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SAN LUIS OBISPO SUPERIOR COURT
BY M. Zepeda
M. Zepeda, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF SAN LUIS OBISPO

ANNA LEVINE, on behalf of the State of
California, as a private attorney general,

Plaintiff,

vs.

ASSOCIATED STUDENTS
INCORPORATED OF CALIFORNIA
POLYTECHNIC STATE UNIVERSITY
AT SAN LUIS OBISPO, a California
Corporation; ASSOCIATED
STUDENTS, INC., a California
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 20CV-0664

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
226(a), 226.7, 351, 510, 512, 558(a)(1)(2),
1194, 1197, 1197.1, 1198, 2802,
California Code of Regulations, Title 8,
Section 11040, Subdivision 5(A)-(B)

1 Plaintiff Anna Levine (“PLAINTIFF”), on behalf of the people of the State of California
2 and as an “aggrieved employee” acting as a private attorney general under the Labor Code
3 Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges on information
4 and belief, except for her own acts and knowledge which are based on personal knowledge, the
5 following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against Defendants ASSOCIATED STUDENTS
8 INCORPORATED OF CALIFORNIA POLYTECHNIC STATE UNIVERSITY AT SAN LUIS
9 OBISPO and ASSOCIATED STUDENTS, INC., (“DEFENDANT”) seeking only to recover
10 PAGA civil penalties for herself, and on behalf of all current and former aggrieved employees
11 that worked for DEFENDANT. PLAINTIFF does **not seek to recover anything other than**
12 **penalties as permitted by California Labor Code § 2699.** To the extent that statutory
13 violations are mentioned for wage violations, PLAINTIFF does not seek underlying general
14 and/or special damages for those violations, but simply the civil penalties permitted by
15 California Labor Code § 2699.

16 2. California has enacted the PAGA to permit an individual to bring an action on
17 behalf of herself and on behalf of others for PAGA penalties *only*, which is the precise and sole
18 nature of this action.

19 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
20 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
21 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
22 complaint should be construed as attempting to obtain any relief that would not be available in
23 a PAGA-only action.

24 **THE PARTIES**

25 4. Defendant Associated Students Incorporated of California Polytechnic University
26 at San Luis Obispo is a California corporation that at all relevant times mentioned herein
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1 conducted and continues to conduct substantial and regular business throughout the State of
2 California.

3 5. Defendant Associated Students, Inc. is a California corporation that at all relevant
4 times mentioned herein conducted and continues to conduct substantial and regular business
5 throughout the State of California.

6 6. Defendants Associated Students Incorporated of California Polytechnic University
7 at San Luis Obispo and Associated Students, Inc. were the joint employers of PLAINTIFF as
8 evidenced by paycheck and by company documents and by the company PLAINTIFF performed
9 work for respectively, and are therefore jointly responsible as employers for the conduct alleged
10 herein, and are therefore collectively referred to herein as DEFENDANT.

11 7. DEFENDANT provides programs and services for college students in California.

12 8. PLAINTIFF was employed by DEFENDANT in California and was classified as
13 a non-exempt employee entitled to overtime pay and meal and rest periods from June 2019 to
14 February of 2020. PLAINTIFF was at all times relevant mentioned herein classified by
15 DEFENDANT as a non-exempt employee paid on an hourly basis.

16 9. PLAINTIFF, and such persons that may be added from time to time who satisfy
17 the requirements and exhaust the administrative procedures under the Private Attorney General
18 Act, brings this Representative Action on behalf of the State of California with respect to herself
19 and all individuals who are or previously were employed by Associated Students Incorporated
20 of California Polytechnic University at San Luis Obispo and/or Associated Students, Inc. in
21 California and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during
22 the time period of May 7, 2019 until a date as determined by the Court (the "PAGA PERIOD").

23 10. PLAINTIFF, on behalf of herself and all AGGRIEVED EMPLOYEES presently
24 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
25 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
26 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510,
27 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8,
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1 Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s). Based upon the
2 foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within
3 the meaning of Labor Code § 2699, *et seq.*

4 11. The true names and capacities, whether individual, corporate, subsidiary,
5 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
6 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
7 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
8 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
9 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
10 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
11 responsible in some manner for one or more of the events and happenings that proximately
12 caused the injuries and damages hereinafter alleged.

13 12. The agents, servants and/or employees of the Defendants and each of them acting
14 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
15 agent, servant and/or employee of the Defendants, and personally participated in the conduct
16 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.
17 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
18 all Defendants are jointly and severally liable to PLAINTIFF and the other AGGRIEVED
19 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants'
20 agents, servants and/or employees.

