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SUPERIOR COURT FOR THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

ARYTON COSTA, individually and on behalf
of all others similarly situated,

Plaintiff,

vs.

UNIVERSITY OF ANTELOPE VALLEY, a
California Corporation,

Defendant.

CASE NO. 21STCV18531

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT FOR CIVIL
PENALTIES PURSUANT TO PRIVATE
ATTORNEY GENERAL ACT (CAL. LABOR
CODE §§ 2698 *ET SEQ.*)**

1 Plaintiff Aryton Costa ("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 and
6 costs on behalf of Plaintiff and all other part-time instructors employed by University of Antelope Valley
7 ("UAV" or "Defendant") in California ("Aggrieved Employees") from April 6, 2020 to the trial date
8 ("PAGA Period) for violations of Labor Code §§ 226.2, 226.7, 512, 1194, 226(a), 201-203, and 2802.

9 2. Plaintiff also brings this action for PAGA penalties on behalf of himself and all other
10 similarly situated individuals employed in California by Defendant, other than Aggrieved Employees,
11 who were required by Defendant to work from home remotely as a result of the COVID-19 pandemic and
12 incurred necessary business expenses ("Reimbursement Aggrieved Employees") from April 6, 2020 until
13 August 31, 2021 ("Reimbursement PAGA Period") for a violation of Labor Code § 2802.

14 **PARTIES**

15 3. Plaintiff Costa is a resident of Redondo Beach, California who was employed by UAV as
16 an adjunct instructor to teach courses during academic terms between approximately May 2019 and 2020.
17 During his employment, Plaintiff was subject to Defendant's unlawful conduct described herein.

18 4. Defendant is a private for-profit university, incorporated in California and located in
19 Lancaster, California.

20 **JURISDICTION**

21 5. This Court has jurisdiction over Plaintiff's claims for civil penalties under Labor Code
22 § 2699. On April 22, 2021, Plaintiff provided Notice pursuant to Labor Code § 2699.3 to the California
23 Labor & Workforce Development Agency ("LWDA") and to the Defendant. On November 2, 2021,
24 Plaintiff sent an Amended PAGA Notice to the LWDA and to the Defendant. On December 1, 2021,
25 Plaintiff sent a Second Amended PAGA Notice to the LWDA and to the Defendant. The LWDA has
26 provided no notice to Plaintiff within the period specified in Labor Code § 2699.3 regarding its intention
27 to investigate or not investigate any other claims alleged in the PAGA Notice. Plaintiff has therefore fully
28 complied with the PAGA procedural requirements and may commence this representative action pursuant
to Labor Code § 2699.

6. 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).

1 **VENUE**

2 7. Venue is proper in the County of Los Angeles pursuant to Cal. Civ. Proc. Code §§ 395(a)
3 and 395.5. Defendant's principal place of business is in Lancaster, Los Angeles County.

4 **FACTUAL ALLEGATIONS**

5 ***A. Defendant's Business***

6 8. Defendant is a private, for-profit university located in Lancaster, California. The
7 university offers undergraduate and graduate degree programs and certificate programs.

8 9. UAV's programs are offered throughout the year, during 14 to 16-week semesters or 3 to
9 13-week terms, and online courses are offered during 8-week terms.

10 10. In order to teach these programs, Defendant employs Aggrieved Employees. Upon
11 information and belief, Defendant employs Aggrieved Employees on a term by term or semester by
12 semester basis for the limited duration of one academic term or a term specified in the contract. As a
13 result, Aggrieved Employees' employment is terminated at the conclusion of each term or each contract.

14 ***B. Aggrieved Employees are Non-Exempt Piece Rate Employees, or Alternatively, They Are Non-
15 Exempt Salaried Employees***

16 11. During the PAGA Period, Aggrieved Employees were non-exempt because they did not
17 earn at least the monthly salary equivalent of two times the California minimum wage for full-time
18 employment – the minimum amount required for an employee in California to be considered exempt. See
19 Wage Order No. 4-2001, § 1(A).

