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**FILED BY FAX**  
ALAMEDA COUNTY  
February 10, 2016  
CLERK OF  
THE SUPERIOR COURT  
By Amrit Khan, Deputy  
CASE NUMBER:  
RG16803572

**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
IN AND FOR ALAMEDA COUNTY**

PETER ALEXANDER, on behalf of  
himself and all others similarly situated,

Plaintiff,

v.

THINKTANK LEARNING, INC., and  
DOES 1 through 10, inclusive,

Defendants.

**CASE NO.:**

**CLASS ACTION COMPLAINT FOR:**

- (1) BREACH OF CONTRACT;
- (2) UNPAID MINIMUM WAGES;
- (3) UNPAID OVERTIME WAGES
- (4) WAITING TIME PENALTIES;
- (5) RECORD-KEEPING VIOLATIONS;
- (6) UNREIMBURSED EXPENSES;
- (7) MEAL AND REST BREAK VIOLATIONS;
- (8) UNLAWFUL BUSINESS PRACTICES; and
- (9) LABOR CODE PRIVATE ATTORNEY GENERAL ACT PUBLIC ENFORCEMENT CLAIM (LABOR CODE § 2699 *ET. SEQ.*)

**DEMAND FOR JURY TRIAL**

1 Plaintiff Peter Alexander (“Plaintiff”), individually and on behalf of all others similarly  
2 situated, by his attorneys Rukin Hyland Doria & Tindall LLP, files this Class Action and  
3 Representative Action Complaint and Jury Demand and alleges as follows:  
4

5 **NATURE OF THE CASE**

6 1. This class action is brought on behalf of Plaintiff and the following  
7 proposed Class: All persons who, at any time from February 10, 2012 until the present, worked  
8 in California for Defendant ThinkTank Learning, Inc. (“ThinkTank”), as teachers, tutors, or  
9 instructors and who were at any time during the proposed Class Period paid on an hourly basis,  
10 based on the number of in-class teaching or tutoring hours they taught (“Class Members”).

11 2. ThinkTank is a for-profit provider of tutoring, test preparation, and other  
12 after-school education services, with thirteen locations in the Bay Area, including Fremont,  
13 Cupertino, Milbrae, Pleasanton, San Ramon, San Francisco, San Jose, San Mateo, and Palo Alto,  
14 California. On information and belief, Plaintiff alleges that ThinkTank is a California  
15 Corporation with its principal place of business in San Jose, California. ThinkTank also operates  
16 two centers internationally, in Beijing and Shenzhen, China. ThinkTank has been in operation  
17 since at least 2002.

18 3. For at least the past four years, ThinkTank has paid Plaintiff and proposed  
19 Class Members for their in-class or in-person teaching and tutoring time but has failed to pay  
20 them anything for the time they are required to spend on a variety of work activities outside of  
21 class, including, but not limited to the following: preparing to teach or tutor, grading student  
22 assignments, quizzes, and exams, producing student progress reports, and providing feedback  
23 outside of class to students and their parents. In addition, Plaintiff and Class Members regularly  
24 worked a full day and did not receive the meal and rest breaks required by California law.  
25 Moreover, teachers, tutors, and instructors are also required to purchase, among other things,  
26 course materials for the courses they teach and to incur travel expenses when travelling between  
27 teaching locations.  
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1 Wage Order No. 4, California Labor Code §§ 201, 202, 203, 226, 2802, 1174, 1194, and 1197,  
2 and California CCP § 1021.5.

3           10. Under California Business and Professions Code (“Cal. Bus. & Prof.  
4 Code”) §§ 17200 *et seq.*, and pursuant to the class action procedures provided for in this statute,  
5 Plaintiff, on behalf of himself and the proposed Class, also seeks restitution of all benefits  
6 ThinkTank has received from their failure to pay compensation due for all hours worked and its  
7 failure to maintain proper records of hours worked. Plaintiff also seeks to bring this case as a  
8 representative action for the recovery of penalties under California Labor Code Private Attorneys  
9 General Act of 2004 (“PAGA”), California Labor Code §2698, *et seq.* PAGA permits an  
10 “aggrieved employee,” such as Plaintiff, to bring a lawsuit on behalf of himself and other current  
11 and former employees to address an employer’s widespread violation of California Labor Code.  
12

13           11. The “Class Period” is designated as the time from February 10, 2012  
14 through the trial date, based upon the allegation that the violations of California’s wage-and-hour  
15 laws and breaches of contract, as described more fully below, have been ongoing at least since  
16 February 10, 2012.

