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10 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

11 **COUNTY OF ORANGE**
12

13 **CHERYL BURLEIGH**, individually and on
14 behalf of all others similarly situated,

15 Plaintiff,

16 vs.

17 **BRANDMAN UNIVERSITY**, a California
18 Non-Profit Corporation,

19 Defendant.
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CASE NO. 30-2020-01172801-CU-OE-CXC

LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT REPRESENTATIVE ACTION

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

1 Plaintiff Cheryl Burleigh (“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
6 and costs on behalf of Plaintiff and all other adjunct instructors employed by Brandman University
7 (“Brandman” or “Defendant”) in California (“Aggrieved Employees”) from September 25, 2019 to the
8 trial date (“PAGA Period”) for the following Labor Code violations: (a) failure to issue accurate itemized
9 wage statements in violation of Labor Code § 226(a) and 226.2(a)(2); (b) failure to pay hourly and
10 separately for rest breaks at the average hourly rate in violation of Labor Code §§ 226.2, 226.7 and/or
11 failure to authorize and permit paid off-duty rest breaks in violation of § 12 of IWC Wage Order No. 4-
12 2001 and Labor Code § 226.7; and failure to pay missed rest break premium pay in violation of Labor
13 Code § 226.7, and § 12 of IWC Wage Order No. 4-2001; and (c) failure to reimburse business related
14 expenses in violation of Labor Code § 2802.

15 2. During the PAGA Period, Plaintiff and Aggrieved Employees were non-exempt employees
16 because they did not earn the monthly equivalent of at least two times the state minimum wage for full-
17 time employment as required by Labor Code § 515(a) and Wage Order No. 4-2001 § 1. Plaintiff and
18 Aggrieved Employees were also piece-rate workers because they were paid on a piece-rate basis or
19 “Course Rate” – a set amount for each course taught.

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

25 4. During the PAGA Period, Defendant failed to provide Plaintiff and Aggrieved Employees
26 with accurate itemized wage statements in violation of Labor Code §§ 226(a) and 226.2(a) including but
27 not limited to, failing to list the total hours worked, the applicable hourly rate in effect during each pay
28 period, and piece-rate information.

5. During the PAGA Period, Defendant failed to pay Aggrieved Employees for their rest
breaks separately and apart from the Course Rate and failed to pay premium pay, in violation of Labor
Code §§ 226.2, 226.7 and Wage Order No. 4-2001 § 12.

6. Even if not piece rate workers, as non-exempt employees, Aggrieved Employees were entitled to be permitted and authorized to take off-duty rest breaks under Labor Code § 226.7 and Wage Order No. 4-2001 § 12. However, Defendant failed to authorize and permit Aggrieved Employees to take off-duty rest breaks as required under Wage Order No. 4-2001 § 12, and failed to pay premium pay for missed rest breaks in violation of Labor Code § 226.7 and Wage Order No. 4-2001 § 12.

7. During the PAGA Period, Aggrieved Employees were required by Defendant to teach online course from home. Aggrieved Employees incurred business expenses in direct consequence of the discharge of their job duties, including home internet, home or cellular phone expenses, ink toner/cartridges and paper and other expenses associated with working from home. Defendant did not reimburse Aggrieved Employees for any of these necessarily incurred business expenses in violation of Labor Code § 2802.

8. Plaintiff also brings this action for PAGA penalties on behalf of herself and all other similarly situated individuals currently and formerly employed in California by Defendant during the PAGA Period (“Unreimbursed Expenses Aggrieved Employees” or “UE Aggrieved Employees”). During the PAGA Period, Plaintiff and UE Aggrieved Employees incurred business expenses in direct consequence of the discharge of their duties, including but not limited to home internet, home or cellular phone expenses, ink toner/cartridges and paper and other expenses associated with working from home, for which Defendant did not reimburse them, in violation of Labor Code § 2802.

PARTIES

9. Plaintiff has been employed by Defendant as an adjunct instructor since 2017. During her employment, Plaintiff was subject to Defendant's unlawful conduct described herein.

10. Defendant is a private non-profit university, with its headquarters located in Irvine.

JURISDICTION

11. This Court has jurisdiction over Plaintiff's PAGA claim pursuant to Labor Code § 2699.

12. On September 25, 2020 Plaintiff provided Notice pursuant to Labor Code § 2699.3 to the LWDA and to Defendant. On November 16, 2020, Plaintiff provided Amended Notice pursuant to Labor Code § 2699.3 to the LWDA and to Defendant. The LWDA has not provided notice to Plaintiff regarding its intentions to investigate or not investigate Plaintiff's claims.

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

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14. Venue is proper in the County of Orange pursuant to Cal. Civ. Proc. Code §§ 395(a) and 395.5. Defendant's headquarters are in Irvine, California.

