

MELMED LAW GROUP P.C.
Jonathan Melmed (SBN 290218)
jm@melmedlaw.com
Alan Wilcox (SBN 287476)
alan@melmedlaw.com
1801 Century Park East, Suite 850
Los Angeles, California 90067
Phone: (310) 824-3828
Fax: (310) 862-6851

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Attorneys for Plaintiffs and the Aggrieved Employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CRUZ**

JENNIFER OIE, MONIQUE KING, and
KATHRYN JUHL, individuals on behalf of
themselves and the State of California, as a
private attorneys general,

Plaintiffs,

v.

ANIMUS, INC., a California Corporation
doing business as Animal Hospital of
Sequel, Aguajito Veterinary Hospital,
Parktown Veterinary Clinic, Ocean Animal
Clinic, Alpine Animal Hospital, Animal
Hospital of Palo Alto, Midtown Veterinary
Hospital, Paso Robles Veterinary Medical
Clinic, Petsvet, and Pets Vet Veterinary
Hospital; and DOES 1 TO 50,

Defendants.

Case Number: 21CV01391

**First Amended PAGA Representative Action
Complaint For:**

1. Penalties Pursuant to the Labor Code
Private Attorneys General Act of 2004
("PAGA") for Violations of Labor Code
Sections 201, 202, 203, 204, 210, 226,
226.3, 226.7, 510, 512, 1174, 1185, 1194,
1194.2, 1197, 1197.1, 1198, 1198.5, 1199,
2802, 2804, and Other Provisions of the
California Labor Code.

1 Plaintiffs Jennifer Oie, Monique King, and Kathryn Juhl (collectively “Plaintiffs”), on
2 behalf of themselves and the State of California, as private attorneys general, complain and allege
3 of defendants Animus, Inc. and Does 1 to 50 (collectively, “Defendants”), and each of them, as
4 follows:

5 **I. INTRODUCTION**

6 1. This action is a representative action brought pursuant to the California Labor Code
7 Private Attorneys General Act of 2004 (“PAGA”), codified at California Labor Code sections 2698
8 through 2699.6.

9 2. The “PAGA Period” as used herein, is defined as the period from February 19,
10 2020, and continuing into the present and ongoing.

11 3. This PAGA action is brought on behalf of Plaintiffs, the State of California as
12 private attorney general, and on behalf of the following aggrieved employees: *All individuals who*
13 *are or were employed by Defendants as non-exempt employees in California during the PAGA*
14 *Period* (the “Aggrieved Employees”).

15 4. Plaintiffs are informed and believe and thereon allege that the California Industrial
16 Welfare Commission (“IWC”) Wage Orders applicable to the facts of this case are IWC Wage
17 Orders 4-2001 and/or 5-2001 (the “Applicable Wage Orders”) and possibly others that may be
18 applicable. (Cal. Code of Regs., tit. 8, §§ 11040, 11050.) Plaintiffs reserve the right to amend or
19 modify the definition of “Applicable Wage Orders” with greater specificity or add additional IWC
20 Wage Orders if additional applicable wage orders are discovered in litigation.

21 **II. JURISDICTION & VENUE**

22 5. This Court has subject matter jurisdiction over all causes of action asserted herein
23 pursuant to Article VI, section 10, of the California Constitution and Code of Civil Procedure
24 section 410.10 because this is a civil action in which the matter in controversy, exclusive of
25 interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the
26 State of California or is subject to adjudication in the courts of the State of California.

27 6. This Court has personal jurisdiction over Defendants because Defendants have
28 caused injuries in the County of Santa Cruz and the State of California through their acts, and by

1 their violation of the California Labor Code and California state common law. Defendants transact
2 millions of dollars of business within the State of California. Defendants own, maintain offices,
3 transact business, have an agent or agents within the County of Santa Cruz, and/or otherwise are
4 found within the County of Santa Cruz, and Defendants are within the jurisdiction of this Court
5 for purposes of service of process.

6 7. Venue as to Defendants is proper in this judicial district, pursuant to section 395 of
7 the Code of Civil Procedure. Defendants operate within California and do business within Santa
8 Cruz County, California. The unlawful acts alleged herein have a direct effect on Plaintiffs and
9 all of Defendants' employees identified above within Santa Cruz County and surrounding counties
10 where Defendants may remotely operate.

11 **III. THE PARTIES**

12 **A. PLAINTIFF**

13 8. At all relevant times, Plaintiffs, who are over the age of 18, were and currently are
14 citizens of California residing in the State of California. Defendants employed Plaintiffs as non-
15 exempt hourly employees in the County of Santa Cruz.

16 9. Plaintiffs bring this action on behalf of themselves and the State of California, as
17 private attorneys general, and on behalf of the following group of aggrieved employees: *All*
18 *individuals who are or were employed by Defendants as non-exempt employees in California*
19 *during the PAGA Period* (the "Aggrieved Employees").