17           12. During the Class Period, ThinkTank has had a consistent policy of  
18 permitting, encouraging, and/or requiring Plaintiff and proposed Class Members to engage in the  
19 following activities (among others), without compensating them for the time they spent  
20 performing these activities as required by California state wage and hours laws and common law:  
21 (1) preparing to teach or tutor, (2) creating, reviewing, and grading student assignments,  
22 homework exercises, quizzes, and exams, (3) producing student progress reports, (4) entering  
23 grades into ThinkTank’s database, (5) providing feedback outside of class to students and their  
24 parents, (6) arriving early to classes to set up and to answer questions from students; (7) staying  
25 after class to answer questions from students and clean up; and (8) attending to administrative  
26 tasks; and (9) traveling between teaching sites.  
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1                   **the present, worked for ThinkTank as a teacher, tutor, or instructor**  
2                   **in the State of California and were paid on an hourly basis for in-**  
3                   **class (or in-person) teaching time.**

4                   This action is brought, and may properly be maintained, as a class action pursuant to California  
5                   Code of Civil Procedure § 382 because there is a well-defined community of interest in the  
6                   litigation, and the proposed class is easily ascertainable. This action presents questions of  
7                   common interest and satisfies the numerosity, commonality, typicality, adequacy, predominance,  
8                   and superiority requirements of Cal. Code Civ. Pro. § 382.

9                   **Numerosity and Ascertainability:**

10                   22.     The proposed Class is so numerous that the individual joinder of all of its  
11                   members is impracticable. While the exact number and identities of proposed Class Members  
12                   are unknown to Plaintiff at this time and can only be ascertained through appropriate discovery,  
13                   Plaintiff is informed and believes that the Class includes at least 50 persons.

14                   23.     A class action is the only available method for the fair and efficient  
15                   adjudication of this controversy. The members of the Class are so numerous that joinder of all  
16                   members is impractical, if not impossible, insofar as the Plaintiff is informed, believes and, on  
17                   that basis, alleges that the total number of Class Members is at least 50 individuals. The identity  
18                   of Class Members can be determined easily upon analysis of, among other things, employee and  
19                   payroll records maintained by ThinkTank.

20                   **Commonality:**

21                   24.     Common questions of fact and law exist as to all members of the proposed  
22                   Class that predominate over any questions affecting only individual Class Members. These  
23                   common legal and factual questions, which do not vary from Class Member to Class Member  
24                   and which may be determined without reference to the individual circumstances of any Class  
25                   Member, include but are not limited to the following:

26                   a.     whether ThinkTank, in violation of Cal. Code Regs., Title 8  
27                   § 11040, and California common law, failed to pay Plaintiff and Class Members for all of the  
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1 work ThinkTank required them to perform, thus breaching the implied contract with its  
2 employees to pay them for all hours worked;

3 b. whether ThinkTank failed to pay Plaintiff and Class Members  
4 minimum wage for all of the work ThinkTank required them to perform, pursuant to IWC Wage  
5 Order No. 4, and Cal. Labor Code §§ 1194 and 1197;

6 c. whether ThinkTank, in violation of Cal. Labor Code §§ 201-203,  
7 failed to timely pay Plaintiff and Class Members all wages due upon termination or resignation;

8 d. whether Plaintiff and other terminated Class Members are entitled  
9 to “waiting time” penalties pursuant to Cal. Labor Code § 203;

10 e. whether ThinkTank, in violation of Cal. Labor Code §§ 226 and  
11 1174, systematically failed to keep and provide accurate records of all of the hours worked by  
12 Plaintiff and Class Members and their applicable hourly rates;

13 f. whether ThinkTank, in violation of Labor Code § 2802, failed to  
14 indemnify Plaintiff and Class Members for all necessary expenditures incurred by them in direct  
15 consequence of the discharge of their duties;

16 g. whether Plaintiff and members of the Class are entitled to  
17 restitution under Cal. Bus. & Prof. Code §§ 17200 *et seq.*;

18 h. whether Plaintiff and members of the Class are entitled to recover  
19 penalties under PAGA; and

20 i. what amounts Plaintiff and Class Members are entitled to receive  
21 in interest on unpaid compensation due and owing to them.  
22

