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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 FOR THE COUNTY OF VENTURA

17 KHARA DUFFY, REBECCA
18 FLYNN, HEATHER DIEFFENBACH,
19 on behalf of themselves and all others
20 similarly situated,

21 Plaintiffs,

22 v.

23 CALIFORNIA VIRTUAL ACADEMY
24 AT LOS ANGELES, a California
25 corporation; CALIFORNIA VIRTUAL
26 ACADEMY AT SAN JOAQUIN, a
27 California corporation, INSPERITY
28 PEO SERVICES, L.P., a Delaware
limited partnership, formerly known as
ADMINISTAFF COMPANIES II, L.P.;
K12, INC., a Delaware Corporation; and
DOES 1 through 50, inclusive,

Defendants.

Case No.: 56-2015-00472734-CU-OE-VTA

**THIRD AMENDED CLASS
ACTION COMPLAINT FOR:**

- (1) **VIOLATION OF LABOR CODE § 2802;**
- (2) **UNLAWFUL BUSINESS PRACTICES (BUS. & PROF. CODE §§ 17200, et seq.); and**
- (3) **VIOLATION OF PRIVATE ATTORNEY GENERAL ACT OF 2004 (“PAGA”) (LABOR CODE § 2698, et seq.)**

DEMAND FOR JURY TRIAL

1 Plaintiffs Khara Duffy, Rebecca Flynn, and Heather Dieffenbach bring this
2 action on behalf of themselves and all others similarly situated, and allege against
3 Defendants California Virtual Academy at Los Angeles (CAVA-LA), California Virtual
4 Academy at San Joaquin (CAVA-SJ), Insperity PEO Services, L.P. (f/k/a Administaff
5 Companies II, Inc.), K12, Inc. (“K12”), and DOES 1-50, (collectively “Defendants”)
6 and each of them, as follows:

7 **NATURE OF THE CASE**

8 1. In 2002, California Virtual Academies (CAVA) created a network of 11
9 privately owned and operated on-line virtual charter schools located in the state of
10 California. These self-described California Virtual Academies advertise and sell a “new
11 model[] in public education.” This new model of education relies heavily upon the use
12 of technology and its privately employed teaching staff. Indeed, in the words of CAVA
13 itself, CAVA’s “virtual teachers are responsible for ensuring that students achieve
14 mastery of learning objectives. They provide guidance, instruction and support, manage
15 the learning process and focus on students’ individual needs. The Virtual Teacher is a
16 highly qualified instructional teacher responsible for the delivery of specified course
17 content in an online, virtual environment.”

18 2. The network of schools that make up the CAVA located within the state
19 of California currently include the following:

- 20 • California Virtual Academy @ Los Angeles;
- 21 • California Virtual Academy @ Jamestown;
- 22 • California Virtual Academy @ San Diego;
- 23 • California Virtual Academy @ Sutter;
- 24 • California Virtual Academy @ Fresno;
- 25 • California Virtual Academy @ Kings;
- 26 • California Virtual Academy @ Maricopa;
- 27 • California Virtual Academy High School @ Maricopa;
- 28 • California Virtual Academy @ San Joaquin;

- 1 • California Virtual Academy @ San Mateo; and,
- 2 • California Virtual Academy @ Sonoma

3 3. In total, there are approximately 2,000 teachers within the state of
4 California who work for and are employed by these 11 virtual schools.

5 4. At all times relevant to this complaint, every single one of the 11 CAVA
6 schools had and continues to have the same Head of School, a K12, Inc. employee
7 named Katrina Abston. In addition, at all times relevant to this complaint every single
8 one of the 11 CAVA schools has had the same principal place of business in Simi
9 Valley, CA and has had the same registered agent for service of process – Katrina
10 Abston.

11 5. Defendant California Virtual Academy at Los Angeles (CAVA-LA) is a
12 school within the CAVA network. CAVA-LA is a California corporation doing
13 business in California with its principal place of business in Simi Valley, California
14 (2360 Shasta Way, Suite A, Simi Valley, CA 93065) and its agent for service of process
15 listed as Katrina Abston. CAVA-LA owns, operates, controls, and/or manages an on-
16 line virtual charter school.

17 6. Defendant California Virtual Academy at San Joaquin (CAVA-SJ) is a
18 school within the CAVA network. CAVA-SJ is a California corporation doing business
19 in California with its principal place of business in Simi Valley, California (2360 Shasta
20 Way, Suite A, Simi Valley, CA 93065) and its agent for service of process listed as
21 Katrina Abston. CAVA-SJ owns, operates, controls, and/or manages an on-line virtual
22 charter school.

