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11 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF ALAMEDA

13 RICHARD DAVILA, individually and on behalf
14 of all others similarly situated,

15 Plaintiff,

16 vs.

17 CONCENTRIX SERVICES US, INC., a
18 Delaware Corporation,

19 Defendant.

Case No.: RG20079700

FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION COMPLAINT
FOR: (1) FAILURE TO REIMBURSE
BUSINESS EXPENSES (LABOR CODE
§ 2802); (2) UCL VIOLATIONS (BUS. & PROF.
CODE §§ 17200-17204); AND (3) CIVIL
PENALTIES UNDER PRIVATE ATTORNEYS
GENERAL ACT (CAL. LABOR CODE § 2699)

DEMAND FOR JURY TRIAL

1 Plaintiff Richard Davila ("Plaintiff"), on behalf of himself and all others similarly situated
2 (hereinafter "Class Members"), complains and alleges as follows:

3 OVERVIEW OF CLAIMS

4 1. This is a class action, under California Code of Civil Procedure § 382, seeking
5 reimbursement for business expenses, interest thereon; other equitable relief; and reasonable attorneys'
6 fees and costs, under California Labor Code § 2802, Code of Civil Procedure § 1021.5, and California's
7 Unfair Competition Law Business and Professions Code § 17200, *et seq.*, (the "UCL") on behalf of
8 Plaintiff and all other individuals employed by Concentrix Services Us, Inc. ("Concentrix" or
9 "Defendant") in California during the four years prior to the filing of this action and who were required
10 and/or expected to work from home ("Class Members"). Plaintiff and Class Members paid business
11 expenses incurred by them in the course of their work for Defendant as Class Members, for which they
12 have not received full reimbursement from Defendant. Plaintiff, on behalf of himself and Class
13 Members, also seeks restitution of all unjust enrichment Defendant has obtained from its failure to fully
14 reimburse expenses incurred by Plaintiff and Class Members.

15 2. The "Class Period" is designated as the period from four years prior to the filing of this
16 action through the trial date. Defendant's violations of California's labor laws and unfair competition
17 laws, as described more fully below, have been ongoing for at least the past four years, are continuing at
18 present.

19 3. Plaintiff also brings this action as a representative action under the California Labor
20 Code's Private Attorneys General Act ("PAGA"), Cal. Labor Code § 2698 *et seq.*, for civil penalties on
21 behalf of himself and all other individuals employed by Concentrix in California ("Aggrieved
22 Employees") for the violation Labor Code § 2802. The "PAGA Period" is from October 30, 2019
23 through to the trial date.

24 JURISDICTION

25 4. This Court has jurisdiction over the Plaintiff's claims for reimbursement of business
26 expenses under Labor Code § 2802.
27
28

5. This Court has jurisdiction over the claims for restitution arising from Defendant’s unlawful business practices, under California’s Unfair Competition Law (“UCL”), Business & Professions Code §§ 17203 and 17204.

6. This Court has jurisdiction over Plaintiff's claims for civil penalties under Labor Code § 2699. On October 30, 2020, Plaintiff provided PAGA Notice pursuant to Labor Code § 2699.3 to the California Labor & Workforce Development Agency ("LWDA") and Defendant. The LWDA has provided no notice to Plaintiff 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. Plaintiff has therefore fully complied with the PAGA procedural requirements and may commence this representative action pursuant to Labor Code § 2699.

VENUE

7. Venue as to Defendant is proper in the County of Alameda, pursuant to Code of Civil Procedure §§ 395(a) and 395.5. Defendant is a Delaware corporation with its principal place of business located at 44201 Novel Drive, Fremont, California 94538. Defendant employs individuals across the country as well as throughout California. The unlawful acts alleged herein have a direct effect on Plaintiff and other Class Members within the State of California, some of whom are employed and incur unreimbursed business expenses while conducting Defendant's business within Alameda County.