23 **Typicality:**

24 25. Plaintiff’s claims are typical of the claims of the proposed Class. Plaintiff  
25 and all Class Members sustained injuries and damages arising out of and caused by ThinkTank’s  
26 common course of conduct in violation of law as alleged herein.  
27  
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1 **Adequacy of Representation:**

2           26. Plaintiff is an adequate representative of the Class in that Plaintiff has the  
3 same interests in the litigation of this case as the Class Members; Plaintiff is committed to  
4 vigorous prosecution of this case and has retained competent counsel experienced in class action  
5 and wage-and-hour litigation of this nature. Plaintiff is not subject to any individual defenses  
6 unique from those conceivably applicable to the Class as a whole and anticipates no management  
7 difficulties in this litigation.

8 **Predominance:**

9           27. ThinkTank has engaged in a common course of wage-and-hour violations  
10 toward Plaintiff and proposed Class Members. The common issues arising from ThinkTank's  
11 conduct that affect Plaintiff and Class Members predominate over any individual issues.  
12 Adjudication of these common issues in a single action has important and desirable advantages  
13 of judicial economy.

14 **Superiority of Class Action:**

15           28. A class action is superior to other available methods for the fair and  
16 efficient adjudication of this controversy because individual litigation of the claims of all Class  
17 Members is impracticable. Even if every Class Member could afford individual litigation, the  
18 court system could not. It would be unduly burdensome to the courts in which individual  
19 litigation of numerous cases would proceed. Individualized litigation would also present the  
20 potential for varying, inconsistent, or contradictory judgments and would magnify the delay and  
21 expense to all parties and to the court system resulting from multiple trials of the same complex  
22 factual issues. Moreover, individual actions by Class Members may establish inconsistent  
23 standards of conduct for ThinkTank. By contrast, the conduct of this action as a class action,  
24 with respect to some or all of the issues presented herein, presents fewer management  
25 difficulties, conserves the resources of the parties and the court system, and protects the rights of  
26 each Class Member.  
27  
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1           29. ThinkTank has acted or refused to act in respects generally applicable to the  
2 Class, thereby making appropriate relief with regard to the members of the Class as a whole, as  
3 requested herein.

4   **FIRST CAUSE OF ACTION**  
5           **(Breach of Contract for Failure to Pay Compensation for all Hours Worked)**  
6   **(brought by Plaintiff on behalf of all Class Members)**

7           30. Plaintiff incorporates in this cause of action every allegation contained in  
8 the previous paragraphs, as though fully set forth herein.

9           31. Pursuant to California Labor Code § 218, Plaintiff may bring a civil action  
10 for unpaid wages due directly against the employer in Plaintiff's name without first filing a claim  
11 with the Department of Labor Standards Enforcement (or DLSE).

12           32. As alleged in ¶ 12 above, throughout the Class Period, Plaintiff and Class  
13 Members have been required to spend substantial time preparing to teach or tutor as well as  
14 creating, reviewing, and grading student assignments and producing student progress reports  
15 without compensation for those hours worked. In addition, Plaintiff and Class Members have  
16 arrived at early to class to prepare for class and to answer questions by students but are not paid  
17 for this time. Moreover, ThinkTank does not compensate Plaintiff and Class Members for their  
18 time spent answering questions from students and parents outside of class or emailing with  
19 students about their class assignments, although ThinkTank requires or permits them to do so.

20           33. In addition, ThinkTank has required Class Members to travel between  
21 different work sites or between work sites without paying them for this time, in violation of  
22 California law. *See Morillion v. Royal Packing Co.* (2000) 22 Cal. 4th 575, 579 n.2.

23           34. At all times herein relevant, IWC Wage Order No. 4-2001, California Code  
24 of Regulations Title 8 § 11040, has applied and continues to apply to Plaintiff and the Class  
25 Members' employment with ThinkTank. IWC Wage Order No. 4-2001 states that "every  
26 employer shall pay to each employee wages . . . for all hours worked." Cal. Code Regs., Tit. 8,  
27 § 11040(4)(A).  
28

1                   35. “Hours worked” is defined at California Code of Regulations Title 8,  
2 § 11040(2)(L) as “the time during which an employee is subject to the control of an employer,  
3 and includes all the time the employee is suffered or permitted to work, whether or not required  
4 to do so.” Under this definition of “hours worked,” the hours spent by Plaintiff and Class  
5 Members preparing to teach and tutor, creating and grading exams and homework assignments,  
6 arriving early to class, staying after class to answer questions, answering questions from students  
7 outside of class, as well as the compulsory travel between various worksites are “hours worked”  
8 and must be compensated.