23 7. Defendant Insperity PEO Services, L.P. formerly known as Administaff
24 Companies II, L.P (collectively “Insperity”) is a Delaware Limited Partnership and is
25 registered with the California Secretary of State to do business in California. Defendant
26 Insperity has its principal place of business located at 19001 Crescent Springs Drive,
27 Kingwood, Texas 77339-3802, with several locations located throughout California.
28

1 Plaintiff did not have a normal classroom from which she taught her students. Instead,
2 Plaintiff would conduct classes in the virtual environment utilizing the power of the
3 Internet to conduct her classes and frequently travel to her students' homes or other
4 locations to interact with her students face-to-face.

5 14. Plaintiff Heather Dieffenbach is a California credentialed teacher.
6 Beginning in or about August 2007, Plaintiff was employed as a teacher by Defendants.
7 In her employment as a teacher, Plaintiff was responsible for providing instruction,
8 mentoring, testing, support, evaluation, grading, and course content to her pupils in an
9 online, virtual environment. Due to the virtual model of education utilized by
10 Defendants, Plaintiff did not have a normal classroom from which she taught her
11 students. Instead, Plaintiff would conduct classes in the virtual environment utilizing the
12 power of the Internet to conduct her classes and frequently travel to her students' homes
13 or other locations to interact with her students face-to-face.

14 15. Plaintiffs, like all members of the class of teachers, would teach students
15 from any number of the CAVA network of schools. For example, Plaintiff Duffy taught
16 students from California Virtual Academy at Maricopa, California Virtual Academy at
17 Kern, and CAVA-LA. Plaintiff Dieffenbach taught students from CAVA-LA and
18 CAVA – San Diego. Plaintiff Flynn taught students from CAVA – San Joaquin, CAVA
19 – Sutter, CAVA – Sonoma, and CAVA – San Mateo. The network of 11 CAVA schools
20 would share teachers such that any one or all of the schools within the network of
21 CAVA schools acted as the employers of the CAVA teachers.

22 16. While Plaintiffs did not have a normal classroom environment, Plaintiffs
23 were still required to meet face-to-face with their students and their parents numerous
24 times throughout the school year. In addition, Plaintiffs had to provide and pay for the
25 typical supplies necessary to be a successful teacher such as printer supplies, postage,
26 Live Scan testing, and dues. Moreover, due to the virtual environment, Defendants
27 required Plaintiffs to have a home phone, cellular phone, and internet access, in order to
28 perform their duties and educate their students.

1 17. During Plaintiffs' employment with Defendants they was also required
2 to attend and travel to mandatory training, mandatory meetings, and mandatory testing.
3 When attending these mandatory meetings, training, and testing, Plaintiffs would incur
4 various expenses such as gas, mileage, food, and hotel expenses.

5 18. Throughout Plaintiffs' employment with Defendants, Plaintiffs were
6 subjected to an illegal and inequitable reimbursement policy that is in violation of
7 California law. Plaintiffs received an allowance from Defendants which was "expected
8 to cover all teacher's expenses including but not limited to mileage, supplies, dues, in-
9 home set up, home phone, cellular phone, internet, Live Scan test, printer supplies,
10 travel and hotel within California, and other monthly expenses."

11 19. Unfortunately, the allowance did not cover the teachers' expenses.
12 Instead, the monthly allowance provided to Plaintiffs was woefully inadequate to cover
13 monthly expenses. Indeed, in carrying out their job duties, Plaintiffs incurred expenses
14 far in excess of the monthly allowance. By way of example, Plaintiffs incurred expenses
15 each month for cellular phones, internet, home phone, mileage to visit students and
16 parents, printer supplies including toner, and postage. In addition, Plaintiffs would
17 incur expenses when traveling to mandatory meetings, training, and testing including
18 food and lodging.

19 20. Because Defendants' reimbursement policy failed to adequately
20 reimburse Plaintiffs, and the other teachers similarly situated, for business expenses,
21 this case is brought as a class action under California Code of Civil Procedure ("CCP")
22 §382 to address Defendants' violations of various California Labor Codes on behalf of
23 all teachers employed by Defendants within the state of California.