20 10. The Aggrieved Employees, at all times pertinent hereto, are or were employees of
21 Defendants during the relevant statutory period.

22 **B. DEFENDANTS**

23 11. Plaintiffs are informed and believe and thereon allege that Defendants were
24 authorized to and doing business in Santa Cruz County and is and/or was the legal employer of
25 Plaintiffs and the other Aggrieved Employees during the applicable statutory periods. Plaintiffs
26 and the other Aggrieved Employees were, and are, subject to Defendants' policies and/or practices
27 complained of herein and have been deprived of the rights guaranteed to them by: California Labor
28 Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1185, 1194, 1194.2,

1 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, and others that may be applicable; California
2 Business and Professions Code sections 17200 through 17210 (“UCL”); and the Applicable Wage
3 Orders (Cal. Code of Regs., tit. 8, §§ 11040, 11050).

4 12. Plaintiffs are informed and believe, and based thereon allege, that during the PAGA
5 Period, Defendants did (and continue to do) business in the State of California, County of Santa
6 Cruz. Defendants operations are headquartered in Santa Cruz County.

7 13. Plaintiffs do not know the true names or capacities, whether individual, partner, or
8 corporate, of the defendants sued herein as Does 1 to 50, inclusive, and for that reason, said
9 defendants are sued under such fictitious names, and Plaintiffs will seek leave from this Court to
10 amend this complaint when such true names and capacities are discovered. Plaintiffs are informed,
11 and believe, and thereon allege, that each of said fictitious defendants, whether individual,
12 partners, or corporate, were responsible in some manner for the acts and omissions alleged herein,
13 and proximately caused Plaintiffs and the other Aggrieved Employees to be subject to the unlawful
14 employment practices, wrongs, injuries, and damages complained of herein.

15 14. Plaintiffs are informed, and believe, and thereon allege, that at all times mentioned
16 herein, Defendants were and/or are the employers of Plaintiffs and the other Aggrieved Employees.
17 At all times herein mentioned, each of said Defendants participated in the doing of the acts
18 hereinafter alleged to have been done by the named Defendants. Furthermore, the Defendants,
19 and each of them, were the agents, servants, and employees of each and every one of the other
20 Defendants, as well as the agents of all Defendants, and at all times herein mentioned were acting
21 within the course and scope of said agency and employment. Defendants, and each of them,
22 approved of, condoned, or otherwise ratified every one of the acts or omissions complained of
23 herein.

24 15. At all relevant times, Defendants, and each of them, were members of and engaged
25 in a joint venture, partnership, and common enterprise, and acting within the course and scope of
26 and in pursuance of said joint venture, partnership, and common enterprise. Further, Plaintiffs are
27 informed, and believe, and thereon allege, that all Defendants were joint employers for all purposes
28 of Plaintiffs and the other Aggrieved Employees.

1 **IV. COMMON FACTS & ALLEGATIONS**

2 16. Plaintiffs and the other Aggrieved Employees (collectively, the “Aggrieved
3 Employees”) are, and were at all relevant times, employed by the Defendants within the State of
4 California.

5 17. The Aggrieved Employees are, and were, at all relevant times, non-exempt
6 employees for the purposes of minimum wages, overtime, rest breaks, meal periods, and the other
7 claims alleged in this complaint.

8 18. Specifically, Plaintiffs were employed by Defendants within the statutory PAGA
9 Period, working as hourly, non-exempt veterinary assistants for Defendants. Plaintiffs’ duties
10 included assisting veterinarians, pulling orders, and loading and unloading products from trucks.

11 **A. MINIMUM WAGE VIOLATIONS**

12 19. Labor Code section 1197 requires employees to be paid at least the minimum wage
13 fixed by the IWC, and any payment of less than the minimum wage is unlawful. Likewise, the
14 Applicable Wage Orders also obligate employers to pay each employee minimum wages for all
15 hours worked. (Cal. Code of Regs., tit. 8, §§ 11040, 11050.) Labor Code section 1198 makes
16 unlawful the employment of an employee under conditions that the IWC Wage Orders prohibit.

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

21 21. Here, Defendants failed to fully conform their pay practices to the requirements of
22 the law during the relevant statutory periods. The Aggrieved Employees were not compensated
23 for all hours worked including, but not limited to, all hours they were subject to the control of
24 Defendants and/or suffered or permitted to work under the California Labor Code and the
25 Applicable Wage Orders. Among other violations, the Aggrieved Employees were subject to the
26 control of Defendants while off-the-clock and did not receive minimum wage for each hour
27 worked.
28

1 22. Labor Code section 1197.1 authorizes employees who are paid less than the
2 minimum wage fixed by an applicable state or local law, or by an order of the IWC, a civil penalty,
3 among other damages, as follows:

4 (1) “For any initial violation that is intentionally committed, one
5 hundred dollars (\$100) for each underpaid employee for each pay
6 period for which the employee is underpaid.”