20 12. Defendant compensated Aggrieved Employees in the form of a flat amount for teaching of
21 each course based on the number of students enrolled ("Course Rate"). The more courses and the more
22 students an Aggrieved Employee teaches, the more she/he is paid. The payment of a Course Rate is form
23 of piece rate compensation.

24 13. Whether piece-rate or not, Aggrieved Employees are non-exempt because they do not earn
25 the minimum required to qualify for exempt status.

26 14. Effective September 9, 2020 California legislature enacted Labor Code § 515.7, which
27 expanded the California professional exemption under the Wage Order No. 4 (and Wage Order No. 5) for
28 non-profit institutions of higher education. *See* Lab. Code § 515.7(a); Edu. Code § 66010(b). However,
because UAV is a private, for-profit institution, Aggrieved Employees remain subject to the professional
exemption criteria set out in Wage Order No. 4. As non-exempt employees, they were and are entitled to
certain protections under the labor code.

1
2 ***C. Defendant Violated California's Minimum Wage Laws***

3 15. During the PAGA Period, in addition to teaching courses, Defendant required and/or
4 expected, Aggrieved Employees to perform non-teaching tasks outside of the classroom hours, including,
5 but not limited to: (1) preparing and submitting syllabi via Canvas prior to the first day of classes; (2)
6 being available to meet and confer with students before and after classes, and hold office hours; (3) being
7 available to students throughout each week of the semester via email; (4) creating course materials,
8 building lesson plans, and preparing lectures; (5) monitoring student progress; (6) grading; (7) performing
9 administrative tasks such as taking and reporting attendance for each class; and (8) attending faculty
meetings, professional development, and other service-sessions ("Non-Teaching Tasks").

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

16 17. Under the alternative theory, even if Aggrieved Employees were not paid by the piece,
17 pursuant to Labor Code §§ 1194 1194.2 and Wage Order No. 4-2001, § 4, Defendant was required to pay
18 them for all hours worked as they were non-exempt. The compensation Defendant paid Aggrieved
19 Employees was intended to cover only hours of classroom instruction. Therefore, Defendant was required
20 to pay Aggrieved Employees additional compensation for Non-Teaching Tasks. However, Defendant
failed to do so.

21 ***D. Defendant Violated California's Rest Break Laws***

22 18. During the PAGA Period, Aggrieved Employees routinely worked at least 3.5 hours or
23 more on any given day. Defendant knew or should have known that Aggrieved Employees worked 3.5
24 hours or more because Defendant scheduled them to teach classes for 3.5 hours or longer (or shorter
25 classes back to back for a total of 3.5 hours or longer). Pursuant to Labor Code § 226.2 and Wage Order
26 No. 4, § 4, Defendant was therefore required to pay Aggrieved Employees at their average hourly rate for
27 their time spent on rest breaks separately and apart from the piece, yet failed to do so, thereby triggering
28 an obligation to make premium payments to Aggrieved Employees under Labor Code § 226.7 and Wage
Order No. 4-2001, § 12.

1 19. Defendant was also required to permit and authorize Aggrieved Employees to take off-
2 duty rest breaks for shifts of 3.5 hours or longer, pursuant to Labor Code § 226.7 and Wage Order No. 4-
3 2001, § 12. However, Defendant maintained policies and/or practices that impeded Aggrieved
4 Employees' ability to take off-duty rest periods. These policies and/or practices included, but were not
5 limited to, expecting and/or requiring Aggrieved Employees to be available to students prior to class,
6 during classroom breaks, and after class. Aggrieved Employees were further routinely approached by
7 students before and after class with questions about course material. As a result, Defendant failed to
8 authorize and permit compliant rest breaks in accordance with Wage Order No. 4-2001, § 12(A) thereby
9 triggering an obligation to make premium payments under Labor Code § 226.7 and Wage Order No. 4-
10 2001, § 12(B). However, Defendant did not pay premium pay for missed or unpaid rest breaks as required
under Labor Code § 226.7.

