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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

VALERIE BOYER, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

LUCILE SALTER PACKARD CHILDREN'S
HOSPITAL AT STANFORD, a California
corporation, and DOES 1 to 100, inclusive,

Defendant.

CASE NO: 20CV375153

CLASS ACTION

**PLAINTIFF'S CLASS ACTION AND PAGA
REPRESENTATIVE COMPLAINT FOR:**

**(1) FAILURE TO REIMBURSE BUSINESS
EXPENSES (LABOR CODE § 2802);
(2) UCL VIOLATIONS (CAL. BUS. & PROF.
CODE §§ 17200-17204); AND,
(3) PAGA PENALTIES (LABOR CODE § 2698
et seq.).**

DEMAND FOR JURY TRIAL

1 Plaintiff Valerie Boyer, (“Plaintiff”), on behalf of herself, the Aggrieved Employees, the
2 State of California, and all others similarly situated (hereinafter “Class Members”), complains and
3 alleges as follows:

4 **OVERVIEW OF CLAIMS**

5 1. Plaintiff brings this action on behalf of herself and all others similarly situated, as a
6 Class Action, as a Representative Action, and on behalf of the California general public, against
7 Defendant Lucile Salter Packard Children’s Hospital at Stanford and Does 1 to 100 (“Defendant”)
8 for its (1) failure to reimburse its current and former employees for their work-related home office
9 expenses in California during the COVID-19 pandemic and the various stay at home orders for
10 which they have not been fully reimbursed; (2) unfair business practices based on the foregoing;
11 and (3) PAGA penalties based on the foregoing. As a result of the foregoing, Defendant has
12 violated California statutory laws as described below.

13 2. The “Class Period” is designated as the period from March 13, 2020 to the filing of
14 this action through the date of class certification. Defendant’s violations of California’s
15 reimbursement laws and unfair competition laws, as described more fully below, have been
16 ongoing throughout the Class Period.

17 3. The “PAGA Period” is designated as the period from March 13, 2020, within the
18 one-year period prior to Plaintiff’s mailing of the LWDA notice letter on October 14, 2020 through
19 the present and on-going.

20 **VENUE**

21 4. Venue is proper in this county under section 395.5 of the California Code of Civil
22 Procedure as the allegations herein took place within the County of Santa Clara. Further,
23 Defendant keeps and maintains its hospital in Palo Alto, California. Many of the putative Class
24 Members were employed and/or performed work during the Class Period by Defendant in Santa
25 Clara County. Finally, many of the acts alleged herein including Defendant’s failure to reimburse
26 Plaintiff and Class Members for a reasonable portion of their home office expenses, occurred in
27 Santa Clara County. Venue is therefore proper in Santa Clara County.

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1 **JURISDICTION**

2 5. Defendant is within the jurisdiction of this Court. Defendant transacts millions of
3 dollars of business by operating a children's hospital and research center in California. Thus,
4 Defendant has obtained the benefits of the laws of the State of California. In addition, Plaintiff
5 asserts no claims arising under federal law. Rather, Plaintiff brings causes of action based solely
6 on, and arising from, California law. The claims of the class are also individual claims for
7 violations of California law described herein.

8 **THE PARTIES**

9 6. Plaintiff Valerie Boyer is a resident of Santa Clara county, California. Throughout
10 the Class Period and the PAGA period, Defendant employed Plaintiff as a translator and
11 interpreter. From at least March 13, 2020 through the present, Defendant's employees, including
12 Plaintiff during her employment, were not reimbursed a reasonable portion of their home office
13 expenses, including their home internet expenses, in the course of carrying out their job duties in
14 California.

15 7. Plaintiff represents the State of California and the following group of employees:
16 *Plaintiff and all other California residents who are or were employed by Defendant, who were*
17 *subject to stay at home orders and/or whose offices were closed due to COVID-19 at any point*
18 *from March 15, 2020 to the present and ongoing* (the "Aggrieved Employees" and/or "Class
19 Members"). All such Aggrieved Employees or Class members are and were subject to
20 Defendant's unlawful reimbursement policy, as described in further detail below.