24 21. For at least four (4) years prior to the original filing of this action and
25 through to the present ("Class Period") Defendants have had a consistent policy and
26 practice of intentionally failing to fully reimburse their teachers for expenses teachers
27 incurred. This practice is a violation of California law. As described above,
28 Defendants' employment practices and policies were to provide teachers with an

1 allowance or stipend but the stipend/allowance provided was insufficient to reimburse
2 the teachers for the actual expenses incurred on behalf of Defendants.

3 22. Plaintiffs and Class Members seek unpaid reimbursements (and interest
4 thereon), penalties, injunctive and other relief, as well as reasonable attorneys' fees and
5 costs, under Labor Code § 2802 on behalf of themselves and the proposed Class.

6 23. Under California Business & Professions Code ("Cal. Bus. & Prof.
7 Code") §§ 17200, *et seq.*, (the Unfair Competition Law or "UCL") and pursuant to both
8 the class action and representative action procedures provided for in these statutes,
9 Plaintiff, on behalf of herself and all others similarly situated and/or represented parties,
10 also seeks any available injunctive relief and restitution of all benefits Defendants have
11 received from their failure to fully reimburse the Plaintiffs, Class Members, and
12 represented parties during the relevant Class Period.

13 24. The "Class Period" is designated as the time from four years prior to the
14 original filing of this action through the entry of judgment, based on the allegation that
15 the violations of California's wage and hour laws and the UCL, as described herein,
16 have been ongoing for at least the four years prior to the filing of the original
17 Complaint.

18 25. During the relevant Class Period, Defendants have had standard and
19 uniform policies that violate California's wage and hour laws. Specifically, Defendants
20 willfully failed to fully reimburse Plaintiff and the proposed class for the expenses
21 incurred while performing their tasks as teachers, in violation of Labor Code § 2802.

22 **JURISDICTION AND VENUE**

23 26. Defendant CAVA-LA has a principal place of business and corporate
24 headquarters within the city of Simi Valley, in Ventura County California, and CAVA-
25 LA regularly does business in California and has employed and does employ numerous
26 individuals within the State of California.

27 27. Defendant CAVA-SJ has a principal place of business and corporate
28 headquarters within the city of Simi Valley, in Ventura County California, and CAVA-

1 SJ regularly does business in California and has employed and does employ numerous
2 individuals within the State of California.

3 28. Defendant Insperity's principal place of business and corporate
4 headquarters are in the city of Kingwood, Texas, and Insperity regularly does business
5 in California and has employed and does employ numerous individuals within the State
6 of California.

7 29. Defendant K12, Inc. is incorporated within the state of Delaware and has
8 its principal place of business in the city of Herndon, Virginia. K12, Inc. regularly does
9 business in California and had employed and does employ numerous individuals,
10 including its agent Katrina Abston, within the state of California.

11 30. Defendants CAVA-LA, CAVA-SJ, Insperity, and K12, Inc. have
12 obtained the benefits of the laws of the State of California and the California labor
13 market.

14 31. Many of the acts, as well as the course of conduct alleged herein,
15 occurred within Ventura County.

16 32. This Court has jurisdiction over Plaintiffs', Class Members', and
17 represented parties' claims for Defendants' failure to fully reimburse teachers for
18 expenses they incurred during their employment with Defendants in violation of Labor
19 Code § 2802; and injunctive relief and restitution of ill-gotten benefits arising from
20 Defendants' unlawful business practices under Business & Professions Code § 17203.

21 33. Venue is proper in this county pursuant to California Code of Civil
22 Procedure § 395(a). Defendants transact business and may be found within Ventura
23 County. The unlawful acts, as well as the course of conduct alleged herein, occurred, in
24 part, in Ventura County. Defendants CAVA-LA and CAVA-SJ maintain their
25 headquarters, transacts business, have agents, and employ numerous Class Members in
26 Ventura County, and is otherwise within this Court's jurisdiction for purposes of service
27 of process. The unlawful acts alleged herein have had a direct effect on Plaintiffs and
28 those similarly situated within the State of California and within Ventura County.

1 **THE PARTIES**

2 34. **Plaintiff Khara Duffy** (“Duffy”) is an individual who resides in Ventura
3 County. Duffy is a former employee of Defendants who worked for Defendants as a
4 teacher. She was employed by Defendants from approximately March 2011 through
5 September 2015.

6 35. **Plaintiff Rebecca Flynn** (“Flynn”) is an individual who resides in
7 Alameda County. Flynn is a former employee of Defendants who worked for
8 Defendants as a teacher. She was employed by Defendants from approximately
9 February 2012 through February 2016.