7 (2) “For each subsequent violation for the same specific offense, two
8 hundred fifty dollars (\$250) for each underpaid employee for each
9 pay period for which the employee is underpaid regardless of
10 whether the initial violation is intentionally committed.” (Lab.
11 Code, § 1197.1, subd. (a).)

12 23. As set forth above, Defendants failed to fully compensate the Aggrieved Employees
13 for all minimum wages. Accordingly, through PAGA and to the extent permitted by law, Plaintiff
14 and the Aggrieved Employees are entitled to recover penalties pursuant to California Labor Code
15 section 1197.1 in addition to any other applicable penalties.

16 **B. OVERTIME VIOLATIONS**

17 24. Labor Code section 510 requires employers to compensate employees who work
18 more than eight hours in one workday, forty hours in a workweek, and for the first eight hours
19 worked on the seventh consecutive day no less than one and one-half times the regular rate of pay
20 for an employee. (Lab. Code, § 510, subd. (a).) Further, Labor Code section 510 obligates
21 employers to compensate employees at no less than twice the regular rate of pay when an employee
22 works more than twelve hours in a day or more than eight hours on the seventh consecutive day
23 of work. (Lab. Code, § 510, subd. (a).) These rules are also reflected in the Applicable Wage
24 Orders.

25 25. In accordance with Labor Code section 1194 and the Applicable Wage Orders, the
26 Aggrieved Employees could not then agree and cannot now agree to work for a lesser wage than
27 the amount provided by Labor Code sections 510 or the Applicable Wage Orders.
28

1 26. Here, Defendants violated their duty to accurately and completely compensate the
2 Aggrieved Employees for all overtime worked. The Aggrieved Employees periodically worked
3 hours that entitled them to overtime compensation under the law but were not fully compensated
4 for those hours.

5 27. These actions were and are in clear violation of California’s overtime laws as set
6 forth in Labor Code sections 510, 1194, 1199, and the Applicable Wage Orders. (Cal. Code of
7 Regs., tit. 8, §§ 11040, 11050.) As a result of Defendants’ faulty policies and practices, the
8 Aggrieved Employees were not compensated for all hours worked or paid accurate overtime
9 compensation.

10 **C. REST BREAK VIOLATIONS**

11 28. Pursuant to Labor Code section 226.7 and the Applicable Wage Orders, Defendants
12 were and are required to provide the Aggrieved Employees with compensated, duty-free rest
13 periods of not less than ten minutes for every major fraction of four hours worked. Under the
14 Applicable Wage Orders, an employer must authorize and permit all employees to take ten minute
15 duty free rest periods for every major fraction of four hours worked. (Cal. Code of Regs., tit. 8,
16 §§ 11040, 11050.)

17 29. Likewise, Labor Code section 226.7 provides that “[a]n employer shall not require
18 an employee to work during a meal or rest or recovery period mandated pursuant to an applicable
19 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission”
20 (Lab. Code, § 226.7, subd. (b).) Labor Code section 226.7 also provides that employers must pay
21 their employees one additional hour of pay at the employee’s regular rate for each workday that a
22 “meal or rest or recovery period is not provided.” (Lab. Code, § 226.7, subd. (c).) Thus, the Wage
23 Orders set when and for how long the rest period must take place and the Labor Code establishes
24 that violations of the IWC Wage Orders are unlawful and sets forth the premium pay employer
25 must pay their employees when employers fail to provide rest periods.

26 30. The California Supreme Court has held that, during required rest periods,
27 “employers must relieve their employees of all duties and relinquish any control over how
28 employees spend their break time.” (*Augustus v. ABM Security Services, Inc.* (2016) 2 Cal.5th

1 257, 260.) Relinquishing control over employees during rest periods requires that employees be
2 “free to leave the employer’s premises” and be “permitted to attend to personal business.” (*Id.* at
3 p. 275.) The *Brinker* Court explained in the context of rest breaks that employer liability attaches
4 from adopting an unlawful policy:

5 “An employer is required to authorize and permit the amount of rest break
6 time called for under the wage order for its industry. If it does not—if, for
7 example, it adopts a uniform policy authorizing and permitting only one rest
8 break for employees working a seven-hour shift when two are required—it
9 has violated the wage order and is liable.” (*Brinker Rest. Corp. v. Superior*
10 *Court* (2012) 53 Cal.4th 1004, 1033.)