21 8. Defendant is a California corporation with its principal place of business in Palo
22 Alto, California. Defendant is a renowned hospital and research center connected with the Stanford
23 Medical School. Defendant was the employer of Plaintiff, Class Members, and the Aggrieved
24 Employees for all relevant time periods.

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

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 10. 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, the Class Members, and the other Aggrieved
9 Employees.

10 11. Plaintiff and the Class Members were employed by Defendant in California at
11 various times during the Class Period. Due to turnover during the Class Period, the total number
12 of class members is estimated to be approximately 200.

13 **FACTUAL ALLEGATIONS**

14 12. Defendant operates and, at all times during the Class Period and PAGA Period, has
15 done and does business in California in the workforce solutions industry. Defendant, in the course
16 of operating its business in California during the Class Period, employed Plaintiff, the Aggrieved
17 Employees, and the Class Members.

18 13. From at least early-to mid-March 2020 when work from home orders went into
19 effect, Plaintiff, the Class, and the aggrieved employees, at the direction of Defendant and/or with
20 Defendant's knowledge and acquiescence, have incurred home office expenses including, among
21 other things, home internet service expenses, hardware and other equipment expenses, cell phone
22 service, and electricity expenses associated with their home offices in order to perform necessary
23 work-related duties.

24 14. Plaintiff and the aggrieved employees and Class Members were thus expected by
25 Defendant to pay for, and have personally paid for, among other things, home internet service, cell
26 phone service, electricity, and the purchase and maintenance of all hardware used for work-
27 purposes, including laptops, keyboards, mice, Bluetooth headsets, and cell phones used by
28 Plaintiff and the Aggrieved Employees and Class members in the discharge of their job duties (the

1 “home office expenses”). These expenses ranged, but typically amounted from \$100 to \$500 per
2 aggrieved employee or Class Member.

3 15. In sum, Defendant’s expense-related policies and/or practices require and expect,
4 and/or with Defendant’s knowledge thereof permit, Plaintiff, the Class, and the aggrieved
5 employees and Class Members to pay for home office expenses incurred in direct consequence of
6 discharging their necessary and business-related job duties on behalf of Defendant, without
7 reimbursement in full by Defendant for such expenses, as required by California law.

8 16. Defendant does not maintain an expense reimbursement policy and/or practice
9 stating that Defendant will affirmatively reimburse Plaintiff and the aggrieved employees and
10 Class Members for a reasonable portion of their home office expenses necessarily incurred in their
11 discharge of their duties during the COVID 19 pandemic when they were required to work from
12 home, as required by Labor Code sections 2802(a) and (c). California Labor Code section 2802
13 requires an employer to “indemnify his or her employee for all necessary expenditures or losses
14 incurred by that employee in direct consequence of the discharge of his or her duties.” See Cal.
15 Labor Code section 2802(a); *see also* 2802(c) where “necessary” expenses are defined to include
16 all “reasonable” costs.

17 17. “The elements of a claim under Section 2802 are: (i) the employee made
18 expenditures or incurred losses; (ii) the expenditures or losses were incurred in direct consequence
19 of the employee's discharge of his or her duties, or obedience to the directions of the employer; and
20 (iii) the expenditures or losses were reasonable and necessary.” *Marr v. Bank of America*, 2011
21 U.S. Dist. LEXIS 24868 (N.D. March 8, 2011) (*citing Gattuso v. Harte-Hanks Shoppers, Inc.*, 42
22 Cal.4th 554, 568 (2007)).

