

10 47. Plaintiffs and Class Members are entitled to and seek penalties under Labor
11 Code §§ 226(b) and 1174.5.

12 **FOURTH CAUSE OF ACTION**
13 **(Unlawful Business Practices under the Unfair Competition Act)**

14 48. Plaintiffs incorporate in this cause of action each and every allegation of
15 the preceding paragraphs as though fully set forth herein.

16 49. Plaintiffs further bring this cause of action on behalf of the general public,
17 seeking statutory relief to stop the misconduct of Defendant, as complained herein, and to compel
18 restitution and disgorgement of all profits obtained by Defendant through the unfair and unlawful
19 business practices described herein.

20 50. The conduct of Defendant, as alleged herein, constitutes an unlawful
21 business practice as set forth in California Business & Professions Code §§ 17200, et seq.
22 Specifically, Defendant conducted business activities while failing to comply with California
23 wage and hour laws and the California common and statutory law as described herein.

24 51. Section 17200 of the California Business & Professions Code prohibits
25 unfair competition by prohibiting unlawful, unfair, or fraudulent business practices or acts.

26 52. Defendant's failure to adopt policies in accordance with and/or adhere to
27 these laws of all of which are binding upon and burdensome to Defendant's competitors
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1 engenders an unfair competitive advantage for Defendant, thereby constituting an unfair business
2 practice, as set forth in California Business & Professions Code §§ 17200, et seq.

3 53. Defendant's conducts also constitutes an unfair business practice as set
4 forth in California Business & Professions Code §§ 17200, et seq. in that, by refusing to pay
5 Class members for hours worked over twenty hours per week, Defendant unfairly deny Class
6 members the Benefits package provided to other Foundation regular part-time employees.

7 54. Defendant's conduct as herein alleged has damaged Plaintiffs and the Class
8 Members by wrongfully denying them earned wages and benefits and therefore was substantially
9 injurious to Plaintiffs and the Class.

10 55. Under the circumstances alleged, it would be inequitable and result in a
11 miscarriage of justice for Defendant to continue to retain the property of Plaintiffs and the
12 members of the Class, entitling Plaintiffs and the members of the Class to restitution of the unfair
13 benefits obtained and disgorgement of Defendant's ill-gotten gains.

14 56. As a result of Defendant's unlawful and unfair business practices, Plaintiff
15 and Class members are entitled to and seek restitution and disgorgement, and other appropriate
16 relief available under Cal. Bus. & Prof. Code § 17200 et. seq.

17 **RELIEF SOUGHT**

18 **WHEREFORE**, Representative Plaintiffs, on behalf of themselves and the
19 proposed Class, pray for judgment and the following specific relief against Defendant as follows:

20 A. That the Court determine that this action may be maintained as a class
21 action under Code of Civil Procedure § 382;

22 B. That Defendant is found to have violated the provisions of the Labor Code
23 and the Wage Orders as to the Plaintiffs and the Class by failing to pay Plaintiffs and the Class for
24 all hours worked;

25 C. That Defendant is found to have breached its implied contract with the
26 Class by failing to pay Class Members for all of their hours worked;

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1 D. That Defendant is found to have violated Labor Code §§ 201, 202, and 203
2 for willful failure to pay all compensation owed at the time of termination of employment to the
3 Plaintiff and the Class Members;

4 E. That Defendant is found to have violated the record-keeping provisions of
5 Labor Code §§ 1174(d) and 226 as to the Plaintiffs and the Class Members;

6 F. That Defendant is found to have violated Business and Provisions Code
7 § 17200 by failing to pay Plaintiffs and the Class Members for all hours worked, benefits, waiting
8 period penalties, and record-keeping violations as to Plaintiffs and the Class;

9 G. That Defendant's violations as described above are found to have been
10 willful;

11 H. An award to Plaintiff and the Class of damages for the amount of unpaid
12 compensation, including interest thereon, and penalties subject to proof at trial;

13 I. That Defendant be ordered and enjoined to pay restitution to Plaintiffs and
14 the Class due to Defendant's unlawful activities, pursuant to Business and Provisions Code
15 §§ 17200-05;

16 J. That Plaintiff and the Class be awarded reasonable attorneys' fees and
17 costs pursuant to Labor Code §§ 218.5, Code of Civil Procedure § 1021.5, and/or other applicable
18 law;

19 K. Civil Penalties pursuant to at California Code of Regulations Title 8,
20 § 11040(20)(a)(1)-(2), California Labor Code § 226.3, and any other applicable statutory section;
21 and

22 L. An award of such other and further relief as this Court may deem
23 appropriate.

24 **DEMAND FOR JURY TRIAL**

25 Plaintiffs, on behalf of themselves and all others similarly situated, hereby request
26 a jury trial on the claims so triable.

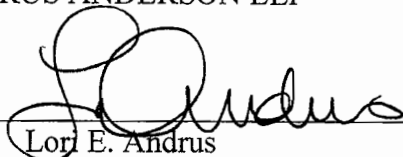
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Dated: March 23 2009

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By:


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