11 31. Here, Defendants periodically did not permit the Aggrieved Employees to take
12 compliant duty-free rest breaks, free from Defendants’ control as required by Labor Code section
13 226.7, the Applicable Wage Orders, and applicable precedent. (See *Augustus v. ABM Security*
14 *Services, Inc.* (2016) 2 Cal.5th 257, 269 [concluding that “during rest periods employers must
15 relieve employees of all duties and relinquish control over how employees spend their time.”].)
16 At all relevant times, the Aggrieved Employees were periodically not provided with legally-
17 compliant and timely rest periods of at least ten minutes for each four hour work period, or major
18 fraction thereof due to Defendants’ unlawful rest period policies/practices. The Aggrieved
19 Employees were often expected and required to continue working through rest periods to meet the
20 expectations Defendants and finish the workday. In some cases when the Aggrieved Employees
21 worked more than ten hours in a shift, Defendants failed to authorize and/or permit a third
22 mandated rest period. As a result, the Aggrieved Employees were periodically unable to take
23 compliant rest periods.

24 32. In such cases where Defendants did not offer the Aggrieved Employees the
25 opportunity to receive a compliant off-duty rest period, “the court may not conclude employees
26 voluntarily chose to skip those breaks.” (*Alberts v. Aurora Behavioral Health Care* (2015) 241
27 Cal.App.4th 388, 410 (2015) [“If an employer fails to provide legally compliant meal or rest
28 breaks, the court may not conclude employees voluntarily chose to skip those breaks.”]; *Brinker*

1 *Rest. Corp. v. Superior Court, supra*, 53 Cal.4th at p. 1033 [“No issue of waiver ever arises for a
2 rest break that was required by law but never authorized; if a break is not authorized, an employee
3 has no opportunity to decline to take it.”].)

4 33. In addition to failing to authorize and permit compliant rest periods, the Aggrieved
5 Employees were not compensated with one hour’s worth of pay at their regular rate of
6 compensation when they were not provided with a compliant rest period in accordance with Labor
7 Code section 226.7, subdivision (c). Thus, Defendants have violated Labor Code section 226.7
8 and the Applicable Wage Orders.

9 **D. MEAL BREAK VIOLATIONS**

10 34. Labor Code section 512 and the Applicable Wage Orders require employers to
11 provide employees with a thirty-minute uninterrupted and duty-free meal period within the first
12 five hours of work. (Lab. Code, § 512, subd. (a) [“An employer shall not employ an employee for
13 a work period of more than five hours per day without providing the employee with a meal period
14 of not less than 30 minutes”]; Cal. Code of Regs., tit. 8, §§ 11040, 11050 [“No employer shall
15 employ any person for a work period of more than five (5) hours without a meal period of not less
16 than 30 minutes”].) Additionally, an employee who works more than ten hours per day is
17 entitled to receive a second thirty-minute uninterrupted and duty-free meal period. (Lab. Code, §
18 512, subd. (a) [“An employer shall not employ an employee for a work period of more than 10
19 hours per day without providing the employee with a second meal period of not less than 30
20 minutes”].)

21 35. “An on-duty meal period is permitted only when the nature of the work prevents an
22 employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal
23 break.” (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal.App.5th 926, 932.) The written agreement
24 must include a provision allowing the employee to revoke it at any time. (*Ibid.*) Generally, the
25 California Department of Industrial Relations, Division of Labor Standards Enforcement
26 (“DLSE”) and courts have “found that the nature of the work exception applies: (1) where the
27 work has some particular external force that requires the employee to be on duty at all times, and
28 (2) where the employee is the sole employee of a particular employer.” (*Id.* at p. 945, internal

1 quotation marks omitted; *Abdullah v. U.S. Security Associates, Inc.* (9th Cir. 2013) 731 F.3d 952,
2 958–959.) “[I]t is the employer’s obligation to determine whether the nature of the work prevents
3 an employee from being relieved before requiring an employee to take an on-duty meal period.”
4 (*Lubin v. The Wackenhut Corp.*, *supra*, 5 Cal.App.5th at p. 946.)

5 36. Here, the Aggrieved Employees were never asked to sign any enforceable
6 document agreeing to an on-duty meal period. Moreover, nothing in the nature of their work
7 involved the kind of “external force” that might justify on-duty meal breaks. (*Lubin v. The*
8 *Wackenhut Corp.*, *supra*, 5 Cal.App.5th at p. 945.) Nevertheless, Defendants periodically did not
9 provide compliant off-duty meal periods within the first five hours of work for the Aggrieved
10 Employees.

11 37. As with rest breaks, meal breaks must be duty-free. (*Brinker Restaurant Corp. v.*
12 *Superior Court* (2012) 53 Cal.4th 1004, 1035 [“The IWC’s wage orders have long made a meal
13 period’s duty-free nature its defining characteristic.”].) Relinquishing control over employees
14 during meal periods requires that employees be “free to leave the employer’s premises” and be
15 “permitted to attend to personal business.” (*Augustus v. ABM Security Services, Inc.*, *supra*, 2
16 Cal.5th at p. 275.) Under Labor Code section 512, if an employer maintains a uniform policy that
17 does not authorize and permit the amount of meal time called for under the law (as specified in the
18 Labor Code and/or applicable IWC Wage Order), “it has violated the wage order and is liable.”
19 (*Brinker Restaurant Corp. v. Superior Court*, *supra*, 53 Cal.4th at p. 1033.)

