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Attorneys for Plaintiff ESMERALDA GUERRERO
on behalf of herself and current and former aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

ESMERALDA GUERRERO, on behalf of
herself and other aggrieved employees,

Plaintiff,

vs.

THE AMERICAN SOCIETY FOR THE
PREVENTION OF CRUELTY TO ANIMALS;
and DOES 1 to 100, inclusive,

Defendants.

Case No.: **22STCV17469**

PAGA ACTION

**PLAINTIFF ESMERALDA
GUERRERO'S COMPLAINT FOR:**

- 1. CIVIL PENALTIES PURSUANT
TO THE PRIVATE ATTORNEYS
GENERAL ACT OF 2004
("PAGA"), LABOR CODE
SECTION 2698, et seq.**

COME NOW Plaintiff ESMERALDA GUERRERO ("Plaintiff"), who alleges and
complains against Defendants THE AMERICAN SOCIETY FOR THE PREVENTION OF
CRUELTY TO ANIMALS ("ASPCA") and DOES 1 to 100, inclusive (collectively "Defendants")
as follows:

I. INTRODUCTION

1. This is a Private Attorneys' General Act of 2004, Lab. Code § 2698, et seq.
("PAGA"). representative action brought by Plaintiff on behalf of the State of California, herself
and other current and former aggrieved employees of Defendants who worked as hourly, non-

1 exempt employees, in California during the relevant time period seeking civil penalties associated
2 with Defendants' violation of the Labor Code based on Defendants' failure to pay wages for all
3 hours worked at the employees' minimum wage rate or overtime rate, failure to provide all legally
4 required and legally compliant meal and rest periods, failure to timely pay earned wages during
5 employment, failure to provide complete and accurate wage statements, and failure to timely pay
6 all unpaid wages following separation of employment. Plaintiff seeks on a representative basis,
7 following notice to the Labor and Workforce Development Agency, civil penalties, reasonable
8 attorney's fees pursuant to Labor Code section 2699(g)(1) and costs brought on behalf of Plaintiff,
9 the State of California, and others aggrieved.

10 2. In response to the COVID-19 pandemic, the Judicial Council of California
11 enacted Emergency Rule 9 to the California Rules of Court, which provided that,
12 notwithstanding any other law, the statutes of limitations and repose for civil causes of action
13 that exceed 180 days are tolled from April 6, 2020, until October 1, 2020.

14 **II. JURISDICTION AND VENUE**

15 3. This Court has jurisdiction over the claims of Plaintiff and all other current and
16 former aggrieved California-based hourly non-exempt employees because Plaintiff's lawsuit seeks
17 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
18 non-exempt employees, and the State of California in excess of twenty-five thousand dollars
19 (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-
20 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
21 aggrieved California-based hourly non-exempt employees occurred in locations throughout
22 California, including but not limited to Los Angeles County at 7012 Motz St., Paramount, CA
23 90723.

24 **III. PARTIES**

25 4. Plaintiff brings this action as a representative of the Labor and Workforce
26 Development Agency on behalf of herself and other current and former employees subject to
27 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is
28 filed include current, former and/or future employees of Defendants who worked, work, or will

1 work for Defendants as non-exempt hourly employees in California. At all times mentioned
2 herein, the currently named Plaintiff is and was domiciled and a resident and citizen of California
3 and was employed by Defendants in an hourly position at one of Defendants' locations in Los
4 Angeles County from approximately August 29, 2021 until on or about December 9, 2021.

5 5. Plaintiff is informed and believes and thereon alleges that Defendant ASPCA is
6 authorized to do business within the State of California and is doing business in the State of
7 California and/or that Defendant DOES 1-50 are, and at all times relevant hereto were persons
8 acting on behalf of Defendant ASPCA in the establishment of, or ratification of, the
9 aforementioned illegal wage and hour practices or policies. Defendant ASPCA operates in Los
10 Angeles County and employed Plaintiff and aggrieved employees in Los Angeles County,
11 including but not limited to, at 7012 Motz St., Paramount, CA 90723.

