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

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

18 Plaintiff,

19 v.

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

22 Defendant.

CASE NO. C21-00939

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

- (1) **Failure to Reimburse Necessary Business Expenses (Cal. Lab. Code § 2802); and**
- (2) **Civil Penalties Pursuant to Private Attorneys General Act (Cal. Lab. 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 class action under California Code of Civil Procedure § 382 seeking
5 reimbursement of business expenses and attorneys’ fees and costs under California Labor Code (“Labor
6 Code”) § 2802 on behalf of Plaintiff and all other similarly situated adjunct instructors (“Class
7 Members”) employed by National University (“National” or “Defendant”) in California from December
8 10, 2019 to January 18, 2022 (“Class Period”).

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

15 3. Plaintiff also brings this action as a representative action under the Private Attorneys
16 General Act of 2004, codified at Labor Code § 2698 *et seq.* (“PAGA”) for civil penalties, attorneys’
17 fees, and costs on behalf of herself and other adjunct instructors employed by Defendant in California
18 (“Aggrieved Employees”) from December 10, 2019, to January 18, 2022 (“PAGA Period”) for failure to
19 reimburse business-related expenses in violation of Labor Code § 2802.

20 **PARTIES**

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

26 5. Defendant is a private non-profit university incorporated in California with its headquarters
27 in La Jolla, California.

1 **JURISDICTION**

2 6. This Court has jurisdiction over Plaintiff and Class Members’ claims for reimbursement
3 of necessary business expenses under Labor Code § 2802.

4 7. This Court has jurisdiction over claims for attorneys’ fees and costs, including pursuant
5 to Labor Code §§ 2802 and 2699(g) and Cal. Civ. Proc. Code § 1021.5.

6 8. This Court has jurisdiction over Plaintiff’s PAGA claim pursuant to California Labor
7 Code § 2699(a).

8 9. On March 2, 2021, Plaintiff provided Notice pursuant to Labor Code § 2699.3 to the Labor
9 & Workforce Development Agency (“LWDA”) and Defendant. The LWDA has not provided notice to
10 Plaintiff regarding its intention to investigate or not investigate Plaintiff’s claims.

11 10. On September 27, 2021, Plaintiff provided Amended PAGA Notice informing the LWDA
12 and Defendant that the PAGA statute of limitations had been tolled for 178 days as a result of the Judicial
13 Council of California’s adoption of Emergency Rule 9, which tolled all civil statutes of limitations from
14 April 6, 2020, until October 1, 2020, changing the start of the PAGA Period.

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

17 **VENUE**

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

23 **FACTUAL ALLEGATIONS**

24 13. Defendant is a private, non-profit university that offers both undergraduate and graduate
25 programs at its main campus in San Diego, California and over 20 campus locations throughout
26 California. Defendant offers undergraduate and graduate degrees and certificate programs. These
27 programs are offered throughout the year during the fall, spring, and summer sessions. Many of
28

1 Defendant's courses are offered online, taught by instructors who work remotely. To teach these courses,
2 Defendant employs instructors, including Class Members.

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

9 15. In addition, as a result of the COVID-19 pandemic and resulting state of emergency
10 declared in California on March 4, 2020, all non-essential employees, including Class Members, were
11 required to work from home. Defendant states on its website: "National University will continue to
12 provide course instruction, student services, and advising in an online format to support academic
13 continuity and help students stay on track to meet their academic goals. At this time, only a select group
14 of staff members have received direct notice from their supervisors to come to campus to maintain critical
15 operations and functions. If your job duties can be performed remotely, your supervisor will work with
16 you to facilitate a successful transition plan."

17 16. Also as stated on its website, Defendant informed all remote employees, including Class
18 Members, that they were required to "be available . . . by telephone and email during core hours," "return
19 calls and emails in a timely manner," "participate in any required video/telephone conferences," "have
20 office calls forwarded to the remote site (if/when possible)," and "answer the telephone during core hours."
21 Defendant also provided Class Members with access to videoconferencing software that it expected them
22 to use.

23 17. Despite Defendant's transition to all online courses and remote work by all employees
24 other than "a select group of staff members" as a result of the COVID-19 pandemic, Defendant did not
25 and does not reimburse Class Members for home office expenses including but not limited to home
26 internet costs, home or mobile telephone expenses, ink toner/cartridges and paper costs, and other
27 expenses associated with working from home to carry out their job duties for Defendant.
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1 without duplication of effort and expense that numerous individual actions would entail. No difficulties
2 are likely to be encountered in the management of this class action that would preclude its maintenance
3 as a class action, and no superior alternative exists for the fair and efficient adjudication of this
4 controversy. Class Members are readily identifiable from Defendant’s employee rosters and/or payroll
5 records.