PARTIES

8. Plaintiff Richard Davila resides in Los Angeles, California. Plaintiff was employed by Concentrix during the Class Period and worked as a Technical Support Advisor until approximately June 2020. During his employment, Plaintiff worked from home and was subject to Defendant's unlawful business expense reimbursement policies and/or practices set forth herein, and incurred unreimbursed business expenses in the course of carrying out his job duties.

9. Defendant is a Delaware corporation with its principal executive office and principal place of business located in Fremont, California. The policies and practices complained of herein were formulated, implemented, and maintained, in whole or in substantial part, at its Fremont address.

10. All of Plaintiff's claims stated herein are asserted against Defendant and any of its predecessors, successors, and/or assigns that do, or have done, business, and that employ, or have employed, Class Members in California during the Class Period.

FACTUAL BACKGROUND

11. Defendant operates and, at all times during the Class Period, has done business throughout California. Defendant, in the course of operating its business in California during the Class Period, employs or has employed Class Members in various capacities.

12. Since at least four years prior to the filing of this action, Defendant has maintained policies and practices relating to the incurrence and reimbursement of business expense that deny lawful reimbursement and/or compensation to Class Members who work from home. Defendant requires and/or expects many Class Members who work from home to maintain and pay out of pocket for (1) hardwired internet service (High Speed DSL/Cable/Fiber Optic) with 5.0 mbps download/ 1.5 mbps upload; (2) landline phones that meet specific requirements; and (3) corded phones and corded headsets and/or USB headsets. Concentrix also requires Class Members to fill out forms with their equipment specifications (i.e. brand/model, type, features) and to test the speed of their internet and submit the test results to Concentrix.

13. Upon information and belief, Class Members are also required and/or expected to be able to print documents at home and thus to have printing supplies, such as paper, ink or toner.

14. Additionally, on or about March 4, 2020, as a result of the COVID-19 pandemic and the state of emergency declared in California on that date due to the pandemic, all non-essential employees were required to work from home, including those Class Members who previously had not been working from home. Those Class Members incurred expenses as a result of working from home, including but not limited to the expense of home internet, phone service and/or equipment, and printing equipment and supplies. However, Concentrix did not reimburse them for these expenses fully or at all.

15. The unreimbursed expenses incurred by all the Class Members, described in the preceding paragraphs, are hereinafter referred to as "Home Office Expenses."

16. Defendant's expense-related policies and/or practices require, and/or with Defendant's knowledge thereof permit, Class Members working from home to pay for business expenses incurred in

1 direct consequence of discharging their job duties on behalf of Defendant, without any or full
2 reimbursement by Defendant for such expenses.

3 17. Defendant is aware or should have been aware that Class Members regularly incur
4 business expenses in the discharge of their duties, as employees, without any reimbursement or
5 reimbursement in full. Defendant is aware that Class Members on a regular basis incur home offices
6 expenses described above. Defendant nevertheless has, throughout the Class Period, failed and refused
7 to reimburse Plaintiff and Class Members for such business expenses incurred by them in carrying out
8 their job duties for Defendant.

9 18. Defendant has maintained its policies of denying reimbursement in full of Plaintiff and
10 Class Members' necessarily incurred business expenses, or substantially similar policies, throughout
11 California and throughout the Class Period, including as of March 4, 2020 and thereafter.

12 19. Plaintiff and Class Members have been harmed by Defendant's unlawful business
13 expense policies and/or practices in that they have not been paid for certain business expenses incurred
14 while employed by Defendant, thereby diminishing their agreed-upon compensation, in substantial
15 amounts to be proved at trial.

16 **CLASS ACTION ALLEGATIONS**

17 20. Plaintiff brings this action on behalf of himself and all others similarly situated as a class
18 action pursuant to Code of Civil Procedure § 382. The Class that Plaintiff seek to represent is composed
19 of and defined as all persons who have been employed by Defendant in California at any time from four
20 years prior to the filing of this Complaint through the commencement of trial. All such Class Members
21 were subject to Defendant's policy and/or practice of failing to fully reimburse employees' business
22 expenses.

