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ELECTRONICALLY FILED

Superior Court of California,
County of San Diego

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Clerk of the Superior Court
By Melinda McClure, Deputy Clerk

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO-CENTRAL DIVISION

GIOVANNY GUTIERREZ, individually
and as an aggrieved employee pursuant
to the Private Attorneys General Act
("PAGA"), on behalf of the State of
California and other aggrieved
employees,

Plaintiffs,

vs.

POGO, INC., a California corporation;
DEBBY MUNOZ, an individual; and
DOES 1 through 10 inclusive

Defendants.

Case No.: 37-2021-00049718-CU-OE-CTL

Judge: Hon. Kenneth J. Medel
Dept.: 66

**PLAINTIFFS' FIRST AMENDED
COMPLAINT FOR:**

1. Failure to Provide Access to Employee Personnel Records (Cal. Labor Code §§ 226, 432, and 1198.5);
2. Claim for Failure to Pay State Minimum/Regular Wages via the PAGA;
3. Claim for Failure to Pay State Overtime Wages via the PAGA;
4. Claim for Failure to Timely Pay Wages via the PAGA;
5. Claim for Meal and Rest Break Labor Code Violations via the PAGA;
6. Claim for Inaccurate Wage Statements via the PAGA;
7. Claim for Failure to Maintain Payroll Records via the PAGA;
8. Claim for Failure to Reimburse Business Expenses in Violation of California Labor Code § 2802 via the PAGA; and
9. Claim for miscellaneous Labor Code Violations via the PAGA.

1 Plaintiff GIOVANNY GUTIERREZ, on behalf of himself and acting for the
2 interests of the State of California and other current and former employees
3 (cumulatively “Plaintiffs”), alleges the following:

4 **NATURE OF THE ACTION**

5 1. Plaintiff GUTIERREZ individually seeks, among other things, penalties,
6 injunctive, and declaratory relief for Defendants’ failure to provide his personnel file
7 records and other Labor Code violations asserted in this Complaint.

8 2. Despite Plaintiff GUTIERREZ’s written request for access to his
9 records, Plaintiff’s employer knowingly, willfully, and intentionally violated
10 Plaintiff’s rights by failing to send his records.

11 3. Pursuant to Labor Code Private Attorney General Act (“PAGA”), §§
12 2698, 2699 of the California Labor Code, Plaintiffs also bring this representative
13 action against Defendants for violations of the California Labor Code and the
14 Industrial Welfare Commission Wage Orders (the “IWC Wage Orders”).

15 4. By this action, Plaintiffs seek individual remedies and collective action
16 penalties pursuant to the PAGA, damages, declaratory, and injunctive relief requiring
17 Defendants to provide Plaintiff with access to records Defendants must provide per
18 the Labor Code.

19 **THE PARTIES**

20 5. Plaintiff GIOVANNY GUTIERREZ is an individual residing in
21 California.

22 6. Defendant POGO, INC. is a California corporation doing business in San
23 Diego County, California.

24 7. Defendant DEBBY MUNOZ is and was Defendant POGO, INC.’s
25 corporate officer/managing agent and, as such, this Defendant is believed to be an
26 “other person acting on behalf of an employer” within the meaning of Labor Code §§
27 558 and 558.1.

28 8. The true names and capacities, whether individual, corporate, associate,

1 or otherwise of the Defendants named herein as DOES 1 through 10, are unknown to
2 Plaintiff at this time. Plaintiff therefore sues said Defendants by such fictitious names
3 pursuant to § 474 of the California Code of Civil Procedure. Plaintiff will seek leave
4 to amend this Complaint to allege the true names and capacities of DOES 1 through
5 10 when their names are ascertained. Plaintiff is informed and believes, and based
6 thereon alleges, that each of the DOE Defendants is in some manner liable to Plaintiff
7 for the events and actions alleged herein.

8 9. Unless otherwise specified by name, the named Defendants and DOES 1
9 through 50 are collectively referred to as "DEFENDANT EMPLOYER."

10 10. All named Defendants and DOES 1 through 10 are collectively referred
11 to as "Defendants."

12 **JURISDICTION & VENUE**

13 11. Pursuant to Article VI, § 10 of the California Constitution, subject matter
14 jurisdiction is proper in the Superior Court of California, County of San Diego, State
15 of California because Plaintiffs allege claims arising under California law.

16 12. This Court has jurisdiction over the Defendants because each is an
17 association, corporation, business entity, or individual that conducts substantial
18 business in the State of California, County of San Diego.

19 13. Pursuant to § 395 of the California Code of Civil Procedure, venue is
20 proper in the Superior Court of California for the County of San Diego because this is
21 where the misconduct alleged in this Complaint occurred.

22 **GENERAL ALLEGATIONS**

23 14. Defendants are in the employee staffing agency business. (See
24 <https://www.getpogo.com>.)

25 15. During all times relevant, Defendants employed Plaintiff in California as
26 a nonexempt employee and paid Plaintiff on an hourly basis.