23 18. “In addition, the employer ‘must either know or have reason to know that the
24 employee has incurred [the] expense.’” *Id.* (*citing Stuart v. RadioShack Corp.*, 641 F.Supp. 2d 901
25 (N.D.Cal. 2009)). Where an employer has knowledge that employees are incurring a reimbursable
26 expense, the employer must “exercise due diligence to ensure each employee is
27 reimbursed.” *Marr*, at *1. The right of an employee to expense reimbursements is not
28 waivable. *See* Cal. Labor Code sections 2804 and 219(a). Any contract to waive them is null and

1 void. *Edwards v. Arthur Anderson*, 44 Cal. 4th 937, 951 (2008)

2 19. Furthermore, under Labor Code section 2802, employers must reimburse employees
3 for all reasonable work-related expenses, regardless of whether or not the employees incurred any
4 additional out-of-pocket expense from that work-related use. *See, Cochran v. Schwan's Home*
5 *Service, Inc.*, 228 Cal.App.4th 1137 (Cal. Aug. 12, 2014) (“We hold that when employees must
6 use their personal cell phones for work-related calls, Labor Code section 2802 requires the
7 employer to reimburse them. Whether the employees have cell phone plans with unlimited
8 minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone
9 bills.”). Thus, where employees are expected or mandated to use their internet at home for work,
10 courts have held that they incurred home internet expenses in “direct consequence of the discharge
11 of his or her duties” and were entitled to reimbursement. *See Aguilar v. Zep, Inc.*, 2014 US Dist
12 LEXIS 120315, *54 (N.D.Cal. Aug. 27, 2014) (Hon. Edward Chen) (where outside sales reps used
13 home internet and computers for work, and even admitted that they would have incurred the same
14 expenses without work duties, the court nevertheless held that the employer was obligated to
15 reimburse some reasonable portion of these expenses); *see also Ritchie v. Blue Shield of*
16 *California*, 2014 WL 6982943, at *21 (N.D.Cal. Dec. 9, 2014) (Hon. Edward Chen)
17 (certifying class of home office claims processors with 2802 phone reimbursement claims for
18 landline reimbursements where company required claims processors working from home to have a
19 landline, but rejecting certification of claims for home office supplies as individualized).

20 20. In short, Defendant’s policies and/or practices require and expect, and/or with
21 Defendant’s knowledge thereof permit, Plaintiff, the Class, and the aggrieved employees to pay for
22 home office expenses incurred in direct consequence of discharging their work duties on behalf of
23 Defendant, without reimbursement in full by Defendant for such expenses. Defendant has
24 maintained its policies and/or practices of denying reimbursement in full of Plaintiff’s, the Class’
25 and the aggrieved employees’ necessarily incurred business expenses, or substantially similar
26 policies, throughout California and throughout the Class and PAGA Period, specifically during the
27 period when work from home orders were in effect as a result of COVID-19.

28 21. Defendant is aware or should have been aware that Plaintiff, the Class, and the

1 aggrieved employees regularly incur home office expenses in the discharge of their duties as
2 employees by virtue of Defendant's instructions to Plaintiff, the Class, and the aggrieved
3 employees to work from home order during the COVID-19 pandemic. Defendant nevertheless
4 has, throughout the Class and PAGA Period, and specifically during work from home orders
5 during the COVID-19 pandemic, failed and refused to reimburse Plaintiff, the Class, and the
6 aggrieved employees for such home office expenses incurred by them in connection with their
7 work.

8 22. Plaintiff, the Aggrieved Employees, and Class Members have been harmed by
9 Defendant's unlawful home office expense policies and/or practices in that they have not been paid
10 for certain home office expenses incurred while employed by Defendant in California, thereby
11 diminishing their agreed-upon compensation, in substantial amounts to be proved at trial.

12 23. Plaintiff has fully and completely exhausted and completed her administrative
13 remedies under PAGA prior to proceeding with the PAGA claim. On October 14, 2020, Plaintiff
14 filed her PAGA Notice online with the Labor Workforce Development Agency ("LWDA") and
15 sent a letter by certified mail to Defendant setting forth the facts and theories of the violations
16 alleged against Defendant, as prescribed by Labor Code § 2698 *et seq.* As required by PAGA,
17 Plaintiff also submitted the \$75.00 filing fee with the LWDA by regular mail. Pursuant to Labor
18 Code § 2699.3(a)(2)(A), Plaintiff has thus satisfied her administrative pre-requisites since sixty-
19 five (65) calendar days have elapsed since the postmark date of the PAGA notice.

