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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN DIEGO

EVA C. JOHNSON, an individual, on behalf of the State of California, as a private attorney general, and on behalf of all aggrieved employees,

PLAINTIFF,

v.

NATIONAL UNIVERSITY, a California Non-Profit Organization; NATIONAL UNIVERSITY ACADEMY, a California Non-Profit Organization; NATIONAL UNIVERSITY DUAL LANGUAGE INSTITUTE, a California Non-Profit Organization; NATIONAL UNIVERSITY ACADEMY 1001 STEAM, a California Non-Profit Organization; NATIONAL UNIVERSITY ACADEMY SPARROW, a California Non-Profit Organization; and DOES 1 to 50, inclusive,

DEFENDANTS.

CASE NO. 37-2019-00007902-CU-OE-CTL

PAGA REPRESENTATIVE ACTION COMPLAINT FOR:

Penalties Pursuant to Labor Code § 2699, *et seq*. for violations of California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.2, 226.3, 226.7, 510, 512, 1194, 1197, 1198, 1199 and 2802; Wage Order 4-2001

Plaintiff EVA C. JOHNSON ("Plaintiff"), on behalf of the people of the State of California and as an "aggrieved employee" acting as a private attorney general under the Labor Code Private Attorneys General Act of 2004, § 2699, *et seq*. ("PAGA") complains of Defendants NATIONAL UNVERSITY, NATIONAL UNIVERSITY ACADEMY, NATIONAL UNIVERSITY ACADEMY 1001 STEAM, NATIONAL UNIVERSITY DUAL LANGUAGE INSTITUTE, NATIONAL UNIVERSITY ACADEMY SPARROW, and DOES 1 to 50 ("Defendants" or "National University") and each of them, as follows:

INTRODUCTION

1. This is a representative action brought pursuant to Labor Code § 2699, *et seq*., on behalf of the State of California and the groups of aggrieved employees defined as follows.

> (1) all individuals who are or were employed by National University as adjunct professors, or in any other similar capacity, from November 19, 2017 to the present and ongoing (the "aggrieved employees");
>
> (2) all individuals who are or were employed by National University as adjunct professors, or in any other similar capacity, from November 19, 2017, to the present on on-going and who worked shifts of at least 4 hours or major fraction thereof (hereafter the "Rest Period Aggrieved Employees");
>
> (3) all individuals who are or were employed by National University as adjunct professors, or in any other similar capacity, from November 19, 2017, to the present on on-going and who worked shifts in excess of five hours (hereafter the "Meal Aggrieved Employees");
>
> (4) all individuals who are or were employed by National University as adjunct professors, or in any other similar capacity, from November 19, 2017, to the present on on-going and who worked shifts in excess of eight hours in a workday, or forty hours in a workweek. (hereafter the "Overtime Aggrieved Employees");

(these groups may be referred to collectively herein as all aggrieved employees).

2. Plaintiff, on behalf of herself and all aggrieved employees presently or formerly employed by Defendants during the liability period, brings this representative action pursuant to Labor Code § 2699, *et seq*. seeking penalties for Defendants' violation of California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.2, 226.3, 226.7, 510, 512, 1194, 1197, 1198, 1199, and 2802; Wage Order 4-2001. Based upon the foregoing, Plaintiff and all aggrieved employees are aggrieved employees within the meaning of Labor Code §2699, *et seq*.

JURISDICTION AND VENUE

3. This Court has subject matter jurisdiction over any and all causes of action asserted herein pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive of interest, exceeds $25,000, and because each cause of action asserted arises under the laws of the State of California or is subject to adjudication in the courts of the State of California.

4. This Court has personal jurisdiction over Defendants because Defendants have caused injuries in the County of San Diego and State of California through their acts, and by their violation of the California Labor Code and California state common law.

5. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil Procedure § 395. Defendants operate within California and does business within San Diego County, California. The unlawful acts alleged herein have a direct effect on Plaintiff and all "employees" within the State of California and San Diego County.

6. Further, to the extent that Defendant claims that Plaintiff has signed an arbitration agreement, venue is still appropriate in the Superior Court of San Diego County as PAGA claims are not arbitrable as a matter of law *Iskanian v. CLS Transp. Los Angeles, LLC,* 59 Cal. 4th 348, 383 (2014) (holding "a PAGA claim lies outside the FAA's coverage because it is not a dispute between an employer and an employee arising out of their contractual relationship. It is a dispute between an employer and the *state*").

PARTIES

7. Plaintiff EVA C. JOHNSON is a resident of California and at all times pertinent hereto worked for Defendants in Riverside County.

8. Plaintiff and all aggrieved employees are, and at all times pertinent hereto, have been classified as employees by Defendants. Defendants hire employees to work in California.

9. Upon information and belief, Plaintiff and all aggrieved employees are covered by California Industrial Welfare Commission Occupational Wage Order No. 4-2001.

10. Plaintiff represents the state of California as well as the four groups of aggrieved employees described in paragraph 1, above.

11. Defendant NATIONAL UNIVERSITY is believed to be a California non-profit organization operating within the State of California. Upon information and belief, Defendant employed Plaintiff and similarly situated persons as employees within California. Defendant has done and does business throughout the State of California including San Diego County.