27 16. Specifically, Plaintiff GUTIERREZ's bank statements show that
28 Defendants paid Plaintiff GUTIERREZ wages on July 30, 2021, August 6, 2021,

1 August 13, 2021, and August 20, 2021, yet to date Defendants have failed to provide
2 Plaintiff GUTIERREZ a W-2 for these wages making it impossible for him to file a
3 tax return to obtain a tax refund.

4 17. Within the 12 months before the filing of this case, Defendants
5 terminated Plaintiff's employment.

6 **Failure to Provide Payroll Records and Personnel File.**

7 18. On or about September 15, 2021, Plaintiff, via counsel, sent a letter via
8 fax and regular U.S. Mail to DEFENDANT EMPLOYER requesting to obtain access
9 to Plaintiff's payroll records and employee personnel file.

10 19. On or about October 19, 2021, Plaintiff, via counsel, sent a second letter
11 via fax and regular U.S. Mail to DEFENDANT EMPLOYER requesting to obtain
12 access to Plaintiff's payroll records and employee personnel file.

13 20. On January 24, 2022, Plaintiff, via counsel, served Defendant POGO,
14 INC. with written discovery requesting to obtain, among other things, access to
15 Plaintiff's payroll records and employee personnel file.

16 21. To date, DEFENDANT EMPLOYER has failed to produce Plaintiff's
17 personnel file or respond to the foregoing discovery.

18 22. Due to the foregoing, including but not limited to Defendants' failure to
19 file an Answer to the original Complaint in this case, Plaintiffs are informed and
20 believe and based thereon allege that Defendants are up to no good and are trying to
21 avoid the legal process mistakenly believing Plaintiffs will go away.

22 **Unpaid Minimum/Regular Wages/and Prevailing Wages.**

23 23. Plaintiffs are informed and believe and based thereon allege that within
24 the last year before the filing of this action and continuing to the present, and pursuant
25 to company policies and/or practices and/or directions implemented and enforced by
26 Defendants, that Defendants failed to pay Aggrieved Employees all their
27 regular/minimum/prevailing wages, in an amount to be proven at trial.

28 24. This claim is premised on Plaintiffs' right to pursue all Labor Code

1 claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services*
2 *USA, Inc.* (2018) 23 Cal.App.5th 745 and Defendants' failure to provide Plaintiff's
3 personnel file and payroll records.

4 **Unpaid Overtime.**

5 25. Plaintiffs are informed and believe and based thereon allege that within
6 the last year before the filing of this action and continuing to the present, and pursuant
7 to company policies and/or practices and/or directions implemented and enforced by
8 Defendants, that Defendants underpaid overtime, failed to pay overtime, or both to
9 Aggrieved Employees.

10 26. This claim is premised on Plaintiffs' right to pursue all Labor Code
11 claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services*
12 *USA, Inc.* (2018) 23 Cal.App.5th 745 and Defendants' failure to provide Plaintiff's
13 personnel file and payroll records.

14 **Meal and Rests Break Claims.**

15 27. Plaintiffs are informed and believe and based thereon allege that within
16 the last year before the filing of this action and continuing to the present, and pursuant
17 to company policies and/or practices and/or directions implemented and enforced by
18 Defendants, that Defendants failed to permit Aggrieved Employees to take all of their
19 compliant off-duty meal and rest breaks during the required timeframe as required by
20 law and failed to pay them premium pay in lieu thereof, in an amount to be proven at
21 trial.

22 28. Plaintiffs are informed and believe and based thereon allege that because
23 of Defendants' policy, Defendants prevented Aggrieved Employees from taking all
24 their uninterrupted rest breaks to which they had the right to enjoy in an amount to be
25 proven at trial, and Defendants failed to pay them premium pay as required under
26 California law. (*See Augustus v. ABM Security Services* (2016) 2 Cal.5th 257.)

27 29. This claim is premised on Plaintiffs' right to pursue all Labor Code claims
28 on behalf of Aggrieved Employees per *Huff v. Securitas Security Services USA, Inc.*

1 (2018) 23 Cal.App.5th 745 and Defendants' failure to provide Plaintiff's personnel
2 file and payroll records.

3 **Unreimbursed Work-Related Expense Claims.**

4 30. Plaintiffs are informed and believe and based thereon allege that within
5 the last year before the filing of this action and continuing to the present, and pursuant
6 to company policies and/or practices and/or directions implemented and enforced by
7 Defendants, that Defendants failed to reimburse Aggrieved Employees for work-
8 related expenses in violation of California law.

9 31. This claim is premised on Plaintiffs' right to pursue all Labor Code
10 claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services*
11 *USA, Inc.* (2018) 23 Cal.App.5th 745 and Defendants' failure to provide Plaintiff's
12 personnel file and payroll records.

13 **Erroneous Wage Statements in Violation of Labor Code § 226.**

14 32. Plaintiffs are informed and believe and based thereon allege that within the
15 last year before the filing of this action and continuing to the present, and pursuant to
16 company policies and/or practices and/or directions implemented and enforced by
17 Defendants, that Defendants issued confusing and inaccurate wage and earning
18 statements to Aggrieved Employees in violation of California law.

