

ENDORSED
FILED
ALAMEDA COUNTY

APR 26 2021

CLERK OF THE SUPERIOR COURT
By GINA FU Deputy

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Attorneys for Plaintiff and all aggrieved employees

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA**

GERALD WHILTON OLIVAS, an
individual, on behalf of the State of
California, as a private attorney general,

PLAINTIFF,

v.

THE UNIVERSITY OF PHOENIX, INC.;
and DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. RG21091953

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT:**

1. Penalties Pursuant to Labor Code
§2699, et seq. for violations of Labor
Code §§2802

1 Plaintiff GERALD WHILTON OLIVAS (“Plaintiff”) , on behalf of himself and the people
2 of the State of California and as an “aggrieved employee” under the Labor Code Private Attorneys
3 General Act of 2004, §2699, et seq. (“PAGA”) complains against THE UNIVERSITY OF
4 PHOENIX, INC. (“Defendant”), a corporation, and DOES 1 to 50 (collectively “Defendants”), as
5 follows:

6 **I.**

7 **GENERAL ALLEGATIONS**

8 1. This is a First Amended Representative Action, pursuant to Labor Code §2699 et
9 seq., on behalf of the following individuals:

10 All employees of THE UNIVERSITY OF PHOENIX, INC., in the
11 State of California who have worked one or more pay periods in
12 whole or in part off site since one (1) year prior to the date of
13 Plaintiff’s notice letter to the Labor & Workforce Development
Agency (“LWDA”) and continuing to the present. (“Aggrieved
Employees”)

14 2. For at least one (1) year prior to the date of the letter sent to the Labor & Workforce
15 Development Agency and Defendant giving notice of this claim pursuant to PAGA and continuing
16 to the present, Defendant has failed to properly comply with Labor Code §2802.

17 3. Labor Code §2802 provides that (a) An employer shall indemnify his or her
18 employee for all necessary expenditures or losses incurred by the employee in direct consequence
19 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
20 even though unlawful, unless the employee, at the time of obeying the directions, believed them
21 to be unlawful.

22 4. Defendant failed to reimburse Plaintiff and all Aggrieved Employees’ for necessary
23 expenditures or losses incurred by the Aggrieved Employees in direct consequence of the
24 discharge of his or her duties. Specifically, Defendant has failed to reimburse Plaintiff and all
25 Aggrieved Employees for necessary expenses incurred to perform off site, remote work during the
26 period of October 6, 2019 to present. This includes, at a minimum, employee expenses for: internet
27 connection services; modem; router; computer; printer and ink; computer support service
28 agreement; operating system and application software; software virus protection; mobile phone

1 (for Defendant's University of Phoenix app and Defendant's required University of Phoenix
2 email); cellular data service; and home office expenses for chair, desk, file cabinet, supplies,
3 utilities, insurance, and miscellaneous office expenses such as paper) without reimbursement in
4 violation of Labor Code §2802.

5 5. As of April 2020, Defendant rolled out a policy to pay monthly expense
6 reimbursement of \$10.50 to Plaintiff and all Aggrieved Employees. This amount is insufficient to
7 reimburse Plaintiff and All Aggrieved Employees for necessary expenditures or losses incurred by
8 the Aggrieved Employees in direct consequence of the discharge of his or her duties. Working
9 remotely, in whole or part, requires at a minimum, employee expenses for: internet connection
10 services; modem; router; computer; printer and ink; computer support service agreement;
11 operating system and application software; software virus protection; mobile phone (for
12 Defendant's University of Phoenix app and Defendant's required University of Phoenix email);
13 cellular data service; and home office expenses for chair, desk, file cabinet, supplies, utilities,
14 insurance, and miscellaneous office expenses such as paper. Defendant fails to adequately
15 reimburse Plaintiff and All Aggrieved employees for such necessary expenditures or losses
16 incurred by the employee in direct consequence of the discharge of his or her duties in violation
17 of Labor Code §2802.

18 6. Plaintiff, on behalf of himself and all Aggrieved Employees presently or formerly
19 employed by Defendant during the liability period, brings this representative action pursuant to
20 Labor Code §2699, et seq. seeking penalties for Defendant's violation of Labor Code §2802.

21 **II.**

22 **JURISDICTION & VENUE**

23 7. This Court has subject matter jurisdiction over any and all causes of action asserted
24 herein pursuant to Article VI, §10 of the California Constitution and California Code of Civil
25 Procedure §410.10 by virtue of the fact that this is a civil action in which the matter in controversy,
26 exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises under the
27 laws of the State of California or is subject to adjudication in the courts of the State of California.