FACTUAL ALLEGATIONS

15. Defendant is a private, non-profit university that offers both undergraduate and graduate programs at its main campus in Irvine, California and over 20 satellite campuses located throughout California. Defendant offers undergraduate and graduate degrees and certificate programs. These programs are offered throughout the year during the fall, spring and summer sessions. In order to teach these programs, Defendant employs adjunct faculty members including Aggrieved Employees.

16. Defendant employs Aggrieved Employees pursuant to a uniform employment contract. This uniform Contract contained the compensation Aggrieved Employees were entitled to be paid in the form of the flat per course compensation for teaching the assigned course (“Course Rate”).

Aggrieved Employees Were Non-Exempt Piece-Rate Employees

17. During the PAGA Period, Plaintiff and Aggrieved Employees were non-exempt employees because they did not earn the monthly equivalent of at least two times the state minimum wage for full-time employment as required by Labor Code § 515(a) and Wage Order No. 4-2001 § 1. *See* Wage Order No. 4-2001, § 1(A). Aggrieved Employees are therefore entitled to certain protections under the labor code, including to receive accurate itemized wage statements containing entries for, including but not limited to, total hours worked and applicable hourly rate in effect during each pay period, and to be permitted and authorized to take compliant rest breaks, and to be paid premium pay for missed breaks, pursuant to Labor Code §§ 226.7 and 226(a), and Wage Order No. 4-2001, § 12.

18. Additionally, Plaintiff and Aggrieved Employees were piece rate workers because Defendant compensated them a set amount per course. The more courses Aggrieved Employees taught/teach, the more they are paid. The per course compensation rates are standardized and vary based on objective criteria such as number of credits in the course, number of students enrolled, type of course taught (e.g. undergraduate, graduate), and experience of the instructor. This type of compensation is a form of piece-rate compensation. Accordingly, Plaintiff and Aggrieved Employees were paid on a piece rate and thus subject to the requirements of Labor Code § 226.2 that governs piece-rate worker pay in California.

19. As a result, during the PAGA Period, Defendant was required to comply with California's wage and hour laws, including but not limited to, the obligation to pay Aggrieved Employees for rest break time separate and apart from the piece rate, and to issue accurate itemized wage statements

1 containing entries for, including but not limited to, piece-rate information, pursuant to Labor Code §§
2 226.2 and 226.2(a).

3 ***Defendant Failed to Issue Accurate Itemized Wage Statements***

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

10 21. Additionally, because Aggrieved Employees were piece-rate workers, Defendant was also
11 required to furnish wage statements to them that contained, including but not limited to, the following
12 information: the number of piece-rate units earned and any applicable piece rate; compensable rest
13 periods, the rate of compensation, and gross wages paid for those rest break periods; and hours of
14 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).

15 22. During the PAGA Period, rather than issue Aggrieved Employees accurate itemized wage
16 statements showing the actual hours worked, and applicable hourly rates, Defendant issued wage
17 statements that included only a lump sum earned during each pay period with a “0” listed for hours and
18 hourly rates. Further, as result of Defendant’s failure to authorize and permit rest breaks, and pay premium
19 pay for missed rest breaks, Defendant also failed to include accurate gross and net wages earned.

20 23. Defendant’s wage statements also failed to include the number of piece-rates earned and
21 applicable piece rate, and, as result of Defendant’s failure to pay for rest breaks separate and hourly from
22 the piece, and pay premium pay for missed rest breaks, also failed to include accurate gross and net wages
earned.

23 ***Defendant Violated California’s Rest Break Law***

24 24. Because Aggrieved Employees are non-exempt piece-rate workers, pursuant to Labor
25 Code §§ 226.2 and 226.7 Defendant was required to permit and authorize them to take a paid 10-minute
26 for every 3.5 hours of work, and to pay them separately and hourly, at their average hourly rate, for their
rest break time.

27 25. During the PAGA Period, Aggrieved Employees routinely worked at least 3.5 hours or
28 more on any given day because Defendant scheduled them to teach classes that were 3.5 hours or longer

1 without a 10-minute break, or scheduled them to teach back-to-back classes that were 3.5 hours long when
2 combined and that had less than 10 minutes between them.

3 26. Defendant also had policies and/or practices in place which impeded Aggrieved
4 Employees' ability to take off-duty rest breaks during these times, including the policy and/or practice of
5 requiring Aggrieved Employees to be available to students during class.

6 27. Defendant failed to pay Aggrieved Employees at their average hourly rate for their time
7 spent on rest breaks separately and apart from the piece in violation of Labor Code § 226.2, thereby
8 triggering an obligation to make premium payments to Aggrieved Employees under Labor Code § 226.7
9 and Wage Order No. 4-2001, § 12. Defendant did not pay premium pay in violation of Labor Code §
226.7.