19 33. Plaintiffs are informed and believe and based thereon allege that
20 compounding the foregoing error is that Defendants failed to pay Plaintiff and similar
21 Aggrieved Employees according to the statutory requirements of Labor Code § 201.3.

22 34. This claim is premised on Plaintiffs' right to pursue all Labor Code claims
23 on behalf of Aggrieved Employees per *Huff v. Securitas Security Services USA, Inc.*
24 (2018) 23 Cal.App.5th 745 and based on Defendants' failure to provide Plaintiff's
25 personnel file and payroll records.

26 **Derivative PAGA Claims.**

27 35. Plaintiffs are informed and believe and based thereon allege that within the
28 last year before the filing of this action and continuing to the present, and pursuant to

1 company policies and/or practices and/or directions implemented and enforced by
2 Defendants, that Defendants failed to pay Aggrieved Employees their final paychecks
3 immediately upon involuntary termination or within 72 hours of voluntary separation,
4 and/or Defendants did not pay all final wages at the location of employment, and/or
5 said final paychecks did not include all wages due to the employee in violation of
6 California law.

7 36. As to the named Plaintiff's Labor Code § 203 claim, the named Plaintiff
8 specifically alleges he received his last paycheck more than two weeks after
9 Defendants terminated his employment in August 2021, the exact dates to be
10 provided upon receipt of discovery.

11 37. Based on the foregoing misconduct, Plaintiffs are informed and believe
12 and based thereon allege that Defendants issued Plaintiffs erroneous paystubs.

13 38. To date, Plaintiffs are informed and believe, and therefore allege, that
14 Defendants have not paid Aggrieved Employees all wages due and payable, in an
15 amount to be proven at trial in violation of Labor Code § 203 and 256 via PAGA.

16 39. This claim is premised, in part, on Plaintiffs' right to pursue all Labor
17 Code claims on behalf of Aggrieved Employees per *Huff v. Securitas Security*
18 *Services USA, Inc.* (2018) 23 Cal.App.5th 745 and based on Defendants' failure to
19 provide Plaintiff's personnel file and payroll records.

20 40. Based on the foregoing, Plaintiff seeks the remedies set forth in this
21 Complaint.

22 **REPRESENTATIVE ACTION (i.e., PAGA) CLAIMS**

23 41. This is a wage and hour individual and representative action filed
24 pursuant to PAGA, §§ 2698, 2699 that generally consists of the following group:

25 **All current or former employees who worked for the**
26 **Defendants in the state of California from May 18, 2021 to**
27 **the present.**

28 42. All members of the represented group are referred to as the "Aggrieved

1 Employees.”

2 43. The “PAGA Period” means from **May 17, 2021** to the present.

3 44. California law provides that an employee may file an action against an
4 employer for penalties in connection with violations of the Labor Code and Wage
5 Orders provided the aggrieved employee file an action on behalf of him or herself and
6 similarly situated current and former employees.

7 45. At all material times, Defendants and DOES 1 through 50 were and/or
8 are Aggrieved Employees’ employers or persons acting on behalf of Aggrieved
9 Employees’ employer, within the meaning of California Labor Code § 558, and, as
10 such, are subject to penalties for each underpaid employee as set for in Labor Code §
11 558.

12 46. As set forth in further detail below, based on the analysis and
13 investigation of the Plaintiffs’ claims, Plaintiffs’ attorneys sent letters to the
14 California Labor and Workforce Development Agency (hereinafter referred to as
15 “LWDA”) and to Defendants informing Defendants of their claims and intent to
16 pursue litigation.

17 **EXHAUSTION OF ADMINISTRATIVE REMEDIES**

18 47. As to penalty claims under the PAGA, on **May 18, 2022**, Plaintiffs, via
19 counsel, sent correspondence to the LWDA (via online filing) and Defendants via
20 certified U.S. Mail indicating that Plaintiffs are pursuing the claims alleged in this
21 Complaint.

22 48. The LWDA did not serve notice of its intent to assume jurisdiction over
23 the applicable penalty claims nor provide notice as set forth in Labor Code §
24 2699.3(a)(2)(A) within the statutory period, and the notice period has expired based
25 on the foregoing correspondence.

26 49. Therefore, Plaintiffs have exhausted Plaintiffs’ administrative remedies
27 to pursue claims and remedies in this Complaint as authorized by the PAGA.

28 50. The Causes of Action alleged herein are appropriately suited for a

1 Representative Action under the PAGA (Labor Code § 2698, *et seq.*) because:

- 2 a. This action involves allegations of violations of provisions
3 of the California Labor Code that provide for a civil penalty
4 to be assessed and collected by the LWDA or any
5 departments, divisions, commissions, boards, agencies, or
6 employees;
7 b. Plaintiffs are “aggrieved employees” because Plaintiffs were
8 employed by the alleged violator and had one or more of the
9 Labor Code violations alleged on this Complaint committed
10 against them; and
11 c. Plaintiffs have satisfied the procedural requirements of
12 Labor Code § 2699.3, as set forth above.