10 36. **Plaintiff Heather Dieffenbach** (“Dieffenbach”) is an individual who
11 resides in Ventura County. Dieffenbach is a former employee of Defendants who
12 worked for Defendants as a teacher. She was employed by Defendants from
13 approximately August 2007 through January 2015.

14 37. As teachers for Defendants, Duffy, Flynn, and Dieffenbach were
15 required to maintain and pay for a safe, legally operable, and insured automobile when
16 performing teacher duties, including but not limited to meeting with students, attending
17 required meetings, attending required training. Plaintiffs would incur costs for gasoline,
18 vehicle maintenance and repairs, insurance, vehicle depreciation, and other expenses
19 while performing these required duties. In addition, Plaintiffs were required to provide
20 and pay for many other items including but not limited to their own supplies, home
21 phones, in-home set up, cellular phones, internet access, dues, Live Scan test, printer
22 supplies, postage, and travel costs within California including hotel rooms.

23 38. While Defendants paid teachers a monthly stipend or allowance, this
24 stipend/allowance did not fully reimburse Plaintiffs for the actual business expenses
25 they incurred in carrying out their required job duties.

26 39. **Defendant CAVA-LA:** At all relevant times, Defendant CAVA-LA
27 was and is a corporation organized under the laws of the State of California, having its
28 corporate headquarters in Simi Valley, California in Ventura County. Plaintiffs allege

1 that the practices and policies that are complained of in this Complaint have been
2 occurring throughout the Class Period and are currently applied by Defendant CAVA-
3 LA and all of the other CAVA Schools throughout California. As a part of the CAVA
4 network of schools, CAVA-LA shares teachers with other schools in its network of 11
5 schools. The network of 11 CAVA schools, to which Defendant CAVA-LA belongs,
6 acts as an integrated organization such that each school shares teachers throughout the
7 state of California, and the integrated organization of the 11 CAVA schools is in effect
8 a joint employer of each of those teachers. CAVA-LA (and each of the other 10 CAVA
9 schools) is, and at all relevant times has been, an employer subject to the California
10 Labor Code.

11 40. **Defendant CAVA-SJ:** At all relevant times, Defendant CAVA-SJ was
12 and is a corporation organized under the laws of the State of California, having its
13 corporate headquarters in Simi Valley, California in Ventura County. Plaintiffs allege
14 that the practices and policies that are complained of in this Complaint have been
15 occurring throughout the Class Period and are currently applied by Defendant CAVA-
16 SJ and all of the other CAVA Schools throughout California. As a part of the CAVA
17 network of schools, CAVA-SJ shares teachers with other schools in its network of 11
18 schools. The network of 11 CAVA schools, to which Defendant CAVA-SJ belongs,
19 acts as an integrated organization such that each school shares teachers throughout the
20 state of California, and the integrated organization of the 11 CAVA schools is in effect
21 a joint employer of each of those teachers. CAVA-SJ (and each of the other 10 CAVA
22 schools) is, and at all relevant times has been, an employer subject to the California
23 Labor Code.

24 41. **Defendant Insperity:** At all times relevant to this complaint, Defendant
25 Insperity acted as Plaintiffs' co-employer and/or joint employer in that it controlled
26 wages, hours, and working conditions of Plaintiffs and the Class. Insperity is a
27 Delaware limited partnership which does business in the state of California. Plaintiffs
28 allege that the practices and policies that are complained of in this Complaint have been

1 occurring throughout the Class Period and are currently applied by Defendant Insperty
2 throughout California. Defendant is, and at all relevant times has been, an employer
3 subject to the California Labor Code.

4 42. **Defendant K12, Inc.:** At all times relevant to this complaint, Defendant
5 K12, Inc. acted as Plaintiffs' co-employer and/or joint employer in the way it controlled
6 the conditions of Plaintiffs' and Class Members' employment. Defendant is, and at all
7 relevant times has been, an employer subject to the California Labor Code.

8 **FICTIOUS DEFENDANTS**

9 43. Defendants Does 1-50, inclusive, are sued herein under fictitious names.
10 Their true names and capacities are unknown to Plaintiffs at this time. When their true
11 names and capacities are ascertained, Plaintiffs will amend this Complaint by inserting
12 their true names and capacities. Plaintiffs are informed and believe, and thereon allege
13 that each of the fictitiously-named Defendants is responsible in some manner for the
14 occurrences alleged herein and that Plaintiffs', the proposed Class Members', and
15 Represented parties' damages and penalties alleged herein were proximately caused by
16 such Defendants.

