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FILED
 Superior Court of California
 County of Los Angeles

09/07/2022

Sherri R. Carter, Executive Officer / Clerk of Court

By: K. Martinez Deputy

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

11 **COUNTY OF LOS ANGELES**

12
 13 **ALBERT KNAPP and ELHAM TABIBIAN,**
 individually and on behalf of all others similarly
 14 situated,

15 Plaintiffs,

16 vs.

17 **PEPPERDINE UNIVERSITY,** a California
 Non-Profit Corporation,

18 Defendant.
 19
 20

CASE NO. 22STCV16736

**FIRST AMENDED CLASS AND
 REPRESENTATIVE ACTION COMPLAINT
 FOR:**

- (1) **Failure to Reimburse Business Expenses (Cal. Lab. Code § 2802);**
- (2) **Unfair, Unlawful, or Fraudulent Business Practices (Cal. Bus. & Prof. Code § 17200 et seq.); and**
- (3) **Civil Penalties Under Private Attorneys General Act (Cal. Labor code § 2699)**

DEMAND FOR JURY TRIAL

1 Plaintiffs Albert Knapp and Elham Tabibian (“Plaintiffs”), on behalf of themselves and all others
2 similarly situated, complain and allege the following:

3 **INTRODUCTION**

4 1. This is a class action under California Code of Civil Procedure § 382 seeking damages for
5 unreimbursed expenses, interest, injunctive relief, restitution, and reasonable attorneys’ fees and costs
6 under California Labor Code (“Labor Code”) § 2802, California Civil Procedure Code § 1021.5, and
7 California Unfair Competition Law (“UCL”), Business & Professions Code §§ 17200 *et seq.*, on behalf
8 of Plaintiffs and all other similarly situated individuals working remotely as adjunct instructors or in a
9 similar capacity (“Class Members”), employed by Pepperdine University (“Pepperdine” or “Defendant”)
10 in California from four years prior to the filing of this Complaint through to the trial date (“Class Period”).
11 Defendant’s violations of California’s wage and hour laws and unfair competition laws, as described more
12 fully below, have been ongoing for at least the past four years, and are continuing at present.

13 2. Throughout the entire Class Period, Pepperdine offered online courses to students, taught
14 remotely by Class Members. To teach these courses, Class Members incurred business expenses in
15 carrying out their job duties for Pepperdine, including but not limited to the cost of internet service,
16 cellular phone charges, software, ink toner/cartridges, paper, and other expenses associated with working
17 from home or remotely (“Home Office Expenses”).

18 3. In addition, during the part of the Class Period from March 2020 through to August 2021,
19 Pepperdine required and/or expected all adjunct instructors to carry out their job duties remotely from
20 home. On March 11, 2020, in response to the Covid-19 pandemic, Pepperdine directed all faculty to begin
21 delivering courses virtually from home beginning on March 16, 2020. This directive continued through
22 2020 and for much of 2021 for many of the adjunct instructors. Class Members incurred Home Office
23 Expenses as a result of Pepperdine’s directive and in carrying out their job duties for Pepperdine.

24 4. Pepperdine knew that Class Members incurred Home Office Expenses, as described in
25 paragraphs 2 and 3 above, yet, Defendant did not maintain a policy or practice of reimbursing Class
26 Members for these necessarily incurred expenses, at any point during the Class Period, in violation of
27 Labor Code § 2802.

28 5. As a result of the above Labor Code violations, Defendant committed unfair, unlawful, and
fraudulent business practices, in violation of the UCL.

6. Plaintiffs also bring this action as a representative action under the California Labor Code’s
Private Attorneys General Act (“PAGA”), Cal. Labor Code § 2698 *et seq.*, for civil penalties on behalf of
themselves and all other individuals working remotely as adjunct instructors or in a similar capacity for

1 Defendant in California (“Aggrieved Employees”) for the violation Labor Code § 2802. The “PAGA
2 Period” is from May 20, 2021 to the present.

3 **PARTIES**

4 7. Plaintiff Knapp is a resident of Redondo Beach, California who was employed by
5 Pepperdine as an adjunct instructor from April 2020 until approximately August 2021. During his
6 employment, Plaintiff Knapp incurred necessary business expenses in performing his work remotely for
7 Defendant. Defendant was aware of this because the tasks it required Plaintiff Knapp to perform and the
8 manner in which Defendant required Plaintiff to perform them necessitated incurring such expenses, yet
9 Defendant failed to reimburse him.