23 21. This action has been brought and may properly be maintained as a class action under
24 Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation,
25 the proposed class is easily ascertainable, and Plaintiff is a proper representatives of the Class:

26 a. Numerosity: The potential members of the Class as defined are so numerous and
27 so diversely located throughout California, that joinder of all the members of the Class is impracticable.
28 While the precise number of Class Members has not been determined at this time, Plaintiff is informed

1 and believe that Defendant has at all times during the Class Period employed more than 100 individuals
2 in California subject to Defendant's business expense reimbursement policies. Due to employee
3 turnover, the number of Class Members is much larger than the number of individuals employed at any
4 one time. The Class Members are dispersed throughout California. Joinder of all members of the
5 proposed class is therefore not practicable.

6 b. Commonality: There are questions of law and fact common to the Plaintiff and
7 the Class that predominate over any questions affecting only individual members of the Class. These
8 common questions of law and fact include, without limitation:

9 i. Whether Plaintiff and Class Members incurred unreimbursed business
10 expenses in the discharge of their duties as employees, included but not limited to expenses for home
11 internet, phone service, printing supplies, and equipment such as headsets.

12 ii. Whether Defendant adopted a uniform policy and/or practice of not
13 reimbursing Class Members for any of their Home Office Expenses fully or at all, while at the same time
14 having actual and/or constructive knowledge that the members of the Class were routinely incurring such
15 business related expenses;

16 iii. Whether Defendant knew or should have known that Plaintiff and the
17 Class were routinely incurring business related Home Office Expenses;

18 iv. Whether Defendant's actual and/or constructive knowledge that Plaintiff
19 and the Class were routinely incurring business related Home Office Expenses triggered an affirmative
20 obligation by Defendant under § 2802 of the Labor Code to reimburse Plaintiff and the Class for such
21 expenses;

22 v. Whether Defendant failed and/or refused to fully reimburse business
23 expenses incurred by Plaintiff and Class Members in the discharge of their duties.

24 vi. Whether Defendant's failure to reimburse business expenses incurred by
25 Plaintiff and Class Members, fully or at all, was the result of, and/or pursuant to, a business policy or
26 regular practice of Defendant.

27 vii. Whether Defendant violated Labor Code § 2802 by denying Plaintiff and
28 similarly situated Class Members reimbursement for their business expenses.

viii. Whether Plaintiff is entitled to restitution under Business and Professions Code §§ 17200 of unreimbursed business expenses incurred by Plaintiff and Class Members.

ix. The proper formula(s) for calculating damages, interest, and restitution owed to Plaintiff and the Class Members.

c. Typicality: Plaintiff's claims are typical of the claims of the Class. Both Plaintiff and Class Members sustained injuries and damages, and were deprived of property rightly belonging to them, arising out of and caused by Defendant's common course of conduct in violation of law as alleged herein, in similar ways and for the same types of expenses.

d. Adequacy of Representation: Plaintiff is a member of the Class and will fairly and adequately represent and protect the interests of the Class Members. Plaintiff's interests do not conflict with those of Class Members. Counsel who represent Plaintiff are competent and experienced in litigating large wage and hour class actions, including business expense reimbursement cases, and other employment class actions, and will devote sufficient time and resources to the case and otherwise adequately represent the Class.

e. Superiority of Class Action: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each Class Member has been damaged or may be damaged in the future by reason of Defendant's unlawful policies and/or practices of not fully reimbursing business expenses. Certification of this case as a class action will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Certifying this case as a class action is superior because it allows for efficient and full disgorgement of the ill-gotten gains Defendant has enjoyed by maintaining its unlawful business expense reimbursement policy and/or practice, and will thereby effectuate California's strong public policy of protecting employees from deprivation or offsetting of compensation earned in their employment. If this action is not certified as a Class Action, it will be impossible as a practical matter for many or most Class Members to bring individual actions to recover monies unlawfully withheld from their lawful compensation due

1 from Defendant, due to the relatively small amounts of such individual recoveries relative to the costs
2 and burdens of litigation.