17 **AGENCY**

18 44. Plaintiffs are informed, believe, and thereon allege that each of the
19 Defendants herein was, at all times relevant in this action, the agent, employee,
20 representing partner, and/or joint venture of the remaining Defendants and was acting
21 within the course and scope of that relationship. Plaintiffs are further informed, believe,
22 and thereon allege that each of the Defendants herein gave consent to, ratified, and
23 authorized the acts alleged herein to the remaining Defendants.

24 **CLASS ACTION ALLEGATIONS**

25 45. Plaintiffs bring this action individually and as a class action on behalf of
26 an opt-out class (the "Class") defined as follows:

27 **All of Defendants' current and former California-**
28 **based employees who were employed as Teachers,**

1 Members are unknown to Plaintiffs at this time and can only be ascertained through
2 appropriate discovery, Plaintiffs are informed and believes that the Class includes at
3 least 2,000 current and former teachers employed by Defendants. On information and
4 belief, therefore, Plaintiffs allege that the members of the Class are so numerous that
5 joinder of all members is impractical, if not impossible. Membership in the Class will
6 be determined upon analysis of, *inter alia*, employee and payroll records maintained by
7 Defendants.

8 **Commonality and Predominance**

9 50. The Plaintiffs and the Class share a community of interest because there
10 are numerous common issues of fact and law that predominate over any questions and
11 issues solely affecting individual members. Such common factual and legal issues
12 include, but are not limited to, the following:

13 a. Whether Defendants violated Labor Code §2802 by failing to
14 reimburse Plaintiffs and Teacher Class Members all expenses reasonably and
15 necessarily incurred as part of their employment, including but not limited to costs of
16 gasoline, insurance, vehicle maintenance, parking, mobile phone use, printer supplies,
17 dues, in-home set up, home phone, internet, Live Scan testing, travel and other expenses
18 related to their position as a teacher; and,

19 b. Whether Defendants violated Business & Professions Code
20 §§17200, *et seq.*, by failing to adequately reimburse teachers.

21 **Typicality**

22 51. Plaintiffs' claims are typical of the claims of the proposed Class.
23 Plaintiffs and all members of the Class sustained injuries and damages arising out of,
24 and caused by, Defendants' common course of conduct in violation of law as alleged
25 herein.

26 **Adequacy of Representation**

27 52. Plaintiffs are adequate representatives of the Class in that Plaintiffs have
28 the same interests in the litigation of this case as the Class Members. Plaintiffs are

1 committed to vigorous prosecution of this case and have retained competent counsel
2 who are experienced in class actions and wage and hour litigation of this nature.
3 Plaintiffs are not subject to any individual defenses different from those conceivably
4 applicable to the Class as a whole.

5 **Superiority of Class Action**

6 53. A class action is superior to other available methods for the fair and
7 efficient adjudication of this controversy because individual litigation of the claims of
8 all Class Members is impractical.

9 54. The California Labor Code upon which Plaintiffs and Class Members
10 assert these claims is broadly remedial in nature. These laws serve an important public
11 interest in establishing minimum working conditions and standards in California. These
12 laws and labor standards protect the average working employee from exploitation by
13 employers who may seek to take advantage of superior economic and bargaining power
14 in setting onerous terms and conditions of employment.

15 55. The nature of this action and the format of laws available to Plaintiffs
16 and members of the class identified herein make the class action format a particularly
17 efficient and appropriate procedure to redress the wrongs alleged herein. If each
18 employee were required to file an individual lawsuit, the corporate Defendants would
19 necessarily gain an unconscionable advantage since they would be able to exploit and
20 overwhelm the limited resources of each individual class member with their vastly
21 superior financial and legal resources. Requiring each class member to pursue an
22 individual remedy would also discourage the assertion of lawful claims by employees
23 who would be disinclined to file an action against their current or former employer for
24 real and justifiable fear of retaliation and permanent damage to their careers at
25 subsequent employment.

26 56. Even if every Class Member could afford individual litigation, the court
27 system could not. It would be unduly burdensome to the courts in which individual
28 litigation of numerous cases would proceed. Individualized litigation would also

1 present the potential for varying, inconsistent, or contradictory judgments and would
2 magnify the delay and expense to all parties and to the court system resulting from
3 multiple trials of the same complex factual issues. By contrast, the conduct of this
4 action as a class action, with respect to some or all of the issues presented herein,
5 presents fewer management difficulties, conserves the resources of the parties and the
6 court system, and protects the rights of each Class Member. Plaintiffs anticipate no
7 management difficulties in this litigation.

