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ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Marc David, Deputy Clerk

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
9 **FOR THE COUNTY OF SAN DIEGO**
10

11 LISA RIGSBEE, as an individual and on
behalf of all others similarly situated;

12
13 Plaintiff,

14 vs.

15 INSPIRE CHARTER SCHOOLS, a California
corporation; PROVENANCE d/b/a INSPIRE
16 CHARTER SERVICES, a California
corporation, KATHRYN FAGUNDO, an
17 individual; KIMMI BUZZARD, an individual;
18 STEVEN LAWRENCE, an individual;
HERBERT NICHOLS, an individual; and
19 DOES 6 through 50, inclusive,

20 Defendants.
21
22

Case No. 37-2020-00028764-CU-OE-CTL

Assigned to the Hon. Joel R. Wohlfeil, Dept. C-73

CLASS ACTION

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Reimburse Business Expenses
(Labor Code § 2802)
2. Violations of the Unfair Competition Law
(Bus. & Prof. Code § 17200, *et seq.*)
3. Wage Statement Violations
(Labor Code § 226)
4. Civil Penalties Under the Private Attorneys
General Action (Labor Code § 2699, *et seq.*)

Action Filed: August 17, 2020

CMC: April 30, 2021 at 1:30 p.m.

Trial: Not Set

1 Plaintiff LISA RIGSBEE (“Plaintiff”), as an individual and on behalf of a class of all other
2 similarly situated current and former employees, and on behalf of the State of California as an
3 “aggrieved employee” acting as a private attorney general under the Labor Code Private Attorneys
4 General Act of 2004 (“PAGA”) California Labor Code § 2698, *et seq.*) brings this class and
5 representative action against Defendants INSPIRE CHARTER SCHOOLS; PROVENANCE d/b/a
6 INSPIRE CHARTER SERVICES, a California corporation, KATHRYN FAGUNDO, an
7 individual; KIMMI BUZZARD, an individual; STEVEN LAWRENCE, an individual; HERBERT
8 NICHOLS, an individual; and DOES 6 through 50 (hereinafter collectively referred to as
9 “Defendants”), alleging as follows:

10 **INTRODUCTION**

11 1. This is a class and representative action brought under the California Labor Code
12 and Unfair Competition Law.

13 2. This complaint challenges systemic unlawful employment policies and practices that
14 resulted in violations of the Labor Code against individuals who worked for Defendants.

15 3. Defendants run a network of private online charter schools where students are
16 primarily taught virtually by Defendants’ employees in online homeschool settings. Defendants’
17 employees, including charter school teachers, instructors and other personnel, work remotely and
18 have to pay out of their own pocket the cost of internet and telephone charges, home office
19 expenses, such as equipment, materials and utilities, without reimbursement from Defendants, in
20 violation of Labor Code section 2802.

21 4. Defendants further failed to list the correct name and address of the legal entity that
22 is and was the employer of Plaintiff and other putative class members as a matter of policy and
23 practice, in violation of Labor Code section 226(a)(8).

24 5. Defendants are liable for civil penalties based on these Labor Code violations under
25 the PAGA.

26 **JURISDICTION & VENUE**

27 6. Jurisdiction of this action is proper in this Court under Article VI, Section 10 of the
28 California Constitution.

1 attorneys, are instrumentalities of the same single venture, do not have an arm's length relationship,
2 and use various corporate entities to conceal the nature of operations but to otherwise share labor
3 and services and benefits. PROVENANCE is an entity that is set up as INSPIRE CHARTER
4 SERVICES to carry on the business of INSPIRE CHARTER SCHOOLS after INSPIRE
5 CHARTER SCHOOLS essentially failed. PROVENANCE d/b/a/ INSPRIE CHARTER
6 SERVICES carry on the services provided to charter schools previously furnished by INSPIRE
7 CHARTER SCHOOLS and is owned and operated by the same core group of individuals, some of
8 whom are named as defendants in this present action.

9 12. Plaintiff, under Code of Civil Procedure section 474, being ignorant of the true name
10 of a defendant when the complaint was filed, and having designated defendant in the prior
11 complaint by the fictitious name of DOE 2 and having discovered the true name of the defendant to
12 be KATHRYN FAGUNDO, an individual, hereby identifies and names the true identity of this
13 defendant in this amended complaint. KATHRYN FAGUNDO is an individual who is liable as an
14 employer and/or as an actor on behalf of one of the employer entity defendants named herein under
15 Labor Code sections 558, 558.1, 1197.1 and 2699 et seq.