12 6. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1
13 through 50 are corporations, or are other business entities or organizations of a nature unknown to
14 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
15 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and
16 working conditions of employment of Plaintiff and aggrieved employees.

17 7. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51
18 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued
19 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,
20 supervisor, independent contractor and/or employee of each defendant who violated or caused to
21 be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of
22 the Industrial Welfare Commission's wage orders regulating hours and days of work.

23 8. Plaintiff is unaware of the true names of Defendant DOES 1 through 100. Plaintiff
24 sues said defendants by said fictitious names, and will amend this complaint when the true names
25 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as
26 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously
27 named defendants is in some manner responsible for the events and allegations set forth in this
28 complaint.

9. Plaintiff makes the allegations in this complaint without any admission that, as to any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and Plaintiff reserves all of Plaintiff's right to plead in the alternative.

FIRST CAUSE OF ACTION

CIVIL PENALTIES AND WAGES PURSUANT TO THE PRIVATE ATTORNEYS

GENERAL ACT OF 2004, LABOR CODE SECTION 2698, et seq.

(Against all Defendants)

10. Plaintiff incorporates all paragraphs above as though fully set forth herein.

11. During the period beginning one-year period preceding the sending of the initial notice to the LWDA to the present, Defendants violated Labor Code sections 201, 202, 203, 204, 226, 226.7, 510, 512, 1194, 1197, and 1198.

12. Specifically, Defendants have committed the following violations of California Labor Code:

13. **Failure to pay wages for all hours worked at the legal minimum wage:** Defendants employed many of their employees, including Plaintiff, as hourly non-exempt employees. In California, an employer is required to pay hourly employees for all “hours worked,” which includes all time that an employee is under control of the employer and all time the employee is suffered and permitted to work. This includes the time an employee spends, either directly or indirectly, performing services which inure to the benefit of the employer.

14. Labor Code sections 1194 and 1197 require an employer to compensate employees for all “hours worked” at least at a minimum wage rate of pay as established by the IWC and the Wage Orders.

15. In this case, Plaintiff and other current and former aggrieved California-based hourly non-exempt employees worked more minutes per shift than Defendants credited them with having worked. Specifically, Defendants failed to pay Plaintiff and other current and former aggrieved California-based hourly non-exempt employees all wages at the applicable minimum wage for all hours worked due to Defendants' policies, practices, and/or procedures including, but not limited to: (1) rounding down the hours worked by Plaintiff and other current and former

1 aggrieved California-based hourly non-exempt employees to the nearest quarter of an hour to the
2 benefit of Defendants; and (2) since the outbreak of COVID-19, requiring Plaintiff and other
3 current and former aggrieved California-based hourly non-exempt employees to arrive at least 15
4 minutes prior to the start of their shift in order to line up and undergo medical screenings,
5 including but not limited to temperature checks, prior to being permitted to clock in for the start of
6 their shift.

7 16. Therefore, Defendants suffered, permitted, and required Plaintiff and other current
8 and former aggrieved California-based hourly non-exempt employees to be subject to Defendants'
9 control without paying wages for that time. This resulted in Plaintiff and other current and former
10 aggrieved California-based hourly non-exempt employees working time for which they were not
11 compensated any wages, in violation of Labor Code sections 1194 and 1197 and the applicable
12 Wage Order.

13 17. **Failure to pay wages for overtime hours worked at the overtime rate of pay:**
14 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
15 employees. In California, an employer is required to pay hourly employees for all "hours worked,"
16 which includes all time that an employee is under control of the employer and all time the
17 employee is suffered and permitted to work. This includes the time an employee spends, either
18 directly or indirectly, performing services that inure to the benefit of the employer.'