11 ***E. Defendant Violated California's Meal Period Laws***

12 20. During the PAGA Period, Aggrieved Employees worked shifts of five hours or more,
13 including teaching classes that were scheduled to meet for 5 hours, or working shifts that were 5 hours or
14 longer (including arriving early to classes, staying later after classes, and spending break time with
15 students). Defendant did not maintain a compliant meal break policy applicable to Aggrieved Employees.
16 As a result, Aggrieved Employees were not relieved 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.

17 21. Thus, Defendant failed to provide compliant meal breaks in accordance with Wage Order
18 No. 4-2001, § 11(A) and Labor Code § 512, thereby triggering an obligation to make premium payments
19 to Plaintiff and Aggrieved Employees pursuant to Labor Code § 226.7. However, Defendant did not pay
premium pay for missed meal breaks as required under Labor Code § 226.7.

20 ***F. Defendant Failed to Issue Accurate Wage Statements***

21 22. During the PAGA Period, Defendant failed to issue accurate wage statements to Plaintiff
22 and Aggrieved Employees. Defendant was required pursuant to Labor Code § 226(a)(2) and (a)(9) to
23 furnish Plaintiff and Aggrieved Employees wage statements that contained accurate entries for total hours
24 worked and applicable hourly rates in effect during each pay period. However, Defendant did not require
25 Plaintiff and Aggrieved Employees to track their hours and as a result failed to include on their wage
26 statements accurate hours worked and hourly rates. Defendant also failed to include the number of piece-
27 rate units earned and any applicable piece rate on Aggrieved Employees' wage statements as required
28 pursuant to Labor Code §§ 226(a)(3), 226.2(a).

1 23. Additionally, as a consequence of Defendant's failure to pay wages owed for Non-
2 Teaching Tasks Defendant failed to issue itemized wage statements to Aggrieved Employees which
3 included accurate entries for gross wages earned and net wages earned, and other piece rate information
4 as required under Labor Code §§ 226(a)(1), (a)(5), 226.2(a).

5 24. Defendant's practice of furnishing Aggrieved Employees incomplete and/or inaccurate
6 wage statements in violation of Labor Code §§ 226(a), 226.2(a) was not an isolated and unintentional
7 payroll error due to a clerical or inadvertent mistake, but rather the result of Defendant's regular
8 compensation policies.

9 25. Defendant's practice of furnishing Plaintiff and Aggrieved Employees incomplete wage
10 statements in violation of Labor Code § 226(a) was not an isolated and unintentional payroll error due to
11 a clerical or inadvertent mistake, but rather was willful and intentional.

12 ***G. Defendant Failed to Pay All Wages Owed to Upon Discharge***

13 26. As a consequence of Defendant's failure to pay wages owed for Non-Teaching Tasks,
14 Aggrieved Employees did not receive all compensation due to them when their employment terminated
15 at the end of each semester. As a result, Aggrieved Employees did not receive all wages due upon
16 termination. Aggrieved Employees also did not receive their final paychecks at the time they were
17 discharged from employment at the end of each contract but late because Defendant followed its regular
18 bi-weekly payroll schedule.

19 27. In light of the clear law requiring that Defendant pay for time spent on non-Teaching Tasks
20 and in light of the clear law that Defendant pay all wages due immediately at the time of discharge,
21 Defendant's failure to pay wages for such time and failure to pay such wages at the time of discharge was
22 willful.

23 ***H. Defendant Failed to Reimburse Business Expenses***

24 28. Labor Code § 2802(a) requires employers to indemnify their employees for all necessary
25 expenditures or losses incurred by their employees in direct consequence of the discharge of their duties,
26 or of their obedience to the directions of the employer.