28 ///

8. This Court has personal jurisdiction over Defendant because Defendant has caused injuries in Alameda County and the State of California through their acts, and by their violation of the California Labor Code and California state common law.

9. At all times set forth herein, Defendant is and was, based upon information and belief, an Arizona corporation doing business in Alameda County and in the State of California with its Arizona address at 4025 S. Riverpoint Parkway, MS CF-K612, Phoenix, AZ 85040. At all relevant times, Defendant employed Plaintiff in the State of California.

10. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil Procedure §395. Defendant operates within California and does business within the county of Alameda, California. The unlawful acts alleged herein have a direct effect on Plaintiff and all Aggrieved Employees within the State of California and Alameda County.

III.

PARTIES

A. Plaintiff

11. Plaintiff GERALD WHILTON OLIVAS is a resident of State of California. Plaintiff was employed by Defendant as a non-exempt employee in California.

12. Upon information and belief, Plaintiff and all aggrieved employees are covered by California Industrial Welfare Commission Occupational Wage Order No. 4 -2001 (Title 8 Cal. Code of Regs. § 11040.)

13. Plaintiff and all current and former employees are aggrieved employees within the meaning of Labor Code §2699, et seq. (See Labor Code §2699(c).)

B. Defendants

14. Defendant is an Arizona Corporation operating in California including in the County of Alameda. The Defendant's address is 4025 S. Riverpoint Parkway, MS CF-K612, Phoenix, AZ 85040. Defendant employed Plaintiff and all other Aggrieved Employees within California. Some of the violations alleged herein arose in the County of Alameda.

15. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 10, inclusive, are currently unknown to

1 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
2 §474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
3 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
4 to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
5 capacities of the Defendants designated hereinafter as DOES when such identities become known.

6 16. Plaintiff is informed and believes, and based thereon alleges, that each of the
7 Defendants acted in all respects pertinent to this action as the agent of the other Defendants, carried
8 out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each of
9 the Defendants are legally attributable to the other Defendants.

10 17. The Defendants named herein as DOE 1 through DOE 10 are and were persons
11 acting on behalf of, or acting jointly with, Defendants, who violated, or caused to be violated, one
12 or more provisions of the California Labor Code and public policy as alleged herein.

13 18. Furthermore, Defendants acted in all respects as the employers or joint employers
14 of Aggrieved Employees. Defendants, and each of them, exercised control over the wages, hours
15 or working conditions of Aggrieved Employees, or suffered or permitted the Aggrieved Employees
16 to work, or engaged, thereby creating a common law employment relationship, with the Aggrieved
17 Employees. Therefore, Defendants, and each of them, employed or jointly employed the
18 Aggrieved Employees.

19 IV.

20 FACTUAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

21 19. Plaintiff and all Aggrieved Employees are, and at all times pertinent hereto, have
22 been classified as non-exempt employees.

23 20. Upon information and belief, Plaintiff and all Aggrieved Employees are covered by
24 California Industrial Welfare Commission Occupational Wage Order No. 4-2001 (Title 8 Cal.
25 Code of Regs. § 11040).

26 21. On a regular and consistent basis, for all Aggrieved Employees employed by
27 Defendant, Defendant has failed to comply with Labor Code §§ 2802.

28 22. Defendant failed to reimburse Plaintiff and all Aggrieved Employees for necessary

1 expenses incurred to perform off site, remote work. This includes, at a minimum, employee
2 expenses for: internet connection services; modem; router; computer; printer and ink; computer
3 support service agreement; operating system and application software; software virus protection;
4 mobile phone (for Defendant's University of Phoenix app and Defendant's required University of
5 Phoenix email); cellular data service; and home office expenses for chair, desk, file cabinet,
6 supplies, utilities, insurance, and miscellaneous office expenses such as paper) without
7 reimbursement in violation of Labor Code §2802.

8 **V.**

9 **CAUSES OF ACTION**

10 **FIRST CAUSE OF ACTION**

11 **PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS**
12 **FOR PENALTIES PURSUANT TO LABOR CODE §2699, ET SEQ. FOR VIOLATIONS**
13 **OF LABOR CODE §§ 2802**

14 23. Plaintiff realleges and incorporates by reference all previous paragraphs.