21 THE CONDUCT

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23 13. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
24 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked,
25 meaning the time during which an employee is subject to the control of an employer, including
26 all the time the employee is suffered or permitted to work. DEFENDANT from time to time
27 required PLAINTIFF and AGGRIEVED EMPLOYEES to work without paying them for all
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1 the time they were under DEFENDANT's control. PLAINTIFF was from time to time
2 interrupted by work assignments while clocked out of DEFENDANT's timekeeping system,
3 during what should have been PLAINTIFF's off duty meal period. As a result, the PLAINTIFF
4 and other AGGRIEVED EMPLOYEES forfeited minimum wage and overtime compensation
5 by regularly working without their time being accurately recorded and without compensation
6 at the applicable minimum wage and overtime rates. DEFENDANT's policy and practice not
7 to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all time worked is evidenced
8 by DEFENDANT's business records

9 14. During the PAGA PERIOD, DEFENDANT failed and continues to fail to
10 accurately calculate and pay PLAINTIFF and the other AGGRIEVED EMPLOYEES for their
11 overtime worked. DEFENDANT unlawfully and unilaterally failed to accurately calculate
12 minimum and overtime wages for time worked by PLAINTIFF and other AGGRIEVED
13 EMPLOYEES in order to avoid paying these employees the correct compensation. As a result,
14 PLAINTIFF and the other AGGRIEVED EMPLOYEES forfeited wages due them for working
15 without compensation at the correct rates. DEFENDANT's policy and practice to not pay the
16 AGGRIEVED EMPLOYEES the correct minimum and overtime wages for all time worked in
17 accordance with applicable law is evidenced by DEFENDANT's business records.

18 15. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
19 EMPLOYEES were also from time to time unable to take thirty (30) minute off duty meal
20 breaks and were not fully relieved of duty for their meal periods. PLAINTIFF and other
21 AGGRIEVED EMPLOYEES were required to perform work as ordered by DEFENDANT for
22 more than five (5) hours during some shifts without receiving a meal break from time to time.
23 Further, DEFENDANT failed to provide PLAINTIFF and AGGRIEVED EMPLOYEES with
24 a second off-duty meal period for some workdays in which these employees were required by
25 DEFENDANT to work ten (10) hours of work from time to time. PLAINTIFF and other
26 AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional compensation
27 and in accordance with DEFENDANT's strict corporate policy and practice.
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1 16. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
2 EMPLOYEES were also from time to time unable to take rest breaks. During the PAGA
3 PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES were also required to work in
4 excess of four (4) hours without being provided ten (10) minute rest periods. Further, these
5 employees were denied their first rest periods of at least ten (10) minutes for every shift worked
6 of at least two (2) to four (4) hours, a first and second rest period of at least ten (10) minutes for
7 every shift worked of between six (6) and eight (8) hours, and a first, second and third rest
8 period of at least ten (10) minutes for every shift worked of ten (10) hours or more from time
9 to time. PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one
10 hour wages in lieu thereof. As a result of their rigorous work schedules, PLAINTIFF and other
11 AGGRIEVED EMPLOYEES were from time to time denied their proper rest periods by
12 DEFENDANT and DEFENDANT's managers. Additionally, the applicable California Wage
13 Order requires employers to provide employees with off-duty rest periods, which the California
14 Supreme Court defined as time during which an employee is relieved from all work related
15 duties and free from employer control. In so doing, the Court held that the requirement under
16 California law that employers authorize and permit all employees to take rest period means that
17 employers must relieve employees of all duties and relinquish control over how employees
18 spend their time which includes control over the locations where employees may take their rest
19 period. Employers cannot impose controls that prohibit an employee from taking a brief walk -
20 five minutes out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and
21 other AGGRIEVED EMPLOYEES from unconstrained walks and was unlawful based on
22 Defendant's rule which stated PLAINTIFF and other AGGRIEVED EMPLOYEES could not
23 leave the work premises during their rest period.

24 17. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
25 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
26 incurred by PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
27 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
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1 2802, employers are required to indemnify employees for all expenses incurred in the course
2 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
3 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
4 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
5 directions of the employer, even though unlawful, unless the employee, at the time of obeying
6 the directions, believed them to be unlawful."

7 18. In the course of their employment PLAINTIFF and other AGGRIEVED
8 EMPLOYEES as a business expense, were required by DEFENDANT to use personal cellular
9 phones as a result of and in furtherance of their job duties as employees for DEFENDANT but
10 were not reimbursed or indemnified by DEFENDANT for the cost associated with the use of
11 the personal cellular phones for DEFENDANT's benefit. As a result, in the course of their
12 employment with DEFENDANT, PLAINTIFF and other AGGRIEVED EMPLOYEES incurred
13 unreimbursed business expenses which included, but were not limited to, costs related to the use
14 of their personal cellular phones all on behalf of and for the benefit of DEFENDANT. As a
15 result, in the course of their employment with DEFENDANT, PLAINTIFF and other
16 AGGRIEVED EMPLOYEES incurred unreimbursed business expenses which included, but
17 were not limited to, costs related to travel all on behalf of and for the benefit of DEFENDANT.