20 **CLASS ACTION ALLEGATIONS**

21 24. Plaintiff brings this action on behalf of herself and all others similarly situated as a
22 class action pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class
23 composed of and defined as *Plaintiff and all other California residents who are or were employed*
24 *by Defendant, who were subject to stay at home orders and/or whose offices were closed due to*
25 *COVID-19 at any point from March 13, 2020 and ongoing* ("Class Members"). All such Class
26 Members were subject to Defendant's policy and practice of not fully reimbursing employees'
27 home office expenses.

28 25. This action has been brought and may properly be maintained as a class action

1 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
2 litigation, the proposed class is easily ascertainable, and Plaintiff is a proper representative of the
3 Class:

4 a. Numerosity: The potential members of the Class as defined are so
5 numerous that joinder of all the members of the Class is impracticable. While the precise number
6 of Class Members has not been determined at this time, Plaintiff is informed and believes that
7 Defendant has employed approximately 200 employees during the Class Period. The Class
8 Members are dispersed throughout California. Joinder of all members of the proposed classes is
9 therefore not practicable.

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

13 i. Whether Plaintiff and Class Members incurred unreimbursed business
14 expenses in the discharge of their duties as employees, including but not limited to home office
15 expenses, in violation of Labor Code § 2802;

16 ii. Whether Defendant intended, suffered and/or permitted, and/or knew and/or
17 should have known that Plaintiff and Class Members incurred unreimbursed home office expenses,
18 in the discharge of their duties as employees;

19 iii. Whether Defendant's failure to reimburse the home office expenses incurred
20 by Plaintiff and Class Members was the result of, and/or pursuant to, a business policy or regular
21 practice of Defendant;

22 iv. Whether Plaintiffs are entitled to restitution under Business and Professions
23 Code § 17200;

24 v. Whether Defendant owes penalties pursuant to PAGA for failing to
25 reimburse its drivers for the necessarily incurred business expenses.

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

28 vii. The nature and extent of class-wide damages.

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

5 d. Adequacy of Representation: Plaintiff is a member of the Class and will
6 fairly and adequately represent and protect the interests of the Class and Class Members.
7 Plaintiff's interests do not conflict with those of Class and Class Members. Counsel who represent
8 Plaintiff are competent and experienced in litigating large wage and hour class actions and will
9 devote sufficient time and resources to the case and otherwise adequately represent the Class and
10 Class Members.

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

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FIRST CAUSE OF ACTION
FAILURE TO REIMBURSE FOR BUSINESS EXPENSES
[Cal. Labor Code § 2802(a) and (c)]
On Behalf of Plaintiff and the Class Against Defendant

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

27. The actionable period for this cause of action is from March 13, 2020 through the present.

28. Defendant does not maintain an expense reimbursement policy and/or practice to affirmatively reimburse Plaintiff and Class Members for a reasonable portion of his and their home office expenses necessarily incurred in their discharge of their duties during the COVID 19 pandemic when working from home was necessary for the aggrieved employees and the Class members, as required by Labor Code sections 2802(a) and (c).

