

ENDORSED
FILED
San Francisco County Superior Court

DEC 14 2020

CLERK OF THE COURT
By: BOWMAN LIU
Deputy Clerk

1 **ACKERMANN & TILAJEF, P.C.**
2 Craig J. Ackerman, CA Bar No. 229832
3 cja@ackermanntilajef.com
4 1180 South Beverly Drive, Suite 610
5 Los Angeles, California 90035
6 Telephone: (310) 277-0614
7 Facsimile: (310) 277-0635

8 **INDIA LIN BODIEN, ATTORNEY AT LAW**
9 India Lin Bodien, WA Bar. No. 44898
10 (Pro Hac Vice Admission Pending)
11 india@indialinbodienlaw.com
12 2522 North Proctor Street, No. 387
13 Tacoma, Washington 98406
14 Telephone: (253) 212-7913
15 Facsimile: (253) 276-0081

16 Attorneys for Plaintiff and the Aggrieved Employees

17 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

18 **FOR THE COUNTY OF SAN FRANCISCO**

19 UMAIR JAVED, as a representative action on
20 behalf of the LWDA and the other aggrieved
21 employees,

22 Plaintiff,

23 v.

24 EXPERIS US, INC., a Wisconsin Corporation,
25 and DOES 1 to 100, inclusive,

26 Defendant.

CASE NO:

CGC -20-588422

PLAINTIFF'S PAGA REPRESENTATIVE
COMPLAINT FOR:

PENALTIES PURSUANT TO LABOR CODE
§ 2698 *et seq.* FOR VIOLATIONS OF
CALIFORNIA LABOR CODE § 2802

FAXED

1 Plaintiff Umair Javed, (“Plaintiff”), on behalf of himself, the Aggrieved Employees and the
2 State of California’s LWDA (hereinafter “Aggrieved Employees”), complains and alleges as
3 follows:

4 **OVERVIEW OF CLAIMS**

5 1. Plaintiff brings this action as a Representative Action on behalf of the LWDA and
6 other aggrieved employees against Defendant Experis US, Inc. and Does 1 to 100 (“Defendant”)
7 for PAGA penalties based on Defendant’s failure to reimburse its current and former employees
8 for their work-related home office expenses in California incurred during the coronavirus
9 pandemic for which they have not been fully or even partially reimbursed. As a result of the
10 foregoing, Defendant has violated California Labor Code section 2802, as described below.

11 2. The “PAGA Period” is designated as the period from one year prior to Plaintiff’s
12 mailing of his LWDA notice letter (*i.e.*, from September 30, 2019) through the present.

13 **VENUE**

14 3. Venue is proper in this county under section 395.5 of the California Code of Civil
15 Procedure as the allegations herein took place within the County of San Francisco. Further,
16 Defendant keeps and maintains an office in San Francisco, California. Many of the Aggrieved
17 Employees were employed and/or performed work during the PAGA Period by Defendant in San
18 Francisco County. Finally, many of the acts alleged herein including Defendant’s failure to
19 reimburse Plaintiff and Aggrieved Employees for a reasonable portion of their home office
20 expenses, occurred in San Francisco County. Venue is therefore proper in San Francisco County.

21 **JURISDICTION**

22 4. Defendant is within the jurisdiction of this Court. Defendant transacts millions of
23 dollars of business by workforce solutions throughout California. Thus, Defendant has obtained
24 the benefits of the laws of the State of California. In addition, Plaintiff asserts no claims arising
25 under federal law. Rather, Plaintiff brings causes of action based solely on, and arising from,
26 California law. The claims of the Aggrieved Employees are also individual claims for violations
27 of California law described herein.