13 **FIRST CAUSE OF ACTION**

14 **Individual Claim for**

15 **Failure to Provide Access to Employee Personnel File**

16 **and Payroll Records in Violation of**

17 **California Labor Code §§ 226, 432, and 1198.5**

18 (Against all Defendants)

19 51. Plaintiff re-alleges and incorporates by reference the foregoing
20 allegations, as though set forth herein.

21 52. California Labor Code § 226, subdivision (b), requires employers doing
22 business in the State of California to “afford current and former employees the right
23 to inspect or copy records pertaining to their employment, upon a reasonable request
24 to the employer...” and subdivision (c), requires employers to produce such records
25 within “21 calendar days from the date of the request.”

26 53. Plaintiff maintains the records requested fall within the meaning of
27 Labor Code § 226 because, among other reasons, the requested documents are
28 “records pertaining to [his] employment.”

1 54. California Labor Code § 432, subdivision (b), requires employers doing
2 business in the State of California to provide current, former employees, and
3 applicants copies of all written instruments they sign upon request.

4 55. Plaintiff maintains the records requested fall within the meaning of
5 Labor Code § 432 because some of the records requested constitute written
6 instruments the Plaintiff signed.

7 56. California Labor Code § 1198.5, *et seq.*, similarly provides current and
8 former employees the right to inspect their employee personnel records and requires
9 the employer to provide the employee access to such records no later than 30 calendar
10 days from the date the employer receives a written request.

11 57. Plaintiff maintains the records requested fall within the meaning of
12 Labor Code § 1198.5, *et seq.* because they were part of and/or related to Plaintiff's
13 personnel file within the meaning of Labor Code § 1198.5.

14 58. As alleged above, Defendants did not provide Plaintiff access to
15 Plaintiff's employee personnel file and/or the records to which Plaintiff has the right
16 to obtain within the meaning of the foregoing statutes in violation of the above
17 described statutes.

18 59. Because of the statutory violations of Labor Code § 226 due to
19 Defendants' failure to provide Plaintiff his payroll records, Plaintiff suffered
20 damages, in an amount to be determined according to proof at trial, but in no event
21 less than \$2,250.

22 60. Because of the statutory violations of Labor Code § 1198.5 due to
23 Defendants' failure to provide Plaintiff his personnel file, Plaintiff suffered damages,
24 in an amount to be determined according to proof at trial, but in no event less than
25 \$2,250.

26 61. Further, Plaintiff is informed and believes and based thereon alleges
27 that Defendant continues to withhold records required to be provided under the
28 foregoing statutes and asserts Plaintiff has been left without an adequate remedy at

1 law, and has the right to obtain injunctive and/or declaratory relief from this Court
2 including, but not limited to, an order by the Court requiring Defendants to turn over
3 copies of Plaintiff's complete employee personnel file.

4 62. Plaintiff seeks the recovery of costs and attorney's fees as provided by
5 applicable law, including but not limited to California Labor Code § 226, subdivision
6 (h) and § 1198.5, subdivision (l) but no less than **\$2,500** for this claim.

7 **SECOND CAUSE OF ACTION**

8 **Individual and Representative Claim for Labor Code and PAGA Penalties**
9 **Under California Labor Code §§ 2698, 2699, *et seq.* for**
10 **Failure to Pay Local/State Minimum/Regular/Prevailing Wages**
11 **in Violation of California Labor Code § 1194, 1197, 1771, 1774, 1776, 1811, and**
12 **1815, 1198, and the applicable Industrial Welfare Commission ("IWC")**
13 **Wage Order, and Where applicable the Local Min. Wage Ordinance**
14 **(Against all Defendants)**

15 63. Plaintiffs re-allege and incorporate by reference the foregoing
16 allegations, as though set forth herein.

17 64. Pursuant to Labor Code §§ 1194, 1197, 1197.1, 1771, 1774, 1776, 1811,
18 1815, and 1198, it is unlawful for a California employer to suffer or permit an
19 employee to work without paying wages for all hours worked, as required by the
20 applicable Industrial Welfare Commission ("IWC") Wage Order and, where
21 applicable on public works projects, prevailing wage laws.

22 65. During all times relevant, Defendants were required to pay Plaintiffs and
23 other Aggrieved Employees their respective hourly rate for all hours worked and/or
24 minimum wages and/or prevailing wages per state law or applicable local law.

25 66. During all times relevant, at least one of the IWC Wage Orders applied
26 to Plaintiffs' employment with Defendants.

27 67. Pursuant to the applicable Wage Order, "hours worked" include the time
28 during which an employee is "suffered or permitted to work, whether or not required

1 to do so.”

2 68. Under state and, where appropriate, local law, every employer must pay
3 each nonexempt employee minimum wages. (*See, e.g.*, Los Angeles County
4 Minimum Wage Ordinance; San Diego Minimum Wage Ordinance, etc.)

5 69. Plaintiffs seek to recover penalties pursuant to the PAGA from the
6 Defendants for any violations of the foregoing laws during the proposed PAGA
7 Period.

8 70. Labor Code § 1194 subdivision (a) permits an action to recover wages
9 because of the payment of a wage less than the minimum wage “applicable to the
10 employee” including attorneys’ fees, costs, and interest.