12. Defendant NATIONAL UNIVERSITY ACADEMY is believed to be a California non-profit organization operating within the State of California. Upon information and belief, Defendant employed Plaintiff and similarly situated persons as employees within California. Defendant has done and does business throughout the State of California including San Diego County.

13. Defendant NATIONAL UNIVERSITY ACADEMY 1001 STEAM is believed to be a California non-profit organization operating within the State of California. Upon information and belief, Defendant employed Plaintiff and similarly situated persons as employees within California. Defendant has done and does business throughout the State of California including San Diego County.

14. Defendant NATIONAL UNIVERSITY DUAL LANGUAGE INSTITUTE is believed to be a California non-profit organization operating within the State of California. Upon information and belief, Defendant employed Plaintiff and similarly situated persons as employees within California. Defendant has done and does business throughout the State of California including San Diego County.

15. Defendant NATIONAL UNIVERSITY ACADEMY SPARROW is believed to be a California non-profit organization operating within the State of California. Upon information and belief, Defendant employed Plaintiff and similarly situated persons as employees within California. Defendant has done and does business throughout the State of California including San Diego County.

16. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to

Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

17. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff and the other aggrieved employees.

18. California courts have recognized that the definition of "employer" for purposes of enforcement of the California Labor Code goes beyond the concept of traditional employment to reach irregular working arrangements for the purpose of preventing evasion and subterfuge of California's labor laws. *Martinez v. Combs* (2010) 49 Cal.4th 35, 65. As such, anyone who directly or indirectly, or through an agent or any other person, engages, suffers, or permits any person to work or exercises control over the wages, hours, or working conditions of any person, may be liable for violations of the California Labor Code as to that person.

19. California law also permits and recognizes the piercing of a corporate veil between sister companies under the single enterprise rule. *Hasso v. Hapke* (2014) 227 Cal. App. 4th 107, 155; *Greenspan v. LADT, LLC* (2010) 19 I Cal. App. 4th 486, 512. The single enterprise rule applies where "there are two or more personalities, there is but one enterprise; and that this enterprise has been so handled that it should respond, as a whole, for the debts of certain component elements of it." *Hasso, supra*, 227 Cal. App. 4th at 155; *Greenspan, supra*, 191 Cal. App. 4th at 512. At all times relevant hereto, Defendants have operated as a single entity that jointly employed Plaintiff and all aggrieved employees. Defendants NATIONAL UNVERSITY, NATIONAL UNIVERSITY ACADEMY, NATIONAL UNIVERSITY ACADEMY 1001 STEAM, NATIONAL UNIVERSITY DUAL LANGUAGE INSTITUTE, NATIONAL UNIVERSITY ACADEMY SPARROW, and DOES 1 to 50, advertise and represent to the general

public that they are one entity who owns and operates university campuses throughout the State of California. Defendants NATIONAL UNVERSITY, NATIONAL UNIVERSITY ACADEMY, NATIONAL UNIVERSITY ACADEMY 1001 STEAM, NATIONAL UNIVERSITY DUAL LANGUAGE INSTITUTE, NATIONAL UNIVERSITY ACADEMY SPARROW, all share the same address, the same website, and the same agent for service of process, and are, for all intents and purposes, the same entity.

20. At all times throughout their employment, Plaintiff and the other aggrieved employees were regularly and consistently subject to the common policies utilized by Defendants NATIONAL UNVERSITY, NATIONAL UNIVERSITY ACADEMY, NATIONAL UNIVERSITY ACADEMY 1001 STEAM, NATIONAL UNIVERSITY DUAL LANGUAGE INSTITUTE, NATIONAL UNIVERSITY ACADEMY SPARROW, and DOES 1 to 50. This includes the employee handbook and employment policies that were issued to Plaintiff and the other aggrieved employees at issue that contributed to the unlawful conduct alleged herein. Moreover, at all times herein, Plaintiff and the other aggrieved employees were subject to the same common control and compensation policies of Defendants. For all intents and purposes, Defendants NATIONAL UNVERSITY, NATIONAL UNIVERSITY ACADEMY, NATIONAL UNIVERSITY ACADEMY 1001 STEAM, NATIONAL UNIVERSITY DUAL LANGUAGE INSTITUTE, NATIONAL UNIVERSITY ACADEMY SPARROW are the same entity.

21. Accordingly, all Defendants engaged, suffered and permitted Plaintiff and all other aggrieved employees to perform services from which they benefitted. Moreover, the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions over Plaintiff and all aggrieved employees at all relevant times herein, so as to be considered the joint employers of all of the aggrieved employees. By reason of their status as joint employers, they are each liable for civil penalties for violation of the California Labor Code as to the Plaintiff and other aggrieved employees as set forth herein.

FACTUAL BACKGROUND

22. Plaintiff Eva C. Johnson was hired as an adjunct professor by DEFENDANTS during the 2012-2013 school year, a position she holds to this day.

23. As adjunct professors at National University, Plaintiff and the Aggrieved Employees are paid on a flat rate basis in the amount of approximately $2,200 or $2,550 per course.

