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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF ORANGE

FRANK CHINDAMO, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

CHAPMAN UNIVERSITY, a California Non-
Profit Corporation,

Defendant.

CASE NO. **30-2020-01147814-CU-OE-CXC**

LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT REPRESENTATIVE ACTION

**COMPLAINT FOR CIVIL PENALTIES
PURSUANT TO LABOR CODE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698 ET
SEQ.**

Assigned for All Purposes
Judge Peter Wilson

CX-102

1 Plaintiff Frank Chindamo ("Plaintiff"), on behalf of himself and all others similarly situated,
2 complains and alleges the following:

3 **INTRODUCTION**

4 1. This is a representative action under the Private Attorneys General Act of 2004, codified
5 at California Labor Code ("Labor Code") §§ 2698 *et seq.* ("PAGA") for civil penalties, attorneys fees
6 and costs on behalf of Plaintiff and all other part-time adjunct instructors employed by Chapman
7 University ("Chapman" or "Defendant") in California from one year prior to the postmark date of
8 Plaintiff's notice of intent to seek PAGA penalties for the following Labor Code violations: (a) failure to
9 pay separately and hourly for nonproductive time and/or wages for all hours worked in violation of
10 Labor Code §§ 226.2, 1194 and 1194.2 and Wage Order No. 4-2001, § 4; (2) failure to pay hourly and
11 separately for rest breaks at the average hourly rates and failure to pay missed rest break premiums in
12 violation of Labor Code §§ 226.2, 226.7 and Wage Order No. 4-2001, § 12; (3) failure to provide
13 compliant meal breaks and failure to pay missed meal break premiums in violation of Labor Code §
14 512, 226.7 and Wage Order No. 4-2001, § 11; (4) failure to issue accurate itemized wage statements in
15 violation of Labor Code §§ 226(a) and § 226.2(a); and (5) failure to pay all wages owed at the time of
16 discharge from employment in violation of Labor Code §§ 201-203.

17 2. The ("PAGA Period") is designated as the period from one year prior to the postmark
18 date of Plaintiff's notice of intent to seek PAGA penalties through the trial date.

19 **PARTIES**

20 3. Plaintiff is a resident of Los Angeles, California who has been employed by Defendant as
21 an adjunct instructor since 2010. During his employment, Plaintiff was subject to Defendant's unlawful
22 conduct described herein.

23 4. Defendant is a private non-profit university, incorporated in California and located in
24 Orange.

25 **JURISDICTION**

26 5. This Court has jurisdiction over Plaintiff's PAGA claim pursuant to Labor Code § 2699.

27 6. On April 13, 2020 Plaintiff provided Notice pursuant to Labor Code § 2699.3 to the
28 LWDA and to Defendant. The LWDA has not provided notice to Plaintiff regarding its intentions to
investigate or not investigate Plaintiff's claims.

7. The amount in controversy for Plaintiff, including claims for civil penalties and pro rata
share of attorney's fees, is less than seventy-five thousand dollars (\$75,000).

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8. Venue is proper in the County of Orange pursuant to Cal. Civ. Proc. Code §§ 395(a) and 395.5. Defendant's principal place of business is in Orange.

FACTUAL ALLEGATIONS

9. Defendant is a private, non-profit university that offers both undergraduate and graduate programs at its main campus in Orange, California and its health sciences campus in Irvine, California. Defendant offers more than 100 undergraduate and graduate degrees. These programs are offered throughout the year, mainly during the fall, spring and summer semesters, with programs also offered during the winter interterm semester. In order to teach these programs, Defendant employs full-time and part-time faculty.

10. Defendant employs Aggrieved Employees pursuant to a uniform employment contract. This uniform Contract contained the compensation Aggrieved Employees were entitled to be paid. From the beginning of the PAGA Period and until January 1, 2020 the Contract provided for compensation in form of a flat amount of money for teaching each course (“Course Rate”). The more courses an Aggrieved Employees taught, the more she/he is paid. The Contract also provided that the “Period of Appointment” began and ended on set dates, typically beginning on the first day of classes and ending on the last day of exam period.

A. Aggrieved Employees Were Non-Exempt Piece Rate Employees

11. During the PAGA Period, Plaintiff and Aggrieved Employees were non-exempt employees under California law.

12. Plaintiff and Aggrieved Employees were non-exempt because they did not earn at least the monthly salary equivalent of two times the California minimum wage for full-time employment – a minimum amount required for an employee in California to be considered exempt. *See* Wage Order No. 4-2001, § 1(A).

