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8 *Attorneys for Plaintiff and the Aggrieved Employees*
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10 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES**
12

13 **HELENA VISSING**, individually and on behalf
14 of all others similarly situated,

15 Plaintiff,

16 vs.

17 **ANTIOCH UNIVERSITY**, an Ohio
18 Corporation,

19 Defendant.
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CASE NO.

REPRESENTATIVE PAGA ACTION

**COMPLAINT FOR CIVIL PENALTIES
PURSUANT TO LABOR CODE PRIVATE
ATTORNEYS GENERAL ACT,
CALIFORNIA LABOR CODE §§ 2698 ET
SEQ.**

1 Plaintiff Helena Vissing ("Plaintiff"), on behalf of herself 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 individuals employed as adjunct instructors by Antioch University
7 ("Antioch" or "Defendant") in California ("Aggrieved Employees") from January 30, 2022 to the trial
8 date ("PAGA Period") for its failure to (a) issue accurate itemized wage statements in violation of Labor
9 Code §§ 226(a) and 226.2(a)(2); (b) pay wages timely in violation of Labor Code §§ 226(a) and 204; (c)
10 pay wages for all hours worked in violation of Labor Code §§ 1194, 226.2 and § 4 of the IWC Wage
11 Order No. 4-2001 ("Wage Order No. 4"); (d) pay hourly and separately for rest breaks at the average
12 hourly rate in violation of Labor Code §§ 226.2, 226.7 and/or failure to authorize and permit paid off-
13 duty rest breaks in violation of § 12 of Wage Order No. 4 and Labor Code § 226.7; and pay missed rest
14 break premium pay in violation of Labor Code § 226.7, and § 12 of Wage Order No. 4; and (e) pay all
15 wages due at the time of discharge from employment in violation of Labor Code §§ 201-203.

16 2. During the PAGA Period, Plaintiff and Aggrieved Employees were non-exempt employees
17 for two independent reasons. First, they are not paid on a "salary" basis – rather, they are paid on a piece-
18 rate basis. Second, Aggrieved Employees did not earn the monthly equivalent of at least two times the
19 state minimum wage for full-time employment as required for the professional exemption (*see* Labor
20 Code § 515(a), Wage Order No. 4 § 1), which is the only potentially applicable exemption.

21 3. As non-exempt piece-rate employees, Plaintiff and Aggrieved Employees were entitled to
22 certain protections under the Labor Code, including to be provided with accurate itemized wage
23 statements pursuant to Labor Code §§ 226.2(a) and 226(a), to be paid timely pursuant to Labor Code §§
24 226(a) and 204, to be paid at least minimum wage for all hours worked in violation of Labor Code §§
25 1194, 226.2 and Wage Order No. 4-2001, § 4, to be authorized and permitted to take off-duty rest periods
26 and/or to be paid for time spent on rest periods separate and apart from the piece, pursuant to Labor Code
27 §§ 226.2 and 226.7 and Wage Order No. 4-2001, § 12.

28 4. Plaintiff also brings this action for PAGA penalties on behalf of herself and all other
individuals employed Defendant in California during the PAGA Period ("Reimbursement Aggrieved
Employees") for violation of Labor Code § 2802. During the PAGA Period, Plaintiff and Reimbursement
Aggrieved Employees incurred business expenses in direct consequence of the discharge of their duties,

1 including but not limited to home internet, cellular phone expenses, utilities, and other expenses associated
2 with working from home, for which Defendant did not reimburse them, in violation of Labor Code § 2802.

3 **PARTIES**

4 5. Plaintiff was employed by Defendant as an adjunct instructor to teach in academic terms
5 between approximately Spring 2017 and through to and including Spring 2022. During her employment,
6 Plaintiff was subject to Defendant's unlawful conduct described herein.

7 6. Defendant is a private university with its headquarters located in Yellow Springs, Ohio.
8 Antioch offers in-person classes at its campuses located in Los Angeles, California; Santa Barbara,
9 California; Keene, New Hampshire; and, Seattle, Washington; and online courses through Antioch
10 Online.

11 **JURISDICTION**

12 7. This Court has jurisdiction over Plaintiff's PAGA claim pursuant to Labor Code § 2699.
13 On January 30, 2023 Plaintiff provided Notice pursuant to Labor Code § 2699.3 to the LWDA and to
14 Defendant. The LWDA has not provided notice to Plaintiff regarding its intentions to investigate or not
15 investigate Plaintiff's claims.

16 8. The amount in controversy for Plaintiff, including claims for civil penalties and pro rata
17 share of attorney's fees, is less than seventy-five thousand dollars (\$75,000).