1 **THE PARTIES**

2 5. Plaintiff Umair Javed resides in San Francisco, California in San Francisco,
3 California. Throughout the PAGA period, Defendant employed Plaintiff in the position of
4 department support and he was assigned to work on a project for IBM. From at least September
5 30, 2019 through the present, Defendant's employees, including Plaintiff during his employment
6 from September 16, 2019 through July 26, 2020, were required to work from home and have a home
7 office with home internet access, but were not reimbursed a reasonable portion of their home office
8 expenses in the course of carrying out their job duties in California.¹

9 6. Plaintiff represents the State of California and the following group of employees:
10 *Plaintiff and all other California residents who are or were employed by Defendant, who were*
11 *subject to stayat home orders and/or whose offices where they were assigned to work were closed*
12 *due to the COVID-19pandemic at any point from March 2020 through the present g (the*
13 *"Aggrieved Employees"). All such Aggrieved Employees are and were subject to Defendant's*
14 *unlawful failure to reimburse practices, as described in further detail below. On information and*
15 *belief, Defendant employed more than 1,000 aggrieved employees who have worked from home in*
16 *California since March 2020.*

17 7. Defendant is a Wisconsin Corporation with its principal place of business in
18 Milwaukee, Wisconsin. Defendant is the world leader in workforce solutions and is essentially a
19 staffing company that leases employees to work for itself and its client customers. Defendant
20 operates throughout California. Defendant was the employer of Plaintiff and the Aggrieved
21 Employees for all relevant time periods.

22 8. The true names and capacities, whether individual, corporate, associate, or
23 otherwise, of Defendants sued herein as DOES 1 to 100 inclusive, are currently unknown to
24 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure §
25 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
26

27 ¹ The statute of limitations for Plaintiff's PAGA claim is one year, however, this case is predicated on Defendant's
28 failure to reimburse a reasonable portion of Plaintiff and the Aggrieved Employees' home office expenses during the
time COVID-19 shelter in place orders were put in place in early March 2020.

1 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to
2 herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
3 capacities of the Defendants designated hereinafter as DOES when such identities become known.

4 9. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
5 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
6 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
7 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
8 employer and/or joint employer of Plaintiff and the other Aggrieved Employees. Further, Labor
9 Code § 558.1 explicitly allows Plaintiff to name any owner, director, officer, or managing agent of
10 Defendant as a Doe Defendant for violations of Labor Code § 2802.

11 10. Plaintiff and the Aggrieved Employees were employed by Defendant in California
12 at various times during the PAGA Period. Due to turnover during the PAGA Period, the total
13 number of Aggrieved Employees is estimated to be more than 1,000.

14 **FACTUAL ALLEGATIONS**

15 11. Defendant operates and, at all times during the PAGA Period, has done and does
16 business in California in the workforce solutions and staffing industry. Defendant, in the course of
17 operating its business in California during the PAGA Period, employed and/or jointly employed
18 (with its customers) Plaintiff and the Aggrieved Employees.

19 12. From at least March 2020 when work from home orders and office closures went
20 into effect, Plaintiff and the aggrieved employees, at the direction of Defendant and/or with
21 Defendant's knowledge and acquiescence, have incurred work-related home office expenses
22 including, among other things, home internet service, equipment, and electricity in order to
23 perform necessary work-related duties. Furthermore, Defendant required Plaintiff and the
24 aggrieved employees to have a personal computer or mobile device and an operating system
25 capable of receiving, accessing, displaying, and either printing or storing information, as well as a
26 home internet connection, and internet browser software to receive electronic notices from
27 Defendant. See relevant portion of Defendant's E-Signature Disclosures and Consent eForm,
28

1 attached hereto as **Exhibit A**.

2 13. Plaintiff and the aggrieved employees were thus expected by Defendant to pay for,
3 and have personally paid for, among other things, home internet service, electricity, and the
4 purchase and maintenance of all hardware used for work-purposes, including laptops, keyboards,
5 mice, and Bluetooth headsets, used by Plaintiff and the Aggrieved Employees in the discharge
6 of their job duties (the “home office expenses”). These expenses ranged, but typically amounted
7 from \$50 to \$100 per month per aggrieved employee.