27 29. During the Reimbursement PAGA Period, Defendant failed to reimburse Plaintiff.
28 Aggrieved Employees, and Reimbursement Aggrieved Employees for their necessarily incurred business
expenses pursuant to Labor Code § 2802.

 30. During the Reimbursement PAGA Period, Plaintiff, Aggrieved Employees, and
Reimbursement Aggrieved Employees were required to work remotely from home, due to the COVID-

1 19 crisis, and those Reimbursement Aggrieved Employees who were faculty members were required to
2 develop alternative methods to deliver curriculum and manage operations.

3 31. During the Reimbursement PAGA Period, Defendant required and expected Plaintiff,
4 Aggrieved Employees and Reimbursement Aggrieved Employees to be readily available by laptop
5 computer, mobile phone, email, and/or videoconferencing, and Defendant required and expected
6 instructors to deliver curriculum as closely as possible to as if they were at their regular campus location.

7 32. As a result of working remotely, in direct consequence of carrying out their duties, or their
8 obedience to the directions of Defendant, Plaintiff, Aggrieved Employees and Reimbursement Aggrieved
9 Employees incurred home office expenses, as described above. Defendant knew or should have known
10 that Plaintiff, Aggrieved Employees and Reimbursement Aggrieved Employees incurred these home
11 office expenses. However, Defendant maintained policies and/or practices that denied reimbursement for
12 these expenses.

13 33. Defendant's policies and/or practices thus have required and/or with Defendant's
14 knowledge thereof have permitted, Plaintiff, Aggrieved Employees and Reimbursement Aggrieved
15 Employees to pay for their home office expenses incurred in direct discharge of their job duties on behalf
16 of Defendant, without reimbursement by Defendant in full, or at all, for such expenses.

17 34. During the Reimbursement PAGA Period, Defendant failed and refused to reimburse
18 Plaintiff, Aggrieved Employees and Reimbursement Aggrieved Employees for their home office expenses
19 incurred by them in their work as they have carried out their work duties for Defendant. As a result,
20 Plaintiff, Aggrieved Employees and Reimbursement Aggrieved Employees have been harmed by
21 Defendant's failure to reimburse their home office expenses in clear violation of § 2802 of the California
22 Labor Code.

23 **CAUSE OF ACTION FOR PAGA CIVIL PENALTIES**

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

26 36. Plaintiff seeks PAGA penalties, and attorneys' fees and costs, on behalf of himself,
27 Aggrieved Employees, and Reimbursement Aggrieved Employees, for the following violations:

28 ***Violation of Labor Code § 226.2 and 1194; Wage Order No. 4-2001, § 4***

37. During the PAGA Period, Defendant did not compensate Aggrieved Employees for their
time spent performing Non-Teaching Tasks, separately from the Course Rate, or at all, in violation of
Labor Code §§ 226.2 and 1194, and Wage Order No. 4-2001, § 4.

1 38. Pursuant to Labor Code § 2699(f)(2), Plaintiff and Aggrieved Employees are entitled to
2 one hundred dollars (\$100) per pay period for each initial violation of Labor Code §§ 226.2 and 1194,
3 and two hundred dollars (\$200) per pay period for each subsequent violation.

4 ***Violation of IWC Wage Order No. 4-2001 § 12 and Labor Code §§ 226.2 and 226.7***

5 39. During the PAGA Period, Defendant failed to pay Aggrieved Employees for their time
6 spent on rest breaks separately and apart from the Course Rate, in violation of Labor Code § 226.2.
7 Defendant also failed to authorize and permit paid rest breaks and pay missed rest break premium pay in
8 violation of IWC Wage Order No. 4-2001 § 12 and Labor Code § 226.7.

9 40. Pursuant to Labor Code § 2699(f)(2), Plaintiff and Aggrieved Employees are entitled to
10 one hundred dollars (\$100) per pay period for each initial violation of Labor Code §§ 226.2 and 226.7,
11 and two hundred dollars (\$200) per pay period for each subsequent violation.