9                   36. By the conduct alleged above, ThinkTank breached an implied agreement  
10 with Plaintiff and Class Members to pay them their agreed-upon contract rate for all hours  
11 worked as understood and required under California state law. ThinkTank’s failure to perform  
12 their part of the contract by failing to pay Class Members for all of their hours worked is  
13 unjustified and unexcused and constitutes a breach of contract.

14                   37. As a direct and proximate result of ThinkTank’s unlawful conduct, as set  
15 forth herein, Plaintiff and the Class Members have sustained damages, including the loss of  
16 earnings paid at the agreed-upon rate for hours worked on behalf of ThinkTank, in an amount to  
17 be established at trial, plus prejudgment interest pursuant to statute.

18  
19   **SECOND CAUSE OF ACTION**  
20   **(Unpaid Minimum Wages under California Law)**  
21   **(brought by Plaintiff on behalf of all Class Members)**

22                   38. Plaintiff incorporates in this cause of action every allegation contained in  
23 the previous paragraphs, as though fully set forth herein.

24                   39. California Labor Code § 1197 states that payment of less than the minimum  
25 wage fixed by California’s Industrial Welfare Commission is unlawful.

26                   40. ThinkTank refused to pay Plaintiff and members of the proposed Class any  
27 compensation for the time they spent preparing to teach and tutor, creating and grading student  
28 assignments, quizzes, and exams, arriving early to class and staying after class to answer

1 students' questions, travelling between worksites, or other activities described in Paragraph 12,  
2 above. As such, Plaintiff and members of the Class received less than the minimum wage for all  
3 hours worked for ThinkTank. *See Armenta v. Osmose, Inc.* (Cal. App. 2d Dist. 2005) 135 Cal.  
4 App. 4th 314 (employer violated minimum wage statute even if average of paid and unpaid hours  
5 exceeded the minimum wage). Plaintiff and the Class, therefore, are entitled under California  
6 law to be paid for all hours during which they were subject to the control of ThinkTank,  
7 including all time they were required, suffered, or permitted to work for ThinkTank.

8  
9 41. As a direct and proximate result of ThinkTank's unlawful conduct, as set  
10 forth herein, Plaintiff and the Class have sustained damages, including compensatory damages  
11 pursuant to Labor Code § 1194(a), prejudgment interest, liquidated damages pursuant to Labor  
12 Code § 1194.2, and reasonable attorneys' fees and costs of suit pursuant to Labor Code  
13 § 1194(a), in an amount to be established at trial.

### 14 **THIRD CAUSE OF ACTION**

#### 15 **(Failure to Pay Overtime)**

#### 16 **(brought by Plaintiff on behalf of himself and all Class Members)**

17 42. Plaintiff, individually and on behalf of himself and all employees similarly  
18 situated, refers to and hereby incorporates by reference the preceding paragraphs as though fully  
19 set forth herein.

20 43. As alleged above, throughout the Class Period, Plaintiff and Class  
21 Members were sometimes required to work more than eight hours per day and more than 40  
22 hours per week, including time worked off-the-clock preparing to teach and tutor and performing  
23 other tasks outside of their in-class or in-person teaching time. Defendants, however, regularly  
24 did not pay Plaintiff or Class Members overtime compensation for the hours they worked over  
25 eight hours in a day and 40 hours a week.

26 44. At all times herein relevant, California Labor Code § 510 and California  
27 Code of Regulations Title 8 § 11100 applied to Plaintiff's work with Defendants and continue to  
28

1 apply to Class Members' employment with Defendants. California Labor Code § 510 and  
2 California Code of Regulations Title 8, § 11100 state that "employers must pay one and a half  
3 times an employee's 'regular rate' if he or she works more than 40 hours per week or more than  
4 eight hours per day." Lab. Code § 510(a).

5 45. California Code of Regulations Title 8, § 11100(3)(a)(1) provide that  
6 "employees shall not be employed more than eight (8) hours in any workday or more than 40  
7 hours in any workweek unless the employee receives one and one-half (1 1/2) times such  
8 employee's regular rate of pay for all hours worked over 40 hours in the workweek. Eight (8)  
9 hours of labor constitutes a day's work." Defendants violated California law by requiring its  
10 employees to work more than eight hours in a day and forty hours in a week and not paying them  
11 overtime wages for these overtime hours worked.