15 24. For at least one (1) year prior to the date of the letter sent to the Labor & Workforce
16 Development Agency and Defendant giving notice of these PAGA claims and continuing to the
17 present, Defendant has violated Labor Code §2802 with respect to Plaintiff and all Aggrieved
18 Employees.

19 25. Labor Code §2802 provides that (a) An employer shall indemnify his or her
20 employee for all necessary expenditures or losses incurred by the employee in direct consequence
21 of the discharge of his or her duties, or of his or her obedience to the directions of the employer,
22 even though unlawful, unless the employee, at the time of obeying the directions, believed them
23 to be unlawful.

24 26. Defendant has failed to reimburse Plaintiff and all Aggrieved Employees for
25 necessary expenses incurred to perform online, remote work during the period of October 6, 2019
26 to present. This includes, at a minimum, employee expenses for: internet connection services;
27 modem; router; computer; printer and ink; computer support service agreement; operating system
28 and application software; software virus protection; mobile phone (for Defendant's University of

Phoenix app and Defendant's required University of Phoenix email); cellular data service; and home office expenses for chair, desk, file cabinet, supplies, utilities, insurance, and miscellaneous office expenses such as paper) without reimbursement in violation of Labor Code §2802.

27. As of April 2020, Defendant rolled out a policy to pay monthly expense reimbursement of \$10.50 to Plaintiff and all Aggrieved Employees. This amount is insufficient to reimburse Plaintiff and All Aggrieved Employees for necessary expenditures or losses incurred by the Aggrieved Employees in direct consequence of the discharge of his or her duties. Working remotely, in whole or part, requires at a minimum, employee expenses for: internet connection services; modem/router; computer; printer and ink; computer support service agreement; operating system and application software; software virus protection; mobile phone (for Defendant's University of Phoenix app and Defendant's required University of Phoenix email); cellular data service; and home office expenses for chair, desk, file cabinet, supplies, utilities, insurance, and miscellaneous office expenses such as paper. Defendant fails to adequately reimburse Plaintiff and All Aggrieved employees for such necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties in violation of Labor Code §2802.

28. Defendant's violation of Labor Code Labor Code § 2802 was all done on a regular and consistent basis.

29. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code §2699, et seq. because of Defendant's violation of Labor Code §§ 2802.

30. Under Labor Code §§2699(f)(2) and 2699.5, for each such violation, Plaintiff and all other Aggrieved Employees are entitled to penalties in an amount to be shown at the time of trial subject to the following formula:

a. \$100 for the initial violation per employee per pay period; and

b. \$200 for each subsequent violation per employee per pay period.

31. These penalties will be allocated 75% to the Labor & Workforce Development Agency and 25% to the affected employees.

32. On October 6, 2020, Plaintiff electronically filed a PAGA Claim Notice to the LWDA, via the State of California Labor and Workforce Development Agency / Department of

Industrial Relations website (<https://dir.tfaforms.net/308>) and mailed by certified mail, return receipt requested, to Defendant setting forth the specific facts and theories of the violations alleged against Defendants, as prescribed by Labor Code §2698 et seq. (Exhibit “1”).

33. On February 18, 2021, Plaintiff electronically filed a supplemental PAGA Claim Notice to the LWDA, via the State of California Labor and Workforce Development Agency / Department of Industrial Relations website (<https://dir.tfaforms.net/310>) and mailed by certified mail, return receipt requested, to Defendant setting forth the specific facts and theories of the violations alleged against Defendants, as prescribed by Labor Code §2698 et seq. (Exhibit “2”).

34. Pursuant to Labor Code §2699.3(a)(2)(A), no notice was received by Plaintiff from the LWDA evidencing its intention to investigate within 65 calendar days of the postmark dates of the notice letters sent on October 6, 2020 and February 18, 2021. Therefore, Plaintiff is entitled to commence a civil action as though the LWDA has chosen not to investigate.

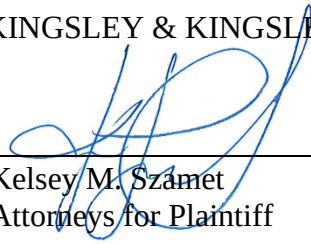
PRAYER FOR RELIEF

WHEREFORE, Plaintiff seeks judgment against THE UNIVERSITY OF PHOENIX, INC. and Does 1 to 50, Inclusive, and each of them, as follows for Plaintiff and all aggrieved employees:

- a. For penalties and other relief pursuant to Labor Code §2698 *et seq.* for Plaintiff and all other aggrieved employees.
- b. An award of prejudgment and post judgment interest;
- c. An award providing for payment of costs of suit;
- d. An award of attorneys’ fees; and
- e. Such other and further relief as this Court may deem proper and just.