18 19. Cal. Lab. Code § 226 provides that every employer shall furnish each of his or her
19 employees with an accurate itemized wage statement in writing showing, among other things,
20 gross wages earned and all applicable hourly rates in effect during the pay period and the
21 corresponding amount of time worked at each hourly rate. From time to time, DEFENDANT
22 violated Cal. Lab. Code § 226 by failing to provide wage statements that identified the correct
23 net and gross wages earned. Additionally, the wage statements DEFENDANT issued to
24 PLAINTIFF and other AGGRIEVED EMPLOYEES violated Cal. Lab. Code Sections 226(a)(6)
25 and (8) in that DEFENDANT failed to correctly list the correct name of the legal entity that was
26 the employer of PLAINTIFF and the AGGRIEVED EMPLOYEES and failed to provide the
27 inclusive dates of the period for which the employee is paid. Aside from the violations listed
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1 above, DEFENDANT failed to issue to PLAINTIFF an itemized wage statement that lists all
2 the requirements under California Labor Code 226 *et seq.* As a result, from time to time
3 DEFENDANT provided PLAINTIFF and the other AGGRIEVED EMPLOYEES with wage
4 statements which violated Cal. Lab. Code § 226.

5 20. All of the conduct and violations alleged herein occurred during the PAGA
6 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
7 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
8 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
9 AJDAR 12157 (Certified for Publication 12/19/18).

10 **JURISDICTION AND VENUE**

11 21. This Court has jurisdiction over this Action pursuant to California Code of Civil
12 Procedure, Section 410.10.

13 22. Venue is proper in this Court pursuant to California Code of Civil Procedure,
14 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
15 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities
16 in this County and/or conducts substantial business in this County, and (ii) committed the
17 wrongful conduct herein alleged in this County against PLAINTIFF and the AGGRIEVED
18 EMPLOYEES.

19 **FIRST CAUSE OF ACTION**

20 **For Violation of the Private Attorneys General Act**

21 **[Cal. Lab. Code §§ 2698, *et seq.*]**

22 **(By PLAINTIFF and Against All Defendants)**

23 23. PLAINTIFF incorporates by reference, as though fully set forth herein, the prior
24 paragraphs of this Complaint.

25 24. PAGA is a mechanism by which the State of California itself can enforce state
26 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
27 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
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1 fundamentally a law enforcement action designed to protect the public and not to benefit private
2 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
3 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
4 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
5 allow aggrieved employees, acting as private attorneys general to recover civil penalties for
6 Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be
7 subject to arbitration.

8 25. PLAINTIFF, and such persons that may be added from time to time who satisfy
9 the requirements and exhaust the administrative procedures under the Private Attorney General
10 Act, brings this Representative Action on behalf of the State of California with respect to herself
11 and all individuals who are or previously were employed by Associated Students Incorporated
12 of California Polytechnic University at San Luis Obispo and/or Associated Students, Inc. in
13 California and classified as non-exempt employees ("AGGRIEVED EMPLOYEES") during
14 the time period of May 7, 2019 until a date as determined by the Court (the "PAGA PERIOD").

15 26. On May 7, 2020, PLAINTIFF gave written notice by electronic mail to the Labor
16 and Workforce Development Agency (the "Agency") and by certified mail to the employer of
17 the specific provisions of this code alleged to have been violated as required by Labor Code §
18 2699.3. The statutory waiting period for PLAINTIFF to add these allegations to the Complaint
19 has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now commence a
20 representative civil action under PAGA pursuant to Section 2699 as the proxy of the State of
21 California with respect to all AGGRIEVED EMPLOYEES as herein defined.

22 27. The policies, acts and practices heretofore described were and are an unlawful
23 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other
24 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
25 and provide legally required meal and rest periods, (c) failed to pay overtime wages, (d) failed
26 to pay minimum wages, (e) failed to reimburse for required business expenses, and (f) failed to
27 provide wages when due, all in violation of the applicable Labor Code sections listed in Labor
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1 Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197,
2 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-
3 (B), and the applicable Industrial Wage Order(s), and thereby gives rise to civil penalties as a
4 result of such conduct.¹ PLAINTIFF hereby seeks recovery of only civil penalties as prescribed
5 by the Labor Code Private Attorney General Act of 2004 as the representative of the State of
6 California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED
7 EMPLOYEES.

8
9 **PRAYER FOR RELIEF**

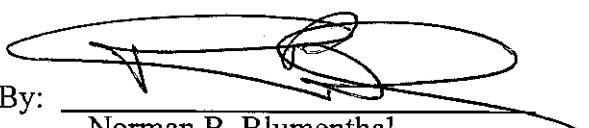
10 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
11 severally, as follows:

12 1. On behalf of the State of California and with respect to all AGGRIEVED
13 EMPLOYEES:

14 A) Recovery of civil penalties as prescribed by the Labor Code Private
15 Attorneys General Act of 2004; and,

16 B) An award of attorneys' fees and cost of suit, as allowable under the
17 law, including, but not limited to, pursuant to Labor Code §2699.

18 Dated: December 21, 2020 **BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP**
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20
21 By: 

22 Norman B. Blumenthal

23 Attorneys for Plaintiff
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27 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
28 Code §558(a)(3).