

1 **ACKERMANN & TILAJEF, P.C.**
2 Craig J. Ackermann, Esq. (SBN 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



6 **INDIA LIN BODIEN ATTORNEY AT LAW**
7 India Lin Bodien, Esq. (to be admitted pro hac vice)
8 india@indialinbodianlaw.com
9 2522 North Proctor Street, #387
10 Tacoma, Washington 98406
11 Telephone: (253) 212-7913
12 Facsimile: (253) 276-0081

PER LOCAL RULE, THIS
CASE IS ASSIGNED TO
DEPT. 14, FOR ALL
PURPOSES

10 *Attorneys for Plaintiff, the LWDA, and all other Aggrieved Employees*

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF CONTRA COSTA**

14 ROWENA KLAR, an individual, on behalf of
15 the State of California, as a private attorney
16 general, and on behalf of all Aggrieved
Employees,

CASE NO.

C21-00303-

**PAGA REPRESENTATIVE ACTION
COMPLAINT FOR:**

17 **PLAINTIFF,**

**PENALTIES PURSUANT TO LABOR
CODE § 2699, ET SEQ., FOR
VIOLATIONS OF CALIFORNIA LABOR
CODE § 2802**

18 v.

19 KPMG, LLP, a California Limited Liability
20 Partnership; DOES 1 to 50, inclusive,

21 **DEFENDANTS.**

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25
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28
BY FAX
FIRST LEGAL
200 WEBSTER ST STE 201
OAKLAND, CA 94607
415-626-3111

COPY

1 Plaintiff ROWENA KLAR (“Plaintiff”), on behalf of the people of the State of California
2 and as an “Aggrieved Employee” acting as a private attorney general under the Labor Code Private
3 Attorneys General Act of 2004, § 2699, *et seq.* (“PAGA”) complains of Defendants KPMG LLP
4 and DOES 1 to 50 (collectively, “Defendants” or “KPMG”) and each of them, and alleges the
5 following upon information and belief:

6 **INTRODUCTION**

7 1. This is a representative action brought pursuant to Labor Code § 2699, *et seq.*, on
8 behalf of the State of California and the group of Aggrieved Employees defined as follows:

9 **The “Aggrieved Employees”:**

10 Plaintiff and all other California residents who are or were employed by Defendants, who
11 were subject to stay at home orders and/or whose offices were closed due to COVID-19
12 for at least one pay period during the time period from March 15, 2020 to the present and
ongoing (the “PAGA Period”);

13 2. Plaintiff, on behalf of herself and all Aggrieved Employees presently or formerly
14 employed by Defendants during the PAGA Period, brings this representative action pursuant to
15 Labor Code § 2699, *et seq.* seeking penalties for Defendants’ violation of California Labor Code §
16 2802. Based upon the foregoing, Plaintiff and all Aggrieved Employees are Aggrieved Employees
17 within the meaning of Labor Code §2699, *et seq.*

18 **THE PARTIES**

19 3. Plaintiff Rowena Klar is a resident of California and at all times pertinent hereto
20 worked for Defendants.

21 4. Plaintiff and all Aggrieved Employees are, and at all times pertinent hereto, have
22 been classified as non-exempt employees by Defendants, and have been hired to work for
23 Defendants in California.

24 5. KPMG is a multinational professional services network, and one of the Big Four
25 accounting organizations. Defendants are headquartered in the Netherlands and has a network of
26 firms in 147 countries including the United States and within the State of California. Defendants
27 employed Plaintiff and similarly situated persons as employees within California. Defendants have
28 done and do business throughout the State of California including in Contra Costa County.

6. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

7. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Accordingly, all Defendants engaged, suffered and permitted Plaintiff and all other Aggrieved Employees to perform services from which they benefitted. Moreover, the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions over Plaintiff and all Aggrieved Employees at all relevant times herein, so as to be considered the joint employers of all of the Aggrieved Employees. By reason of their status as joint employers, they are each liable for civil penalties for violation of the California Labor Code as to the Plaintiff and other Aggrieved Employees as set forth herein.

JURISDICTION AND VENUE

8. This Court has subject matter jurisdiction over any and all causes of action asserted herein pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the State of California or is subject to adjudication in the courts of the State of California.

9. This Court has personal jurisdiction over Defendants because Defendants have caused injuries in the County of Contra Costa and State of California through their acts, and by their violation of the California Labor Code and California state common law.

10. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil Procedure § 395. Defendants operate within California and does business within Contra Costa

1 County, California. The unlawful acts alleged herein have a direct effect on Plaintiff and all
2 “employees” within the State of California and Contra Costa County.

3 11. Further, to the extent that Defendants may claim that Plaintiff has signed an
4 arbitration agreement, venue is still appropriate in the Superior Court of Santa Clara County as
5 PAGA claims are not arbitrable as a matter of law *Iskanian v. CLS Transp. Los Angeles, LLC*, 59
6 Cal. 4th 348, 383 (2014) (holding “a PAGA claim lies outside the FAA’s coverage because it is not
7 a dispute between an employer and an employee arising out of their contractual relationship. It is a
8 dispute between an employer and the *state*”).