18 **VENUE**

19 9. Venue is proper in the County of Los Angeles pursuant to Cal. Civ. Proc. Code §§ 395(a)
20 and 395.5. Defendant is an Ohio corporation with its California office located at 400 Corporate Pointe
21 Culver City, CA 90230. Defendant employs Aggrieved Employees and Reimbursement Aggrieved
22 Employees throughout the state of California, including at its campus location in Los Angeles County.

23 **FACTUAL ALLEGATIONS**

24 10. Defendant is a private university that offers undergraduate and graduate degrees and
25 certificate programs. These programs are offered throughout the year during the fall, spring and summer
26 terms. In order to teach these programs, Defendant employs Aggrieved Employees on a term-by-term
27 basis pursuant to Adjunct Faculty Appointment letters. These uniform letters contain the compensation
28 Aggrieved Employees are to be paid for their teaching assignments, which is in the form of the flat per-
course pay for teaching the assigned course ("Course Rate"), typically paid in three monthly installments.

29 ***A. Aggrieved Employees Are Non-Exempt Piece-Rate Employees***

30 11. During the PAGA Period, Plaintiff and Aggrieved Employees were non-exempt employees
for two independent reasons. First, Aggrieved Employees were piece rate workers because Defendant

1 compensated them based on a set amount of money per “teaching assignment” (e.g., for delivering a
2 course(s) during the specified academic term). The more courses/units Aggrieved Employees teach, the
3 more they are paid. Defendant also reserved the right to decrease Aggrieve Employees’ compensation due
4 to low enrollment thus making compensation not a salary, because it was subject to reduction based on
5 the quantity of work performed, but rather a form of piece-rate compensation. Accordingly, Plaintiff and
6 Aggrieved Employees were piece rate employees, and were subject to the requirements of Labor Code §
226.2 that governs piece-rate worker pay in California.

7 12. Second, during the PAGA Period, Aggrieved Employees earned less than the monthly
8 equivalent of at least two times the state minimum wage for full-time employment during most, if not all
9 pay periods during the PAGA Period, as required to be exempt under Labor Code § 515(a) and Wage
10 Order No. 4 § 1(A). Accordingly, Aggrieved Employees were and are entitled to certain protections under
11 the Labor Code as described below.

12 ***B. Defendant Failed to Issue Accurate Itemized Wage Statements***

13 13. During the PAGA Period, Defendant was required to issue accurate itemized wage
14 statements to Plaintiff and Aggrieved Employees semimonthly or at the time of each payment of wages
15 containing (1) gross wages earned pursuant to subdivision (a)(1) of Labor Code § 226(a); (2) total number
16 of hours worked during each period, pursuant to subdivision (a)(2) of § 226(a); (3) net wages earned
17 pursuant to subdivision (a)(5) of Labor Code § 226(a); (4) all applicable hourly rates in effect during the
18 pay period and corresponding number of hours worked pursuant to subdivision (a)(9) of Labor Code §
226(a).

19 14. Additionally, because Aggrieved Employees are piece-rate workers, Defendant was also
20 required to furnish wage statements to them that contained, including the number of piece-rate units
21 earned and any applicable piece rate; compensable rest periods, the rate of compensation, and gross wages
22 paid for those rest break periods; and hours of nonproductive time, the rate of compensation, and gross
23 wages paid for nonproductive time during the pay period pursuant to Labor Code §§ 226(a)(3) and
226.2(a).

24 15. During the PAGA Period, rather than issue Aggrieved Employees accurate itemized wage
25 statements that met the requirements discussed in paragraphs 13 and 14, above, Defendant issued wage
26 statements that included only a lump sum earned during the pay period and, while it listed a number of
27 hours, that number did not reflect the actual hours worked by Aggrieved Employees because Antioch did
28 not require Aggrieved Employees to keep track of their hours. In addition, Antioch did not include any
piece rate information, and, as result of its failure to pay for non-productive time and for rest break time

1 separate and hourly from the piece, and failure to pay premium pay for missed rest breaks, Antioch also
2 failed to include accurate gross and net wages earned.

3 ***C. Defendant Failed to Pay Wages Timely***

4 16. In addition, Aggrieved Employees were entitled to be paid twice per month under Labor
5 Code § 204(a) which requires that “[l]abor performed between the 1st and 15th days, inclusive, of any
6 calendar month ... paid for between the 16th and the 26th day of the month during which the labor was
7 performed, and labor performed between the 16th and the last day, inclusive, of any calendar month,
8 ...paid for between the 1st and 10th day of the following month.” Antioch, however, did not pay for work
9 performed between the 1st and the 15th of the month before the 26th day of the month, in violation of
10 Labor Code § 204(a). For example, Defendant paid Adjunct Aggrieved Employees for work performed
11 between the first and the last day of March 2022, on March 31, 2022, and for work performed between
12 the first and the last day of April 2022, on April 29, 2022.

13 ***D. Defendant Violated California’s Minimum Wage Laws***

14 17. During the PAGA Period, Aggrieved Employees’ Adjunct Faculty Appointment letters
15 began on the first day of the academic term and ended “on the last day of the academic term.” In addition
16 to teaching, Antioch requires Aggrieved Employees to complete course preparations well in advance of
17 the first day of classes including completing online book order forms, preparing and/or updating syllabi,
18 and uploading syllabi online before the beginning of the academic term. Since this work takes place prior
19 to the beginning of the academic term, and prior to the beginning of Aggrieved Employees’ Appointment
20 letters, it is not covered by the compensation set out in their Adjunct Faculty Appointment letters.

21 18. In addition, during the PAGA Period, students routinely took an incomplete grade in a
22 course and submitted course work at a later point in time, typically in a subsequent term, to receive credit.
23 As a result, Aggrieved Employees were required and/or expected to grade and/or provide narrative
24 assessments to students based on the work submitted in academic terms subsequent to the term paid under
25 the Adjunct Faculty Appointment letter. As a result, Aggrieved Employees performed work weeks or
26 even months after their employment had ended under a particular Appointment letter, and were not
27 compensated for this work, separately from the compensation set out in the Appointment letters, or at all.

28 19. In addition, Antioch required and/or expected Aggrieved Employees to complete
mandatory trainings, such as FERPA, privacy, and other trainings. These trainings were not covered by
the compensation set out in the Adjunct Faculty Appointment letters because it was non-productive work
unrelated to the teaching work being paid for. In addition, trainings routinely were completed in between
terms, when Aggrieved Employees were not employed under a contract at all. Antioch, however, did not

1 compensate Aggrieved Employees for the time spent on these trainings or, if it did, it paid a flat sum for
2 a training, without tracking their hours and without paying them for all hours worked and/or separately
3 and hourly for all hours worked.

4 20. As a result, Antioch failed to pay Aggrieved Employees for all hours worked in violation
5 of Labor Code §§ 226.2 and 1194 and Wage Order No. 4, § 4.

6 ***E. Defendant Violated California's Rest Break Law***

7 21. During the PAGA Period, Aggrieved Employees frequently worked at least 3.5 hours or
8 more in a row because Antioch scheduled them to teach classes that were 3.5 hours long or longer and/or
9 because Antioch scheduled to teach them shorter classes but required and/or expected them to arrive prior
10 to start of class and to remain after class to answer students' questions and/or hold office hours, which in
11 combination resulted in Aggrieved Employees working 3.5 hours or longer straight.

12 22. Antioch knew or should have known that Aggrieved Employees worked 3.5-hour shifts
13 because it was a result of Antioch's own scheduling practices, policies, job duties/expectations and/or the
14 nature of Aggrieved Employees' jobs. Antioch was therefore required to permit and authorize Aggrieved
15 Employees to take paid rest breaks of at least 10 minutes for every 3.5 hours worked under Labor Code §
16 226.7 and Wage Order No. 4, § 12, and to pay Aggrieved Employees at their average hourly rate for their
17 time spent on rest breaks separately and apart from the piece under Labor Code § 226.2. Antioch failed
18 to do so, thereby triggering an obligation to make premium payments to Aggrieved Employees under
19 Labor Code § 226.7 and Wage Order No. 4.

20 23. Defendant also had policies and/or practices in place which impeded Aggrieved
21 Employees' ability to take off-duty rest breaks during these times, including the policy and/or practice of
22 requiring Aggrieved Employees to arrive early to prepare for class, and to be available to students before,
23 during, and after class. Thus, Antioch failed to authorize and permit compliant rest breaks in accordance
24 with Wage Order No. 4, § 12(A) thereby triggering an obligation to make premium payments to Aggrieved
25 Employees under Wage Order No. 4, § 12(B).

26 ***F. Defendant Failed to Pay All Wages Due Upon Discharge***

27 24. During the PAGA Period, Aggrieved Employees were employed pursuant to Adjunct
28 Faculty Appointment letters which provided that the "contract expires by its terms on the last day of the
academic term without further notice." Thus, Adjunct Aggrieved Employees were discharged from
employment at the end of each contract. As a result of failing to pay Aggrieved Employees for all hours
worked and premium pay for missed rest breaks, Aggrieved Employees were not timely paid all wages
owed to them upon their discharge at the end of contract, in violation of Labor Code §§ 201-203.

1 ***G. Defendant Failed to Reimburse Necessarily Incurred Business Expenses***

2 25. During the PAGA Period, Plaintiff and Reimbursement Aggrieved Employees incurred
3 unreimbursed expenses in carrying out their job duties for Antioch including, but not limited to, the cost
4 of home internet, cellular phones, and utilities. Antioch knew or should have known that Plaintiff and
5 Aggrieved Employees incurred these expenses because Antioch required and/or expected Plaintiff and
6 Aggrieved Employees to work from home, including to teach online courses if they were instructors.
7 Upon information and belief, when working remotely from home, Aggrieved Employees were also
8 required and/or expected to be available by phone, and those Aggrieved Employees who were faculty
9 members were required and/or expected to be available to their students for questions by phone even when
10 not teaching remotely. In addition, Aggrieved Employees who were instructors were required to list their
11 contact information on their syllabi, and they typically listed their email addresses and cellular phone
12 numbers.

13 26. Defendant was aware, or should have been aware, that Reimbursement Aggrieved
14 Employees incurred out-of-pocket expenses in direct consequence of the discharge of their job duties.
15 Throughout the PAGA Period, however, Antioch did not reimburse Reimbursement Aggrieved
16 Employees for these necessarily incurred business expenses fully or at all in violation of Labor Code §
17 2802.

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

19 27. Plaintiff seeks PAGA penalties on behalf of herself, Aggrieved Employees, and
20 Reimbursement Aggrieved Employees, as follows:

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

22 28. During the PAGA Period, Defendant failed to issue accurate itemized wage statements for
23 each pay period during which Aggrieve Employees worked, in violation of Labor Code §§ 226(a) and
24 226.2(a)(2).

25 29. Under Labor Code § 226.3, Aggrieved Employees are entitled to a PAGA penalty equal to
26 two hundred fifty dollars (\$250) per pay period for the initial violation and one thousand dollars (\$1,000)
27 per pay period for each subsequent violation.

28 30. Alternatively, Aggrieved Employees are entitled to one hundred dollars (\$100) for each
initial violation and two hundred dollars (\$200) for each subsequent violation, pursuant to Labor Code §
2699(f)(2).

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1 **Violation of Labor Code §§ 226(a) and 204**

2 31. During the PAGA Period, Defendant did not pay wages to Adjunct Aggrieved Employees
3 semi-monthly, and did not pay for work performed between the 1st and the 15th of the month before the
4 26th day of the month, in violation of Labor Code §§ 226(a) and 204.

5 32. Under Labor Code § 226.3, Aggrieved Employees are entitled to a PAGA penalty equal to
6 two hundred fifty dollars (\$250) per pay period for the initial violation and one thousand dollars (\$1,000)
7 per pay period for each subsequent violation.

8 33. Alternatively, Aggrieved Employees are entitled to one hundred dollars (\$100) for each
9 initial violation and two hundred dollars (\$200) for each subsequent violation, pursuant to Labor Code §
10 2699(f)(2).

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

12 34. During the PAGA Period, Defendant failed to pay Aggrieved Employees for all hours
13 worked, and failed to compensate Aggrieved Employees for their non-productive time separately from
14 the piece, in violation of Labor Code §§ 226.2 and 1194, and Wage Order No. 4, § 4.

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

18 **Violation of Labor Code §§ 226.2 and 226.7 and Wage Order 4, § 12**

19 36. During the PAGA Period, Defendant failed to permit and authorize paid off-duty rest
20 breaks in violation of IWC Wage Order 4-2001, § 12, failed to pay separately and hourly for rest breaks
21 in violation of Labor Code § 226.2, and failed to pay premium pay for unpaid and/or missed breaks in
22 violation of Labor Code § 226.7.

23 37. Pursuant to Labor Code § 2699(f)(2), Plaintiff and Aggrieved Employees are entitled to
24 one hundred dollars (\$100) for each initial violation and two hundred dollars (\$200) for each subsequent
25 violation.

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

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

 39. Pursuant to Labor Code § 2699(f)(2), Aggrieved Employees are entitled to one hundred
dollars (\$100) for each pay period in which there was an initial violation, and two hundred dollars (\$200)
for each pay period in which there was a subsequent violation.

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2 **Violation of Labor Code § 2802**

3 40. During the PAGA Period, Defendant failed to reimburse Reimbursement Aggrieved
4 Employees for necessarily incurred business expenses, in violation of Labor Code § 2802.

5 41. Pursuant to Labor Code § 2699(f)(2), Plaintiff and Reimbursement Aggrieved Employees
6 are entitled to hundred dollars (\$100) for each initial violation and two hundred dollars (\$200) for each
subsequent violation.

7 **Attorneys' Fees and Costs**

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

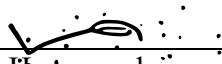
10 **PRAYER FOR RELIEF**

11 **WHEREFORE**, Plaintiff requests the following relief:

- 12 A. Civil penalties pursuant to PAGA;
13 B. Reasonable attorneys' fees and costs pursuant to Labor Code § 2699(g); and
14 C. All other relief as this Court deems proper.

15 Dated: April 10, 2023

Respectfully submitted,

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19 By: Julian Hammond
HAMMONDLAW, P.C.

20 *Attorneys for Plaintiff*
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