DATED: April 26, 2021

KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet
Attorneys for Plaintiff

EXHIBIT "1"

New PAGA Claim Notice Summary: See below

California's Labor Code Violated: 2802 (Payment or Reimbursement of Employee Expenses)

Aggrieved Employee: Gerald Olivas

Employee: Gerald Olivas, 7067 Rockrose Terrace, Carlsbad, CA 92011
E-mail: drolivas@hotmail.com · Mobile: 760-207-6005

Employer: University of Phoenix, Legal Department, 4025 South Riverpoint Parkway, Mail Stop: CF-K612, Phoenix, AZ 85040

Payment or Reimbursement of Employee Expenses for required online work for last 12 months (10/20/2019 – 10/19/2020). This includes employee expenses for: Internet Connection Services, Modem Router, Computer, Printer, Computer Support Service Agreement, Operating System and Application Software, Software Virus Protection, Mobile Phone (for UOP App and E-Mail), Cellular Data Service, and Home Office (for chair, desk, file cabinet, supplies, utilities, and insurance). The below figures are exact expenses. Note that I maintain clear and verifiable documentation, including receipts and statements, of all of my employee expenditures incurred as a result of performing work duties for my employer.

Employee Expenses

Internet Connection Services (Spectrum)

10/20/19 through 11/04/19	\$30.50
11/05/19 through 12/04/19	\$64.99
12/05/19 through 01/04/20	\$69.99
01/05/20 through 02/04/20	\$69.99
02/05/20 through 03/04/20	\$69.99
03/05/20 through 04/04/20	\$69.99
04/05/20 through 05/04/20	\$59.49 (Minus (\$10.50) for Tech Stipend for business expenses.)
05/05/20 through 06/04/20	\$59.49 (Minus (\$10.50) for Tech Stipend for business expenses.)
06/05/20 through 07/04/20	\$48.99 (Minus (\$21.00) for Tech Stipends for business expenses.)
07/05/20 through 08/04/20	(\$69.99) (No hours worked.)
08/05/20 through 09/04/20	(\$69.99) (No hours worked.)
09/05/20 through 10/04/20	(\$69.99) (No hours worked.)

Total **\$543.42** for 12 months which subtracts 3 months of (\$209.97) and three months of Tech Stipend of (\$42.00).

Computer (Dell)

Total **\$259.59** for 12 months using 5 years useable lifespan of \$1297.97 laptop computer.

Modem Router (Netgear)

Total **\$17.99** for 12 months using 5 years useable lifespan of \$89.99 modem router.

Printer (HP)

Total **\$13.99** for 12 months using 5 years useable lifespan of \$69.99 inkjet printer.

Computer Support Services Agreement (Dell)

Total **\$0.0** computer and software under warranty (for one computer).

Software – OS and Applications (Windows and Word)

Total **\$0.0** operating system and application software purchased with above computer and was under warranty.

Software – Virus Protection (AVG)

Total **\$16.83** for 12 months (for one computer).

iPhone (for UOP App and E-Mail)

Total **\$149.80** for 12 months using 5 years useable lifespan of \$749.00 mobile phone.

Cellular Data Services (for UOP App and E-Mail)

Total **\$572.04** for 12 months (for one cellular connection).

Home Office Space and Necessary for Performing Work Duties Furniture including utilities and insurance, desk, chair, filing cabinet, and clerical miscellaneous supplies (e.g., printer cartridges, paper, and file folders)—based on \$5 per square foot for 144 feet home office of 2888 square feet home).

Total **\$720.00** for 12 months.