16 13. Plaintiff, under Code of Civil Procedure section 474, being ignorant of the true name
17 of a defendant when the complaint was filed, and having designated defendant in the prior
18 complaint by the fictitious name of DOE 3 and having discovered the true name of the defendant to
19 be KIMMI BUZZARD, an individual, hereby identifies and names the true identity of this
20 defendant in this amended complaint. KIMMI BUZZARD is an individual who is liable as an
21 employer and/or as an actor on behalf of one of the employer entity defendants named herein under
22 Labor Code sections 558, 558.1, 1197.1 and 2699 et seq.

23 14. Plaintiff, under Code of Civil Procedure section 474, being ignorant of the true name
24 of a defendant when the complaint was filed, and having designated defendant in the prior
25 complaint by the fictitious name of DOE 4 and having discovered the true name of the defendant to
26 be STEVEN LAWRENCE, an individual, hereby identifies and names the true identity of this
27 defendant in this amended complaint. STEVEN LAWRENCE is an individual who is liable as an
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1 employer and/or as an actor on behalf of one of the employer entity defendants named herein under
2 Labor Code sections 558, 558.1, 1197.1 and 2699 et seq.

3 15. Plaintiff, under Code of Civil Procedure section 474, being ignorant of the true name
4 of a defendant when the complaint was filed, and having designated defendant in the prior
5 complaint by the fictitious name of DOE 5 and having discovered the true name of the defendant to
6 be HERBERT NICHOLS, an individual, hereby identifies and names the true identity of this
7 defendant in this amended complaint. HERBERT NICHOLS is an individual who is liable as an
8 employer and/or as an actor on behalf of one of the employer entity defendants named herein under
9 Labor Code sections 558, 558.1, 1197.1 and 2699 et seq. The true names and capacities, whether
10 individual, corporate, or otherwise, of the parties sued as DOES 6 through 50, are presently
11 unknown to Plaintiff, who sues them by such fictitious names under Code of Civil Procedure
12 section 474. Plaintiff is informed, believes and alleges that each of the fictitious defendants is
13 responsible in some manner for the acts and omissions alleged herein. Plaintiff will seek leave to
14 amend this Complaint to reflect their true names and capacities when they become known.

15 16. Plaintiff is informed, believes and alleges that all defendants in this action and the
16 above-mentioned charter schools are employers and/or joint employers and part of an integrated
17 employer enterprise, as each defendant exercises control over the wages, hours, and working
18 conditions of Plaintiff and the aggrieved employees, suffers and permits them to work, and engages
19 the workforce creating a common law employment relationship.

20 17. Additionally, all defendants have common ownership, common management,
21 interrelationship of operations, and centralized control over labor relations and are therefore part of
22 an integrated enterprise and thus jointly and severally responsible for the legally responsible for the
23 acts and omissions alleged herein.

24 18. Plaintiff is informed, believes and alleges that each defendant and the above-
25 mentioned charter schools acted in all respects pertinent to this action as an alter-ego, agent,
26 servant, joint employer, joint venturer, co-conspirator, partner, in an integrated enterprise, or in
27 some other capacity on behalf of all other co-defendants, such that the acts and omissions of each
28 defendant are legally attributable to all others.

GENERAL ALLEGATIONS

1
2 19. At all relevant times, Defendants were required to comply with Labor Code sections
3 2802 and 226. Defendants are subject to California’s Unfair Competition Law.

4 20. Plaintiff, like other putative class members, was subject to Defendants’ uniform
5 employment policies and practices with respect to the reimbursement of expenses and the issuance
6 of wage statements. Plaintiff is an “aggrieved employee” under the PAGA.

7 21. Specifically, Defendants maintained a uniform reimbursement policy and practice
8 and system-wide payroll administration and wage statement processing, resulting in the same
9 violations on a class-wide basis.

10 22. Defendants employed Plaintiff and other putative class members remotely. Class
11 members provide educational services and instruction to Defendants’ students over the internet.

12 23. It would be impossible for Plaintiff and the class members to complete their job
13 duties without use of the internet, telephone, and home office equipment, materials, and utilities.
14 Plaintiff and class members necessarily and unavoidably incurred the costs of these expenses each
15 pay period without reimbursement from Defendants as a matter of common policy and practice in
16 direct consequence of their remote work duties.

17 24. As a result, Defendants have failed to reimburse Plaintiff and the class members for
18 a host of business expenses in violation of Labor Code section 2802. Through this complaint,
19 Plaintiff seeks to recover on behalf of a class of current and former remote employees three
20 categories of expenses: the reasonable percentage of work-related home internet costs; the
21 reasonable percentage of work-related personal telephone and data charges; and a reasonable
22 stipend to reimburse the base cost of home office equipment (i.e., computers, printers, hardware),
23 materials (i.e., paper, ink refills, etc.) and utilities.