20 38. During the applicable statutory periods here, the Aggrieved Employees were
21 periodically denied legally-compliant and timely off-duty meal periods of at least thirty minutes
22 due to Defendants’ unlawful meal period policy and practices. As a result of Defendants’ uniform
23 meal period policies and practices, the Aggrieved Employees were often not permitted to take
24 complaint first meal periods before the end of the fifth hour of work. The Aggrieved Employees
25 were also periodically not permitted to take second meal periods for shifts in excess of ten hours.
26 Defendants thus violated Labor Code section 512 and the Applicable Wage Orders by failing to
27 advise, authorize, or permit the Aggrieved Employees to receive thirty-minute, off-duty meal
28 periods within the first five hours of their shifts.

1 39. Labor Code section 226.7 provides that “[a]n employer shall not require an
2 employee to work during a meal or rest or recovery period mandated pursuant to an applicable
3 statute, or applicable regulation, standard, or order of the Industrial Welfare Commission.” (Lab.
4 Code, § 226.7, subd. (b).) Labor Code section 226.7, subdivision (c), and the Applicable Wage
5 Orders further obligate employers to pay employees one additional hour of pay at the employee’s
6 regular rate of compensation for each workday that the meal period is not provided. (Lab. Code,
7 § 226.7, subd. (c); Cal. Code of Regs., tit. 8, §§ 11040, 11050 [“If an employer fails to provide an
8 employee a meal period in accordance with the applicable provisions of this order, the employer
9 shall pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each
10 workday that the meal period is not provided.”].)

11 40. Accordingly, for each day that the Aggrieved Employees did not receive compliant
12 meal periods, they were and are entitled to receive meal period premiums pursuant to Labor Code
13 section 226.7 and the Applicable Wage Orders. Defendants, however, failed to pay the Aggrieved
14 Employees applicable meal period premiums for many workdays that the employees did not
15 receive a compliant meal period. Thus, Defendants have violated Labor Code section 226.7 and
16 the Applicable Wage Orders.

17 **E. UNTIMELY WAGES DURING EMPLOYMENT**

18 41. Labor Code section 204 expressly requires employers who pay employees on a
19 weekly, biweekly, or semimonthly basis to pay all wages “not more than seven calendar days
20 following the close of the payroll period.” Labor Code section 210, subdivision (a), makes
21 employers who violate Labor Code section 204 subject to a penalty of:

22 “(1) For any initial violation, one hundred dollars (\$100) for each failure
23 to pay each employee.

24 “(2) For each subsequent violation, or any willful or intentional
25 violation, two hundred dollars (\$200) for each failure to pay each
26 employee, plus 25 percent of the amount unlawfully withheld.”
27 (Lab. Code, § 210, subd. (a).)
28

1 42. Notably, the penalty provided by Labor Code section 210 is “[i]n addition to, and
2 entirely independent and apart from, any other penalty provided in this article” (Lab. Code,
3 § 210, subd. (a).)

4 43. Due to Defendants’ failure to pay the Aggrieved Employees the wages described
5 above, along with rest and meal break premiums, Defendants failed to timely pay the Aggrieved
6 Employees within seven calendar days following the close of payroll in accordance with Labor
7 Code section 204 on a regular and consistent basis. (See *Parson v. Golden State FC, LLC* (N.D.
8 Cal., May 2, 2016, No. 16-CV-00405-JST) 2016 WL 1734010, at p. *3–5, 2016 U.S. Dist. LEXIS
9 58299 [finding that a failure to pay rest period premiums can support claims under Labor Code
10 sections 203 and 204].)

11 **F. UNTIMELY WAGES AT SEPARATION**

12 44. Labor Code section 203 provides “if an employer willfully fails to pay . . . any
13 wages of an employee who is discharged or who quits, the wages of the employee shall continue
14 as a penalty” for up to thirty days. (Lab. Code § 203; *Mamika v. Barca* (1998) 68 Cal.App.4th
15 487, 492.) As a result of Defendants’ failure to pay the Aggrieved Employees for the wages
16 described above, along with rest and meal break premiums, Defendants violated and continue to
17 violate Labor Code section 203.

18 **G. FAILURE TO REIMBURSE BUSINESS EXPENSES**

19 45. At all relevant times herein, Defendants were subject to Labor Code section 2802,
20 which states that “an employer shall indemnify his or her employees for all necessary expenditures
21 or losses incurred by the employee in direct consequence of the discharge of his or her duties, or
22 of his or her obedience to the directions of the employer.” The purpose of this section is to “prevent
23 employers from passing along their operating expenses onto their employees.” (*Gattuso v. Harte-*
24 *Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 562.)

