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14 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
15 **COUNTY OF CONTRA COSTA**
16

17 **CHERYL BURLEIGH**, on a representative
basis,

18 Plaintiff,

19 vs.

20
21 **NATIONAL UNIVERSITY**, a California Non-
Profit Corporation,

22 Defendant.
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FILED
MAY 06 2021

K. BIEKER CLERK OF THE COURT
SUPERIOR COURT OF CALIFORNIA
COUNTY OF CONTRA COSTA

By _____ B. Root, Deputy Clerk

SUMMONS ISSUED

THIS CASE IS ASSIGNED
TO DEPT 07, FOR ALL
PURPOSES.

CASE NO. **C21-00939**

LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT REPRESENTATIVE ACTION

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

1 Plaintiff Cheryl Burleigh (“Plaintiff”), as a representative of the State of California pursuing
2 claims for civil penalties for violations of the Labor Code against herself and other aggrieved employees,
3 complains and alleges the following:

4 **INTRODUCTION**

5 1. This is a representative action under the Private Attorneys General Act of 2004, codified
6 at California Labor Code (“Labor Code”) § 2698 *et seq.* (“PAGA”) for civil penalties, attorneys fees, and
7 costs on behalf of Plaintiff and all other instructors or other employees employed by National University
8 (“National” or “Defendant”) in California and who work remotely (“Aggrieved Employees”) from March
9 2, 2020 to the trial date (“PAGA Period”) for failure to reimburse business-related expenses in violation
10 of Labor Code § 2802.

11 2. During the PAGA Period, Defendant required Aggrieved Employees to teach online
12 courses or otherwise work remotely from home. Aggrieved Employees incurred business expenses in
13 direct consequence of the discharge of their job duties, including home internet costs, home or cellular
14 phone expenses, ink toner/cartridges and paper, and other expenses required to perform their work from
15 home. Defendant did not reimburse Aggrieved Employees for any of these necessarily incurred business
16 expenses in violation of Labor Code § 2802.

17 **PARTIES**

18 3. Plaintiff is a resident of Danville, California who has been employed by Defendant as an
19 adjunct instructor since 2017 teaching online courses remotely from home. During her employment,
20 Plaintiff incurred necessary business expenses in performing her work remotely for Defendant. Defendant
21 was aware of this because the tasks it required her to perform necessitated incurring such expenses, yet
22 Defendant failed to reimburse her.

23 4. Defendant is a private non-profit university incorporated in California with its headquarters
24 in La Jolla, California.

25 **JURISDICTION**

26 5. This Court has jurisdiction over Plaintiff’s PAGA claim pursuant to California Labor Code
27 § 2699(a).
28

6. On March 2, 2021, Plaintiff provided Notice pursuant to Labor Code § 2699.3 to the LWDA (via its website) and to Defendant (via certified mail). The LWDA has not provided notice to Plaintiff regarding its intention to investigate or not investigate Plaintiff's claims.

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

VENUE

8. Venue is proper in the County of Contra Costa pursuant to California Code of Civil Procedure §§ 395(a) and 395.5. Plaintiff's employment contract with Defendant was for teaching online courses remotely. Plaintiff performed this work from her residence in Danville, California in the County of Contra Costa. She incurred business expenses here without reimbursement, and thus the obligation to reimburse arose here, as did liability.

FACTUAL ALLEGATIONS

9. Defendant is a private, non-profit university that offers both undergraduate and graduate programs at its main campus in San Diego, California and over 20 campus locations 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. Many of Defendant's courses are offered online, taught by instructors who work remotely. To teach these courses, Defendant employs instructors, including Aggrieved Employees.

10. During the PAGA Period, Plaintiff and Aggrieved Employees were required to teach these online courses from their homes. Aggrieved Employees incurred expenses carrying out their work-related duties teaching online courses from their homes including but not limited to home internet costs, home or mobile telephone expenses, ink toner/cartridges and paper costs, and other expenses associated with working from home. Defendant did not reimburse Aggrieved Employees for these necessarily incurred business expenses fully or at all.

11. In addition, as a result of the COVID-19 pandemic and resulting state of emergency declared in California on March 4, 2020, all non-essential employees were required to work from home. Defendant states on its website: “National University will continue to provide course instruction, student

1 services, and advising in an online format to support academic continuity and help students stay on track
2 to meet their academic goals. At this time, only a select group of staff members have received direct
3 notice from their supervisors to come to campus to maintain critical operations and functions. If your job
4 duties can be performed remotely, your supervisor will work with you to facilitate a successful transition
5 plan.”

6 12. Also as stated on its website, Defendant informed all remote employees (not just
7 instructors) that they were required to “be available . . . by telephone and email during core hours,” “return
8 calls and emails in a timely manner,” “participate in any required video/telephone conferences,” “have
9 office calls forwarded to the remote site (if/when possible),” and “answer the telephone during core
10 hours.” Defendant also provided Aggrieved Employees with access to videoconferencing software that
11 it expected them to use.

12 13. Despite Defendant’s transition to all online courses and remote work by all employees
13 other than “a select group of staff members” as a result of the COVID-19 pandemic, Defendant did not
14 and does not reimburse Aggrieved Employees for home office expenses including but not limited to home
15 internet costs, home or mobile telephone expenses, ink toner/cartridges and paper costs, and other
16 expenses associated with working from home to carry out their job duties for Defendant.

17 14. Defendant was aware that Aggrieved Employees incurred these expenses in direct
18 consequence of the discharge of their job duties because Defendant required and/or expected Aggrieved
19 Employees to perform their work duties from home, and such duties required such expenditures.
20 Defendant, however, did not reimburse Aggrieved Employees for such expenses incurred throughout the
21 PAGA Period, as required under Labor Code § 2802.

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

23 15. Plaintiff incorporates the foregoing paragraphs as fully set forth herein. Plaintiff seeks
24 PAGA penalties on behalf of herself, Aggrieved Employees, and the State of California for violations of
25 Labor Code § 2802.

26 16. During the PAGA Period, Defendant failed to reimburse Plaintiff and Aggrieved
27 Employees for necessarily incurred business expenses, including home internet costs, home or mobile
28

1 telephone expenses, ink toner/cartridges and paper costs, and other expenses associated with working
2 from home incurred in carrying out their job duties for Defendant.

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

6 **PRAYER FOR RELIEF**

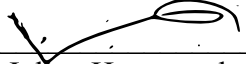
7 **WHEREFORE**, Plaintiff requests the following relief:

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

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12 Dated: May 6, 2021

Respectfully submitted,

13 HAMMONDLAW, P.C.

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16 By: Julian Hammond

17 *Attorneys for Plaintiff*
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