13. Additionally, Plaintiff and Aggrieved Employees were non-exempt piece rate workers because from the beginning of the PAGA Period and until January 1, 2020, based on a piece rate, where the “piece” of work was teaching a specified Course.

14. As a result, during the PAGA Period, as alleged in further detail below, Defendant was required to comply with California's wage and hour laws, including but not limited to, the obligation to pay Aggrieved Employees for all hours worked, to pay for nonproductive time and rest break time separate and apart from the piece rate, and to authorize and permit paid rest periods, and to provide

1 compliant meal periods, pursuant to Labor Code §§ 226.2, 226.7, 512, 1194, and Wage Order No. 4-
2 2001, §§ 4, 11, 12.

3 15. Even if Aggrieved Employees are not considered piece-rate because they are non-exempt
4 under the salary basis test of the Wage Order No. 4-2001, § 1(A)(3)(d), they were and are entitled to
5 certain protections under the labor code, including but not limited to be paid for all hours worked, to be
6 permitted and authorized to take compliant rest breaks, to be provided with compliant meal periods.

7 ***B. Defendant Failed to Pay Aggrieved Employees for All Hours Worked***

8 16. During the PAGA Period, in addition to teaching courses, Defendant required and/or
9 expected, Aggrieved Employees to perform, and Aggrieved Employees did perform, numerous non-
10 productive tasks outside of Periods of Appointment and outside the classroom instructional hours. For
11 example, Defendant required and/or expected Aggrieved Employees to: (1) prepare syllabi prior to the
12 beginning of their Periods of Appointment, (2) be available to students outside the hour of classroom
instruction, (3) create exams and/or projects and other course materials, (4) grade, (5) attending faculty
meetings (“Non-Teaching Tasks”).

13 17. Because Aggrieved Employees are non-exempt piece-rate employees, pursuant to Labor
14 Code § 226.2, Defendant was required to pay them separately from the piece at least at the minimum
15 wage for all hours worked spent performing Non-Teaching Tasks. However, throughout the PAGA
16 Period, Defendant failed to pay any wages to Plaintiff and Aggrieved Employees for the time spent on
17 Non-Teaching Tasks. Nor did Defendant provide any means or mechanism for them to record their
18 time spent performing Non-Teaching Tasks, and had no practice and/or policy in place to compensate
them for such work.

19 18. Even if Aggrieved Employees are not piece-rate workers, Defendant was required but
20 failed to compensate them for work performed prior to the Periods of Appointment pursuant to Labor
21 Code §§ 1194, 1194.2 and Wage Order No. 4-2001, § 4.

22 ***C. Defendant Violated Rest Break Law***

23 19. Because Aggrieved Employees are non-exempt piece-rate workers, pursuant to Labor
24 Code §§ 226.2 and 226.7 Defendant was required to permit and authorize them to take a paid 10-minute
25 for every 3.5 hours of work, and to pay them separately and hourly, at their average hourly rate, for their
rest break time.

26 20. During the PAGA Period, Aggrieved Employees routinely worked at least 3.5 hours or
27 more on any given day because Defendant scheduled them to teach for 3.5 hours or longer, or because
28 Defendant scheduled them to teach shorter classes but required and/or expected them to arrive prior to

1 start of class and to remain after class to answer students' questions and/or hold office hours, which in
2 resulted in Aggrieved Employees working 3.5 hours or longer.

3 21. Defendant also had policies and/or practices in place which impeded Aggrieved
4 Employees' ability to take off-duty rest breaks during these times, including the policy and/or practice
5 of requiring Aggrieved Employees to be available to students during class, as well as before and after
6 class as alleged in the previous paragraph.

7 22. Defendant knew or should have known that Aggrieved Employees worked 3.5 hours or
8 more. Pursuant to Labor Code §§ 226.2, 226.7 and Wage Order No. 4, § 12, Defendant was therefore
9 required to pay Aggrieved Employees at their average hourly rate for their time spent on rest breaks
10 separately and apart from the piece, yet failed to do so, thereby triggering an obligation to make
11 premium payments to Aggrieved Employees under Labor Code § 226.7 and Wage Order No. 4-2001, §
12 12.