8 57. Further, the Defendants have also acted, or have refused to act, in
9 respects generally applicable to the Class, thereby making appropriate relief with regard
10 to the members of the Class as a whole, as requested herein.

11 COMMON FACTUAL ALLEGATIONS

12 58. Plaintiffs, on information and belief, allege the following:

13 59. **Plaintiffs and Class Members:** Plaintiffs and Class Members are
14 employed by Defendants as teachers throughout the state of California. Plaintiffs and
15 Class Members are paid a salary along with a “allowance” that is intended to cover “all
16 teacher’s expenses including but not limited to mileage, supplies, dues, in-home set up,
17 home phone, cellular phones, internet, Live Scan test, printer supplies, travel and hotel
18 within California, and other monthly expenses.”

19 60. **Defendants:** The Defendants own, operate, control, maintain, and/or
20 manage a network of approximately 11 virtual schools throughout the state of
21 California. Defendants were aware of and have been notified of the improprieties
22 alleged herein by the Plaintiff and their employees, and have intentionally refused to
23 correct or rectify their policies for their own financial benefit.

24 61. **Business Reimbursement Violation Claims:** Section 2802 of the
25 California Labor Code requires an employer to indemnify its employees for “all
26 necessary expenditures or losses incurred by that employee in direct consequence of the
27 discharge of his or her duties.”

28 62. In this case Defendants provide their teachers with an allowance each

1 month but the monthly allowance is insufficient to adequately reimburse the expenses
2 the teachers incur on a monthly basis. Teachers incur monthly expenses due to mileage,
3 cell phone use, home phone use, internet use, supplies, toner, postage and many other
4 expenses. The monthly allowance is insufficient to cover such expenses.

5 63. During Plaintiffs' employment by Defendants, the monthly
6 reimbursement remained the same for the entire four year period. Moreover, the
7 allowance was subject to payroll taxes such as state and federal taxes which reduced the
8 actual monthly reimbursement allowance.

9 64. Defendants' requirements and expectations of their Teachers force
10 Teachers to incur expenses such as mileage when meeting their students face to face.
11 Moreover, since Defendants employ teachers within the virtual classroom, teachers
12 must have internet access and must provide their own supplies. Teachers are also
13 required to attend meetings, travel within their assigned geographic area, participate in
14 open houses, expos, orientations, serve as proctors for site-based proctored exams,
15 participate in weekly conference calls, attend a school outing at least once per month,
16 among other mandated duties that necessitate Teachers incurring expenses. These
17 expenses forced Plaintiffs and the Class Members to incur costs in excess of the
18 monthly allowance.

19 65. As a direct and proximate result of Defendants' unlawful conduct, as set
20 forth herein, Plaintiffs and the Class Members have sustained damages, including the
21 lack of proper reimbursement all in an amount to be established at trial. Plaintiffs and
22 the Class Members are also entitled to recover prejudgment interest, attorneys' fees and
23 costs, pursuant to statute.

24 66. At all times herein set forth, PAGA was applicable to the Plaintiffs'
25 employment by Defendants. Pursuant to PAGA, a civil action under PAGA may be
26 brought by an "aggrieved employee," who is any person that was employed by the
27 alleged violator and against whom one or more of the alleged violations was committed.

28 67. Plaintiff Duffy was employed by Defendants and the Labor Code

1 violations alleged herein were committed against her during the time of her
2 employment, and she is therefore an aggrieved employee. Plaintiff Duffy and other
3 employees, including Class Members, are “aggrieved employees” as defined by
4 California Labor Code §2699(c) in that they are all current or former employees of
5 Defendants, and one or more of the Labor Code violations alleged herein were
6 committed against them.

7 68. Pursuant to California Labor Code §§ 2699.3 and 2699.5, an aggrieved
8 employee, may pursue a civil action arising under PAGA after the following
9 requirements have been met:

10 a. The aggrieved employee shall give written notice by certified
11 mail (hereinafter "Employee's Notice") to the California Labor and Workforce
12 Development Agency ("LWDA") and the employer of the specific provisions of
13 the California Labor Code alleged to have been violated, including the facts and
14 theories to support the alleged violations.

15 b. The LWDA shall provide notice to the employer and the
16 aggrieved employee by certified mail that it does not intend to investigate the
17 alleged violation within thirty (30) calendar days of the postmark date of the
18 Employee's Notice. Upon receipt of the LWDA Notice, or if the LWDA Notice
19 is not provided within thirty-three (33) calendar days of the postmark date of the
20 Employee's Notice, the aggrieved employee may commence a civil action
21 pursuant to California Labor Code § 2699 to recover civil penalties in addition
22 to any other penalties to which the employee may be entitled.