12 46. As a direct and proximate result of Defendants' unlawful conduct, as set  
13 forth herein, Plaintiff and the Class Members have sustained damages, including loss of earnings  
14 from overtime compensation due, in an amount to be established at trial, plus prejudgment  
15 interest pursuant to statute.  
16

17 **FOURTH CAUSE OF ACTION**  
18 **(Waiting Time Penalties Under California Law)**  
19 **(brought by Plaintiff on behalf of himself and Class Members)**

20 47. Plaintiff incorporates in this cause of action every allegation contained in  
21 the previous paragraphs, as though fully set forth herein.

22 48. California Labor Code § 201 requires ThinkTank to pay their discharged  
23 employees all wages due immediately upon discharge.

24 49. California Labor Code § 202 requires that if an employee quits his or her  
25 employment, "his or her wages shall become due and payable not later than 72 hours thereafter,  
26 unless the employee has given 72 hours previous notice of his or her intention to quit, in which  
27 case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any  
28

1 other provision of law, an employee who quits without providing a 72-hour notice shall be  
2 entitled to receive payment by mail if he or she so requests and designates a mailing address.

3 50. California Labor Code § 203 provides that if an employer willfully fails to  
4 timely pay any wages that are due to an employee who quits or is discharged, the employer must,  
5 as a penalty, continue to pay the employee's wages until the back wages are paid in full or an  
6 action is commenced. The penalty cannot exceed 30 days of wages.

7 51. Plaintiff and Class Members who have been discharged or who have quit at  
8 any time during the proposed Class Period are entitled to all unpaid compensation, pursuant to  
9 California Labor Code § 203, but, to date, have not received such compensation, as alleged  
10 above. In addition, Plaintiff and Class Members who signed employment agreements with  
11 ThinkTank specifying a beginning and ending date for employment and who were not paid for  
12 all unpaid compensation at the time of the termination of such contracts are entitled to all unpaid  
13 compensation, pursuant to California Labor Code § 203, but at no time received payments for all  
14 of the time they spent working for ThinkTank outside of the time they spent actually teaching  
15 and tutoring.  
16

17 52. As a consequence of ThinkTank's willful conduct in not paying  
18 compensation for all hours worked, Plaintiff and proposed Class Members are entitled to up to  
19 30 days wages as a penalty under California Labor Code § 203, together with interest thereon.

20 **FIFTH CAUSE OF ACTION**  
21 **(Record-Keeping Violations under California Law)**  
22 **(brought by Plaintiff on behalf of all Class Members)**

23 53. Plaintiff incorporates in this cause of action every allegation contained in  
24 the previous paragraphs, as though fully set forth herein.

25 54. On information and belief, Plaintiff alleges that ThinkTank maintains and  
26 has maintained no records of most—if not all—of the hours worked by Plaintiff and proposed  
27 Class Members outside of their in-class or in-person teaching and tutoring hours.  
28

1           55. ThinkTank knowingly and intentionally failed to maintain and provide  
2 timely, accurate, itemized wage statements by failing, *inter alia*, to identify all hours worked by  
3 Plaintiff and the Class in accordance with Labor Code § 226(a) and the IWC Wage Orders.

4           56. At all times relevant herein, ThinkTank willfully failed to maintain records  
5 of all hours worked and applicable hourly rates as required under Labor Code § 1174(d).

6           57. Plaintiff and members of the Class are entitled to and seek penalties under  
7 Labor Code §§ 226.3 and 1174.5 and attorneys' fees under Labor Code §§ 226(e).

8  
9                                   **SIXTH CAUSE OF ACTION**  
10                                   **(Claim for Unreimbursed Expenses)**  
11                                   **(brought by Plaintiff on behalf of all Class Members)**

12           58. Plaintiff incorporates in this cause of action every allegation contained in  
13 the previous paragraphs, as though fully set forth herein.

14           59. Throughout the class period, Plaintiff and Class Members have incurred  
15 necessary expenditures in direct consequence of the discharge of their duties, including  
16 expenditures for textbooks, test preparation texts, and other class materials. In addition, Class  
17 Members have incurred necessary expenditures in traveling between teaching locations.  
18 ThinkTank did not indemnify or reimburse Class Members for all necessary expenditures or  
19 losses incurred by Plaintiff and proposed Class Members in discharging their duties.