11 71. At all material times, Defendants were and/or are Aggrieved Employees’
12 employers or persons acting on behalf of Aggrieved Employees’ employer, within the
13 meaning of California Labor Code §§ 558 and 558.1, and, as such, are subject to civil
14 penalties for each underpaid employee as set for in Labor Code § 558.

15 72. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
16 a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay
17 period for the initial violation and two hundred (\$200.00) for each aggrieved
18 employee per pay period for each subsequent violation in which Defendants violated
19 the minimum wage and/or regular wage provisions of the Labor Code, including but
20 not limited to §§ 216, 218, 218.5, 558, 1194, 1197, 1197.1, 1771, 1774, 1776, 1811,
21 1815, 1182.12, 1194.2, 1197, and 1198 the exact amount of the applicable penalty is
22 all in an amount to be shown according to proof at trial.

23 73. Pursuant to Labor Code § 2699, Plaintiffs and Aggrieved Employees
24 seek to recover from Defendants, and each of them, penalties, attorneys’ fees, and
25 costs incurred herein all in an amount to be shown according to proof at trial but no
26 less than **\$1 million**.

THIRD CAUSE OF ACTION

**Individual and Representative Claim for Labor Code and PAGA Penalties
Under California Labor Code §§ 2698, 2699, *et seq.* for
Failure to Pay State Overtime and/or Double-Time Compensation
in Violation of California Labor Code §§ 216, 218, 218.5, 225.5,
1182.12, 1194, 1194.2, 1197, 1197.1, 1771, 1774, 1776, 1811, 1815, 1198, and the
Applicable IWC Wage Order
(Against all Defendants)**

74. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth herein.

75. California law requires an employer to pay each employee for the actual hours worked. (*See* Cal. Labor Code §§ 200, 226.)

76. During all times relevant, one or more of the IWC Wage Orders applied to Plaintiffs' employment with Defendants.

77. Pursuant to § 2(K) of the applicable Wage Order(s), including Wage Order 4, "hours worked" include the time during which an employee is "suffered or permitted to work, whether or not required to do so."

78. Pursuant to Labor Code §§ 510, 1194, 1194.2, and § 3 of the applicable Wage Order(s), for each hour (or fraction thereof) an employee works up to forty (40) hours in a week and eight (8) hours in a day, the employer must pay the employee's regular hourly wage. For each hour (or fraction thereof) an employee works over forty (40) hours in a week or more than eight (8) hours in a workday the employer must pay the rate of one and a half times the employee's regular hourly wage.

79. For each hour (or fraction thereof) an employee works more than twelve (12) hours in one day or more than eight (8) hours a day on the seventh consecutive day of work, the employer must compensate the employee at the rate of no less than twice the regular rate of pay for that employee.

80. Plaintiffs seek to recover penalties pursuant to the PAGA from the

1 Defendants for any violations of the foregoing overtime laws during the proposed
2 PAGA Period.

3 81. At all material times, Defendants were and/or are Aggrieved Employees'
4 employers or persons acting on behalf of Aggrieved Employees' employer, within the
5 meaning of California Labor Code §§ 558 and 558.1, and, as such, are subject to
6 penalties for each underpaid employee as set for in Labor Code § 558.

7 82. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
8 a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay
9 period for the initial violation and two hundred (\$200.00) for each aggrieved
10 employee per pay period for each subsequent violation in which Defendants violated
11 the overtime provisions of the Labor Code, including but not limited to §§ 510, 558
12 and 1194, the exact amount of the penalties sought is in an amount to be shown
13 according to proof at trial.

14 83. Pursuant to Labor Code § 2699, Plaintiffs seek to recover from
15 Defendants, and each of them, penalties, attorneys' fees, and costs incurred herein all
16 in an amount to be shown according to proof at trial but no less than **\$1 million**.

17 **FOURTH CAUSE OF ACTION**

18 **Individual and Representative Claim for Labor Code and PAGA Penalties**

19 **Under California Labor Code §§ 2698, 2699, *et seq.* for**

20 **Failure to Timely Pay Earned Wages in Violation of California**

21 **Labor Code §§ 201, 201.3, 202, 203, 204, 204b,**

22 **218.5, 218.6, 256, 1198, and the applicable Wage Order**

23 (Against all Defendants)

24 84. Plaintiffs re-allege and incorporate by reference the foregoing allegations
25 as though set forth herein.

26 85. Pursuant to Labor Code § 201, "If an employer discharges an employee,
27 the wages earned and unpaid at the time of discharge are due and payable
28 immediately."

1 86. Pursuant to Labor Code § 201.3, temporary employment agencies must
2 pay temporary employees weekly.

3 87. Pursuant to Labor Code § 202, “If an employee not having a written
4 contract for a definite period quits his or her employment, his or her wages shall
5 become due and payable not later than 72 hours thereafter, unless the employee has
6 given 72 hours previous notice of his or her intention to quit, in which case the
7 employee is entitled to his or her wages at the time of quitting.”

8 88. Labor Code § 203 provides, in pertinent part: “If an employer willfully
9 fails to pay, without abatement or reduction, ... any wages of an employee who is
10 discharged or who quits, the wages of the employee shall continue as a penalty from
11 the due date thereof at the same rate until paid or until an action therefore is
12 commenced; but the wages shall not continue for more than 30 days. ...”