29. California Labor Code section 2802 requires an employer to "indemnify his or her employee for all necessary expenditures or losses incurred by that employee in direct consequence of the discharge of his or her duties." See Cal. Labor Code section 2802(a); *see also* 2802(c) where necessary is defined to include all "reasonable" costs. As noted, "[t]he elements of a claim under Section 2802 are: (i) the employee made expenditures or incurred losses; (ii) the expenditures or losses were incurred in direct consequence of the employee's discharge of his or her duties, or obedience to the directions of the employer; and (iii) the expenditures or losses were reasonable and necessary." *Marr v. Bank of America*, 2011 U.S. Dist. LEXIS 24868 (N.D. March 8, 2011) (*citing Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 568 (2007)). "In addition, the employer 'must either know or have reason to know that the employee has incurred [the] expense.'" *Id.* (*citing Stuart v. RadioShack Corp.*, 641 F.Supp. 2d 901 (N.D.Cal. 2009)). Where an employer has knowledge that employees are incurring a reimbursable expense, the employer must "exercise due diligence to ensure each employee is reimbursed." *Marr*, at *1. The right of an employee to expense reimbursements is not waivable. *See* Cal. Labor Code sections 2804 and 219(a). Any contract to waive them is null and void. *Edwards v. Arthur Anderson*, 44 Cal. 4th 937, 951 (2008)

1 30. Furthermore, under Labor Code section 2802, employers must reimburse employees
2 for all reasonable work-related expenses, regardless of whether or not the employees incurred any
3 additional out-of-pocket expense from that work-related use. *See, Cochran v. Schwan's Home*
4 *Service, Inc.*, 228 Cal.App.4th 1137 (Cal. Aug. 12, 2014) (“We hold that when employees must
5 use their personal cell phones for work-related calls, Labor Code section 2802 requires the
6 employer to reimburse them. Whether the employees have cell phone plans with unlimited
7 minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone
8 bills.”). Thus, where employees are expected or mandated to use their internet at home for work,
9 courts have held that they incurred home internet expenses in “direct consequence of the discharge
10 of his or her duties” and were entitled to reimbursement. *See Aguilar v. Zep, Inc.*, 2014 US Dist
11 LEXIS 120315, *54 (N.D.Cal. Aug. 27, 2014) (Hon. Edward Chen) (where outside sales reps used
12 home internet and computers for work, and even admitted that they would have incurred the same
13 expenses without work duties, the court nevertheless held that the employer was obligated to
14 reimburse some reasonable portion of these expenses); see also *Ritchie v. Blue Shield of*
15 *California*, 2014 WL 6982943, at *21 (N.D.Cal. Dec. 9, 2014) (Hon. Edward Chen)
16 (certifying class of home office claims processors with 2802 phone reimbursement claims for
17 landline reimbursements where company required claims processors working from home to have a
18 landline, but rejecting certification of claims for home office supplies as individualized).

19 31. Here, Defendant’s failure to reimburse the work-related home office expenses of
20 Plaintiff and Class Members violated their non-waivable rights secured to Plaintiff and Class
21 Members by Labor Code §2802. See Labor Code §2804. Plaintiff and similarly situated Class
22 Members are thus entitled to reimbursement for these necessary expenditures, plus interest and
23 attorneys’ fees and costs, under Labor Code § 2802(c).

24 **SECOND CAUSE OF ACTION**
25 **UNFAIR COMPETITION LAW VIOLATIONS**
26 **[Bus. & Prof. Code § 17200]**
 On Behalf of Plaintiff and the Class Against Defendant

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

1 33. Section 17200 of the California Business & Professions Code prohibits any
2 unlawful, unfair, or fraudulent business practices. Business & Professions Code § 17204 allows
3 “any person who has suffered injury in fact and has lost money or property” to prosecute a civil
4 action for violation of the UCL. Such a person may bring such an action on behalf of herself and
5 others similarly situated who are affected by the unlawful, unfair, or fraudulent business practice.

6 34. Under section 17208 of the California Business and Professions Code, the statute of
7 limitations for a claim under Section 17200 is four years. Accordingly, the actionable period for
8 this cause of action is March 13, 2020 through the present.

9 35. Section 90.5(a) of the Labor Code states that it is the public policy of California to
10 enforce vigorously minimum labor standards in order to ensure employees are not required to work
11 under substandard and unlawful conditions, and to protect employers who comply with the law
12 from those who attempt to gain competitive advantage at the expense of their workers by failing to
13 comply with minimum labor standards.