6 24. Defendant’s actions are generally applicable to the entire Class. Prosecution of separate
7 actions by individual members of the Class creates the risk of inconsistent or varying adjudications of
8 the issues presented herein, which, in turn, would establish incompatible standards of conduct for
9 Defendant.

10 25. Because joinder of all Class Members is impractical, a class action is superior to other
11 available methods for the fair and efficient adjudication of this controversy. Furthermore, the amounts at
12 stake for many members of the Class, while substantial, may not be sufficient to enable them to maintain
13 separate suits against Defendant.

14 **FIRST CAUSE OF ACTION**
15 **Failure to Reimburse Business Expenses**
16 **[Labor Code § 2802]**

17 26. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the
18 preceding paragraphs.

19 27. Under Labor Code § 2802(a), “[a]n employer shall indemnify his or her employee for all
20 necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his
21 or her duties.”

22 28. Throughout the Class Period, Defendant did not reimburse Plaintiff and Class Members
23 for necessary business expenses, including but not limited to home internet costs, home or mobile
24 telephone expenses, ink toner/cartridges and paper costs, and other expenses associated with working
25 from home to carry out their job duties for Defendant, in violation of Labor Code § 2802.

26 29. Defendant was aware that Class Members incurred these expenses in direct consequence
27 of the discharge of their job duties because Defendant required and/or expected Class Members to perform
28 their work duties from home, and such duties required such expenditures. Defendant, however, did not

1 reimburse Class Members for such expenses incurred throughout the Class Period, as required under
2 Labor Code § 2802.

3 30. Plaintiff, on behalf of herself and all other Class Members, requests relief as described
4 below.

5 **SECOND CAUSE OF ACTION**
6 **PAGA Civil Penalties**
7 **[Labor Code §§ 2698 *et seq.*]**

8 31. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the
9 preceding paragraphs.

10 32. Plaintiff seeks PAGA penalties on behalf of the State of California for violations of Labor
11 Code § 2802 against herself and Aggrieved Employees.

12 33. During the PAGA Period, Defendant failed to reimburse Plaintiff and Aggrieved
13 Employees for necessarily incurred business expenses, including home internet costs, home or mobile
14 telephone expenses, ink toner/cartridges and paper costs, and other expenses associated with working
15 from home incurred in carrying out their job duties for Defendant.

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

19 **PRAYER FOR RELIEF**

20 **WHEREFORE**, Plaintiff, on behalf of herself and the Class, requests the following relief:

21 A. An Order that this action may proceed and be maintained as a class action, with the Class
22 as designated and defined in this Complaint, and that Plaintiff and her counsel be certified as class
23 representative and counsel, respectively, for the Class.

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

27 C. On the Second Cause of Action: That the Court award PAGA civil penalties and
28 attorneys' fees and costs, pursuant to Labor Code § 2699(g).

1 D. That the Court award attorneys' fees and costs to the extent permitted by law pursuant to
2 Labor Code § 2802 and Cal. Civ. Proc. Code § 1021.5.

3 E. All other relief as this Court deems proper.
4

5 Dated: January 13, 2022

Respectfully submitted,

6 THE JHAVERI-WEEKS FIRM

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8 
9 By: William Jhaveri-Weeks

10 *Attorneys for Plaintiff and the Putative Class*

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1 **PROOF OF SERVICE**

2 I, Ally N. Girouard, am counsel of record for Plaintiff in this case and am a member of the
3 California Bar. My business address is The Jhaveri-Weeks Firm, P.C., 351 California Street, Suite 700,
4 San Francisco, CA 94104. On the date set forth below, I served the following document:

5 **FIRST AMENDED CLASS AND REPRESENTATIVE ACTOIN COMPLAINT**

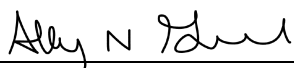
6 on the Defendant or its attorneys in this action who are identified below, using the following means of
7 service:

8 Spencer C. Skeen, CA Bar No. 182216
spencer.skeen@ogletree.com
9 Tim L. Johnson, CA Bar No. 265794
tim.johnson@ogletree.com
10 Jesse C. Ferrantella, CA Bar No. 279131
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11 OGLETREE, DEAKINS, NASH, SMOAK &
STEWART, P.C.
12 4370 La Jolla Village Drive, Suite 990
San Diego, CA 92122

13 **BY ELECTRONIC TRANSMISSION.** I caused the document to be sent to the persons at the e-mail
14 addresses listed above, pursuant to California Rules of Court, Rule 2.251 and California Code of Civil
15 Procedure section 1010.6.

16 I declare under penalty of perjury under the laws of the State of California that the foregoing is true and
correct.

17 Executed on February 7, 2022, at San Francisco, California.

18 
19 _____
20 Ally N. Girouard