8 14. In sum, Defendant’s expense-related policies and/or practices require and expect,
9 and/or with Defendant’s knowledge thereof permit, Plaintiff and the aggrieved employees to pay
10 for home office expenses incurred in direct consequence of discharging their necessary and
11 business-related job duties on behalf of Defendant, without some reimbursement of a reasonable
12 portion of such expenses by Defendant, as required by California law.

13 15. Defendant does not maintain an expense reimbursement policy and/or practice
14 stating that Defendant will affirmatively reimburse Plaintiff and the aggrieved employees for a
15 reasonable portion of their home office expenses necessarily incurred in their discharge of their
16 duties during the coronavirus pandemic, as required by Labor Code sections 2802(a) and (c).

17 16. California Labor Code section 2802 requires an employer to “indemnify his or her
18 employee for all necessary expenditures or losses incurred by that employee in direct consequence
19 of the discharge of his or her duties.” See Cal. Labor Code section 2802(a); *see also* 2802(c)
20 where necessary is defined to include all “reasonable” costs. “The elements of a claim under
21 Section 2802 are: (i) the employee made expenditures or incurred losses; (ii) the expenditures or
22 losses were incurred in direct consequence of the employee's discharge of his or her duties, or
23 obedience to the directions of the employer; and (iii) the expenditures or losses were reasonable
24 and necessary.” *Marr v. Bank of America*, 2011 U.S. Dist. LEXIS 24868 (N.D. March 8,
25 2011) (*citing Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 568 (2007)).

26 17. In addition, to trigger an affirmative obligation to reimburse employees, the
27 employer ‘must either know or have reason to know that the employee has incurred [the]
28

1 expense.” *Id.* (citing *Stuart v. RadioShack Corp.*, 641 F.Supp. 2d 901 (N.D.Cal. 2009). Where an
2 employer has knowledge that employees are incurring a reimbursable expense, the employer must
3 “exercise due diligence to ensure each employee is reimbursed.” *Marr*, at *1.

4 18. The right of an employee to expense reimbursements is not waivable. *See* Cal.
5 Labor Code sections 2804 and 219(a). Any contract to waive them is null and void. *Edwards v.*
6 *Arthur Anderson*, 44 Cal. 4th 937, 951 (2008)

7 19. Furthermore, under Labor Code section 2802, employers must reimburse employees
8 for all reasonable work-related expenses, regardless of whether or not the employees incurred any
9 additional out-of-pocket expense from that work-related use. *See, Cochran v. Schwan’s Home*
10 *Service, Inc.*, 228 Cal.App.4th 1137 (Cal. Aug. 12, 2014) (“We hold that when employees must
11 use their personal cell phones for work-related calls, Labor Code section 2802 requires the
12 employer to reimburse them. Whether the employees have cell phone plans with unlimited
13 minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone
14 bills.”).

15 20. Thus, where employees are expected or mandated to use their internet at home for
16 work, courts have held that they incurred home internet expenses in “direct consequence of the
17 discharge of his or her duties” and were entitled to reimbursement. *See Aguilar v. Zep, Inc.*, 2014
18 US Dist LEXIS 120315, *54 (N.D.Cal. Aug. 27, 2014) (Hon. Edward Chen) (where outside sales
19 reps used home internet and computers for work, and even admitted that they would have incurred
20 the same expenses without work duties, the court nevertheless held that the employer was
21 obligated to reimburse some reasonable portion of these expenses); see also *Ritchie v. Blue Shield*
22 *of California*, 2014 WL 6982943, at *21 (N.D.Cal. Dec. 9, 2014) (Hon. Edward Chen)
23 (certifying class of home office claims processors with 2802 phone reimbursement claims for
24 landline reimbursements where company required claims processors working from home to have a
25 landline, but rejecting certification of claims for home office supplies as individualized).