24. As adjunct professors, *in addition to their teaching duties,* Plaintiff and the Aggrieved Employees are expected to prepare all documents necessary for the course, grade any papers or tests associated with the course, develop her and their own syllabus, and be available to students for their questions. Thus, for each hour spent teaching the courses and/or seminar courses assigned to her, Plaintiff and the Aggrieved Employees spend between one to five hours outside of the classroom engaging in the duties necessary to complete their courses.

25. Additionally, Plaintiff and the Aggrieved Employees regularly supply their students with paper hand-outs and other materials necessary for her course, which they print at their own expense. Plaintiff and the Aggrieved Employees further utilize their home computer and personal cellphone to read and respond to emails sent to them by their students, other National University faculty, and their supervisors. Despite being required to use a home office, a personal computer, a personal cellphone, and printing hand-outs for their students, Plaintiff and the Aggrieved Employees did not and do not receive any reimbursement from National University.

Plaintiff and the Aggrieved Employees Are and Were Not Reimbursed for Their Business Expenses

26. As noted above, Plaintiff and the Aggrieved Employees regularly incurred expenses during the course of their employment, such as printing expenses, that were not reimbursed. Additionally, to perform their duties, Plaintiff and the Aggrieved Employees also had to utilize their own personal work computers, cellphones, and home offices to perform such tasks as (1) reading and responding to emails from students, co-workers, and supervisors, (2) researching topics necessary to create and develop courses, and (3) participate in the mandatory trainings required by the Defendant. Yet, Plaintiff and the Aggrieved Employees were never reimbursed for any of these expenses.

27. Cal. Labor Code §2802 (a) provides that:

> An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

28. Thus, employees such as Plaintiff and the Aggrieved Employees, are entitled to reimbursement for the expenses they incur during the course of their duties. The duty to reimburse even extends to the use of equipment the employee may already own, and would be required to pay for anyway. *Cochran v. Schwan's Home Serv., Inc.* (2014) 228 Cal. App. 4th 1137, 1144 ("The threshold question in this case is this: Does an employer always have to reimburse an employee for the reasonable expense of the mandatory use of a personal cell phone, or is the reimbursement obligation limited to the situation in which the employee incurred an extra expense that he or she would not have otherwise incurred absent the job? The answer is that reimbursement is always required. Otherwise, the employer would receive a windfall because it would be passing its operating expenses on to the employee.") After all, the purpose of 2802 is to "prevent employers from passing along their operating expenses onto their employees." *Gattuso v. Harte-Hanks Shoppers, Inc.,* (2007) 42 Cal. 4th 554, 562.

29. Here, Defendants have no policy to reimburse Plaintiff and the Aggrieved Employees for their reasonable and necessary business expenses. Plaintiff regularly incurred expenses, and due to the lack of any reimbursement policy, he had to bear the burden of these operating costs alone. Therefore, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendants have violated §2802 with respect to Plaintiff and the Aggrieved Employees.

Plaintiff and the Aggrieved Employees Are and Were Not Compensated for All Hours Worked

30. As noted above, Plaintiff and the Aggrieved Employees are and were paid on a set amount per credit hour for each course they taught. This amount was not tied to the number of hours Plaintiff and the Aggrieved Employees work or worked, but rather, was a form of piece-rate compensation based on the number of courses they teach, and student enrollment in those courses. As a result, Plaintiff and the Aggrieved Employees, were paid on a piece-rate basis, and

were thus non-exempt employees. *See Negri v. Koning & Associates* (2013) 216 Cal.App.4th 392, 398 (holding that to be exempt, an employee must be paid on a salary basis and defining the term as being the same under California law as it is under federal law). In fact, Plaintiff's total compensation for 2018 was well below the twice the minimum wage requirement of Cal. Labor §515.[1] Thus, Plaintiff and the Aggrieved Employees are and were non-exempt.

31. California Labor Code §226.2 governs compensation paid to piece-rate employees, like Plaintiff and the Aggrieved Employees. It states, in the relevant part:

> This section shall apply for employees who are compensated on a piece-rate basis for any work performed during a pay period. This section shall not be construed to limit or alter minimum wage or overtime compensation requirements, or the obligation to compensate employees for all hours worked under any other statute or local ordinance. For the purposes of this section, "applicable minimum wage" means the highest of the federal, state, or local minimum wage that is applicable to the employment, and "other nonproductive time" means time under the employer's control, exclusive of rest and recovery periods, that is not directly related to the activity being compensated on a piece-rate basis.
>
> (a) For employees compensated on a piece-rate basis during a pay period, the following shall apply for that pay period:
>
> (1) Employees shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.
>
> (2) The itemized statement required by subdivision (a) of Section 226 shall, in addition to the other items specified in that subdivision, separately state the following, to which the provisions of Section 226 shall also be applicable:
>
> (A) The total hours of compensable rest and recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay period.
>
> (B) Except for employers paying compensation for other nonproductive time in accordance with paragraph (7), the total hours of other nonproductive time, as determined under paragraph (5), the rate of compensation, and the gross wages paid for that time during the pay period.

32. Thus, according to Cal. Labor Code §226.2, which codifies the decision in *Armenta v. Osmose, Inc*. (Cal. App. 2d Dist. 2005) 135 Cal. App. 4th 314, employees who are

[1] Thus, to the extent that the compensation paid to Plaintiff and the Aggrieved Employees could be defined as a salary, as it is referred to in Defendants' policy documents, neither Plaintiff nor the Aggrieved Employees ever received enough in compensation to be classified as exempt. Further, as the compensation itself is tied to credit hours and enrollment, and focused entirely on the teaching of the classes, the compensation format operates as a piece-rate compensation plan.

paid on a piece-rate basis, such as Plaintiff and the Aggrieved Employees, must be compensated for all the hours that they work, including non-productive time.

33. This, however, did not happen. Plaintiff and the Aggrieved Employees are and not paid for many activities that occur outside of teaching their classes, such as, but not limited to (1) creating course materials, such as syllabi, in-class and homework assignments, tests and quizzes; (2) grading assignments, tests and quizzes; (3) assisting students with their coursework by consulting with students outside of class time and during breaks to provide regular and timely feedback; (4) advising students in matters relating to academics, vocational goals, attendance, and behavior; (5) completing professional development and in-service activities in accordance with Defendants' standards; and (6) attending on-line training courses.

34. Labor Code § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles "any employee receiving less than the legal minimum wage ... to recover in a civil action the unpaid balance of the full amount of this minimum wage." IWC Wage Order Nos. 4-2001 at § 4 also obligates employers to pay each employee minimum wages for all hours worked.

35. These minimum wage standards apply to each hour employees worked for which they were not paid. Therefore, an employer's failure to pay for any particular hour of time worked by an employee is unlawful, even if averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.

36. Defendants have violated Labor Code §§1194 and 1197 as well as IWC Wage Order Nos. 4-2001 through their consistent policy of failing to pay Plaintiff and the other Aggrieved Employees for all the hours that they worked, instead only paying Plaintiff and the Aggrieved Employees for their time providing instruction, and not any of the time associated with preparing the instruction to their students. As a result, Plaintiff and the other Aggrieved Employees were forced to work on a regular and consistent basis without receiving compensation

for all hours worked at the proper rate. Based upon the above violations, Plaintiff and the other Minimum Aggrieved Employees are aggrieved within the meaning of PAGA.

Plaintiff and the Aggrieved Employees Are and Were Not Provided with Legally Compliant Rest Periods

37. Pursuant to Labor Code § 226.7, and Wage Order 4-2001, Defendants have failed to provide Plaintiff and the other Rest Period Aggrieved Employees with compensated, duty-free rest periods of not less than ten (10) minutes for every major fraction of four hours worked.

38. Labor Code § 226.7 provides "an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ("IWC")." Under IWC Wage Order 4-2001 an employer must authorize and permit all employees to take ten (10) minute duty free rest periods for every major fraction of four hours worked.

39. Specifically, Defendants failed to advise Plaintiff and the Rest Period Aggrieved Employees of their right to take paid duty-free ten (10) minute rest periods when working on a piece-rate basis and failed to separately compensate Plaintiff and the Rest Period Aggrieved Employees for the non-productive time associated with their rest periods. *See Bluford v. Safeway Stores, Inc.,* 216 Cal. App. 4th 864,872 (2013), reh'g denied (June 18, 2013), review denied (Aug. 28, 2013) ("rest periods must be separately compensated in a piece-rate system. Rest periods are considered hours worked and must be compensated.") (*citing Armenta v. Osmose, Inc.* 135 Cal.App.4th 314,323 (2005)).

40. Here as in *Bluford*, Defendants have compensated Plaintiff and the other Aggrieved Employees by way of a piece-rate system for each credit hour taught. As a result, when they are not teaching, but rather taking a mandated rest period, they are not compensated for their time, in violation of Labor Code section 226.7 and the Wage Order.

41. Pursuant to Labor Code § 226.7 and Wage Order 4-2001, Defendants have failed to provide Plaintiff and the all Rest Period Aggrieved Employees with duty-free rest periods of not less than ten (10) minutes for every major fraction of four (4) hours worked. Specifically, Defendants have failed to have a lawful rest period policy in place that informed Plaintiff and the

other Rest Period Aggrieved Employees of their right to take rest periods for shifts that were a major fraction of a four (4) hour work period and to make rest breaks available to these employees.

42. The Brinker Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

> An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not-if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required-it has violated the wage order and is liable.

(*Brinker Rest. Corp. v. Sup. Ct. (*2012) 53 Cal.4th 1004, 1033.) [emphasis added]. Since Defendants did not offer employees the opportunity to receive a compliant and appropriately separately compensated rest periods, "the court may not conclude employees voluntarily chose to skip ... breaks." *Alberts v. Aurora Behavioral Health Care,* 241 Cal. App. 4th 388, 410 (2015) ("[i]f an employer fails to provide legally compliant meal or rest breaks, the court may not conclude employees voluntarily chose to skip those breaks."); accord *Brinker Rest. Corp. v. Sup. Ct.,* 53 Cal. 4th 1004, 1033 (2012) ("No issue of waiver ever arises for a rest break that was required by law but never authorized; if a break is not authorized, an employee has no opportunity to decline to take it.").

43. Even an employer who maintains an otherwise compliant rest period policy, "reminded their employees of their availability-and the importance-of taking breaks on a daily basis, and even went so far as to conduct regular audits to ensure that employees were being offered rest breaks" will still be liable for rest period violations if the employees were not separately or properly compensated for the non-productive time associated with rest periods under a piece-rate compensation system. *Amaro v. Gerawan Farming, Inc.,* 2016 U.S. Dist. LEXIS 66842 * (E.D. Cal. May 19, 2016) *aff'd Amaro v. Gerawan*, 2016 U.S. Dist. LEXIS 112540, 20 I 6 WL 4440966, at * 11 (E.D. Cal. Aug. 22, 2016); rev. denied by 9th Cir. Case No. 0:16-23f-80120 (9th Cir. Nov. 16, 2016). Here, again, Plaintiff and the Rest Period Aggrieved

Employees were never properly compensated for their rest periods, and as such, Defendants violated the law.

44. In addition, Plaintiff and all Rest Period Aggrieved Employees are not compensated with one (1) hours' worth of pay at their regular rate of compensation when they were not provided with a compliant rest period.

Plaintiff and the Meal Period Aggrieved Class Members Are and Were Not Provided With Meal Periods or Compensation for Missed Meal Periods

45. Labor Code § 512, and Section 11 of Wage Order 4-2001 require employers to provide employees with thirty (30) minute uninterrupted and duty-free meal period within the first five hours of work. Moreover, an employee who works more than ten (10) hours per day is entitles to receive a second thirty (30) minute uninterrupted and duty-free meal period. *Brinker Rest. Corp. v. Superior Court,* (2012) 53 Cal. 4th 1004, 1042 ("Accordingly, first meal periods must start after no more than five hours."); See also *Munoz v. Guimarra Vineyards Corp.,* 2015 WL 5350563 at *3 (E.D. Cal. Sept. 11, 2015) (holding that meal periods must be taken within the first five hours of work).

46. IWC Wage Order 4-2001, Section 11, further obligates employers to provide an employee to "pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided." Labor Code § 226.7 provides "an employer shall not require an employee to work during a meal or rest or recovery periods mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ("IWC"). IWC Wage Order 4-2001 prohibits an employer from "employ[ing] any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes. Accordingly, for each day that Plaintiff and all Aggrieved Employees did not receive compliant meal periods, they are entitled to receive meal period premiums pursuant to Labor Code § 226.7 and Wage Order 4-2001.

47. Here, despite what policies Defendants may claim to have, they regularly deny Plaintiff and the Meal Period Aggrieved Employees meal periods that comply with the substantive law. Defendants did not provide meal periods in compliance with Labor Code §§ 512, 226.7, and Wage Order 4-2001. Nor do Defendants keep track of when meal periods are

taken, and as such, there are no records of whether Plaintiff, or the Meal Period Aggrieved Employees ever took a timely and complete meal period.

48. This failure to provide meal periods to Plaintiff and the Meal Period Aggrieved Employees within the statutory requirements of § 512 and Section 11(a) of Wage Order 4-2001, which again, as easily confirmed by Defendants' own records, is not the result of Plaintiff's choosing. As noted above, Plaintiff works at college university whereby she, and the other Meal Period Aggrieved Employees are not allowed to take complaint off-duty meal periods. Thus, the failure of Plaintiff and the Meal Period Aggrieved Employees to take meal periods with the first 5 hours of work, is not the result of any choice by Plaintiff or the Meal Period Aggrieved Employees, but rather, is based on Defendants' faulty policies, practices, and procedures.

Plaintiff and the Aggrieved Employees Are or Were Not Paid Overtime Compensation

49. Labor Code § 510 and Section 3 of Wage Order 4-2001 require an employer to compensate an employee who works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours worked on the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee. Further, Labor Code § 510 and Section 3 of Wage Order 4-2001 obligate employers to compensate employees at no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work. In accordance with Labor Code §§ 1194, Plaintiff and the other Overtime Aggrieved Employees could not agree to work for a lesser wage.

50. Here, Defendants do not account for all time actually worked by Plaintiff and Aggrieved Employees when calculating the number of hours worked to determine how many hours of overtime wages were and are owed.

51. Moreover, Defendants have had a consistent policy of failing to pay overtime compensation and at the proper amounts to Plaintiff and all Overtime Aggrieved Employees. When Plaintiff and the other Overtime Aggrieved Employees worked more than eight hours in a workday, or more than forty hours in a workweek, and received overtime compensation, Defendants have failed to include in the overtime compensation paid all nondiscretionary compensation that constituted their regular rate of pay.

52. By their common policy of requiring Plaintiff and the other Overtime Aggrieved Employees to work in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without compensating them at the rate of one and one-half times their regular rate of pay, Defendants have willfully violated the provisions of Labor Code §§ 510, 1194 and 1199, as well as IWC Wage Order 4-2001, Section 3.