23 69. On **September 25, 2015**, the date the original complaint was filed,
24 Plaintiff provided a written Employee’s Notice and draft copy of the First Amended
25 Complaint with additional PAGA claims by certified mail to the LWDA and to the
26 employer Defendants CAVA-LA and Insperity of the specific provisions of the
27 California Labor Code alleged to have been violated, including the facts and theories to
28 support the alleged violations, pursuant to California Labor Code §2699.3.

1 **FIRST CAUSE OF ACTION**

2 **Failure To Reimburse Expenses - Labor Code §2802**

3 **(Against All Defendants and Does 1-50)**

4 70. Plaintiffs incorporate by reference in this cause of action each allegation
5 of all of the foregoing paragraphs as if fully restated herein, and further allege against
6 Defendants and Does 1-50, and each of them, as follows:

7 71. Under Labor Code § 2802 employers must reimburse employees for “all
8 necessary expenditures or losses incurred by the employee in direct consequence of the
9 discharge of his or her duties, or his or her obedience to the directions of the employer.”

10 72. During the Class Period Plaintiffs and Class Member Teachers were
11 entitled to reasonable reimbursement of expenses incurred in performing the required
12 duties expected of Teachers including without limitation, costs of gasoline, insurance,
13 maintenance of vehicle, parking expenses incurred in connection with their duties,
14 reimbursement for a reasonable portion of their cellular phone bills and home phone
15 bills for required work-related phone calls, as well as expenses incurred for postage,
16 supplies, internet, Live Scan tests, travel and hotels.

17 73. Defendants have intentionally and willfully, as part of their
18 reimbursement policies, violated Labor Code § 2802 by (1) failing and refusing to
19 reimburse to Plaintiffs and Teacher Class Members for all expenses that they reasonably
20 and necessarily incurred as part of their employment while working for Defendants and
21 (2) by withholding payroll taxes such as state and federal taxes from the Teacher Class
22 Members’ allowances, which reduced the actual monthly reimbursement amounts to a
23 level that did not fully reimburse Teachers for their reasonable and necessary job-
24 related expenses.

25 74. In particular, Defendants have reimbursed Plaintiffs and Teacher Class
26 Members with a monthly allowance that is significantly less than the monthly expenses
27 they incur.

28 75. Defendants’ refusal to fully indemnify Teacher Class Members has

1 damaged them in an amount according to proof at trial. Plaintiffs and Teacher Class
2 Members are entitled to their business-related expenses incurred during the course and
3 scope of their employment, plus interest, reasonable costs and attorneys' fees, and
4 injunctive relief.

5 **SECOND CAUSE OF ACTION**

6 **Unfair Practices Under The Unfair Competition Act**

7 **California Business & Professions Code §§ 17200-17208**

8 **(Against All Defendants and Does 1-50)**

9 76. Plaintiffs incorporate by reference in this cause of action each allegation
10 of all of the foregoing paragraphs as if fully restated herein, and further allege against
11 Defendants and Does 1-50, and each of them, as follows:

12 77. Plaintiffs bring this cause of action on behalf of herself and the Class as
13 well as on behalf of the general public, seeking equitable and statutory relief to stop the
14 misconduct of Defendants, as complained of herein, and to compel disgorgement of all
15 profits obtained by Defendants through the unfair, unlawful, and/or fraudulent business
16 practices described herein.

17 78. The conduct of Defendants, as alleged herein, constitutes an unlawful
18 business practice as set forth in Business and Professions Code §§ 17200, *et seq.*

19 79. Specifically, Defendants conducted business activities while failing to
20 comply with California wage and hour laws as described in this Complaint.

21 Defendants, and each of them, have intentionally and improperly failed to reimburse
22 employee's expenses. Section 17200 of the Business and Professions Code prohibits
23 unfair competition by prohibiting unlawful, unfair, or fraudulent business practices or
24 acts. Defendants' failure to adopt policies in accordance and/or adherence with these
25 laws, all of which are binding upon and burdensome to Defendants' competitors,
26 engenders an unfair competitive advantage for Defendants, thereby constituting an
27 unfair business practice, as set forth in California Business and Professions Code
28 §§ 17200, *et seq.*

1 Section 2699(c), which provides in relevant part, “(c) For purposes of this part,
2 “aggrieved employee” means any person who was employed by the alleged violator and
3 against whom one or more of the alleged violations was committed.”