14 36. Beginning in March 2020 and continuing to the present, Defendant has committed
15 unlawful, unfair, and/or fraudulent business acts and practices as defined by the UCL, by failing to
16 reimburse and indemnify Plaintiff and similarly situated Class Members for their employment-
17 related home office expenses, in violation of Labor Code § 2802.

18 37. As a direct and proximate result of Defendant’s unlawful, unfair, and/or fraudulent
19 acts and practices described herein, Defendant has received and continues to hold unlawfully
20 obtained property and money belonging to Plaintiff and the Class in the form of unreimbursed
21 employee home office expenses that reduced or offset compensation earned by Plaintiff and Class
22 Members.

23 38. As a direct and proximate result of Defendant’s unlawful business practices,
24 Plaintiffs and the Class Members have suffered economic injuries including, but not limited to out-
25 of-pocket home office expenses. Defendant has profited from its unlawful, unfair, and/or
26 fraudulent acts and practices in the amount of those home office expenses and interest accrued
27 thereon.

28 39. Plaintiff and similarly situated Class Members are entitled to monetary relief

1 pursuant to Business & Professions Code §§ 17203 and 17208 for all unreimbursed business
2 expenses, and interest thereon, from at least March 13, 2020 through to the date of such
3 restitution, at rates specified by law. Defendant should be required to disgorge all the profits and
4 gains it has reaped and restore such profits and gains to Plaintiff and Class Members from whom
5 they were unlawfully taken.

6 40. Beginning four years prior to the filing of this Complaint, Defendant committed,
7 and continues to commit, acts of unfair competition, as defined in sections 17200 *et seq.* of the
8 California Business and Professions Code by, among other things, failing to reimburse Plaintiff
9 and the Class members for a reasonable portion of their home office expenses as required by
10 California law, and therefore was substantially injurious to Plaintiff and the Class members.

11 41. Defendant engaged in unfair competition in violation of sections 17200 *et seq.* of
12 the California Business & Professions Code by violating Section 2802 of the Labor Code.

13 42. Defendant's course of conduct, act, and practice in violation of the California laws
14 mentioned above constitute independent violations of sections 17200 *et seq.* of the California
15 Business and Professions Code.

16 43. The unlawful, unfair and fraudulent business practices and acts of Defendant, as
17 described above, have injured Plaintiff and the Class in that they were denied reimbursement for a
18 reasonable percentage of their home office expenses, and therefore was substantially injurious to
19 Plaintiff and the Class Members.

20 44. Plaintiff and similarly situated Class Members are entitled to enforce all applicable
21 penalty provisions of the Labor Code pursuant to Business & Professions Code § 17202.

22 45. Plaintiff has assumed the responsibility of enforcement of the laws and public
23 policies specified herein by suing on behalf of herself and other similarly situated Class Members
24 previously or presently employed by Defendant in California. Plaintiff's success in this action will
25 enforce important rights affecting the public interest. Plaintiff will incur a financial burden in
26 pursuing this action in the public interest. Therefore, an award of reasonable attorneys' fees to
27 Plaintiff is appropriate pursuant to Code of Civil Procedure § 1021.5.

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

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

47. Based on the above allegations incorporated by reference, Lucile Salter Packard Children's Hospital at Stanford has violated Labor Code § 2802 by failing to reimburse Plaintiff and the Aggrieved Employees their reasonable and necessary business expenses.

48. 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.

49. 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. Therefore, class certification hereby of the PAGA claims is not required, but Plaintiff may choose to seek certification of the PAGA claims.

50. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, 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.

These penalties shall be allocated seventy-five percent (75%) to the Labor and Workforce Development Agency (LWDA) and twenty-five percent (25%) to the affected employees.