Grand Total is **\$2,293.66** for reasonable and necessary business expenses for 1 year (10/20/2019 – 10/19/2020)

Additional Information

Bi-Weekly Pay Periods and Hours Worked (and pay for by University of Phoenix):

Start Date 10/20/2019 End Date 11/02/2019 Pay Date 11/08/2019 Hours 30
Start Date 11/03/2019 End Date 11/16/2019 Pay Date 11/22/2019 Hours 35
Start Date 11/17/2019 End Date 11/31/2019 Pay Date 12/06/2019 Hours 35
Start Date 12/01/2019 End Date 12/14/2019 Pay Date 12/20/2019 Hours 54
Start Date 12/15/2019 End Date 12/28/2019 Pay Date 01/03/2020 Hours 04

Start Date 12/29/2019 End Date 01/11/2020 Pay Date 01/17/2020 Hours 05
 Start Date 01/12/2020 End Date 01/25/2020 Pay Date 01/31/2020 Hours 25
 Start Date 01/26/2020 End Date 02/08/2020 Pay Date 02/08/2020 Hours 48
 Start Date 02/09/2020 End Date 02/22/2020 Pay Date 02/28/2020 Hours 48
 Start Date 02/23/2020 End Date 03/07/2020 Pay Date 03/13/2020 Hours 48
 Start Date 03/08/2020 End Date 03/21/2020 Pay Date 03/27/2020 Hours 36
 Start Date 03/22/2020 End Date 04/04/2020 Pay Date 04/10/2020 Hours 20
 Start Date 04/05/2020 End Date 04/18/2020 Pay Date 04/24/2020 Hours 52
 Start Date 04/19/2020 End Date 05/02/2020 Pay Date 05/08/2020 Hours 48
 Start Date 05/03/2020 End Date 05/16/2020 Pay Date 05/22/2020 Hours 48
 Start Date 05/17/2020 End Date 05/30/2020 Pay Date 06/05/2020 Hours 36
 (No additional work offered after this last 05/17/2020 Bi-Weekly Pay Period.)
 Total **16 pay periods** with pay for a total of **572 hours**

This above pay periods hourly work is for teaching dissertation students as Dissertation Chair Primary Teacher and Dissertation Chair Engagement Teacher using Blackboard Ultra online learning system (including Blackboard mobile app) and other required online instructional systems including Tk20 dissertation (research) evaluation system, IRBNet dissertation privacy and confidentiality system, University of Phoenix e-mail system, AT&T mobile cell service (for person-to-person instructional calls).

Dissertation Chair Primary Teacher or Dissertation Chair Engagement classes were:

10/22/2019 – 12/16/2019, DOC/742, Doctoral Project IV, *Primary Dissertation Chair Teacher*
 (**Declined** by Scheduler but worked to prepare for class.) (8 weeks)
 10/22/2019 – 12/16/2019, DOC/741B, Doctoral Dissertation, *Dissertation Chair Engagement*
 (8 weeks) (JES)
 12/03/2019 – 02/10/2020, DOC/742, Doctoral Project IV, *Primary Dissertation Chair Teacher*
 (**Declined** by Scheduler but worked to prepare for class.) (8 weeks)
 01/21/2020 – 03/16/2020, DOC/742, Doctoral Project IV, *Primary Dissertation Chair Teacher*
 (8 weeks) (HUG) ✓
 03/03/2020 – 04/27/2020, DOC/742, Doctoral Project IV, *Primary Dissertation Chair Teacher*
 (**Declined** by Scheduler but worked to prepare for class.) (8 weeks)
 03/31/2020 – 05/25/2020, DOC/742B, Doctoral Project IV, *Primary Dissertation Chair Teacher*
 (8 weeks) (HUG) ✓

10/7/2020



State of California

Labor and Workforce Development Agency /
Department of Industrial Relations

Case #

LWDA-CM-
808879-20

Private Attorneys General Act (PAGA) – Filing

New PAGA Claim Notice

Your Information (Person Who is Filing)

Your First Name *

Gerald

Your Last Name *

Olivas

Firm Name (if any) *

in pro per

(Enter "in pro per" if you are representing yourself)

Your Email Address *

Your Street Name, Number and Suite/Apt *

Your Mobile Phone Number

Your City *

Your Work Phone Number

Your State *

California



Your Zip/Postal Code *

Plaintiff Information

Plaintiff/Aggrieved Employee Name *

Gerald Olivas

Plaintiff/Aggrieved Employee Occupation *

Associate Faculty

Add Additional Plaintiffs

Employer Information

Employer Entity Type

Corporation



Employer Name *

University of Phoenix

Maximum 80 Character Limit

Employer Street Name, Number and Suite/Apt

4025 South Riverpoint Parkway (Mail Stop: CF-K612)

Employer City

Phoenix

Employer State

Arizona



Employer Zip/Postal Code

85040

Employer Industry *

Other



Employer Industry for "Other" *

Higher Education

Add additional defendants

- ☐ Add any entity other than an individual
- ☐ Add an individual/sole proprietor employer