13 23. Defendant also knew or should have known that Aggrieved Employees were impeded
14 from taking off-duty rest breaks. Even if Aggrieved Employees are not piece-rate workers, Defendant
15 was required but failed, as alleged above, to permit and authorize Aggrieved Employees to take off-duty
16 rest breaks for shifts of 3.5 hours or longer, pursuant to Labor Code § 226.7 and Wage Order No. 4-
17 2001, § 12, thereby triggering an obligation to make premium payments under Labor Code § 226.7 and
18 Wage Order No. 4-2001, § 12(B).

19 ***D. Defendant Violated Meal Break Laws***

20 24. Because Aggrieved Employees were non-exempt employees, Defendant was required to
21 provide them with 30-minute off-duty meal break, before the end of the fifth hour of work, pursuant to
22 Labor Code § 512 and Wage Order No. 4-2001, § 11.

23 25. During the PAGA Period, Aggrieved Employees routinely worked at least 5 hours or
24 longer straight because, in addition to teaching during scheduled classroom hours, Defendant required
25 them to hold office hours, which Aggrieved Employees held on the day(s) they were teaching, required
26 and/or expected them to arrive prior to start of class and to remain after class to answer students'
27 questions, which resulted in Aggrieved Employees working shifts that were 5 hours or longer.

28 26. During the PAGA Period, Defendant did not relieve Aggrieved Employees of all duties
for at least 30 minutes before the end of their fifth hour of work, as required under Labor Code § 512(a)
and Wage Order No. 4-2001, § 11. Thus, Defendant failed to provide compliant meal breaks in
accordance with Wage Order No. 4-2001, § 11(A) and Labor Code § 512, thereby triggering an

1 obligation to make premium payments to Plaintiff and Aggrieved Employees pursuant to Labor Code §
2 226.7.

3 27. Defendant also did not provide Aggrieved Employees with a mechanism to inform
4 Defendant of missed or untimely meal breaks, and did not make premium payments to Aggrieved
5 Employees under Labor Code § 226.7 and Wage Order No. 4-2001, § 11(B).

6 ***E. Defendant Failed to Issue Accurate Itemized Wage Statements***

7 28. During the PAGA Period, Defendant was required to issue accurate itemized wage
8 statements to Plaintiff and Aggrieved Employees semimonthly or at the time of each payment of wages
9 containing (1) gross wages earned pursuant to subdivision (a)(1) of Labor Code § 226(a); (2) total
10 number of hours worked, pursuant to subdivision (a)(2) of § 226(a); (3) net wages earned pursuant to
11 subdivision (a)(5) of Labor Code § 226(a); (4) all applicable hourly rates in effect during the pay period
12 and corresponding number of hours worked pursuant to subdivision (a)(9) of Labor Code § 226(a).

13 29. Additionally, because Aggrieved Employees were piece-rate workers, Defendant was
14 required to furnish wage statements to them that contained, including but not limited to, the following
15 information: the number of piece-rate units earned and any applicable piece rate; compensable rest
16 periods, the rate of compensation, and gross wages paid for those rest break periods; and hours of
17 nonproductive time, the rate of compensation, and gross wages paid for nonproductive time during the
18 pay period pursuant to Labor Code § 226(a)(3) and § 226.2(a).

19 30. Defendant, however, issued wage statements to the Aggrieved Employees that were
20 incomplete and/or inaccurate in that failed to include any hours spent working; the number of piece-rate
21 units earned and applicable piece rate; applicable hourly rates; and gross and net wages earned. Rather,
22 Defendant issued wage statements that only included a lump sum earned during each pay period, with
23 no information for hours, pieces, or hourly rates, or accurate net and gross wages earned.

24 ***F. Defendant Failed to Pay All Wages Owed Upon Discharge***

25 31. Defendant failed to pay Aggrieved Employees all wages due immediately upon discharge
26 at the end of each Contract, including but not limited to as a consequence of Defendant's failure to pay
27 wages owed for Non-Teaching Tasks and rest and meal break premium pay. As a result, Aggrieved
28 Employees did not receive all wages due upon discharge, nor did they receive these wages due within
30 days of the separation of their employment from Defendant.

CAUSE OF ACTION FOR PAGA CIVIL PENALTIES

32. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in
the preceding paragraphs.