10 28. Even if Aggrieved Employees are not piece-rate workers, Defendant was required but
11 failed, as alleged above, to permit and authorize them to take off-duty rest breaks for shifts of 3.5 hours
12 or longer, pursuant to Labor Code § 226.7 and Wage Order No. 4-2001, § 12, thereby triggering an
13 obligation to make premium payments under Labor Code § 226.7 and Wage Order No. 4-2001, § 12(B),
which it also did not pay.

14 ***D. Defendant Violated California's Expense Reimbursement Law***

15 29. During the PAGA Period, Plaintiff and Aggrieved Employees were required to teach
16 online courses from homes. Aggrieved Employees incurred expenses carrying out their work-related
17 duties teaching online courses from their homes including internet access, home or mobile telephone
18 expenses, ink toner/cartridges and paper. Defendant did not maintain policies or practices of reimbursing
Aggrieved Employees for these necessarily incurred business expenses fully or at all.

19 30. Defendant was aware, or should have been aware, that Aggrieved Employees incurred
20 these expenses in direct consequence of the discharge of their job duties because Defendant required
21 and/or expected Aggrieved Employees to teach online courses from home. Defendant, however, did not
22 reimburse Aggrieved Employees in any amount for any such expenses incurred throughout the Aggrieved
23 Employees as required under Labor Code § 2802.

24 31. As a result, Defendant knowingly permitted Plaintiff and Aggrieved Employees to pay for
25 expenses incurred in direct consequence of discharging their duties for Defendant, without any
26 reimbursement or reimbursement in full by Defendant for such expenses, in violation of Labor Code
§ 2802.

1 ***Defendant Failed to Reimburse Unreimbursed Expense Aggrieved Employees for their***
2 ***Necessarily Incurred Business Expenses***

3 32. On or about March 18, 2020, Defendant moved all instruction to on-line classroom format,
4 and closed the campus to all or most of its employees. Following the closure of the campus and moving
5 instruction on-line, Defendant implemented and maintained the following policies and practices: (a)
6 requiring and expecting its employees to have an internet connection and Wi-Fi connectivity in order for
7 faculty to teach, and in order for its other employees to stay connected with the University; (b) requiring
8 and expecting its employees to maintain a mobile phone, and use such phone for business related
9 purposes; and (c) not allowing its employees to take office equipment and computer accessories home for
10 working remotely. As a result of Defendant's, UE Aggrieved Employees incurred expenses as a direct
11 consequence of discharging their duties for Brandman, including, but not limited to home internet, mobile
12 phone, and printer ink/cartridges and paper ("Home Office Expenses")

13 33. Defendant was aware, or should have been aware, that UE Aggrieved Employees incurred
14 Home Office Expenses in direct consequence of the discharge of their job duties because Defendant
15 required and/or expected UE Aggrieved Employees to work from home. Defendant, however, did not
16 reimburse UE Aggrieved Employees in any amount for any such expenses incurred as required under
17 Labor Code § 2802.

18 34. As a result, Defendant knowingly permitted Plaintiff and UE Aggrieved Employees to pay
19 for Home Office Expenses incurred in direct consequence of discharging their duties for Defendant,
20 without any reimbursement or reimbursement in full by Defendant for such expenses, in violation of
21 Labor Code § 2802.

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

23 35. Plaintiff seeks PAGA penalties on behalf of herself and Aggrieved Employees as follows:

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

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

28 37. Under Labor Code § 226.3, Plaintiff is entitled to a PAGA penalty equal to two hundred
fifty dollars (\$250) per pay period for the initial violation and one thousand dollars (\$1,000) per pay period
for each subsequent violation.

38. 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).

Violation of Labor Code §§ 226.2 and 226.7 and IWC Wage Order 4-2001, § 12

39. As discussed above, throughout the PAGA Period, Defendant failed to permit and authorize paid off-duty rest breaks in violation of IWC Wage Order 4-2001, § 12, failed to pay separately and hourly for rest breaks in violation of Labor Code § 226.2, and failed to pay Aggrieved Employees premium pay for unpaid and/or missed breaks in violation of Labor Code § 226.7.

40. As a result of Defendant's violation of Labor Code §§ 226.2 and 226.7, Plaintiff and 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).

Violation of Labor Code § 2802

41. During the PAGA Period, Defendant failed to reimburse Plaintiff, Aggrieved Employees and UE Aggrieved Employees, for necessarily incurred business expenses, including cellphone, internet, and Home Office Expenses, they incurred in carrying out their job duties to Defendant.

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

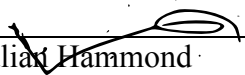
PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief:

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

Dated: January 18, 2021

Respectfully submitted,

By: 
HAMMONDLAW, P.C.

Attorneys for Plaintiff