3 **FIRST CAUSE OF ACTION**
4 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**
5 **(LABOR CODE § 2802)**

6 22. Plaintiff re-allege and incorporate by reference each and every allegation set forth in the
7 preceding paragraphs.

8 23. Labor Code § 2802 provides that “[a]n employer shall indemnify his or her employee for
9 all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of
10 his or her duties.”

11 24. In order to discharge their job duties for Defendant while working from home, Plaintiff
12 and other Class Members employed in various positions were required and expected by Defendant to
13 use their own home internet, phone service, printing supplies, and equipment as described above.
14 However, Defendant did not pay fully, or at all, for Home Office Expenses incurred by Plaintiff and
15 Class Members as described above.

16 25. Defendant’s failure to pay for or reimburse the Home Office Expenses of Plaintiff and
17 other Class Members violated non-waivable rights secured to Plaintiff and Class Members by Labor
18 Code § 2802. Plaintiff and Class Members are entitled to reimbursement for these necessary
19 expenditures, plus interest and attorneys’ fees and costs, under Labor Code § 2802.

20 26. As a result of Defendant’s violations of Labor Code § 2802, Defendant is also liable for
21 attorneys’ fees and costs under Labor Code § 2802(c).

22 27. Plaintiff, on behalf of himself and Class Members, requests relief as described below.

23 **SECOND CAUSE OF ACTION**
24 **UNFAIR COMPETITION LAW VIOLATIONS**
25 **(BUS. & PROF. CODE § 17200)**

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

28 29. Business & Professions Code §§ 17200, *et seq.* (the “UCL”) prohibits unfair competition
in the form of any unlawful, unfair, or fraudulent business act or practice. Business & Professions Code
§ 17204 allows “any person who has suffered injury in fact and has lost money or property” to prosecute

1 a civil action for violation of the UCL. Such a person may bring such an action on behalf of himself and
2 others similarly situated who are affected by the unlawful, unfair, or fraudulent business practice.

3 30. Beginning at an exact date unknown to Plaintiff, but at least four years prior to the filing
4 of this action, and continuing to the present, Defendant has committed unlawful, unfair, and/or fraudulent
5 business acts and practices as defined by the UCL, by failing to reimburse and indemnify Plaintiff and
6 Class Members for Home Office Expenses, in violation of Labor Code § 2802.

7 31. In order to discharge their job duties for Defendant, Plaintiff and other Class Members
8 were required and expected by Defendant to incur and pay, and did in fact incur and pay, Home Office
9 Expenses in the course and scope of their employment, as alleged above. Plaintiff and other Class
10 Members were not reimbursed fully, or at all, by Defendant for such expenses.

11 32. As a direct and proximate result of Defendant's unlawful, unfair, and/or fraudulent acts
12 and practices described herein, Defendant has received and continues to hold unlawfully obtained
13 property and money belonging to Plaintiff and Class Members in the form of unreimbursed employee
14 business expenses that reduced or offset compensation earned by Plaintiff and Class Members. As a
15 direct and proximate result of Defendant's unlawful business practices, Plaintiff and Class Members
16 have suffered economic injuries including, but not limited to out-of-pocket business expenses and
17 resulting reductions or offsets to earned compensation. Defendant has profited from its unlawful, unfair,
18 and/or fraudulent acts and practices in the amount of those business expenses and interest accrued
19 thereon.

20 33. Plaintiff and other Class Members are entitled to restitution pursuant to Business &
21 Professions Code §§ 17203 and 17208 for all unpaid business expenses, and interest thereon, from four
22 years prior to the filing of this action to the date of such restitution, at rates specified by law. Defendant
23 should be required to disgorge all the profits and gains it has reaped and restore such profits and gains
24 to Plaintiff and Class Members, from whom they were unlawfully taken.

25 34. Plaintiff and other Class Members are entitled to enforce all applicable penalty provisions
26 of the Labor Code pursuant to Business & Professions Code § 17202.