Notice General Information

Estimated Number of Employees Impacted by Violations *

1

Notice Violations – Check All that Apply ***Child Labor – Specify Ages**

- ☐ Child Labor
- ☐ Misclassification Employee Classified as Contractor
- ☐ Misclassification NonExempt Classified as Exempt
- ☐ Minimum Wage
- ☐ Overtime
- ☐ Not paid for all hours worked
- ☐ Not paid wages due on termination
- ☐ Other Unpaid Wages
- ☐ Tips or Gratuities
- ☒ Payment or Reimbursement of Employee Expenses
- ☐ Improper Form of Payment Including NSF Checks
- ☐ Kickbacks
- ☐ Meal and Rest Breaks
- ☐ Sick Leave
- ☐ Lactation Accommodation (Labor Code 1030–1033)
- ☐ Not providing required time off, other
- ☐ Pay Discrimination on basis of sex, (Labor Code 1197.5)
- ☐ No Wage Statements
- ☐ Improper or Incomplete Wage Statements
- ☐ Other Notice or Posting or Recordkeeping
- ☐ Public Works (Labor Code 1720 – 1815)
- ☐ Apprenticeship (Labor Code 3070 – 3098)
- ☐ Occupational Safety and Health (Labor Code 6300 et seq)
- ☐ No Workers' Compensation
- ☐ Licensing, Registration, or Permit
- ☐ Unfair Immigration Activities
- ☐ Agricultural Labor Relations
- ☐ Industrial Homework
- ☐ Retaliation for Protected Status or Activity (Specify)
- ☐ Other

PAGA Claim Type – Check All that Apply *

- ☒ Notice asserts one or more Labor Code violations listed in Labor Code 2699.5– not curable subject to 2699.3(a)
- ☐ Notice asserts one or more OSHA violations subject to requirements of 2699.3(b)
- ☐ Includes one or more violations not listed in Labor Code 2699.5 – curable subject to 2699.3(c)

Filing Fee

A filing fee of \$75 is required to file a new PAGA claim notice.

IFP

☐ I wish to claim In Forma Pauperis and am attaching a Confidential Request to Waive Court Fees (Judicial Council Court Form FW-001) or similar form to this submission.

Billing information

Billing First Name *

Gerald

Billing Last Name *

Olivas

Billing Email *

Billing Phone

Billing Street Name, Number and Suite/Apt *

Billing City *

Billing State *

California

Billing Zip/Postal Code *

Credit Card Type *

Master Card

Credit Card Number *

CVV Number *

Credit Card Expiration Month *

mm

Credit Card Expiration Year *

yyyy

Notice and Other Attachments

PAGA Claim Notice (must be a .pdf) *

Choose File New PAGA Clai...ld Olivas.pdf

Other Attachment – (if any) (must be a .pdf)

Choose File No file chosen

[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

Submit

EXHIBIT "2"

KINGSLEY & KINGSLEY

| L A W Y E R S |

February 18, 2021

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

The University of Phoenix, Inc.
4025 S. Riverpoint Parkway, MS CF-K612
Phoenix, Arizona 85040

Re: GERALD WHILTON OLIVAS, v. THE UNIVERSITY OF PHOENIX, INC.
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents GERALD WHILTON OLIVAS, ("Plaintiff") and a proposed group of current and former employees working for The University of Phoenix, Inc. ("Defendant") in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant's aggrieved employees, as defined immediately below. Plaintiff sends this letter to supplement the notice letter electronically filed on October 7, 2020 Case # LWDA-CM-808879-20.

Plaintiff wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of a group of aggrieved employees defined as: All employees of THE UNIVERSITY OF PHOENIX, INC., in the State of California who have worked one or more pay periods in whole or in part off site since one (1) year prior to the date of Plaintiff's notice letter to the Labor & Workforce Development Agency ("LWDA") and continuing to the present. ("Aggrieved Employees").

Labor Code § 2802 provides that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.