13 89. Pursuant to Labor Code § 204, “all wages ... earned by any person in
14 any employment are due and payable twice during each calendar month, on days
15 designated in advance by the employer as the regular paydays.”

16 90. Pursuant to Labor Code § 204b, “Labor performed by a weekly-paid
17 employee during any calendar week and prior to or on the regular payday shall be
18 paid for not later than the regular payday of the employer for such weekly-paid
19 employee falling during the following calendar week.”

20 91. Defendants did not properly pay Plaintiff and potentially other
21 Aggrieved Employees pursuant to the requirements of Labor Code §§ 201, 202, 204
22 and/or 204b and thereby Plaintiffs seek the remedies sought in this Complaint.

23 92. At all material times, Defendants and DOES 1 through 50 were and/or
24 are Aggrieved Employees’ employers or persons acting on behalf of Aggrieved
25 Employees’ employer, within the meaning of California Labor Code § 558, and, as
26 such, are subject to penalties for each underpaid employee as set for in Labor Code §
27 558.

28 93. Plaintiffs seek to recover penalties pursuant to the PAGA from the

1 Defendants for any violations of the foregoing Labor laws during the proposed PAGA
2 Period.

3 94. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
4 a penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay
5 period for the initial violation and two hundred (\$200.00) for each aggrieved
6 employee per pay period for each subsequent violation in which Defendants violated
7 Labor Code §§ 201, 202, 203, 204, 204b, and 256.

8 95. Plaintiffs seek all waiting time penalties, interest, attorneys' fees, costs,
9 damages, and other remedies pursuant to the PAGA in an amount to be proven at trial
10 all in an amount to be shown according to proof at trial but no less than **\$1 million**.

11 **FIFTH CAUSE OF ACTION**

12 **Individual and Representative Claim for Labor Code and PAGA Penalties**
13 **Under California Labor Code §§ 2698, 2699, *et seq.* for**
14 **Failure to Comply with the Meal and Rest Break Requirements Under Labor**
15 **Code §§ 226.7, 512, 1198, and the applicable IWC Wage Order**
16 **(Against all Defendants)**

17 96. Plaintiffs re-allege and incorporate by reference the foregoing allegations
18 as though set forth herein.

19 97. Plaintiffs seek to recover penalties pursuant to the PAGA from the
20 Defendants for any violations of Labor Code §§ 226.7, 512, and 1198 during the
21 proposed PAGA Period.

22 98. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a
23 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
24 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
25 pay period for each subsequent violation in which all culpable Defendants violated
26 Cal. Labor Code §§ 226.7 and 512, the exact amount of the applicable penalty is all in
27 an amount to be shown according to proof at trial.

28 99. Wherefore, Plaintiffs request all remedies available to them and to the

1 Aggrieved Employees pursuant to the PAGA all in an amount to be shown according
2 to proof at trial but no less than **\$1 million**.

3 **SIXTH CAUSE OF ACTION**

4 **Individual and Representative Claim for Labor Code and PAGA Penalties**

5 **Under California Labor Code §§ 2698, 2699, *et seq.* for**

6 **Violations of California Labor Code §§ 226, 226.3, 226.6, 1198,**

7 **and the applicable IWC Wage Order**

8 (Against all Defendants)

9 100. Plaintiffs re-allege and incorporate by reference the foregoing allegations
10 as though set forth herein.

11 101. Plaintiffs allege that Labor Code § 226 subdivision (a) requires, in
12 pertinent part, that every employer shall, “semimonthly or at the time of each
13 payment of wages, shall furnish to his or her employees, either as a detachable part of
14 the check, draft, or voucher paying the employee's wages, or separately if wages are
15 paid by personal check or cash, an accurate itemized statement in writing showing (1)
16 gross wages earned, (2) total hours worked by the employee. . . (3) the number of
17 piece-rate units earned and any applicable piece rate if the employee is paid on a
18 piece-rate basis, (4) all deductions, provided that all deductions made on written
19 orders of the employee may be aggregated and shown as one item, (5) net wages
20 earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
21 name of the employee and only the last four digits of his or her social security
22 number..., (8) the name and address of the legal entity that is the employer. . . , and
23 (9) all applicable hourly rates in effect during the pay period and the corresponding
24 number of hours worked at each hourly rate by the employee and, beginning July 1,
25 2013, if the employer is a temporary services employer as defined in Section 201.3,
26 the rate of pay and the total hours worked for each temporary services assignment. . .”
27 (Labor Code § 226 subdivision (a).)

28 102. Plaintiffs seek to recover penalties pursuant to the PAGA from the

1 Defendants for any violations of Labor Code §§ 226, 226.3, 226.6, and 1198 during
2 the proposed PAGA Period.

3 103. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a
4 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
5 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
6 pay period for each subsequent violation in which all culpable Defendants violated
7 the applicable Cal. Labor Code provisions alleged in this Complaint, the exact amount
8 of the applicable penalty is all in an amount to be shown according to proof at trial.