20           60. California Labor Code § 2802 provides that an employer “shall indemnify  
21 his or her employee for all necessary expenditures or losses incurred by the employee in direct  
22 consequence of the discharge of his or her duties . . . .”

23           61. As a direct and proximate result of ThinkTank’s unlawful conduct, as set  
24 forth herein, Plaintiff and the Class have sustained damages in the amount of their unreimbursed  
25 expenses, plus interest accrued from the date of the expenditure, in an amount to be established  
26 at trial.

27           62. Pursuant to California Labor Code 2802, Plaintiff and Class Members are  
28 also entitled to reasonable attorneys’ fees and costs.

1 **SEVENTH CAUSE OF ACTION**

2 **(Failure to Provide Meal and Rest Breaks)**

3 **(brought by Plaintiff on behalf of himself and all Class Members)**

4 63. Plaintiff, individually and on behalf of himself and all employees similarly  
5 situated, refers to and hereby incorporates by reference the preceding paragraphs as though fully  
6 set forth herein.

7 64. As alleged above, throughout the Class Period, Plaintiff and Class  
8 Members regularly worked a full day and did not receive proper meal and rest breaks. Instead,  
9 Class Members were frequently required and/or encouraged to work all or part of their lunch  
10 period, and/or discouraged from taking their full meal and rest periods. They were not informed  
11 that they could or should take 30-minute uninterrupted lunch periods when they worked five  
12 hours a day or more.

13 65. Plaintiff and Class Members have regularly worked in excess of five hours  
14 a day without being afforded at least a half-hour meal period in which they were relieved of all  
15 duties, as required by California Labor Code §§ 226.7 and 512 and IWC Wage Order No. 5, §  
16 11.  
17

18 66. By failing to consistently provide Plaintiff and Class Members an  
19 uninterrupted, thirty-minute meal period within the first five hours of work each day, Defendants  
20 violated the California Labor Code and applicable IWC Wage Order provisions.

21 67. Plaintiff is informed and believes, and on that basis alleges, that  
22 Defendants have rarely, if ever, paid the one hour of compensation as a premium payment to any  
23 Class Member pursuant to California Labor Code § 226.7 for not providing proper meal periods.  
24 As a direct and proximate result of Defendants' unlawful conduct as set forth herein, Plaintiff  
25 and Class Members have sustained damages, including loss of compensation resulting from  
26 missed meal periods, in an amount to be determined at trial.  
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1           68. In addition, at all relevant times, Defendant was aware of, and under a  
2 duty to comply with, California Labor Code § 226.7.

3           69. At all times herein relevant, California Labor Code § 226.7 has applied  
4 and continues to apply to Plaintiff's and Class Members' employment with Defendant.  
5 California Labor Code § 226.7 states "no employer shall require any employee to work during  
6 any meal or rest period mandated by an applicable order of the Industrial Welfare Commission."

7           70. Section 12 of Wage Order No. 5-2001 provides in relevant part that:

8                           (A) Every employer shall authorize and permit all employees to  
9 take rest periods, which insofar as practicable shall be in the middle of each work  
10 period. The authorized rest period time shall be based on the total hours worked  
11 daily at the rate of ten (10) minutes net rest time per four (4) hours or major  
12 fraction thereof. However, a rest period need not be authorized for employees  
13 whose total daily work time is less than three and one-half (3 ½) hours.  
14 Authorized rest period time shall be counted, as hours worked, for which there  
15 shall be no deduction from wages.

16           71. If an employer fails to provide an employee a rest period in accordance  
17 with the applicable provisions of this order, the employer shall pay the employee one (1) hour of  
18 pay at the employee's regular rate of compensation for each work day that the rest period is not  
19 provided.

20           72. Defendant did not authorize or permit Plaintiff and other Class Members  
21 to take rest breaks as required by California law. Plaintiffs and California Class Members  
22 regularly worked a full work day but were denied a rest period every four hours or major fraction  
23 thereof.

24           73. Defendant failed to authorize and permit Plaintiff and Class Members to  
25 take adequate rest periods as required by law. Plaintiffs and California Class Members are  
26 therefore entitled to payment of additional wages as provided by law.