25 46. At all relevant times herein, Defendants were subject to Labor Code section 2804,
26 which states that “any contract or agreement, express or implied, made by any employee to waive
27 the benefits of this article or any part thereof, is null and void, and this article shall not deprive any
28

1 employee or his personal representative of any right or remedy to which he is entitled under the
2 laws of this State.”

3 47. Thus, the Aggrieved Employees were and are entitled to reimbursement for the
4 expenses they incurred during the course of their duties. The duty to reimburse even extends to
5 the use of equipment the employee may already own and would be required to pay for anyway.
6 (*Cochran v. Schwan’s Home Serv., Inc.* (2014) 228 Cal.App.4th 1137, 1144 [“The threshold
7 question in this case is this: Does an employer always have to reimburse an employee for the
8 reasonable expense of the mandatory use of a personal cell phone, or is the reimbursement
9 obligation limited to the situation in which the employee incurred an extra expense that he or she
10 would not have otherwise incurred absent the job? The answer is that reimbursement is always
11 required. Otherwise, the employer would receive a windfall because it would be passing its
12 operating expenses on to the employee.”].)

13 48. Here, Defendants failed to fully reimburse the Aggrieved Employees for necessary
14 expenditures incurred as a direct consequence and requirement of performing their job duties,
15 including the costs associated with their materials and equipment used to perform job duties they
16 required to perform their work. Consequently, Defendants failed to comply with Labor Code
17 section 2802.

18 **H. WAGE STATEMENT VIOLATIONS**

19 49. Defendants also failed to provide accurate itemized wage statements in accordance
20 with Labor Code sections 226, subdivisions (a)(1), (2), (5), and (9). Labor Code section 226,
21 subdivision (a), obligates employers, semi-monthly or at the time of each payment to furnish an
22 itemized wage statement in writing showing:

- 23 (1) The gross wages earned;
- 24 (2) The total hours worked by the employee;
- 25 (3) The number of piece-rate units earned and any applicable piece rate
26 if the employee is paid on a piece rate basis;
- 27 (4) All deductions, provided that all deductions made on written orders
28 of the employee may be aggregated and shown as one item;

- (5) The 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; and
- (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.

50. Due to Defendants' failure to pay the Aggrieved Employees properly as described above, the wage statements issued do not indicate the correct amount of gross wages earned, total hours worked, or the 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. Thus, Defendants have violated Labor Code section 226, subdivisions (a)(1), (2), (5), and (9).

51. In addition to Labor Code section 226, subdivision (a), Defendants also knowingly and intentionally failed to provide the Aggrieved Employees with accurate itemized wage statements in violation of Labor Code section 226, subdivision (e). Defendants knew that they were not providing the Aggrieved Employees with wage statements required by California law but nevertheless failed to correct their unlawful practices and policies. (See *Garnett v. ADT LLC* (E.D. Cal. 2015) 139 F.Supp.3d 1121, 1134 [finding the defendant knowingly and intentionally violated Labor Code section 226 because the "[d]efendant knew that it was not providing total hours worked to plaintiff or other employees paid on commission" even though it believed that employees paid solely on commission or commission and salary "are exempt and therefore we do not record hours on a wage statement."].)

I. RECORDKEEPING VIOLATIONS

52. Labor Code section 226, subdivision (a), requires employers to keep an accurate record of, among other things, all hours worked by employees. Labor Code section 226.3 provides, in pertinent part, as follows:

1 “Any employer who violates subdivision (a) of Section 226 shall be subject
2 to a civil penalty in the amount of two hundred fifty dollars (\$250) per
3 employee per violation in an initial citation and one thousand dollars
4 (\$1,000) per employee for each violation in a subsequent citation, for which
5 the employer fails to provide the employee a wage deduction statement or
6 fails to keep the records required in subdivision (a) of Section 226. The
7 civil penalties provided for in this section are in addition to any other
8 penalty provided by law.” (Lab. Code, § 226.3, emphasis added.)

9 53. Likewise, Labor Code section 1174, subdivision (d), requires every employer,
10 including Defendants, to:

11 “Keep, at a central location in the state or at the plants or establishments at
12 which employees are employed, payroll records showing the hours worked
13 daily by and the wages paid to, and the number of piece-rate units earned
14 by and any applicable piece rate paid to, employees employed at the
15 respective plants or establishments. These records shall be kept in
16 accordance with rules established for this purpose by the commission, but
17 in any case shall be kept on file for not less than three years. An employer
18 shall not prohibit an employee from maintaining a personal record of hours
19 worked, or, if paid on a piece-rate basis, piece-rate units earned.” (Lab.
20 Code, § 1174, subd. (d), emphasis added.)