10 8. Plaintiff Tabibian is a resident of Encino, California who was employed by Pepperdine as
11 an adjunct instructor during the summer session 2020 and the summer session 2021. During her
12 employment, Plaintiff Tabibian incurred necessary business expenses in performing her work remotely
13 for Defendant. Defendant was aware of this because the tasks it required Plaintiff Tabibian to perform
14 and the manner in which Defendant required Plaintiff to perform them necessitated incurring such
15 expenses, yet Defendant failed to reimburse her.

16 9. Defendant is a private non-profit university, incorporated in California and located in
17 Malibu, California.

18 **JURISDICTION**

19 10. This Court has jurisdiction over Plaintiffs’ and Class Members’ claims for failure to
20 reimburse necessarily incurred business expenses pursuant to Labor Code § 2802.

21 11. This Court has jurisdiction over the claims for restitution under the UCL, Business &
22 Professions Code §§ 17203 and 17204 arising from Defendant’s violations of Labor Code § 2802.

23 12. This Court has jurisdiction over claims for reasonable attorney’s fees and costs pursuant
24 to Labor Code § 2802(c), and Cal. Civ. Proc. Code § 1021.5.

25 13. This Court has jurisdiction over Plaintiffs’ claims for civil penalties under Labor Code
26 § 2699. On May 20, 2022, Plaintiffs provided PAGA Notice pursuant to Labor Code § 2699.3 to the
27 California Labor & Workforce Development Agency (“LWDA”) and Defendant. The LWDA has
28 provided no notice to Plaintiffs within the period specified in Labor Code § 2699.3 regarding its intention
to investigate or not investigate any other claims alleged in the PAGA Notice. Plaintiffs have therefore
fully complied with the PAGA procedural requirements and may commence this representative action
pursuant to Labor Code § 2699.

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14. Venue is proper in the County of Los Angeles pursuant to Cal. Civ. Proc. Code §§ 395(a) and 395.5. Defendant's principal place of business is in Malibu, in the County of Los Angeles.

FACTUAL ALLEGATIONS COMMON TO ALL CLASS MEMBERS

15. Defendant is a private, non-profit, university that offers both undergraduate and graduate degrees, as well as graduate and executive education certificates. The university is based in Malibu, and has additional locations in West Los Angeles, Calabasas, and Irvine. In order to teach its programs, Defendant employs full-time and part-time adjunct faculty. Upon information and belief, Pepperdine employs approximately 700 faculty members, approximately 400 of whom are full time and approximately 300 of whom are part-time adjunct instructors.

16. Pepperdine offered online courses throughout the entire Class Period and employed faculty to deliver those courses online. Class Members who taught these online courses incurred Home Office Expenses including internet costs, in order to be able to teach each course online, and cellular telephone costs, in order to be able to communicate with students.

17. Between March 16, 2020, and August 30, 2021, Defendant maintained a policy and/or practice of requiring all adjunct instructors to teach classes remotely and online as a result of the COVID-19 pandemic. On March 11, 2020, Defendant stated on its website: “The last day of scheduled in-person classes at all five schools and across every campus will be on Friday, March 13. These classes will transition to online beginning the week of March 16” In-person classes resumed in the fall semester of 2021, in which classes commenced on August 30, 2021.

18. The directive to work remotely from home continued for most adjunct instructors throughout 2020 and for much of 2021.

19. As a result of working remotely during the COVID-19 pandemic, in direct consequence of carrying out their duties, or their obedience to the directions of Defendant, Class Members incurred Home Office Expenses including internet costs, in order to be able to teach each course online, and cellular telephone costs, in order to be able to communicate with students.

20. Throughout the Class Period, Class Members have been harmed by Defendant's unlawful reimbursement policy and/or lack of a lawful reimbursement policy in that they have not been paid fully or at all for their expenses in carrying out their job duties for Defendant, thereby diminishing their agreed-upon compensation, in substantial amounts to be proved at trial.