19 18. Labor Code sections 510 and 1194 require an employer to compensate employees a
20 higher rate of pay for hours worked in excess of eight (8) hours in a workday, in excess of forty
21 (40) hours in a workweek, and on any seventh consecutive day of work in a workweek:

22 Any work in excess of eight (8) hours in one workday, any work in excess of forty (40)
23 hours in any one (1) workweek, and the first eight (8) hours worked on the seventh day of
24 work in any one (1) workweek, shall be compensated at the rate of no less than one-and-
25 one-half (1.5) times the regular rate of pay for an employee. Any work in excess of twelve
26 (12) hours in one (1) day shall be compensated at the rate of no less than twice the regular
27 rate of pay for an employee. In addition, any work in excess of eight (8) hours on any
28 seventh day of a workweek shall be compensated at the rate of no less than twice the
regular rate of pay of an employee.

27 Labor Code section 510.

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1 19. In this case, Defendants failed to pay Plaintiff and other current and former
2 aggrieved California-based hourly non-exempt employees overtime wages for all overtime hours
3 worked due to Defendants' policies, practices, and/or procedures including, but not limited to: (1)
4 rounding down the hours worked by Plaintiff and other current and former aggrieved California-
5 based hourly non-exempt employees to the nearest quarter of an hour to the benefit of Defendants;
6 and (2) requiring Plaintiff and other current and former aggrieved California-based hourly non-
7 exempt employees to arrive at least 15 minutes prior to the start of their shift in order to line up
8 and undergo medical screenings, including but not limited to temperature checks, prior to being
9 permitted to clock in for the start of their shift.

10 20. The foregoing policies, practices, and/or procedures resulted in time during each
11 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
12 employees were under the control of Defendants but were not compensated. To the extent that the
13 foregoing uncompensated time occurred when Plaintiff and other current and former aggrieved
14 California-based hourly non-exempt employees worked more than eight (8) hours in a workday,
15 more than forty (40) hours in a workweek, and/or seven (7) days in a workweek, Defendants failed
16 to pay them at their overtime rate of pay for overtime hours worked, in violation of Labor Code
17 sections 510 and 1194 and the applicable Wage Order.

18 21. **Failure to pay wages to hourly non-exempt employees for workdays that**
19 **Defendants failed to provide legally required and compliant meal periods:** Plaintiff and other
20 current and former aggrieved California-based hourly non-exempt employees regularly worked
21 shifts of more than five (5) hours in length and shifts of more than ten (10) hours in length.

22 22. California law requires an employer to authorize or permit an employee an
23 uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of
24 all duties and the employer relinquishes control over the employee's activities prior to the
25 employee's sixth hour of work. Labor Code sections 226.7, 512; Wage Order 4 at §11; *Brinker*
26 *Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an
27 employee for a work period of more than ten (10) hours per day without providing the employee
28 with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh

1 hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period
2 shall be considered an “on duty” meal period and counted as time worked. A paid “on duty” meal
3 period is only permitted when: (1) the nature of the work prevents an employee from being
4 relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

5 23. If an employer fails to provide an employee a meal period in accordance with the
6 law, the employer must pay the employee one (1) hour of pay at the employee’s regular rate of pay
7 for each workday that a legally required and compliant meal period was not provided. Labor Code
8 section 226.7; Wage Order 4 at §11.

9 24. In this case, Defendants failed to authorize or permit legally required and compliant
10 meal periods to Plaintiff and other current and former aggrieved California-based hourly non-
11 exempt employees due to Defendants’ policies, practices, and/or procedures, including but not
12 limited to: (1) requiring Plaintiff and other current and former aggrieved California-based hourly
13 non-exempt employees to keep Defendant-provided cellular phones on in order to remain
14 reachable by Employer while they were off the clock during their meal periods, resulting in meal
15 periods that were not duty-free and/or less than thirty (30) minutes; and (2) “rounding” down or
16 “shaving” Employee and other current and former aggrieved California-based hourly non-exempt
17 employees clock-in and clock-out for their meal periods to the nearest quarter of an hour.

18 25. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
19 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
20 based hourly non-exempt employees one (1) hour of pay at their regular rate of pay for each
21 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt
22 employees did not receive legally required and compliant meal periods, in violation of Labor Code
23 section 226.7.

24 26. Defendants’ foregoing policies, practices, and/or procedures resulted in Plaintiff
25 and other current and former aggrieved California-based hourly non-exempt employees not
26 receiving wages to compensate them for workdays during which Defendants did not provide them
27 with meal periods in compliance with California law.