26 21. In short, Defendant’s policies and/or practices require and expect, and/or with
27 Defendant’s knowledge thereof permit, Plaintiff and the aggrieved employees to pay for home
28

1 office expenses incurred in direct consequence of discharging their duties on behalf of Defendant
2 during the coronavirus pandemic, without reimbursement in full by Defendant for such expenses.
3 Defendant has maintained its policies and/or practices of denying reimbursement of a reasonable
4 portion of Plaintiff's and the aggrieved employees' necessarily incurred business expenses
5 throughout California during the COVID-19 pandemic and within the PAGA Period.

6 22. Defendant is aware or should have been aware that Plaintiff and the aggrieved
7 employees regularly incur home office expenses in the discharge of their duties as employees by
8 virtue of Defendant's instructions to Plaintiff and the aggrieved employees to work from home
9 order during the COVID-19 pandemic. Defendant nevertheless has, during work from home
10 orders during the COVID-19 pandemic within the PAGA Period, failed and refused to reimburse
11 Plaintiff and the aggrieved employees for a reasonable portion of such home office expenses
12 incurred by them in connection with their work.

13 23. Plaintiff and the Aggrieved Employees have been harmed by Defendant's unlawful
14 home office expense policies and/or practices in that they have not been paid for certain home
15 office expenses incurred while employed by Defendant in California, thereby diminishing their
16 agreed-upon compensation, in substantial amounts.

17 24. Plaintiff has fully and completely exhausted and/or will have fully and completed
18 and exhausted his administrative remedies under PAGA prior to proceeding with the PAGA claim.
19 On September 30, 2020, Plaintiff filed his PAGA Notice online with the Labor Workforce
20 Development Agency ("LWDA") and sent a letter by certified mail to Defendant setting forth the
21 facts and theories of the violations alleged against Defendant, as prescribed by Labor Code § 2698
22 *et seq.* As required by PAGA, Plaintiff submitted the \$75.00 filing fee with the LWDA by regular
23 mail. Pursuant to Labor Code § 2699.3(a)(2)(A), Since sixty-five (65) calendar days have elapsed
24 since the postmark date of the PAGA notice, all administrative prerequisites have now been
25 satisfied.

26 ///

27 ///

FIRST CAUSE OF ACTION
LABOR CODE PRIVATE ATTORNEY GENERAL ACT
[Cal. Labor Code §§ 2698-2699.5]
On Behalf of Plaintiff, the LWDA, and the Aggrieved Employees Against Defendant

25. Plaintiff, on behalf of himself and all Aggrieved Employees, re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

26. Based on the above allegations incorporated by reference, Defendant has violated Labor Code § 2802 by failing to reimburse Plaintiff and the Aggrieved Employees for a reasonable percentage of their necessary business expenses associated with their home offices during the COVID-19 pandemic.

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

28. Plaintiff seeks to recover the PAGA civil penalties through a representative action as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009), 46 Cal.4th 969. Under Labor Code §§ 2699(f)(2) and 2699.5, 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: \$100 for the initial violation per employee per pay period; and \$200 for each subsequent violation per employee per pay period.

29. Since Defendant paid Plaintiff and the Aggrieved Employees on a weekly basis, and there have been 10 months since the commencement of the stay-at-home orders and office closures, Plaintiff estimates that, for each Aggrieved Employee who worked for Defendant throughout the pandemic, there have been approximately 40 pay periods as of the present date, with an additional 4 pay periods accruing per month for each Aggrieved Employee.

30. Courts have held that the \$200 per pay period stepped up amount of PAGA penalties is triggered from the date of the submission of Plaintiff's PAGA letter to the LWDA. *See Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1209 (2008) ("[u]ntil the employer has been notified that it is violating a Labor Code provision (whether or not the Commissioner or court chooses to impose penalties), the employer cannot be presumed to be aware that its continuing underpayment of employees is a "violation" subject to penalties).