4 87. PAGA provides as follows, “[n]otwithstanding any other provision of
5 law, a plaintiff may as a matter of right amend an existing complaint to add a cause of
6 action arising under this part at any time within 60 days of the time periods specified in
7 this part.”

8 88. Defendants’ conduct, as alleged herein, violates numerous sections of the
9 California Labor Code, including, but not limited to, the following: Violation of Labor
10 Code §2802 by failing to reimburse Plaintiff and Teacher Class Members all expenses
11 reasonably necessarily incurred as part of their employment.

12 89. Plaintiff also seeks any civil penalties allowable under the Labor Code
13 that arise out of the same set of operative facts as the claims made in this complaint.

14 90. Plaintiff has fully complied with the statutory requirements of Labor
15 Code section 2699.3. Plaintiff gave notice by a letter dated September 25, 2015 and
16 delivered by certified mail to the California Labor and Workforce Development Agency
17 and the employer of the specific provisions of the Labor Code alleged to have been
18 violated, including the facts and theories to support the alleged violations. More than
19 33 days have passed since Plaintiff gave written notice, yet Plaintiff has not yet received
20 notice that the Labor and Workforce Development Agency intends to pursue an action
21 for penalties against Defendants.

22 91. Defendants have knowingly refused to pay any portion of the amount
23 due and owing Plaintiff. Further, Defendants have not taken any actions to “cure” the
24 Labor Code violations pursuant to California Labor Code section 2699 et seq.

25 92. By failing to pay Plaintiff and the current and past aggrieved employees,
26 Defendants have violated numerous California Labor Code and Wage Order provisions,
27 all as set forth hereinabove. Civil penalties are therefore appropriate.

28

1 **PRAYER FOR RELIEF**

2 **WHEREFORE**, Plaintiffs, on behalf of herself and the Proposed Class
3 and represented parties, pray for judgment and the following specific relief against
4 Defendants, jointly and separately as follows:

5 A. That the Court determine that this action may be maintained and
6 certified as a class action under California Code of Civil Procedure § 382;

7 B. For compensatory damages in an amount according to proof with
8 interest thereon including but not limited to all amounts necessary to indemnify Plaintiff
9 and the Teacher Class Members for expenses they incurred in the discharge of their
10 duties within the scope of their employment and the attorneys' fees and costs incurred
11 in this action to enforce their rights under Labor Code § 2802;

12 C. That Defendants are found to have violated Labor Code § 2802
13 for willfully refusing to adequately reimburse costs incurred by Plaintiffs and the
14 Teacher Class Members for expenses they incurred in the discharge of their duties
15 within the scope of their employment

16 D. That Defendants are found to have violated or owe penalties
17 regarding the following California Labor Code sections as to Plaintiffs, the Class, and
18 represented parties: § 2802;

19 E. That Defendants' violations as described above are found to have
20 been willful;

21 F. That Defendants are found to have violated Business &
22 Professions Code §§ 17200, *et seq.*, and be enjoined to cease and desist from unlawful
23 activities in violation of Business & Professions Code §§ 17200, *et seq*

24 G. That Defendants be ordered and enjoined to pay restitution to
25 Plaintiff and Class Members due to Defendants' unlawful activities, pursuant to
26 Business & Professions Code §§ 17200, *et seq.*;

27 H. That Plaintiffs, the Class Members, and represented parties be
28 awarded reasonable attorneys' fees and costs pursuant to Labor Code § 2802 and/or

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other applicable law; and

I. That Plaintiffs and the Class Members be awarded prejudgment interest on all damages and other relief awarded pursuant to Labor Code § 2802 and/or other applicable law;

J. For penalties as provided, per violation, under the Private Attorneys General Act (PAGA) Labor Code § 2699, et seq.,


K. For attorneys’ fees as provided under the Private Attorneys General Act (PAGA) Labor Code § 2699, et seq.

That Plaintiffs, the Class Members, and represented parties receive an award of such other and further relief as this Court may deem appropriate.

DEMAND FOR JURY TRIAL

Plaintiffs, on behalf of themselves and all others similarly situated, hereby demand a trial by jury for all issues so triable.

Dated: September 29, 2016 DA VEGA | FISHER | MECHTENBERG LLP

By: 

Ted Mechtenberg, SBN 219602

Attorneys for Plaintiffs and Putative Class