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1 27. **Failure to pay wages to hourly non-exempt employees for workdays that**
2 **Defendants failed to provide legally required and compliant rest periods:** Plaintiff and other
3 current and former aggrieved California-based hourly non-exempt employees regularly worked
4 shifts of more than three-and-a-half (3.5) hours.

5 28. California law requires every employer to authorize and permit an employee a rest
6 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor
7 Code section 226.7; Wage Order 4 at §12. Under California law, “[e]mployees are entitled to 10
8 minutes’ rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more
9 than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so
10 on.” *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code
11 section 226.7; Wage Order 4 at §12. Rest periods, insofar as practicable, shall be in the middle of
12 each work period. Wage Order 4 at §12. Additionally, the rest period requirement “obligates
13 employers to permit – and authorizes employees to take – off-duty rest periods.” *Augustus v. ABM*
14 *Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must
15 relieve employees of all duties and relinquish control over how employees spend their time. *Id.*

16 29. If the employer fails to authorize or permit a required rest period, the employer
17 must pay the employee one (1) hour of pay at the employee’s regular rate of pay for each workday
18 the employer did not authorize or permit a legally required rest period. Labor Code section 226.7;
19 Wage Order 4 at § 12.

20 30. In this case, Defendants failed to authorize or permit all legally required and
21 compliant rest periods to Plaintiff and other current and former aggrieved California-based hourly
22 non-exempt employees due to Defendants’ policies, practices, and/or procedures including, but not
23 limited to: (1) failing to inform Plaintiff and other current and former aggrieved California-based
24 hourly non-exempt employees of their right to uninterrupted duty-free rest periods of a net ten (10)
25 minutes for every four (4) hours worked or major fraction thereof; and (2) failing to authorize or
26 permit Plaintiff and other current and former aggrieved California-based hourly non-exempt
27 employees an uninterrupted duty-free rest period of a net ten (10) minutes for every four (4) hours
28 worked or major fraction thereof.

1 31. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
2 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
3 based hourly non-exempt employees with one (1) hour of pay at their regular rate of pay for each
4 workday they did not receive legally required and compliant rest periods, , in violation of Labor
5 Code section 226.7.

6 32. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff
7 and other current and former aggrieved California-based hourly non-exempt employees not
8 receiving wages to compensate them for workdays in which Defendants did not provide them with
9 rest periods in compliance with California law.

10 33. **Failure to timely pay earned wages during employment:** In California, wages
11 must be paid at least twice during each calendar month on days designated in advance by the
12 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages
13 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the
14 16th and the 26th day of that month and wages earned between the 16th and the last day,
15 inclusive, of any calendar month must be paid between the 1st and 10th day of the following
16 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be
17 paid within seven (7) calendar days following the close of the payroll period in which wages were
18 earned. Labor Code section 204(d).

19 34. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
20 to timely pay Plaintiff's and other current and former aggrieved California-based hourly non-
21 exempt employees' earned wages (including minimum wages, overtime wages, meal period
22 premium wages and/or rest period premium wages), in violation of Labor Code section 204.
23 Defendants' aforementioned policies, practices, and/or procedures resulted in their failure to pay
24 Plaintiff's and other current and former aggrieved California-based hourly non-exempt employees'
25 their earned wages within the applicable time frames outlined in Labor Code section 204.

26 35. **Failure to provide complete and accurate wage statements:** Labor Code section
27 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an
28 employee his or her wages, the employer must "furnish each of his or her employees ... an

1 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the
2 employee, except for any employee whose compensation is solely based on a salary and who is
3 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of
4 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable
5 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all
6 deductions made on written orders of the employee may be aggregated and shown as one item, (5)
7 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the
8 name of the employee and his or her social security number, (8) the name and address of the legal
9 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and
10 the corresponding number of hours worked at each hourly rate by the employee.”