27 35. Plaintiff has assumed the responsibility of enforcement of the laws and public policies
28 specified herein by suing on behalf of himself and other similarly situated members of the public

1 previously and presently employed by Defendant in California. Plaintiff's success in this action will
2 enforce important rights affecting the public interest. Plaintiff will incur a financial burden in pursuing
3 this action in the public interest. Therefore, an award of reasonable attorneys' fees to Plaintiff is
4 appropriate pursuant to Code of Civil Procedure § 1021.5.

5 36. Plaintiff, on behalf of himself and other Class Members, requests relief as described
6 below.

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

10 37. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in
the preceding paragraphs.

11 38. Plaintiff is an "aggrieved employee" under PAGA as he was employed by Defendant
12 during the applicable statutory period and suffered the violation of Labor Code § 2802 alleged herein.

13 39. During the PAGA Period, Defendant did not maintain a policy of reimbursing
14 Aggrieved Employees for their business expenses incurred in carrying out their job duties for
15 Concentrix. These expenses include but are not limited to home office expenses including the cost of
16 internet, including high speed internet; home or mobile telephone expenses, including service and
17 equipment; ink toner/cartridges and paper and other expenses associated with working from home.

18 40. Concentrix knew or should have known that Aggrieved Employees who worked from
19 home incurred these expenses in carrying out their job duties for Concentrix, as alleged above.
20 Concentrix also required Aggrieved Employees to fill out forms with their equipment specifications
21 (i.e. brand/model, type, features) and to test the speed of their internet and submit the test results to
22 Concentrix.

23 41. Furthermore, as a result of the COVID-19 pandemic and the state of emergency
24 declared in California on March 4, 2020 due to the pandemic, all non-essential employees were
25 required to work from home, including Aggrieved Employees, who have all incurred home office
26 expenses, including but not limited to home internet, home or mobile phone service, and printing
27 supplies, in order to carry out their job duties for Concentrix at home. However, Concentrix did not
28 reimburse them for these expenses fully or at all in violation of § 2802 of the California Labor Code.

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

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff requests the following relief:

6 A. That the Court determine that this action may be maintained as a class action under Code
7 of Civil Procedure § 382, and define the Class as requested herein;

8 B. That the Court find and declare that Defendant's business expense policies and/or
9 practices violate California law, including Labor Code § 2802, by refusing and/or failing to reimburse
10 all business expenses incurred by Plaintiff and other Class Members in the discharge of their duties as
11 employees of Defendant;

12 C. That the Court find and declare that Defendant has violated the UCL and committed
13 unfair and unlawful business practices by failing to reimburse Plaintiff and other Class Members for
14 business expenses incurred by them in the course of their duties for the benefit of Defendant, their
15 employer;

16 D. That the Court find and declare that Defendant's business expense policies and/or
17 practices violate California law by causing a denial or forfeiture of compensation including earned
18 wages;

19 E. That the Court award to Plaintiff and Class Members all unreimbursed business expenses,
20 and interest thereon, that they are owed, pursuant to Labor Code § 2802, in an amount to be proved at
21 trial;

22 F. That Defendant be ordered to pay restitution to Plaintiff and the Class due to Defendant's
23 UCL violations, pursuant to Business and Professions Code §§ 17200-17205, in the amount of their
24 unreimbursed business expenses and interest thereon;

25 G. That Plaintiff and the Class be awarded reasonable attorneys' fees and costs pursuant to
26 Labor Code §§ 2802(c), Code of Civil Procedure § 1021.5, and/or other applicable law;

27 H. That the Court award PAGA Civil Penalties, and attorneys' fees and costs, as provided
28 under Labor Code § 2699.

1 I. That the Court award such other and further relief as this Court may deem appropriate.

2 **DEMAND FOR JURY TRIAL**

3 Plaintiff, on behalf of himself and the Class Members, hereby demand a jury trial on all causes
4 of action and claims with respect to which they have a right to jury trial.

5 Dated: February 12, 2021

6 Respectfully submitted,

7 HAMMONDLAW, P.C.

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10 Julian Hammond

11 Attorneys for Plaintiff
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