24 25. These unpaid expense reimbursements are recoverable as restitution under
25 California’s Unfair Competition Law.

26 26. Further, Defendant INSPIRE CHARTER SCHOOL is the legal employer of Plaintiff
27 and the class members in this action. Yet, Defendants do not state INSPIRE CHARTER
28 SCHOOL’s name and address on the wage statements for Plaintiff and the class, in violation of

1 Labor Code section 226(a)(8). Instead, Defendants list the name and address of charter schools that
2 are not the legal employer (i.e., Heartland Charter School), and/or list the division of INSPIRE
3 CHARTER SCHOOLS within which Plaintiff and members of the class respectively work (i.e.,
4 Inspire Charter School – South).

5 27. As a result, Plaintiff and class members have suffered injury as a result of
6 Defendants’ knowing and intentional failure to list the accurate employer name, in violation of
7 Labor Code sections 226(a)(8) and (e).

8 28. Plaintiff is informed, believes and alleges that Defendants have engaged in willful
9 violations of the Labor Code and IWC Wage Orders by creating and maintain policies, practices
10 and customs that knowingly deny Plaintiff and class members their legal rights and benefits.

11 **CLASS ACTION ALLEGATIONS**

12 29. ***Class Definitions.*** The named individual Plaintiff seeks class certification under
13 California Code of Civil Procedure section 382. Plaintiff proposes the following classes:

14 a. All current and former employees of Defendants who worked remotely for
15 Defendants in the State of California at any time from August 17, 2016 through the
16 present (the “Remote Work Class” or “Remote Work Class Members”).

17 b. All current and former employees of Defendants who worked for Defendants in the
18 State of California and who received a wage statement that did not list “Inspire
19 Charter Schools” as the legal name of the employer at any time from August 17,
20 2019 through the present (the “Wage Statement Class” or “Wage Statement Class
21 Members”).

22 30. Reference to the “class” or “class members” refers jointly to members of the Remote
23 Work Class and the Wage Statement Class.

24 31. Plaintiff reserves the right to move the Court to amend or modify the class
25 definitions and to establish additional classes and subclasses as appropriate.

26 32. ***Numerosity.*** The members of the Remote Work Class and Wage Statement Class
27 are so numerous that joinder of all individuals is impracticable. The identity of these class
28 members is readily ascertainable by review of Defendants’ employment and payroll records.

1 Plaintiff is informed, believes and alleges there are more than 100 individuals in the Remote Work
2 Class and in the Wage Statement Class.

3 33. **Adequacy of Representation.** Plaintiff is an adequate class representative, who will
4 take all necessary steps to adequately and fairly represent and protect the interest of the classes.
5 Plaintiff is represented by attorneys who have substantial experience prosecuting and resolving
6 wage-and-hour class actions in the past and currently have numerous wage-and-hour class actions
7 pending in California state and federal courts.

8 34. **Manageability.** This class action is manageable because all of the liability and
9 damages to class members can be ascertained by forensic review of corporate and employer payroll
10 and reimbursement records and wage statements, along with other evidence that Defendants
11 maintained and is required by law to maintain.

12 35. **Superiority.** A class action is superior to other means for adjudication of the claims
13 of the classes and is beneficial and efficient for the parties and the Court. Class treatment will
14 allow for the common issues to be resolved in a single forum, simultaneously and without
15 duplication of effort and expense.

16 36. **Commonality.** Common questions of law and fact and a community of interest
17 exists amongst Plaintiff and the Class. These common issues arise from the employment
18 relationship with Defendants and predominate over any individual issues:

- 19 a. Must Defendants comply with Labor Code section 2802?
- 20 b. Must Defendants comply with Labor Code section 226(a)(8)?
- 21 c. Were Defendants required to reimburse Plaintiff and the Remote Work Class for the
22 reasonable percentage of work-related home internet costs; the reasonable percentage of work-
23 related personal telephone and data charges; and a reasonable stipend to reimburse the base cost of
24 home office equipment (i.e., computers, printers, hardware), materials (i.e., paper, ink refills, etc.)
25 and utilities.
- 26 d. Were Defendants required to list “Inspire Charter Schools” as the legal employer on
27 the wage statements of Plaintiff and the Wage Statement Class?

1 and Remote Work Class Members in addition to interest, attorneys' fees, and costs under Labor
2 Code section 2802.