11 36. As a derivative of Plaintiff’s allegations above, Defendants’ failure to pay Plaintiff
12 and other current and former aggrieved California-based hourly non-exempt employees all wages
13 earned (including minimum wages, overtime wages, meal period premium wages, and/or rest
14 period premium wages) rendered Plaintiff’s and other current and former aggrieved California-
15 based hourly non-exempt employees’ wage statements inaccurate, in violation of Labor Code
16 section 226.

17 37. **Failure to pay employees all wages due at time of termination/resignation:** An
18 employer is required to pay all unpaid wages timely after an employee’s employment ends. The
19 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
20 hours of resignation (Labor Code section 202).

21 38. As a derivative of Plaintiff’s allegations above, because Defendants failed to pay
22 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
23 all their earned wages (including minimum wages, overtime wages, meal period premium wages,
24 and/or rest period premium wages), Defendants failed to pay those employees timely after each
25 employee’s termination and/or resignation, in violation of Labor Code sections 201, 202, and 203.

26 39. Defendants’ violations of Wage Order 4 constituted violations of Labor Code
27 section 1198, which prohibits employment under conditions of labor that violate the Wage Orders.

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1 40. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved
2 employee, on behalf of himself or herself and other current or former employees, to bring a civil
3 action to recover civil penalties against all Defendants pursuant to the procedures specified in
4 Labor Code section 2699.3.

5 41. Plaintiff has complied with the procedures for bringing suit specified in Labor
6 Code section 2699.3. On February 7, 2022, Plaintiff filed notice with LWDA and provided notice
7 to Defendants by certified mail which provided notice of the specific provisions of the Labor Code
8 alleged to have been violated, including the facts and theories to support the violations alleged.

9 42. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
10 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
11 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
12 parties notice within 60 days of the date of Plaintiff's letter that the LWDA intends to investigate
13 Plaintiff's claims.

14 43. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil
15 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204 226, 226.7, 510,
16 512, 1194, 1197, and 1198, during the Civil Penalty Period in the following amounts:

17 a. For violations of Labor Code sections 201, 202, 203, 204, 226.7, 512, and
18 1198; one hundred dollars (\$100) for each aggrieved employee per pay period for the initial
19 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each
20 subsequent violation [penalty amounts established by Labor Code section 2699(f)(2)].

21 b. For violations of Labor Code section 226, two hundred fifty dollars (\$250)
22 for each employee for each pay period for the initial violation, and for each subsequent violation,
23 one thousand dollars (\$1000) for each underpaid employee for each pay period [penalty amounts
24 established by Labor Code section 226.3].

25 c. For violations of Labor Code section 510, fifty dollars (\$50) for each
26 employee for each pay period for the initial violation, and for each subsequent violation, one
27 hundred dollars (\$100) for each underpaid employee for each pay period [penalty amounts
28 established by Labor Code section 558] and any unpaid wages.

d. For violations of Labor Code section 1194 and 1197, one hundred dollars (\$100) for each underpaid employee for each pay period for the initial violation, and for each subsequent violation, two hundred fifty dollars (\$250) for each underpaid employee for each pay period [penalty amounts established by Labor Code section 1197.1] and any unpaid wages.

44. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of reasonable attorney's fees and costs in connection with her claims for civil penalties

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFF, ON HER BEHALF AND ON OTHER AGGRIEVED PRAYS AS FOLLOWS:

ON THE FIRST CAUSE OF ACTION:

1. That the Defendants be found to have violated the provisions of the Labor Code and the IWC Wages Orders as to the Plaintiff and aggrieved employees;

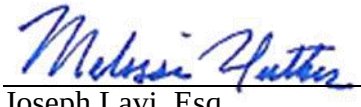
2. For any and all legally applicable penalties during the relevant statute of limitations subject to any permissible tolling, including but not limited to that recoverable under California Labor Code, including but not limited to sections 2699(f).

3. For attorneys' fees and costs of suit, including but not limited to that recoverable under California Labor Code section 2699(g); and,

4. For such and other further relief, in law and/or equity, as the Court deems just or appropriate

Dated: May 26, 2022

Respectfully submitted,
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By: 
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ESMERALDA GUERRERO on behalf of
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