1 **PRAYER FOR RELIEF**

2 Wherefore, Plaintiff, on behalf of himself as the representative of the LWDA and the
3 Aggrieved Employees, prays for judgment against Defendant as follows:

4 1. A civil penalty against Defendant in the amount of \$100 for each initial violation
5 per employee per each weekly pay period prior to the submission of his LWDA letter, and \$200
6 for each subsequent violation per employee per each weekly pay period post submission of his
7 LWDA letter as specified in section 2699(f)(2) of the California Labor Code for Plaintiff and the
8 Aggrieved Employees during all of the pay periods in the PAGA Period since March 16, 2020 and
9 on-going until the violations are corrected;

10 2. An award of reasonable attorney's fees against Defendant as specified in Labor
11 Code § 2699(g)(1), for all the work performed by the undersigned counsel in connection with the
12 PAGA claims;

13 3. An award of all costs incurred by the undersigned counsel for Plaintiff in
14 connection with Plaintiff's and Aggrieved Employees' PAGA claim against Defendant as provided
15 for in Labor Code § 2699(g)(1);

16 1. All other relief as this Court deems proper.
17

18 Dated: December 11, 2020

Respectfully submitted,

19 ACKERMANN & TILAJEF, P.C.
20 INDIA LIN BODIEN, ATTORNEY AT LAW

21 By: 
22 _____

Craig Ackermann, Esq.

India Lin Bodien, Esq.

23 *Counsel for Plaintiff as the representative of the*
24 *LWDA and the Aggrieved Employees*
25
26
27
28

EXHIBIT A

E-Signature Disclosures and Consent eForm

You must update ManpowerGroup regarding the information necessary to contact you electronically (including your personal email address) by calling ManpowerGroup at 800- 326-6797, or emailing experiscare@experis.com. If you are employed, ManpowerGroup may electronically send Materials to your ManpowerGroup email address or your personal email address, in its discretion.

To access these electronic Materials, you must have (a) a personal computer or mobile device and an operating system capable of receiving, accessing, displaying, and either printing or storing information, (b) an Internet connection, and (c) Internet Browser Software such as Internet Explorer®, Google Chromed), Safari®, or Firefox®. Your Internet Browser Software must support 128-bit encryption and Secure Sockets Layer (SSL) protocol. If you are able to see these E-Signature Disclosures & Consent, your hardware and software should allow you to access these electronic Materials.

To retain any of these electronic Materials, you may either print or download them. To print these Materials on your computer, you will need a printer connected to your computer with adequate paper. To download these Materials on your computer, you will need an available storage medium, like a hard drive on your computer or a removable thumb drive. To print these Materials on your mobile device, you will need a printer linked with your device (e.g., via Wi-Fi, Bluetooth®, etc.) and/or an application (app) that allows for printing. To store these Materials on your mobile device you will need (1) sufficient storage space on your mobile device and (2) an app or function that allows for the capture of electronic data (e.g., a screenshot). Please follow the instructions for your particular computer operating system and/or software to print and/or to download these Materials. Each individual screen may need to be printed and/or downloaded separately. If you have trouble printing and/or downloading, please contact the manufacturer of your personal computer or mobile device, computer operating system, web browser, app, or other relevant software or another information source of your choosing.

By clicking the "Keyboard Sign" button, typing my name, entering the date, clicking the "Sign" button, and clicking the "Save & Complete Task" button below, I understand that I am:

- 1. Confirming that I can access these E-Signature Disclosures & Consent.**
- 2. Confirming that I have an email address and that the computer I intend to use to access documents electronically has the hardware and software requirements described in these E-Signature Disclosures & Consent, to access and to retain these electronic Materials.**
- 3. Agreeing to electronically access, receive, review, sign, and authenticate Materials related in any way to my employment with ManpowerGroup, in place of hard copy/paper documents and handwritten signatures.**
- 4. Confirming that I understand how to cancel these E-Signature Disclosures & Consent, should I ever want to do so.**
- 5. Consenting to update ManpowerGroup regarding the information necessary to contact me electronically (including my personal email address) by calling Experis Care at 800-326-6797 or emailing at experiscare@experis.com.**
- 6. Agreeing that I have read, understand, and agree to all statements, agreements, and acknowledgements in these E-Signature Disclosures & Consent.**