21. Even during the COVID-19 pandemic, despite Defendant's transition to all online courses and remote work by all employees other than select essential employees, and despite knowing that Class

1 Members incurred Home Office Expenses, Defendant did not maintain a policy and/or practice of fully
2 reimbursing Class Members for these expenses.

3 22. As a result of its conduct described above, Defendant violated Labor Code § 2802, and
4 Class Members are entitled to reimbursement for these expenses, and their reasonable attorneys' fees and
5 costs.

6 23. From at least four years prior to filing this complaint, through the present, Defendant has
7 adopted and used unfair and/or unlawful business practices to reduce Class Members' compensation and
8 increase profits. These unfair business practices are based on the failure to reimburse Class Members for
9 necessary business expenses.

10 **CLASS ACTION ALLEGATIONS**

11 24. Plaintiffs bring this class action pursuant to Cal. Civ. Pro. Code § 382 on behalf of the
12 Class. Upon information and belief, there are more than 500 Class Members. The members of the Class
13 are so numerous that joinder of all members is impractical.

14 25. Plaintiffs' claims are typical of the claims of the members of the Class because they were
15 required and/or directed by Pepperdine to work remotely during the Class Period and incurred Home
16 Office Expenses as a result, without reimbursement.

17 26. Plaintiffs will fairly and adequately represent the interests of the Class. Plaintiffs have no
18 conflict of interest with any member of the Class. Plaintiffs have retained competent and experienced
19 counsel in complex class action litigation. Plaintiffs' counsel have the expertise and financial resources
20 to adequately represent the interests of the Class.

21 27. Common questions of law and fact exist as to all members of the Class and predominate
22 over any questions solely affecting individual members of the Class. Among the questions of law and fact
23 common to the Plaintiffs and the Class are the following:

- 24 a. Whether Class Members incurred necessary business expenses in carrying out their job
25 duties for Defendant during the Class Period;
- 26 b. Whether Defendant knew or should have known that Class Members incurred business
27 expenses in carrying out their job duties;
- 28 c. Whether Defendant violated Labor Code § 2802 by failing to reimburse Class Members
for necessary business expenses;
- d. Whether Defendant's violation of Labor Code § 2802 constitutes unfair, unlawful, and
fraudulent business practices, in violation of UCL;

- 1 e. Whether Plaintiffs and Class Members are entitled to restitution under Business &
2 Professions Code § 17200 *et seq.* for unreimbursed business expenses; and
3 f. The proper formula(s) for calculating damages, interest, and restitution owed to Plaintiffs
4 and Class Members;
5 g. Whether the Class is entitled to declaratory relief; and
6 h. Whether the Class is entitled to injunctive relief.

7 28. Class action treatment is superior to any alternative to ensure the fair and efficient
8 adjudication of the controversy alleged herein. Such treatment will permit a large number of similarly
9 situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and
10 without duplication of effort and expense that numerous individual actions would entail. No difficulties
11 are likely to be encountered in the management of this class action that would preclude its maintenance
12 as a class action, and no superior alternative exists for the fair and efficient adjudication of this
13 controversy. Class Members are readily identifiable from Defendant's employee rosters and/or payroll
14 records.

15 29. Defendant's actions are generally applicable to the entire Class. Prosecution of separate
16 actions by individual members of each Class creates the risk of inconsistent or varying adjudications of
17 the issues presented herein, which, in turn, would establish incompatible standards of conduct for
18 Defendant.

19 30. Because joinder of all members is impractical, a class action is superior to other available
20 methods for the fair and efficient adjudication of this controversy. Furthermore, the amounts at stake for
21 many members of each Class, while substantial, may not be sufficient to enable them to maintain separate
22 suits against Defendant.

23 **FIRST CAUSE OF ACTION**
24 **Failure to Reimburse Business Expenses**
25 **[Cal. Labor Code § 2802]**

26 31. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the
27 preceding paragraphs.

28 32. Under Labor Code § 2802, "[a]n 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."

33. Defendant did not reimburse Plaintiffs and Class Members for necessary business
expenses, including but not limited to cost of internet service, cellular phone charges, software, ink toner/

1 cartridges, papers, and other expenses associated with working from home, in violation of Labor Code §
2 2802.