27                           **EIGHTH CAUSE OF ACTION**  
28                           **(Unlawful Business Practices under California's Unfair Competition Act)**  
                              **(brought by Plaintiff on behalf of all Class Members)**

1           74. Plaintiff incorporates in this cause of action every allegation contained in  
2 the previous paragraphs, as though fully set forth herein.

3           75. Plaintiff further brings this cause of action on behalf of the Class and the  
4 general public, seeking statutory relief regarding the misconduct of ThinkTank, as complained  
5 herein, and to compel restitution and disgorgement of all profits obtained by ThinkTank through  
6 the unfair and unlawful business practices described in this Complaint.

7           76. The conduct of ThinkTank, as alleged herein, constitutes unlawful practices  
8 as set forth in California Business & Professions Code §§ 17200, *et seq.* Specifically,  
9 ThinkTank conducts business activities while failing to comply with California wage-and-hour  
10 laws and the California common and statutory law as described herein.

11           77. Section 17200 of the California Business & Professions Code prohibits  
12 unfair competition by prohibiting unlawful, unfair, or fraudulent business practices or acts.

13           78. ThinkTank's failure to adopt policies in accordance with these laws and/or  
14 adhere to these laws, all of which are binding upon and burdensome to ThinkTank's competitors,  
15 engenders an unfair competitive advantage for ThinkTank, thereby constituting an unfair  
16 business practice, as set forth in California Business & Professions Code §§ 17200, *et seq.*

17           79. ThinkTank's conduct as herein alleged has damaged Plaintiff and members  
18 of the proposed Class by wrongfully denying them earned wages and reimbursement for  
19 expenses and therefore was substantially injurious to Plaintiff and the Class.

20           80. Under the circumstances alleged, it would be inequitable and result in a  
21 miscarriage of justice for ThinkTank to continue to retain the property of Plaintiff and the  
22 members of the Class, entitling Plaintiff and the Class to restitution of the unfair benefits  
23 obtained and disgorgement of ThinkTank's ill-gotten gains.

24           81. As a result of ThinkTank's unlawful and unfair business practices, Plaintiff  
25 and members of the Class are entitled to and seek restitution and disgorgement, and other  
26 appropriate relief available under Cal. Bus. & Prof. Code §§ 17200 *et seq.*  
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**NINTH CAUSE OF ACTION**  
**(Labor Code Private Attorney General Act Claim, Labor Code §§2699 et. seq.)**  
**(Brought By Plaintiff On Behalf Of All Class Members)**

82. Plaintiff incorporates in this cause of action every allegation contained in the previous paragraphs, as though fully set forth herein.

83. California Labor Code §§ 2698-2699.5, the Labor Code Private Attorneys General Act of 2004 (“PAGA”), establishes that any provision of the California Labor Code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency (“LWDA”)—or any of its departments, divisions, commissions, boards agencies or employees—for violations of the California Labor Code, may be recovered through a collective action brought by an aggrieved employee on behalf of himself or herself, and other current or former employees. Under PAGA, an aggrieved employee (or former employee) need not satisfy class action requirements in order to bring a collective action on behalf of all other aggrieved current or former employees; instead, a PAGA collective action is essentially a public enforcement action on behalf of the general public. Such an action, therefore, “functions as a substitute for an action brought by the government itself.” *Arias v. Superior Court of San Joaquin County* (2009) 46 Cal. 4th 969, 986.

84. Whenever the LWDA, or any of its departments, divisions, commissions, boards, agencies, or employees has discretion to assess a civil penalty, a court in a civil action is authorized to exercise the same discretion, subject to the same limitations and conditions, to assess a civil penalty.

85. Plaintiff is an aggrieved employee as defined in Labor Code § 2699(a). Plaintiff brings this case on behalf of himself and other current or former teachers and tutors affected by the employment law violations alleged in this Complaint. One or more of the alleged violations was committed against them.

86. Plaintiff hereby seeks to collect civil penalties for the Labor Code violations described above, including but not limited to the penalties provided for payment of a

1 wage less than the minimum, authorized under Cal. Labor Code § 1197.1, the penalties provided  
2 for failure to provide accurate itemized wage statements, authorized under Cal. Labor Code §  
3 226.3, and the penalties provided for failure to indemnify employees for necessary business  
4 expenses, authorized under Cal. Labor Code § 2802.

5 87. Plaintiff has satisfied all the prerequisites set out in California Labor Code  
6 Section 2699.3 required for maintaining a civil suit to recover the afore-mentioned penalties.  
7 Plaintiff by and through counsel, provided written notice on January 8, 2016 by certified mail to  
8 the California Labor and Workforce Development Agency and to ThinkTank’s counsel stating  
9 the provisions of the Labor Code alleged to have been violated, including the facts and theories  
10 to support the alleged violation. The time limit for the LWDA to respond has passed. As such,  
11 Plaintiff has exhausted his administrative remedies.

12 88. Defendant is liable for civil penalties in amounts to be established at trial,  
13 payable as provided in Labor Code § 2699(i) to Plaintiff and to all other aggrieved employees  
14 and to the Labor and Workforce Development Agency as provided in this subsection, and for an  
15 award of attorneys’ fees and costs incurred in securing these penalties, pursuant to § 2699(g)(1).  
16

17 **PRAYER FOR RELIEF**

18 **WHEREFORE**, Plaintiff, individually and on behalf of all others similarly situated,  
19 seeks the following relief:

- 20 a. An Order declaring that this action is properly maintainable as a Class  
21 Action under California Code of Civil Procedure § 382, certifying the  
22 Class proposed herein and appointing Plaintiff and the undersigned  
23 counsel of record to represent the Class;
- 24 b. That ThinkTank is found to have violated the provisions of the California  
25 Labor Code, as to the Plaintiff and the proposed Class by failing to pay  
26 Plaintiff and the Class for all hours worked and failing to pay overtime  
27 wages when Plaintiff and proposed Class members worked more than  
28 eight hours in a day or more than 40 hours in a week;
- c. That ThinkTank is found to have breached its implied contracts with  
Plaintiff and the Class by failing to pay them at the agreed-upon contract  
rate for all of their hours worked;

- 1 d. That ThinkTank is found to have violated California Labor Code §§ 1194  
2 and 1197 for failure to pay the minimum wage compensation due to  
3 Plaintiff and the Class Members;  
4 e. That ThinkTank is found to have violated the record-keeping provisions of  
5 California Labor Code §§ 1174(d) and 226 as to Plaintiff and the Class  
6 Members;  
7 f. That ThinkTank is found to have violated the Labor Code by failing to  
8 provide mandated meal and rest breaks to Plaintiff and the Class  
9 Members;  
10 g. That the Court adjudge and decree that Defendant ThinkTank violated  
11 California Labor Code 2802(a), *inter alia*, by willfully failing to reimburse  
12 Plaintiff and Class Members for expenses incurred in direct consequence  
13 of the discharge of their duties during their employment with ThinkTank;  
14 h. That ThinkTank is found to have violated California's Business and  
15 Provisions Code § 17200 as to Plaintiff and the Class by failing to pay  
16 Plaintiff and members of the Class for all hours worked and failing to keep  
17 timely, accurate, itemized records of all hours worked;  
18 i. An award to Plaintiff and Class Members of damages for the amount of  
19 unpaid compensation, including interest thereon, compensation for missed  
20 meal and rest breaks, liquidated damages, un-reimbursed expenses,  
21 including interest thereon, and penalties subject to proof at trial;  
22 j. That ThinkTank be ordered and enjoined to pay restitution to Plaintiff and  
23 the Class due to ThinkTank's unlawful activities, pursuant to California's  
24 Business and Professions Code §§ 17200-05;  
25 k. That Plaintiff and the California Class Members collect civil penalties  
26 authorized by PAGA;  
27 l. That Plaintiff and the Class be awarded reasonable attorneys' fees and  
28 costs pursuant to California Labor Code §§ 226(e), 1194(a), and 2802,  
and/or other applicable law; and  
m. An award of such other and further relief as this Court may deem  
appropriate.

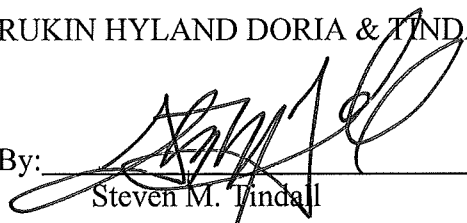
**JURY DEMAND**

**WHEREFORE**, Plaintiff demands a trial by jury on all issues so triable as a matter of right.

Dated: February 10, 2016

RUKIN HYLAND DORIA & TINDALL LLP

By: \_\_\_\_\_



Steven M. Tindall  
Attorney for Plaintiff

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