Defendant failed to reimburse Plaintiff and all Aggrieved Employees' for necessary expenditures or losses incurred by the Aggrieved Employees in direct consequence of the discharge of his or her duties. Specifically, Defendant has failed to reimburse Plaintiff and all Aggrieved Employees for necessary expenses incurred to perform off site, remote work. This includes, at a minimum, Aggrieved Employees' expenses for: internet connection services, including high speed connections; modem; router; computer; range extender; printer and ink; computer support service agreement; operating system and application software; software virus protection; mobile phone (for phone calls, Defendant's University of Phoenix app and Defendant's required University of

LABOR & WORKFORCE DEVELOPMENT AGENCY

California Labor Code §2699 Penalties

February 18, 2021

Page 2 of 2

Phoenix email); cellular data service, including upgraded services; mobile phone service contract; diagnostic and optimization software; back-up and recovery services; and home office expenses for chair, desk, file cabinet, supplies, utilities, insurance, and miscellaneous office expenses such as paper).

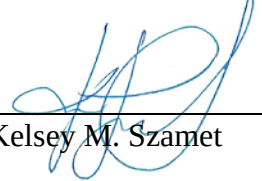
These tools/equipment were not provided by Defendant and Defendant failed to reimburse Plaintiff and all Aggrieved Employees in violation of Labor Code §2802.

As of April 2020, Defendant rolled out a policy to pay monthly expense reimbursement of \$10.50 to Plaintiff and all Aggrieved Employees. This amount is insufficient to reimburse Plaintiff and All Aggrieved Employees for necessary expenditures or losses incurred by the Aggrieved Employees in direct consequence of the discharge of his or her duties. Working remotely, in whole or part, requires at a minimum, employee expenses for: internet connection services, including high speed connections; modem; router; computer; range extender; printer and ink; computer support service agreement; operating system and application software; software virus protection; mobile phone (for phone calls, Defendant's University of Phoenix app and Defendant's required University of Phoenix email); cellular data service, including upgraded services; mobile phone service contract; diagnostic and optimization software; back-up and recovery services; and home office expenses for chair, desk, file cabinet, supplies, utilities, insurance, and miscellaneous office expenses such as paper. Defendant fails to adequately reimburse Plaintiff and All Aggrieved employees for such necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties in violation of Labor Code §2802.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code § 2802 with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 

Kelsey M. Szamet

KMS/jl

- Cc: 1. LWDA Letter filed via Electronic Submission: <https://dir.tfaforms.net/310>
2. The University of Phoenix, Inc. via USPS Certified Mail # 7018 1130 0001 5815 0706



State of California
Labor and Workforce Development Agency /
Department of Industrial Relations

Private Attorneys General Act (PAGA) – Filing

Amended PAGA Claim Notice

PAGA Number (LWDA-CM-) : *

Please enter only the eight digit number after "LWDA-CM-" in the following format, "XXXXXX-XX".

[Search for PAGA Case number](#)

Your Information (Attorney or Employee – Whoever is Filing)

Your First Name *

Your Last Name *

Your Email Address *

Your Street Name, Number and Suite/Apt *

Your Mobile Phone Number

Your City *

Your Work Phone Number

Your State *

Your Zip/Postal Code *

Amended Notice Detail

Please provide the details of the amendments to the original notice. *

- ☐ Adding additional claims
- ☐ Adding additional corporate defendants
- ☐ Adding additional Individual/Sole proprietor defendants
- ☐ Adding additional plaintiffs
- ☒ Other (please specify)

Please specify "other" *

\$10.50 to employees but
amount is insufficient.

Amended Notice

Amended Notice *

Choose File PAGA Letter- T...nix, Inc..pdf

Other Attachment (if any) (must be a .pdf)

Choose File No file chosen

[Add Another Attachment](#)

Should you have questions regarding this online form, please contact PAGAInfo@dir.ca.gov

IMPORTANT NOTICE OF REDACTION RESPONSIBILITY: All filers must redact: Social Security or taxpayer identification numbers; personal addresses, personal telephone numbers, personal email addresses, dates of birth; names of minor children; & financial account numbers. This requirement applies to all documents, including attachments.

☒ I understand that, if I file, I must comply with the redaction rules consistent with this notice.

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Submit

Thank you. If you provided an email address with your submission, a confirmation regarding your submission will be emailed to you. Otherwise, you can search for the case to verify that your submission was properly received.

[Click Here](#) to Search Case

From: [FormAssembly](#) on behalf of [DIR PAGA Unit](#)
To: [Service Email](#)
Subject: Thank you for your Amended PAGA Claim Notice Submission.
Date: Thursday, February 18, 2021 10:05:13 AM

02/18/2021 10:05:00 AM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Amended PAGA Claim Notice

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm