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SUPERIOR COURT FOR THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES

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

Plaintiff,

vs.

COALITION FOR THE COMMON GOOD,
an Ohio Non-profit Corporation,

Defendant.

CASE NO. 23STCV07770

REPRESENTATIVE PAGA ACTION

**FIRST AMENDED 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 Coalition for the
7 Common Good, formerly known as Antioch University, (“Defendant”) in California (“Aggrieved
8 Employees”) from January 30, 2022 to the trial date (“PAGA Period”) for its failure to (a) issue accurate
9 itemized wage statements in violation of Labor Code §§ 226(a) and 226.2(a)(2); (b) pay wages timely in
10 violation of Labor Code §§ 226(a) and 204; (c) pay wages for all hours worked in violation of Labor Code
11 §§ 1194, 226.2 and § 4 of the IWC Wage Order No. 4-2001 (“Wage Order No. 4”); (d) pay hourly and
12 separately for rest breaks at the average hourly rate in violation of Labor Code §§ 226.2, 226.7 and/or
13 failure to authorize and permit paid off-duty rest breaks in violation of § 12 of Wage Order No. 4 and
14 Labor Code § 226.7; and pay missed rest break premium pay in violation of Labor Code § 226.7, and §
15 12 of Wage Order No. 4; and (e) pay all wages due at the time of discharge from employment in violation
16 of Labor Code §§ 201-203.

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

22 3. As non-exempt piece-rate employees, Plaintiff and Aggrieved Employees were entitled to
23 certain protections under the Labor Code, including to be provided with accurate itemized wage
24 statements pursuant to Labor Code §§ 226.2(a) and 226(a), to be paid timely pursuant to Labor Code §§
25 226(a) and 204, to be paid at least minimum wage for all hours worked in violation of Labor Code §§
26 1194, 226.2 and Wage Order No. 4-2001, § 4, to be authorized and permitted to take off-duty rest periods
27 and/or to be paid for time spent on rest periods separate and apart from the piece, pursuant to Labor Code
28 §§ 226.2 and 226.7 and Wage Order No. 4-2001, § 12.

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 non-profit university with its headquarters located in Yellow
8 Springs, Ohio. From the beginning of the PAGA Period and until approximately July 2023, Defendant's
9 corporate name was Antioch University. In or about June or July 2023, Antioch University and another
10 Ohio based university, Otterbein University, created the Coalition for the Common Good, a higher
11 education system of affiliated universities. As part of this affiliation, on or about July 25, 2023, Antioch
12 University filed an amendment with the California Secretary of State, changing its name to the Coalition
13 for the Common Good. Coalition for the Common Good offers in-person classes at its campuses located
14 in Los Angeles, California; Santa Barbara, California; Keene, New Hampshire; and, Seattle, Washington;
15 and online courses through Antioch Online.

14 **JURISDICTION**

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

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

20 **VENUE**

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

24 **FACTUAL ALLEGATIONS**

25 10. Defendant is a university system of affiliated universities that offers undergraduate and
26 graduate degrees and certificate programs. These programs are offered throughout the year during the
27 fall, spring and summer terms. In order to teach these programs, Defendant employs Aggrieved
28 Employees on a term-by-term basis pursuant to Adjunct Faculty Appointment letters. These uniform

1 letters contain the compensation Aggrieved Employees are to be paid for their teaching assignments,
2 which is in the form of the flat per-course pay for teaching the assigned course (“Course Rate”), typically
3 paid in three monthly installments.

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

5 11. During the PAGA Period, Plaintiff and Aggrieved Employees were non-exempt employees
6 for two independent reasons. First, Aggrieved Employees were piece rate workers because Defendant
7 compensated them based on a set amount of money per “teaching assignment” (e.g., for delivering a
8 course(s) during the specified academic term). The more courses/units Aggrieved Employees teach, the
9 more they are paid. Defendant also reserved the right to decrease Aggrieved Employees’ compensation due
10 to low enrollment thus making compensation not a salary, because it was subject to reduction based on
11 the quantity of work performed, but rather a form of piece-rate compensation. Accordingly, Plaintiff and
12 Aggrieved Employees were piece rate employees, and were subject to the requirements of Labor Code §
13 226.2 that governs piece-rate worker pay in California.