53. Labor Code § 1197.1 authorizes employees who are paid less than the minimum fixed by an applicable state or local law, or by an order of the commission a civil penalty, restitution of wages, and liquidate damages as follows: (1) for any initial violation that is intentionally committed, one hundred dollars ($100) for each underpaid employee for each pay period for which the employee is underpaid….[and] (2) [f]or each subsequent violation for the same specific offense, two hundred fifty dollars ($250) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation is intentionally committed. As set forth above, Defendants failed to compensate Plaintiff and all Aggrieved Employees for all overtime wages or at the proper rates. Accordingly, through PAGA and to the extent permitted by law Plaintiff and all Aggrieved Employees are entitled to recover liquidated damages for violations of Labor Code § 1197.1. Based upon these same factual allegations, Plaintiff and the other Overtime Aggrieved Employees are entitled to penalties under Labor Code § 1199, as well.

Plaintiff and the Aggrieved Employees Are and Were Not Provided with Accurate Wage Statements

54. As to Plaintiff and all Aggrieved Employees, Defendants have also failed to provide accurate itemized wage statements in accordance with Labor Code § 226(a) (1, 2, 3, 5, 9). Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

(1) gross wages earned;

(2) total hours worked by the employee;

(3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;

(4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;

(5) net wages earned;

(6) the inclusive dates of the period for which the employee is paid;

(7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;

(8) the name and address of the legal entity that is the employer…;

(9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee…

55. Due to Defendants' failure to pay adjunct professors for all hours worked, provide Plaintiff and the Rest Period Aggrieved Employees with paid and lawful off-duty rest periods, provide Plaintiff and the Meal Period Aggrieved Employees with timely meal periods, and pay Plaintiff and the Overtime Aggrieved Employees with overtime compensation based on their regular rate of pay, wage statements issued by Defendants do not indicate the correct amount of gross wages earned, total hours worked, the number of piece rate units earned, and the applicable piece rate, net wages earned, or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor Code § 226(a)(1), (2), (3), (5) and (9). Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendants have violated Labor Code §226(a)(1), (2), (3), (5), and (9) with respect to Plaintiff and all Aggrieved Employees.

56. Plaintiff and the Aggrieved Employees will prevail on their claim for PAGA penalties under Labor Code § 226(a). *See Lopez v. Friant & Assocs., LLC*, (2017) 15 Cal. Cal. App. 4th 773, 788 ("hold[ing] a plaintiff seeking civil penalties under PAGA for a violation of Labor Code Section 226(a) does not have to satisfy the 'injury' and 'knowing and intentional' requirements of Section 226(e)(1)."); *Willner v. Manpower Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To obtain judgment on a PAGA claim, "all [plaintiff] needs to establish is a violation of Section 226(a), which she has done, as discussed above."); *McKenzie v. Fed. Exp. Corp.* 765 F.Supp.2d 1222, 1232 (C.D. Cal. 2011) (holding that "for the purposes of recovering PAGA penalties, one need only prove a violation of Section 226(a), and need not establish a Section 226(e) injury.").[2]

[2] *See* also *Aguirre v. Genesis Logistics*, 2013 U.S. Dist. LEXIS 189815, at *28 (C.D. Cal. July 3, 2013) ("Plaintiffs do not need to establish a Cal. Lab. Code § 226(e) injury to recover penalties under § 2699(f) of PAGA."); *York v. Starbucks Corp.*, 2012 WL 10890355, at *2 (C.D. Cal. Nov. 1, 2012) (granting summary adjudication to the plaintiff on his PAGA claim based upon violations of Lab. Code § 226(a) because "the presence or absence of injury

57. Following *Friant*, courts have found that employees can recover separate penalties under PAGA for a defendant's violations of Labor Code § 226(a) and 226(e). *See e.g. Bell v. Home Depot U.S.A*. (E.D. Cal. Dec. 11, 2017) 2017 U.S. Dist. LEXIS 204493, at *5 [finding after *Friant* that "[t]o the extent the Court's Order [granting summary judgment to Home Depot] was ambiguous, the Court now clarifies that it granted summary judgment on Plaintiffs' derivative claim for [PAGA] penalties under Section 226(e)…the Court's Order should not be read to grant summary judgment on Plaintiffs' claim for PAGA penalties based on violation of Section 226(a)."]).

58. Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars ($250) per employee per violation in an initial violation and one thousand dollars ($1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226." Thus, for the violations of Labor Code Section 226 described above, Plaintiff and the other Aggrieved Employees may also recover Labor Code § 226.3 penalties for Defendant's violations of Labor Code § 226(a).

Defendants' Violation of Labor Code §§ 201-203

59. As a result of Defendants' failure to pay Plaintiff and all Aggrieved Employees for all hours worked, including non-productive time, meal and rest period premiums, and overtime at the correct rate, Defendants violated Labor Code § 203. Labor Code § 203 provides "if an employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the

(continued…)

is irrelevant to the standing inquiry under PAGA.") *Pelton v. Panda Restaurant Group, Inc.* (C.D. Cal., May 3, 2011,) 2011 WL 1743268 ("[T]he Court rejects defendant's argument that plaintiff 'lacks any PAGA injury.' Pursuant to Cal. Labor Code § 2699, 'any provision of this code that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency ... may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees.' Sections 2699.5 and 2699.3(a) provide that such a claim may be brought for a violation of § 226(a) . . ."); *accord Lopez v. G.A.T. Airline Ground Support, Inc.* (S.D. Cal., July 19, 2010) 2010 WL 2839417, *5-6 ("It is undisputed that GAT's paychecks do not indicate the applicable hourly rate of pay for the employee's regular rate, overtime rate, or double-time rate of pay…The failure to provide this information violates Section 226(a)… Because Section 226 does not provide a penalty, Section 2699(f) penalties are available."); *Burnham v. Ruan Transp.*, 2013 U.S. Dist. LEXIS 198505 * (C.D. Cal. Aug. 30, 2013) (holding that to recover damages or penalties under Section 226, plaintiffs must prove they suffered injury. Cal. Lab. Code § 226(e). But to recover penalties under PAGA, even for violations of Section 226, plaintiffs do not need to prove such injury.").

wages of the employee shall continue as a penalty. . .” for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

60. Due to Defendants’ faulty policies described above, Plaintiff and all Aggrieved Employees whose employment with Defendants concluded were not compensated for each and every hour worked or at the appropriate rate. Additionally, Defendants has failed to pay all Aggrieved Employees overtime for all hours worked (including at the proper rates), and rest period premiums, whose sums were certain, at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter.

61. Further, Plaintiff and the Aggrieved Employees are entitled to “rolling” waiting time penalties (waiting time penalties for wages owed at the end of each course taught).

62. Labor Code § 204 expressly requires that “[a]ll wages…earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.” Violations of Labor Code § 204 are non-curable under PAGA pursuant to Labor Code § 2699.5.

63. Defendant failed to pay Plaintiff and the other aggrieved employees within seven (7) days of the close of the payroll period as required by Labor Code § 204(d). As a result of its policy and practices, Defendant regularly and consistently paid Plaintiff and the other aggrieved employees eight (8) or more days after the close of the payroll period in violation of Labor Code § 204(d).

64. Labor Code § 210 provides that “in addition to, an entirely independent and apart from, any other penalty provided in this article, every person who fails to pay the wages of each employee as provided in Sections…204…shall be subject to a civil penalty as follows: (1) For any initial violation, one hundred dollars ($100) for each failure to pay each employee; (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars ($200) for each failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result of the faulty compensation policies and practices described in detail above and Defendant’s failure to pay Plaintiff all aggrieved employees within seven (7) days of the close of the payroll period, Plaintiff and all aggrieved employees are entitled to recover penalties under Labor Code § 210 through PAGA.

FIRST CAUSE OF ACTION

PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS FOR PENALTIES PURSUANT TO LABOR CODE § 2699, *ET SEQ*. and § 210 FOR VIOLATIONS OF LABOR CODE §§ 201, 202, 203, 204, 210, 226, 226.2, 226.3, 226.7, 1194, 1197, 1198,[3] 1199, and 2802; WAGE ORDER 4-2001

65. Plaintiff, on behalf of himself and all aggrieved employees, realleges and incorporates by reference all previous paragraphs.

66. Based on the above allegations incorporated by reference, Defendants have violated Labor Code §§ 201, 202, 203, 204, 210, 226, 226.2, 226.3, 226.7, 1194, 1197, 1198, 1199, and 2802, as well as IWC Wage Order 4-2001.

67. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiff and all other aggrieved employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

$100 for the initial violation per employee per pay period; and

$200 for each subsequent violation per employee per pay period.

These penalties shall be allocated seventy-five percent (75%) to the Labor and Workforce Development Agency (LWDA) and twenty-five percent (25%) to the affected employees. These penalties may be stacked separately for each of Defendants violations of the California Labor Code. *See e.g. Hernandez v. Towne Park, Ltd.*, No. CV 12-02972 MMM (JCGx) 2012 U.S.Dist. LEXIS 86975, at *59, fn. 77 (C.D.Cal. June 22, 2012) (holding that although the plaintiff did not seek stacked PAGA penalties, that "PAGA penalties can be 'stacked,' *i.e.,* multiple PAGA penalties can be assessed for the same pay period for different Labor Code violations."); *See Lopez v. Friant & Assocs., LLC*, No. A148849, 2017 Cal. App. LEXIS 839, at *1 (Ct. App. Sep. 26, 2017) ("hold[ing] a plaintiff seeking civil penalties under PAGA for a violation of Labor Code section 226(a) does not have to satisfy the 'injury' and 'knowing and intentional' requirements of section 226(e)(1) and acknowledging that a Plaintiff could recover separately under PAGA for violations of Labor Code §§ 226(a) and 226(e)); *accord Schiller v. David's Bridal, Inc.*, No. 1:10-cv-00616 AWI SKO) 2010 U.S. Dist. LEXIS 81128, at *17 (E.D. Cal. July 14, 2010); *Pulera v. F & B, Inc.*, No. 2:08-cv-00275-MCE-DAD, 2008 U.S. Dist. LEXIS 72659,

[3] All alleged violations of IWC Wage Orders 4-2001 are also deemed to be alleged violations of Labor Code § 1198.

2008 WL 3863489, at * 2-3 (E.D. Cal. Aug. 19, 2008); *Smith v. Brinker Intern, Inc.*, No. C 10-0213 VRW, 2010 U.S. Dist. LEXIS 54110, 2010 WL 1838726, at * 2-6 (N.D. Cal. May 5, 2010).