51. Some courts have interpreted Labor Code section 2699(f)(2) to impose the enhanced "subsequent violation penalty" only after an employer has been notified that its conduct violates the Labor Code. *See Steenhuyse v. UBS Fin. Servs., Inc.*, 317 F. Supp. 3d 1062, 1067 (N.D. Cal. 2018) ("California law is clear that a 'subsequent violation' level applies only to violations after the employer is on notice that its continued conduct is unlawful. Until 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

1 of employees is a ‘violation’ subject to penalties.”); *Amalgamated Transit Union Local 1309*,
2 *AFL-CIO v. Laidlaw Transit Services, Inc.*, No. 05cv1199–IEG–CAB, 2009 WL 2448430 (S.D.
3 Cal. 2009) (finding that California law imposes the “subsequent violation penalty” only after an
4 employer has been notified its conduct violates the Labor Code); *Willis v. Xerox Bus. Servs., LLC*,
5 No. No. 1:13-cv-01353-LJO-JLT, 2013 WL 6053831, at *6 (E.D. Cal. Nov. 15, 2013) (finding that
6 “[t]he phrase ‘subsequent violation’ is a term of art” and “[f]or a plaintiff to recover for a
7 ‘subsequent violation,’ an employer must have notice that it has violated the Labor Code.”). Based
8 on these decisions, all pay periods at issue after the submission of Plaintiff’s LWDA letter would
9 trigger the heightened subsequent violation amount.

10 JURY DEMAND

11 1. Plaintiff hereby demands trial by jury of her and the Class’s claims under Section
12 2802 of the Labor Code against Defendant, and of all claims, except for those brought under the
13 PAGA and UCL, which are subject to a bench trial.

14 PRAYER FOR RELIEF

15 Wherefore, Plaintiff, on behalf of herself and the members of the Class, prays for judgment
16 against Defendant as follows:

17 1. An Order that this action may proceed and be maintained as a class action;

18 2. On the First Cause of Action:

19 a. That the Court find and declare that Defendant’s business expense policies
20 and/or practices violate California law, including Labor Code § 2802, by refusing and/or failing to
21 reimburse all business expenses incurred by Plaintiff and other and Class Members in the
22 discharge of their duties in California as employees of Defendant;

23 b. That the Court award to Plaintiff and Class Members all unreimbursed
24 business expenses, and interest thereon, that they are owed, pursuant to Labor Code § 2802, and
25 attorneys fees, pursuant to Labor Code § 2802(c), in an amount to be proved at trial;

26 3. On the Second Cause of Action:

27 a. That the Court find and declare that Defendant has violated the UCL and
28 committed unfair and unlawful business practices by failing to reimburse Plaintiff and similarly

1 situated Class Members for their home office expenses incurred by them in the course of their
2 duties for the benefit of Defendant, their employers;

3 b. Restitution, including, but not limited to, the relief permitted by section
4 2802 of the California Labor Code;

5 c. That Defendant be ordered to pay restitution to Plaintiff and the Class
6 Members due to Defendant's UCL violations under the First Cause of Action pursuant to Business
7 and Professions Code §§ 17200-17205, in the amount of their unreimbursed business expenses and
8 interest thereon;

9 4. On the Third Cause of Action:

10 a. A civil penalty against Defendant in the amount of \$100 for the initial
11 violation and \$200 for each subsequent violation as specified in section 2699(f)(2) of the
12 California Labor Code for Plaintiff and the Aggrieved Employees during all of the pay periods in
13 the PAGA Period and on-going until the violations are corrected;

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

17 c. An award of all costs incurred by the undersigned counsel for Plaintiff in
18 connection with Plaintiff's and Class Members' PAGA claim against Defendant as provided for in
19 Labor Code § 2699(g)(1);

20 5. All other relief as this Court deems proper.

21 Dated: December 29, 2020

Respectfully submitted,

23 ACKERMANN & TILAJEF, P.C.
EMPLOYMENT RIGHTS LAW GROUP, APC

25 By: _____

Craig Ackermann, Esq.

Amir Seyedfarshi, Esq.

*Attorneys for Plaintiff, the Putative Class, and the
Aggrieved Employees*