9 104. Pursuant to Labor Code § 2699, Plaintiffs and Aggrieved Employees
10 seek to recover from Defendants, and each of them, penalties, attorneys' fees, and
11 costs incurred herein under §§ 226, 226.3, and 226.6 all in an amount to be shown
12 according to proof at trial but no less than **\$1 million**.

13 **SEVENTH CAUSE OF ACTION**

14 **Individual and Representative Claim for Labor Code and PAGA Penalties** 15 **For Failure to Maintain Required Records in Violation of California** 16 **Labor Code §§ 1174 and the Applicable Wage Order and/or § 1198**

17 (Against All Defendants)

18 105. Plaintiffs re-allege and incorporate by reference the foregoing allegations
19 as though set forth herein.

20 106. Section 7 of the typical Wage Order requires every employer to maintain
21 time and payroll records.

22 107. Plaintiffs seek to recover penalties pursuant to the PAGA from the
23 Defendants for any violations of Labor Code § 1174 for failing to maintain certain
24 records which employers are required to maintain, including but not limited to, an
25 accurate record indicating the number hours worked by the Plaintiffs.

26 108. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a
27 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
28 for the initial violation and two hundred (\$200.00) for each aggrieved employee per

1 pay period for each subsequent violation in which all culpable Defendants violated
2 the applicable Cal. Labor Code provisions alleged in this Complaint, the exact amount
3 of the applicable penalty is all in an amount to be shown according to proof at trial.

4 109. For the reasons alleged herein, Plaintiffs seek all available remedies
5 pursuant to the PAGA all in an amount to be shown according to proof at trial but no
6 less than **\$1 million**.

7 **EIGHTH CAUSE OF ACTION**

8 **Individual and Representative Claim for Labor Code and PAGA Penalties**

9 **Under California Labor Code §§ 2698, 2699, *et seq.* for**

10 **Failure to Failure to Indemnify/Reimburse Business Expenses in Violation of**

11 **California Labor Code §§ 2802, 1198, and the Applicable Wage Order**

12 (Against all Defendants)

13 110. Plaintiffs re-allege and incorporate by reference the foregoing allegations
14 as though set forth herein.

15 111. California Labor Code § 2802 requires employers to indemnify their
16 employees for expenses and losses incurred while discharging their duties or
17 obedience to the directions of their employer.

18 112. California Labor Code § 2804 prohibits waiver of this statutory right.

19 113. Plaintiffs seek to recover penalties pursuant to the PAGA from the
20 Defendants for any violations of Labor Code § 2802 for failing to reimburse
21 employees for work-related expenses.

22 114. Cal. Labor Code § 2699, *et seq.* imposes upon all culpable Defendants a
23 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period
24 for the initial violation and two hundred (\$200.00) for each aggrieved employee per
25 pay period for each subsequent violation in which all culpable Defendants violated
26 the applicable Cal. Labor Code provisions alleged in this Complaint, the exact amount
27 of the applicable penalty is all in an amount to be shown according to proof at trial.

28 115. For the reasons alleged herein, Plaintiffs seek all available remedies

pursuant to the PAGA all in an amount to be shown according to proof at trial but no less than \$1 million.

NINTH CAUSE OF ACTION

Individual and Representative Claim for PAGA Penalties

Under California Labor Code §§ 2698, 2699, *et seq.* for

Individual and Representative Claim for PAGA Penalties and Wage

Under California Labor Code §§ 2698, 2699, *et seq.* for Violations of California

Labor Code subdivision (k) of Section 96, Sections 98.6, 201.5, 201.7, 203.1, 203.5, 204a, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, 224, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 245-249, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 511, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, 1153, 1197.5, 1198 via the applicable Wage Order, subdivision (b) of Section 1198.3, Sections 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, 1700.47, 1735, 1777.5, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311, and 6399.7 and the Applicable Wage Order

(Against all Defendants)

116. Plaintiffs re-allege and incorporate by reference the foregoing allegations as though set forth herein.

117. This claim is premised on Plaintiffs' right to pursue all Labor Code claims on behalf of Aggrieved Employees per *Huff v. Securitas Security Services*

1 *USA, Inc.* (2018) 23 Cal.App.5th 745.

2 118. Plaintiffs have sent their written notice to the LWDA and Defendants of
3 the specific sections of the California Labor Code Defendants violated and continue
4 to violate.

5 119. Plaintiffs will file an amended complaint once they have exhausted their
6 administrative remedies and are entitled to pursue claims and remedies as authorized
7 by PAGA.

8 120. Pursuant to Labor Code § 2699, any provision of the Labor Code that
9 provides for a civil penalty to be assessed and collected by the LWDA or any of its
10 departments, divisions, commissions, boards, agencies or employees for violation of
11 the code may, as an alternative, be recovered through a civil action brought by an
12 aggrieved employee on behalf of himself or herself and other current or former
13 employees pursuant to the procedures specified in Labor Code § 2699.3.

14 121. Plaintiffs seek to recover penalties pursuant to the PAGA from the
15 Defendants for any violations of the foregoing Labor Codes.