21 54. As explained in detail above, Defendants failed to provide the Aggrieved
22 Employees with accurate itemized wage statements. Defendants did so, in part, because they failed
23 to accurately track hours worked by the Aggrieved Employees. Defendants have thus failed to
24 keep accurate records of the “total hours worked by the employee[s]” in violation of Labor Code
25 section 226, subdivision (a), and are therefore subject to the penalties provided by Labor Code
26 section 226.3. These penalties are “in addition to any other penalty provided by law.” (Lab. Code,
27 § 226.3.)
28

1 55. The failure to accurately track hours worked also resulted in a failure of Defendants
2 to keep a record of all “payroll records showing the hours worked daily by” Defendants’
3 employees, including Plaintiffs, in violation of Labor Code section 1174, subdivision (d).

4 **V. EXHAUSTION OF REMEDIES**

5 56. Plaintiffs have fully and completely exhausted administrative remedies under
6 PAGA prior to proceeding with the PAGA claims stated in this complaint. Plaintiffs filed a PAGA
7 notice online with the Labor Workforce Development Agency (“LWDA”) and sent a letter by
8 certified mail to Defendants setting forth the facts and theories of the violations alleged against
9 Defendants, as prescribed by PAGA. (Lab. Code, §§ 2698–2699.6.)

10 57. As required by PAGA, Plaintiffs submitted the \$75.00 filing fee with the LWDA
11 by regular mail. Pursuant to Labor Code section 2699.3, subdivision (a)(2)(A), no notice was
12 received by Plaintiff from the LWDA evidencing its intention to investigate within sixty-five
13 calendar days of the postmark date of the PAGA notice. Plaintiffs are therefore entitled to
14 commence and proceed with a civil action pursuant to Labor Code section 2699.

15 **VI. CAUSES OF ACTION**

16 **First Cause of Action**

17 *Penalties Pursuant to PAGA for Violations of Labor Code Sections 201, 202, 203,*
18 *204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1,*
19 *1198, 1198.5, 1199, 2802, 2804, and Other Provisions of the California Labor*
20 *Code*

21 *(Against All Defendants)*

22 58. Plaintiffs reallege and incorporate by reference all previous paragraphs.

23 59. Based on the above allegations incorporated by reference, Defendants violated
24 Labor Code sections 201, 202, 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1185, 1194,
25 1194.2, 1197, 1197.1, 1198, 1198.5, 1199, 2802, 2804, and others that may be applicable; and the
26 Applicable Wage Orders (Cal. Code of Regs., tit. 8, §§ 11040, 11050), and others that may be
27 applicable.
28

1 60. As a result of the acts alleged above, Plaintiffs seek penalties under Labor Code
2 sections 2698 through 2699.6 because of Defendants' violation of Labor Code sections 201, 202,
3 203, 204, 210, 226, 226.3, 226.7, 510, 512, 1174, 1185, 1194, 1194.2, 1197, 1197.1, 1198, 1198.5,
4 1199, 2802, 2804, and others that may be applicable; and the Applicable Wage Orders (Cal. Code
5 of Regs., tit. 8, §§ 11040, 11050), and others that may be applicable.

6 61. Under Labor Code section 2699, subdivision (f)(2), and 2699.5, for each such
7 violation, Plaintiffs and the Aggrieved Employees are entitled to penalties in an amount to be
8 shown at the time of trial subject to the following formula:

9 A. \$100 for the initial violation per employee per pay period; and

10 B. \$200 for each subsequent violation per employee per pay period.

11 62. These penalties must be allocated seventy-five percent to the Labor and Workforce
12 Development Agency ("LWDA") and twenty-five percent to the affected employees. These
13 penalties may be stacked separately for each of Defendants violations of the California Labor
14 Code. (*Lopez v. Friant & Associates, LLC* (2017) 15 Cal.App.5th 773, 780–781 [citing with
15 approval *Stoddart v. Express Services, Inc.* (E.D. Cal., Sept. 16, 2015, No. 2:12-CV-01054-KJM)
16 2015 WL 5522142, at *9, for the proposition that plaintiff could pursue separate claims for
17 penalties under Labor Code section 226, subdivision (e), and penalties for Labor Code section 226,
18 subdivision (a), violations]; see also *Hernandez v. Towne Park, Ltd.* (C.D. Cal., June 22, 2012,
19 No. CV 12-02972 MMM JCGX) 2012 WL 2373372, at *17 fn. 70 [noting that federal courts
20 applying California law have found that "PAGA penalties can be stacked, i.e., multiple PAGA
21 penalties can be assessed for the same pay period for different Labor Code violations."], internal
22 quotation marks omitted).