12 ***Violation of Labor Code §§ 226.7 and 512 and IWC Wage Order 4-2001, § 11***

13 36. During the PAGA Period, Defendant failed to provide Aggrieved Employees with off-duty
14 meal breaks in violation of Labor Code § 512, and failed to pay missed meal break premiums in violation
15 of IWC Wage Order No. 4-2001 § 11 and Labor Code § 226.7.

16 37. Pursuant to Labor Code § 2699(f)(2), Plaintiff and Aggrieved Employees are entitled to
17 one hundred dollars (\$100) per pay period for each initial violation and two hundred dollars (\$200) per
18 pay period for each subsequent violation.

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

20 41. During the PAGA Period, Defendant failed to issue accurate itemized wage statements by
21 failing to list on the wage statements (1) gross wages earned, (2) total hours worked, (3) the number of
22 piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) net
23 wages earned, and (5) all applicable hourly rates in effect during the pay period, and the corresponding
24 number of hours worked at each hourly rate, in violation of Labor Code § 226(a)(1), (2), (3), (5), and (9).

25 42. Defendant also failed to itemize the total number of hours of compensable rest periods,
26 the rate of compensation, and the gross wages paid for those periods during the pay period; and the total
27 hours of other nonproductive time, the rate of compensation, and the gross wages paid for that time during
28 the pay period, as required under Labor Code § 226.2.

 43. Pursuant to Labor Code § 226.3, Plaintiff and Aggrieved Employees are entitled to \$250
for each initial pay period with a violation and \$1,000 for each subsequent pay period with a violation

 44. Alternatively, under Labor Code § 2699(f)(2), Plaintiff and Aggrieved Employees are
entitled to a PAGA penalty equal to one hundred dollars (\$100) per pay period per Aggrieved Employee

1 for each initial violation of Labor Code § 226(a)(1), (a)(2), (a)(3), (a)(5), and (a)(9), and two hundred
2 dollars (\$200) per pay period for each subsequent violation.

3 **Violation of Labor Code §§ 201-202**

4 45. During the PAGA Period, Defendant failed to pay Aggrieved Employees their final wages
5 on their discharge from employment, in violation of Labor Code § 201.

6 46. Pursuant to Labor Code § 2699(f)(2), Plaintiff and Aggrieved Employees are entitled to
7 one hundred dollars (\$100) per pay period for each initial violation and two hundred dollars (\$200) per
8 pay period for each subsequent violation.

9 **Violation of Labor Code § 2802**

10 47. During the Reimbursement PAGA Period, Defendant failed to reimburse Plaintiff,
11 Aggrieved Employees and Reimbursement Aggrieved Employees, for necessarily incurred business
12 expenses, including Home Office Expenses, incurred in carrying out their job duties to Defendant.

13 48. Pursuant to Labor Code § 2699(f)(2), Plaintiff, Aggrieved Employees and Reimbursement
14 Aggrieved Employees are entitled to one hundred dollars (\$100) per pay period for each initial violation
15 and two hundred dollars (\$200) per pay period for each subsequent violation.

16 **Attorneys' Fees and Costs**

17 49. Plaintiff, Aggrieved Employees, and Reimbursement Aggrieved Employees are entitled to
18 recover attorneys' fees and costs under Labor Code § 2699(g)(1).

19 **PRAYER FOR RELIEF**

20 **WHEREFORE**, Plaintiff prays for the following relief:

21 A. That the Court award PAGA Civil Penalties, and attorneys' fees and costs, as provided
22 under Labor Code § 2699; and

23 B. all other relief as this Court deems proper.

24 Dated: December 15, 2021

25 Respectfully submitted,

26 By: 
27 HAMMONDLAW, P.C.
28 Attorneys for Plaintiff