16 122. Plaintiffs are “aggrieved employees” because Plaintiffs were employed
17 by the alleged violator and had one or more of the alleged violations committed
18 against Plaintiffs, and therefore are properly suited to represent the interests of other
19 current and former Represented Employees.

20 123. Labor Code § 2699, *et seq.* imposes upon Defendants, and each of them,
21 penalties for violating Labor Code subdivision (k) of Section 96, Sections 98.6, 201.5,
22 201.7, 203.1, 203.5, 204a, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212,
23 subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, 224, 227, 227.3, 230,
24 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232,
25 subdivision (c) of Section 232.5, Sections 233, 234, 245-249, 351, 353, and 403,
26 subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 511, 513, 551,
27 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970,
28 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, 1153, 1197.5, 1198 via the

1 applicable Wage Order, subdivision (b) of Section 1198.3, Sections 1199.5, 1290,
2 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1,
3 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of
4 Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5,
5 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, 1700.47, 1735, 1777.5,
6 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801,
7 2806, and 2810, subdivision (b) of Section 2929, and Sections 3073.6, 6310, 6311,
8 and 6399.7.

9 124. Labor Code § 558 establishes a civil penalty as follows: Any employer
10 or other person acting on behalf of an employer who violates, or causes to be violated,
11 a section of this chapter or any provision regulating hours and days of work in any
12 order of the Industrial Welfare Commission (including the “Hours and Days of Work”
13 section of the Wage Order) shall be subject to a civil penalty of (1) for any initial
14 violation, fifty dollars (\$50) for each underpaid employee for each pay period for
15 which the employee was underpaid in addition to an amount sufficient to recover
16 underpaid wages; (2) for each subsequent violation, one hundred dollars (\$100) for
17 each underpaid employee for each pay period for which the employee was underpaid
18 in addition to an amount sufficient to recover underpaid wages; and (3) wages
19 recovered pursuant to this section shall be paid to the affected employee.

20 125. Plaintiffs seek penalties for Defendants’ conduct as alleged herein as
21 permitted by law.

22 126. Pursuant to Labor Code § 2698, *et seq.*, Plaintiffs seek to recover
23 attorney’s fees, costs, civil penalties, and wages on behalf of Plaintiff and other
24 current and former Represented Employees as alleged herein all in an amount to be
25 shown according to proof at trial but no less than **\$1 million**.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Plaintiffs pray for judgment against Defendants as follows:

28 1. For all remedies available to Plaintiff under the applicable Industrial

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1 Welfare Commission Order, the Labor Code, and the Labor Code via § 2698, *et seq.*
2 including an award of damages for the named Plaintiff, and civil penalties for the
3 Aggrieved Employees in an amount to be determined at trial but no less than \$1
4 million;

5 2. For maximum civil penalties available under the Labor Code and
6 applicable Wage Order as described more particularly in this Complaint,
7 representative PAGA claims as set forth in Labor Code § 558 in an amount to be
8 determined at trial but no less than **\$1 million**;

9 3. That Plaintiff and/or Aggrieved Employees be awarded reasonable
10 attorneys' fees where available by law, including but not limited to pursuant to Labor
11 Code §§ 2698, *et seq.*, Code of Civil Procedure § 1021.5, and/or other applicable
12 laws; and

13 4. For such other and further relief as this Court may deem proper and
14 just.

15 Dated: August 29, 2022

Law Office of Thomas D.
Rutledge

17 By:  Thomas D. Rutledge
18 /s/Thomas D. Rutledge
19 Attorney for Plaintiffs
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28

Thomas D. Rutledge
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PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

I, Thomas D. Rutledge, the undersigned, am employed in the County of San Diego, State of California; I am over the age of 18 and not a party to the within action; my business address is 16956 Via de Santa Fe, Suite 1847, Rancho Santa Fe, California 92091.

On July 25, 2022, I served the foregoing document(s) described as:

PLAINTIFF'S FIRST AMENDED COMPLAINT

on the interested parties to this action by placing a copy thereof enclosed in a sealed envelope addressed as follows: **See Attached List.**

☒ **(BY MAIL)** I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence was deposited with the United States Postal Service this same day in the ordinary course of business at our Firm's office address in San Diego, California.

☐ **(BY OVERNIGHT DELIVERY SERVICE)** I served the foregoing document by Federal Express, an express service carrier which provides overnight delivery, as follows. I placed true copies of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed to each interested party as set forth above, with fees for overnight delivery paid or provided for.

☐ **(BY PERSONAL SERVICE)** I caused such envelope to be delivered by hand to the offices of the above named addressee(s).

☐ **(BY FACSIMILE)** I caused such documents to be delivered via facsimile to the offices of the addressee(s) at the following facsimile number:

Executed July 25, 2022, at San Diego, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Thomas D. Rutledge
/s/Thomas D. Rutledge

SERVICE LIST

Director
POGO, INC.
6265 Greenwich Drive, Suite 103
San Diego, California 92122

Defendant In Pro Per

DEBBY MUNOZ
6265 Greenwich Drive, Suite 103
San Diego, California 92122

Defendant In Pro Per