3 **SECOND CAUSE OF ACTION**

4 **VIOLATIONS OF THE UNFAIR COMPETITION LAW**

5 **Business and Professions Code §§ 17200, *et seq.***

6 44. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

7 45. Defendants willfully failed in their affirmative obligation to timely pay each payday
8 or at other required intervals all minimum, regular, and overtime wages, meal and rest period
9 premium wages, and reimbursements to Plaintiff and Remote Work Class Members. These failures
10 constitute unlawful, deceptive, and unfair business acts and practices in violation of Business and
11 Professions Code section 17200, *et seq.*

12 46. Here, this cause of action is brought as a cumulative remedy and seeks restitution in
13 the amount of the unpaid reimbursements based on Defendants' systemic violation of Labor Code
14 section 2802 on behalf of the Remote Work Class.

15 47. Because Plaintiff is a victim of Defendants' unfair and unlawful conduct, as alleged
16 throughout this Complaint, Plaintiff, as an individual and on behalf of the Remote Class seeks
17 restitution of all monies and property withheld, acquired, or converted by Defendants in violation of
18 the Labor Code and IWC Wage Orders under Business and Professions Code section 17202, 17203,
19 17204 and 17208.

20 48. Defendants' unlawful, knowing and intentional acts and omissions deprived Plaintiff
21 and Remote Class Members of monies and property in amounts to be determined at trial. Plaintiff
22 and the Remote Class are entitled to injunctive relief against Defendants, restitution, and other
23 equitable relief to return all funds over which Plaintiff and the Class have an ownership interest and
24 to prevent future damage under Business and Professions Code section 17200, *et seq.*

25 **THIRD CAUSE OF ACTION**

26 **WAGE STATEMENT VIOLATIONS**

27 **Labor Code § 226**

28 49. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

1 50. Defendants knowingly and intentionally failed in their affirmative obligation provide
2 accurate itemized wage statements to Plaintiff and Wage Statement Class Members in violation of
3 Labor Code section 226(a)(8).

4 51. Here, Plaintiff and the Wage Statement Class received wage statements from
5 Defendants that failed to list “Inspire Charter Schools” as the employer name and address on wage
6 statements. Defendants listed the name and address of other entities or non-entities, such as
7 divisions, as the employer name in violation of Labor Code section 226(a)(8).

8 52. Defendants engaged in this practice as a matter of uniform payroll administration
9 and corporate policy, which caused confusion and injury Plaintiff and the Wage Statement Class.

10 53. Defendants’ unlawful, knowing and intentional acts and omissions deprived Plaintiff
11 and the Wage Statement Class of accurate itemized wage statements and Plaintiff and the Wage
12 Statement Class are entitled to recover the statutory penalty of \$50 per employee for the initial pay
13 period in which a violation occurred and \$100 per employee for each violation in a subsequent pay
14 period, up to an aggregate penalty of \$4,000 per employee, in addition to interest, attorneys’ fees,
15 and costs under Labor Code section 226(e)

16 **FOURTH CAUSE OF ACTION**

17 **CIVIL PENALTIES UNDER THE PRIVATE ATTORNEYS GENERAL ACT**

18 **Labor Code §§ 2698, *et seq.***

19 54. Plaintiff incorporates all outside paragraphs of this Complaint as if set forth herein.

20 55. “Notwithstanding any other provision of law, any provision of this code that
21 provides for a civil penalty to be assessed and collected by the Labor and Workforce Development
22 Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a
23 violation of this code, may, as an alternative, be recovered through a civil action brought by an
24 aggrieved employee on behalf of himself or herself and other current or former employees pursuant
25 to the procedures specified in Section 2699.3.” (Labor Code § 2699(a)).

26 56. Plaintiff seeks to recover civil penalties as an individual aggrieved employee and on
27 behalf of the State of California and all other members of the Remote Work Class and the Wage
28 Statement Class who worked for Defendant(s) within the one-year period prior to the date on which

1 Plaintiff first provided written notice to the Labor and Workforce Development Agency (“LWDA”)
2 and Defendants under Labor Code § 2699.3 and continuing through the present (the “aggrieved
3 employee” and the “PAGA Period”) (i.e., August 12, 2019 through the present).

4 57. Plaintiff is an “aggrieved employee” because Plaintiff was employed by Defendants
5 and suffered one or more of the Labor Code violations committed by Defendant and alleged in this
6 Complaint.