3 34. Defendant knew that Class Members incurred these expenses to perform their duties, yet
4 Defendant did not maintain a policy or practice of reimbursing Class Members for these expenses,
5 throughout the Class Period.

6 35. Plaintiffs, on behalf of themselves and all other Class Members, request relief as described
7 below.

8 **SECOND CAUSE OF ACTION**
9 **Violation of Unfair Competition Laws**
10 **[Cal. Bus. & Prof. Code § 17200 et seq.]**

11 36. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the
12 preceding paragraphs.

13 37. The UCL prohibits any unlawful, unfair, or fraudulent business practices. Labor Code
14 § 90.5(a) states that it is the public policy of California to vigorously enforce minimum labor standards in
15 order to ensure employees are not required to work under substandard and unlawful conditions, and to
16 protect employers who comply with the law from those who attempt to gain competitive advantage at the
17 expense of their workers by failing to comply with minimum labor standards. Through its actions alleged
18 herein, Defendant has engaged in unfair competition within the meaning of the UCL, because Defendant's
19 conduct has violated state wage and hour laws as herein described.

20 38. Beginning at least four years prior to the filing of this Complaint, Defendant committed,
21 and continues to commit, acts of unfair competition, as defined in the UCL by, among other things,
22 engaging in the acts and practices described above—to wit, wrongfully denying Class Members
23 reimbursement for their necessarily incurred expenses described above. Defendant's conduct as herein
24 alleged has damaged and was substantially injurious to Plaintiffs and the Class.

25 39. The harm to Plaintiffs and the Class resulting from Defendant's violation of Labor Code §
26 2802 outweighs the utility, if any, of Defendant's policies and practices. Therefore, Defendant's actions
27 described herein constitute an unfair business practice or act within the meaning of the UCL.

28 40. Plaintiffs, on behalf of themselves and all other Class Members, request relief as described
below.

THIRD CAUSE OF ACTION
Civil Penalties
[Labor Code §§ 2698 *et seq.*]

41. Plaintiffs re-allege and incorporate by reference each and every allegation set forth in the preceding paragraphs.

42. Plaintiffs are “aggrieved employees” under PAGA as they were employed by Defendant during the PAGA Period and suffered the violation of Labor Code § 2802 alleged herein.

43. During the PAGA Period, Defendant did not maintain a policy of reimbursing Aggrieved Employees for their business expenses incurred in carrying out their job duties for Defendant. These expenses include but are not limited to cost of internet service, cellular phone charges, software, ink toner/ cartridge and papers, and other expenses associated with working from home, in violation of Labor Code § 2802.

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

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, on behalf of themselves and the Class, pray for the following relief:

A. An Order that this action may proceed and be maintained as a class action, with the Class as designated and defined in this Complaint, and that Plaintiffs and their counsel be certified as representatives and Counsel for the Class, respectively.

B. On the First Cause of Action: That the Court find and declare that Defendant violated Labor Code § 2802 by failing to reimburse Plaintiffs and Class Members for necessary business expenses, and award Plaintiffs and the Class reimbursement of such expenses.

C. On the Second Cause of Action: That the Court find and declare Defendant has violated the UCL by failing to reimburse Class Members for their necessarily incurred business expenses resulting from carrying out their job duties remotely from home; award restitution to the Class in the amount of unreimbursed expenses; and that the Court enjoin Defendant from continuing to enforce policies and practices that violate Labor Code § 2802.

D. On the Third Cause of Action: That the Court award PAGA Civil Penalties, and attorneys’ fees and costs, as provided under Labor Code § 2699.

1 E. That the Court award attorneys' fees and costs of suit to the extent permitted by law,
2 including, but not limited to, Labor Code § 2802(c), 2699, and Cal. Civ. Pro. Code § 1021.5.

3 F. Declaratory and injunctive relief; and

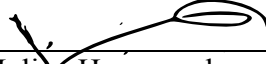
4 G. All other relief as this Court deems proper.

JURY DEMAND

5 Plaintiffs hereby demand trial by jury of the Labor Code § 2802 claims against Defendant alleged
6 herein.

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8 Dated: September 7, 2022

Respectfully submitted,

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12 By: Julian Hammond
HAMMONDLAW, P.C.

13 *Attorneys for Plaintiffs*
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