1 33. Plaintiff seeks PAGA penalties on behalf of himself and Aggrieved Employees for the
2 following:

3 **Violation of Labor Code §§ 226.2 and 1194**

4 34. During the PAGA Period, Defendant did not compensate Aggrieved Employees
5 separately and hourly for the Non-Teaching Tasks they were required to perform, or for their time spent
6 on rest breaks. Thus, Defendant failed to pay for non-productive time, and rest break time, separately
7 and apart from the piece, as required under Labor Code §§ 226.2 and 1194, and Wage Order No. 4-
2001, § 4.

8 35. As a result of Defendant's violation of Labor Code §§ 226.2 and/or 1194, Plaintiff and
9 Aggrieved Employees are entitled to one hundred dollars (\$100) for each initial violation and two
10 hundred dollars (\$200) for each subsequent violation.

11 **Violation of Labor Code §§ 226.2, 226.7**

12 36. During the PAGA Period, Defendant failed to pay separately and hourly for rest break
13 time and failed to authorize and permit Aggrieved Employees to take a paid rest break, and failed to pay
14 one hour of premium pay for unpaid or missed rest breaks, pursuant to Labor Code §§ 226.2, 226.7.

15 37. As a result of Defendant's violation of Labor Code §§ 226.2, 226.7, Plaintiff and
16 Aggrieved Employees are entitled to one hundred dollars (\$100) for each initial violation and two
hundred dollars (\$200) for each subsequent violation.

17 **Violation of Labor Code §§ 226.7, 512**

18 38. During the PAGA Period, Defendant failed to provide Aggrieved Employees with
19 compliant off-duty meal breaks, and failed to pay one hour of premium pay for missed meal breaks,
pursuant to Labor Code §§ 226.7, 512.

20 39. As a result of Defendant's violation of Labor Code §§ 226.7, 512 Plaintiff and Aggrieved
21 Employees are entitled to one hundred dollars (\$100) for each initial violation and two hundred dollars
22 (\$200) for each subsequent violation.

23 **Violation of Labor Code §§ 226(a) and 226.2**

24 40. During the PAGA Period, Defendant failed to provide Plaintiff and Aggrieved
25 Employees with accurate itemized wage statements in violation of Labor Code § 226(a) by failing to list
26 on the wage statements (1) gross wages earned, (2) total hours worked, (3) the number of piece rate
27 units earned and application piece rate, (4) net wages earned, and (4) all applicable hourly rates in effect
28 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).

1 41. Defendant also failed to itemize the total number of hours of compensable rest and
2 recovery periods, the rate of compensation, and the gross wages paid for those periods during the pay
3 period; and the total hours of other nonproductive time, the rate of compensation, and the gross wages
4 paid for that time during the pay period, as required under Labor Code § 226.2.

5 42. Under California Labor Code § 226.3, Plaintiff is entitled to a PAGA penalty equal to
6 two hundred fifty dollars (\$250) per pay period for the initial violation and one thousand dollars
7 (\$1,000) per pay period for each subsequent violation.

8 **Violation of Labor Code § 201**

9 43. During the PAGA Period, Defendant failed to pay Plaintiff and Aggrieved Employees all
10 wages owed upon discharge, in violation of Labor Code § 201. As a result, under Labor Code § 256
11 Plaintiff and formerly employed Aggrieved Employees are entitled to penalties in an amount not
12 exceeding 30 days' pay as waiting time under the terms of Section 203. Alternatively, pursuant to Labor
13 Code § 2699(f)(2), Plaintiff and Aggrieved Employees are entitled to one hundred dollars (\$100) for
14 each initial violation, and two hundred dollars (\$200) for each subsequent violation.

15 **PRAYER FOR RELIEF**

16 **WHEREFORE**, Plaintiff requests the following relief:

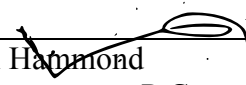
17 A. Civil penalties pursuant to PAGA for Defendant's failure to pay Plaintiff and Aggrieved
18 Employees at least minimum wage for all nonproductive time and/or all hours worked; failure to pay
19 separately and hourly for time spent on rest break at the average hourly rate; failure to authorize and
20 permit rest breaks and pay premium pay for missed rest breaks; to provide complaint meal periods and
21 pay premium pay for missed meal periods; failure to issue accurate wage statements; and for willfully
22 failing to pay all wages due at the time of discharge from employment;

23 B. Reasonable attorneys' fees and costs pursuant to Labor Code § 2699(g); and

24 C. All other relief as this Court deems proper.

25 Dated: July 10, 2020

26 Respectfully submitted,

27 By: 
28 HAMMONDLAW, P.C.

 Attorneys for Plaintiff