7 58. On August 12, 2020, Plaintiff gave written notice by online filing with the LWDA
8 and by certified mail to Defendants of the specific provisions of the Labor Code alleged to have
9 been violated, including the facts and theories to support the alleged violations. Plaintiff paid the
10 requisite filing fee to the LWDA. A copy of this notice, which is incorporated by reference, is
11 attached hereto as Exhibit A.

12 59. On Sept. 1, 2020, Plaintiff supplemented the LWDA notice to add additional
13 Defendants liable for the Labor Code violations and sent that notice by certified mail to Defendants
14 and via the online portal to the LWDA. A copy of this supplemented notice is attached hereto as
15 Exhibit B.

16 60. Within 33 calendar days of the postmark date of the original and supplemented
17 notices sent by Plaintiff, Defendants did not give written notice by certified mail to Plaintiff
18 providing a description of any actions taken to cure the alleged violations.

19 61. Now that more than 65 days have passed from Plaintiff notifying Defendants of these
20 violations (via the original and supplemented notices), without any notice of cure from them or
21 notice from the LWDA of its intent to investigate the alleged allegations and issue the appropriate
22 citations to Defendants, Plaintiff exhausted all prerequisites and commences this civil action under
23 Labor Code § 2699.

24 62. Defendants committed Labor Code violations against Plaintiff and the other
25 aggrieved employees as alleged in this Complaint. Plaintiff brings this representative action as an
26 individual and on behalf of the State of California and all other aggrieved employees of Defendants
27 to recover civil penalties under Labor Code § 2699(a) and (f) for the Labor Code violations
28 committed against Plaintiff and other aggrieved employees during the PAGA Period, including:

1 a. Failing to furnish complete, accurate itemized wage statements each pay period in
2 violation of Labor Code § 226(a);

3 b. Failing to reimburse business expenses in violation of Labor Code § 2802;

4 63. For these violations, Plaintiff seeks to recover the following civil penalties:

5 a. Civil penalties recoverable under Labor Code § 2699(a);

6 b. Civil penalties under Labor Code § 2699(f)(2), for all provisions of the Labor Code
7 for which a civil penalty is not specifically provided (including those sections
8 identified in Labor Code § 2699.5), in the amount of \$100 for each aggrieved
9 employee per pay period for all initial violations plus \$200 for each aggrieved
10 employee per pay period for all subsequent violations;

11 c. Civil penalties under Labor Code § 226.3 in the amount of \$250 per employee per
12 violation for an initial citation and \$1,000 per employee for each subsequent
13 violation;

14 d. Civil penalties under Labor Code § 558(a)(1), (2) for all violations in the amount of
15 \$50 for each underpaid employee per pay period for all initial violations plus
16 \$100 for each underpaid employee per pay period for all subsequent violations;

17 64. For this cause of action, Plaintiff exclusively seeks to recover civil penalties as a
18 private attorney general under the PAGA and does not seek to recover underpaid wages or other
19 damages in this action.

20 65. Plaintiff further seeks to recover attorneys' fees and costs under Labor Code
21 section 2699(g) and Code of Civil Procedure section 1021.5.

22 **PRAYER FOR RELIEF**

23 Plaintiff, as an individual and on behalf of the Class and as a representative under the
24 PAGA, prays for judgment as follows:

25 a. For certification of this action as a class action;

26 b. For appointment of Plaintiff as the representative of the Remote Work Class;

27 c. For appointment of Plaintiff as the representative of the Wage Statement Class;

28 d. For appointment of counsel for Plaintiff as Class Counsel;

- 1 e. For injunctive relief;
- 2 f. For compensatory damages in amount according to proof;
- 3 g. For all interest accrued;
- 4 h. For disgorgement of all amounts wrongfully obtained;
- 5 i. For recovery of civil penalties and other recoverable amounts under the PAGA;
- 6 j. For recovery of all statutory penalties and liquidated damages;
- 7 k. For this action to be maintained as a representative action under the PAGA and for
- 8 Plaintiff and counsel to be provided with all enforcement capability as if the action
- 9 were brought by the State of California or the California Division of Labor
- 10 Enforcement;
- 11 l. For reasonable attorneys' fees and costs of suit, including expert fees, including
- 12 pursuant to California Labor Code sections 226, 2802, 2699, and Code of Civil
- 13 Procedure section 1021.5;
- 14 m. For such other relief the Court deems just and proper.
- 15 n. Attorneys' fees and costs of suit; and
- 16 o. Such other relief as the Court may deem just and proper.
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18 Dated: November 9, 2020

FERRARO EMPLOYMENT LAW, INC.

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20 NICHOLAS J. FERRARO, ESQ.
21 Attorney for Plaintiff Lisa Rigsbee

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