68. In addition, to the extent permitted by law, Defendants have failed to provide Plaintiff and all aggrieved employees with accurate itemized wage statements in compliance with Labor Code § 226(a). Plaintiff seeks separate PAGA penalties for Defendants' violations of Labor Code §§ 226(a) and 226(e). *Lopez v. Friant & Assocs., LLC*, 15 Cal.App.5th 773, 788 (2017); *Bell v. Home Depot U.S.A.* (E.D. Cal. Dec. 11, 2017) No. 2:12-cv-02499 JAM-CKD, 2017 U.S. Dist. LEXIS 204493, at *5 [finding after Friant that "[t]o the extent the Court's Order [granting summary judgment to Home Depot] was ambiguous, the Court now clarifies that it granted summary judgment on Plaintiffs' derivative claim for [PAGA] penalties under section 226(e)…the Court's Order should not be read to grant summary judgment on Plaintiffs' claim for PAGA penalties based on violation of section 226(a)."]). For violations of Labor Code § 226(a), Plaintiff seeks the default penalty provided by Labor Code § 226.3. Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars ($250) per employee per violation in an initial violation and one thousand dollars ($1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226." Accordingly, through PAGA and to the extent permitted by law Plaintiff and the aggrieved employees are entitled to recover penalties for violations of Labor Code § 226.3 and seeks default PAGA penalties for each of Defendants' numerous violations of Labor Code § 226(e).

69. Pursuant to Labor Code § 2699.3 (a), on November 19, 2018, Plaintiff gave written notice by certified mail to Defendant, and to the LWDA of their claims for violations of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.2, 226.3, 226.7, 1194, 1197, 1198, 1199, and 2802 as well as IWC Wage Order 4-2001, and theories supporting these claims as alleged herein. As of the date of this Complaint, the LWDA has not responded to Plaintiff's PAGA letter. Accordingly, Plaintiff has fulfilled all administrative prerequisites to the filing and pursuit of her PAGA claims on himself and all other current and former Aggrieved Employees of Defendants.

70. Further, pursuant to Labor Code § 2699.3 (a), on January 28, 2019 Plaintiff gave written notice by certified mail to Defendant, and to the LWDA of their additional claims for violations of Labor Code §§ 204, 210, and theories supporting these claims as alleged herein. As of the date of this Complaint, the LWDA has not responded to Plaintiff's PAGA letter. Accordingly, Plaintiff has fulfilled all administrative prerequisites to the filing and pursuit of her PAGA claims on himself and all other current and former Aggrieved Employees of Defendants.

71. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code § 2699, et seq. because of Defendants' violation of Labor Code §§ Labor Code §§ 201, 202, 203, 204, 210, 226, 226.2, 226.3, 226.7, 1194, 1197, 1198, 1199, and 2802 as well as IWC Wage Order 4-2001.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For penalties and other relief allowable under Labor Code § 2699, *et seq*. for Plaintiff and all aggrieved employees because of Defendants' violation of Labor Code §§ 201, 202, 203, 204, 210, 226, 226.2, 226.3, 226.7, 510, 512, 1194, 1197, 1198, 1199 and 2802 as well as Wage Order 4-2001**;**

2. A civil penalty against Defendants in the amount of $100 for the initial violation and $200 for each subsequent violation as specified in section 2699(f)(2) of the California Labor Code for Plaintiff and all aggrieved employees for each and every pay period during that occurred between November 19, 2017 and the date of judgment and/or approval of settlement;

3. A civil penalty against Defendants, pursuant to Labor Code § 1197.1 for the initial violation that is intentionally committed, in the amount of one hundred dollars ($100) for each underpaid employee for each pay period for which the employee is underpaid and for each subsequent violation, two hundred fifty dollars ($200) for each underpaid employee for each pay period for which the employee is underpaid regardless of whether the initial violation was intentionally committed, for Plaintiff and all aggrieved employees for each and every payperiod during that occurred between November 19, 2017 and the date of judgment and/or approval of settlement;

4. A civil penalty against Defendants pursuant to Labor Code § 210 as follows: (1) For any initial violation, one hundred dollars ($100) for each failure to pay each employee; (2) For each subsequent violation, or any willful or intentional violation, two hundred dollars ($200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld.

5. A civil penalty against Defendants pursuant to Labor Code § 226.3 for the initial violation that is committed, in the amount of two hundred fifty dollars ($250) for the initial each inaccurate wage statement provided to Plaintiff and the Aggrieved Employees and for each subsequent violation, one thousand dollars ($1000) for each underpaid employee for each pay period for which the employee is provided an incomplete or inaccurate wage statement, for Plaintiff and all aggrieved employees for each and every pay period during that occurred between November 19, 2017 and the date of judgment and/or approval of settlement;

6. An award of reasonable attorney's fees against Defendants as specified in Labor Code § 2699(g)(1), for all the work performed by the undersigned counsel in connection with the PAGA claims;

7. An award of all costs incurred by the undersigned counsel for Plaintiff in connection with Plaintiff's and the aggrieved employees' claims against Defendants as provided for in Labor Code § 2699(g)(1);

8. Such other and further relief as this Court may deem proper and just.

Dated: February 7, 2019

ACKERMANN & TILAJEF, P.C.
MELMED LAW GROUP P.C.

By: _____
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