23 63. In addition, to the extent permitted by law, Defendants failed to provide Plaintiffs
24 and all Aggrieved Employees with accurate itemized wage statements in compliance with Labor
25 Code section 226, subdivision (a). Plaintiffs seek separate PAGA penalties for Defendants'
26 violations of Labor Code section 226, subdivisions (a) and (e). (*Lopez v. Friant & Associates,*
27 *LLC, supra*, 15 Cal.App.5th at pp. 780, 788.)
28

1 64. For violations of Labor Code section 226, subdivision (a), Plaintiffs seek the default
2 penalty provided by Labor Code section 226.3. Labor Code section 226.3 provides that “[a]ny
3 employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the
4 amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and
5 one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which
6 the employer fails to provide the employee a wage deduction statement or fails to keep the required
7 in subdivision (a) of Section 226.” Accordingly, through PAGA and to the extent permitted by
8 law Plaintiffs and the Aggrieved Employees are entitled to recover penalties for violations of Labor
9 Code section 226.3 and seek default PAGA penalties for each of Defendants’ numerous violations
10 of Labor Code section 226, subdivision (e).

11 65. Labor Code section 210 provides that “in addition to, an entirely independent and
12 apart from, any other penalty provided in this article, every person who fails to pay the wages of
13 each employee as provided in Sections . . . 204 . . . shall be subject to a civil penalty as follows:
14 (1) For any initial violation, one hundred dollars (\$100) for each failure to pay each employee; (2)
15 For each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200)
16 for each failure to pay each employee, plus 25% of the amount unlawfully withheld.” As a result
17 of the faulty compensation policies and practices, Plaintiffs and the Aggrieved Employees are also
18 entitled to recover penalties under Labor Code section 210 through PAGA.

19 66. Labor Code section 1197.1 authorizes a civil penalty, restitution of wages, and
20 liquidated damages, in the amount of: (1) one hundred dollars (\$100) for any initial violation that
21 is intentionally committed for each underpaid employee for each pay period for which the
22 employee is underpaid, and (2) two hundred fifty dollars (\$250) for each subsequent violation for
23 the same specific offense for each underpaid employee for each pay period for which the employee
24 is underpaid regardless of whether the initial violation is intentionally committed. Accordingly,
25 through PAGA and to the extent permitted by law, Plaintiffs and the Aggrieved Employees are
26 entitled to recover pursuant to Labor Code section 1197.1.

27 67. Plaintiffs were compelled to retain the services of counsel to file this action to
28 protect their interests and those of the Aggrieved Employees, and to assess and collect the wages

1 and penalties owed by Defendants. Plaintiffs have thereby incurred attorneys' fees and costs,
2 which Plaintiff is also entitled to recover under Labor Code section 2699, subdivision (g)(1).

3 **VII. PRAYER FOR RELIEF**

4 Plaintiffs pray for judgment for self and for all others on whose behalf this suit is brought
5 against Defendants, as follows:

- 6 **1.** For the claim of penalties pursuant to PAGA and other provisions of the California
7 Labor Code, a civil penalty in the amount of \$100 for the initial violation and \$200
8 for each subsequent violation as specified in Labor Code section 2699, subdivision
9 (f)(2), in the representative action brought on behalf of Plaintiffs and the Aggrieved
10 Employees pursuant the Labor Code Private Attorneys General Act of 2004, and
11 for civil penalties available under Labor Code sections 201 through 203, 210,
12 226(e), 226.3, 1174.5, and others that may be applicable to the claims raised in this
13 Complaint;
- 14 **2.** For attorneys' fees and costs as provided by law; and
- 15 **3.** For such other and further relief, this Court may deem just and proper.

16 Dated: August 11, 2021

MELMED LAW GROUP P.C.

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18 

19
20 **ALAN WILCOX**

21 Attorney for Plaintiffs and the Aggrieved
22 Employees
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28

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF SANTA CRUZ

I am over the age of 18 years and am employed in the county of Los Angeles, State of California. I am not a party to this action. My business address is 1801 Century Park East, Suite 850, Los Angeles, California 90067.

I declare that on the date hereof, August 11, 2021, I served the foregoing document(s) described as:

- **FIRST AMENDED PAGA REPRESENTATIVE ACTION COMPLAINT**

By causing a true copy thereof to be sent to the following individuals and/or parties:

RYBICKI & ASSOCIATES
Richard C. Rybicki
rrybicki@rybickiassociates.com
Jacqueline K. Loveless
jl@rybickiassociates.com
10 Executive Court, Suite 204
Napa, CA 94558

[XX] BY MAIL. I am readily familiar with the firm's practice of collection and processing correspondence for mailing; Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postage cancellation date or postage meter date is more than one day after date of deposit for mailing this affidavit.

[XX] BY ELECTRONIC SERVICE. On the above-mentioned date, I caused the documents to be sent to the persons at the electronic notification addresses as shown above.

I declare under penalty of perjury under the laws of California that the above is true and correct. I further declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on August 11, 2021 in Los Angeles, California.



Lorie Gutierrez