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

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

20 13. During the PAGA Period, Defendant was required to issue accurate itemized wage
21 statements to Plaintiff and Aggrieved Employees semimonthly or at the time of each payment of wages
22 containing (1) gross wages earned pursuant to subdivision (a)(1) of Labor Code § 226(a); (2) total number
23 of hours worked during each period, pursuant to subdivision (a)(2) of § 226(a); (3) net wages earned
24 pursuant to subdivision (a)(5) of Labor Code § 226(a); (4) all applicable hourly rates in effect during the
25 pay period and corresponding number of hours worked pursuant to subdivision (a)(9) of Labor Code §
26 226(a).

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

1 15. During the PAGA Period, rather than issue Aggrieved Employees accurate itemized wage
2 statements that met the requirements discussed in paragraphs 13 and 14, above, Defendant issued wage
3 statements that included only a lump sum earned during the pay period and, while it listed a number of
4 hours, that number did not reflect the actual hours worked by Aggrieved Employees because Defendant did
5 not require Aggrieved Employees to keep track of their hours. In addition, Defendant did not include any
6 piece rate information, and, as result of its failure to pay for non-productive time and for rest break time
7 separate and hourly from the piece, and failure to pay premium pay for missed rest breaks, Defendant also
8 failed to include accurate gross and net wages earned.

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

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

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

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

27 18. In addition, during the PAGA Period, students routinely took an incomplete grade in a
28 course and submitted course work at a later point in time, typically in a subsequent term, to receive credit.
As a result, Aggrieved Employees were required and/or expected to grade and/or provide narrative
assessments to students based on the work submitted in academic terms subsequent to the term paid under
the Adjunct Faculty Appointment letter. As a result, Aggrieved Employees performed work weeks or

1 even months after their employment had ended under a particular Appointment letter, and were not
2 compensated for this work, separately from the compensation set out in the Appointment letters, or at all.

3 19. In addition, Defendant required and/or expected Aggrieved Employees to complete
4 mandatory trainings, such as FERPA, privacy, and other trainings. These trainings were not covered by
5 the compensation set out in the Adjunct Faculty Appointment letters because it was non-productive work
6 unrelated to the teaching work being paid for. In addition, trainings routinely were completed in between
7 terms, when Aggrieved Employees were not employed under a contract at all. Defendant, however, did
8 not compensate Aggrieved Employees for the time spent on these trainings or, if it did, it paid a flat sum
9 for a training, without tracking their hours and without paying them for all hours worked and/or separately
and hourly for all hours worked.

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

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

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

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

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

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

2 24. During the PAGA Period, Aggrieved Employees were employed pursuant to Adjunct
3 Faculty Appointment letters which provided that the “contract expires by its terms on the last day of the
4 academic term without further notice.” Thus, Adjunct Aggrieved Employees were discharged from
5 employment at the end of each contract. As a result of failing to pay Aggrieved Employees for all hours
6 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.

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

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

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

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

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

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

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

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

4 30. Alternatively, Aggrieved Employees are entitled to one hundred dollars (\$100) for each
5 initial violation and two hundred dollars (\$200) for each subsequent violation, pursuant to Labor Code §
6 2699(f)(2).

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

8 31. During the PAGA Period, Defendant did not pay wages to Adjunct Aggrieved Employees
9 semi-monthly, and did not pay for work performed between the 1st and the 15th of the month before the
10 26th day of the month, in violation of Labor Code §§ 226(a) and 204.

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

14 33. Alternatively, Aggrieved Employees are entitled to one hundred dollars (\$100) for each
15 initial violation and two hundred dollars (\$200) for each subsequent violation, pursuant to Labor Code §
16 2699(f)(2).

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

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

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

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

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

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

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

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

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

7 **Violation of Labor Code § 2802**

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

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

13 **Attorneys' Fees and Costs**

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

16 **PRAYER FOR RELIEF**

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

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

21 Dated: March 20, 2024

22 Respectfully submitted,

23 
24 By: Julian Hammond
25 HAMMONDLAW, P.C.
26 *Attorneys for Plaintiff*