9 COMMON ALLEGATIONS

10 12. On or around March 15, 2020, when work-from-home and shelter in place orders
11 and KPMG office closures went into effect, Plaintiff and the aggrieved employees, at the direction
12 of Defendants and/or with Defendants’ knowledge and acquiescence, have incurred home office
13 expenses including, *inter alia*, home internet expenses, equipment expenses, electricity and home
14 office infrastructure expenses in order to perform necessary work-related duties. During the
15 referenced time, until on or around July 2020, Plaintiff was not able to work on premises at
16 KPMG’s offices in either San Francisco or Walnut Creek, because KPMG’s offices were closed,
17 and she was instead expected to, and did, work from home, pursuant to state and city shelter-in-
18 place orders, like the other aggrieved employees. During this time frame, KPMG did not reimburse
19 Plaintiff and the other aggrieved employees for a reasonable portion of her and their home internet
20 and/or other home office expenses and/or a reasonable portion of personal cell phone bills and/or a
21 reasonable portion of rent or mortgage payments. Only on November 13, 2020, numerous months
22 after the work-from-home and shelter in place orders went into effect, did KPMG begin to make
23 and retroactively reimbursed Plaintiff and the aggrieved employees at the rate of \$83 per month for
24 their expenses incurred.¹ This was more than eight months after the aggrieved employees began to
25 incur home internet expenses, and was too late. Additionally, the \$83 is not enough to cover
26 Plaintiff and the other aggrieved employees home office expenses, personal cell phone bills, and a

27
28 ¹ Notably, the failure to reimburse claim does trigger a claim for reimbursement, plus interest. Here, Defendants claim \$83 is the monthly expense, as proven by Defendant’s policy going forward, but failed to pay interest when retroactive reimbursement payments were made, which is a violation of section 2802 triggering PAGA penalties.

1 reasonable portion of rent or mortgage payments.

2 13. Notably, in March 2020, KPMG established a “Working Remotely Homepage”
3 where the company compiled various remote collaboration tools available to KPMG employees.
4 On that webpage, KPMG also provided guidance on working-from-home. In a message from Lisa
5 Daniels, the Managing Partner of KPMG in San Francisco, Plaintiff and the other aggrieved
6 employees were advised that all such employees would be required to work remotely (“As noted in
7 a message Monday, as a result of the Bay Area Public Health Order we are all expected to work
8 remotely...”). In the same message, employees were told to direct all work-related calls to their
9 personal cell phones, but KPMG did not reimburse a reasonable portion of Plaintiff’s and the
10 aggrieved employees’ monthly personal cell phone bills until much later. Since access to the office
11 was extremely limited and done only on an emergency basis, there is no doubt that home office
12 expenses for Plaintiff and all the aggrieved employees was necessary. On information and belief,
13 KPMG failed to timely reimburse home office expenses, a reasonable portion of personal cell
14 phone expenses, and a reasonable portion of rent or mortgage payments throughout California
15 during the state-wide and various municipal stay at home orders issued during the pending COVID-
16 19 pandemic.

17 14. During the COVID-19 stay-at-home orders and KPMG’s office closures, which took
18 place state-wide, Plaintiff and the aggrieved employees were thus expected by Defendants to pay
19 for, and have personally paid for, among other things, home internet service, electricity, and the
20 purchase and maintenance of all hardware used for work-purposes, including laptops, keyboards,
21 mouses, Bluetooth headsets, and cell phones, as well as to allocate home office space, in the
22 discharge of their job duties (the “home office expenses”). These expenses ranged, but typically
23 amounted from \$100 to \$250 per month aggrieved employee. Before Defendants retroactively
24 partially reimbursed Plaintiff and the aggrieved employees for expenses incurred numerous months
25 into the COVID-19 pandemic, Defendants had no policy to affirmatively reimburse Plaintiff and all
26 of its aggrieved employees who were forced to work from home during the COVID 19 pandemic
27 for their home office expenses, cell phone bills or other home office infrastructure expenses. In fact,
28 initially, employees who asked if such reimbursements were available were told that KPMG would

1 not be reimbursing them for home internet or the other home office expenses. Defendants began
2 reimbursing \$83 per month on November 20, 2020, only eight days after Plaintiff's LWDA letter
3 was sent.

4 15. Furthermore, KMPG promulgated Expense Reimbursement Policies, attached hereto
5 as **Exhibit A**, stating: "3.01 Individuals are required to submit timely, complete, and accurate semi-
6 monthly expense reports through TIMEnX. KPMG reimburses individuals for appropriately
7 authorized, reasonable and documented business expenses that comply with these policies.
8 Expenses should generally be submitted no later than the cycle following the date incurred to
9 ensure that charges are billed and reported timely. Expenses submitted more than three months after
10 the incurred date will not be reimbursed unless approved by a functional leader, as defined in
11 section 2.02." Therefore, expense reimbursement to Plaintiff and aggrieved employees should have
12 been by the pay period but not more than three months later for recurring expenses that Defendants
13 knew or should have known about.

14 16. In sum, Defendants' expense-related policies and/or practices required and expected,
15 and/or with Defendants' knowledge thereof permitted, Plaintiff and the aggrieved employees to pay
16 for home internet and the home office expenses incurred in direct consequence of discharging her
17 and their necessary, reasonable and business-related job duties on behalf of Defendants, without
18 reimbursement in full by Defendants for such expenses, as required by California law until
19 Defendants retroactively reimbursed several months into the work-from-home and shelter in place
20 orders, notably without interest. Since it was impossible to work in KPMG's offices, these home
21 office expenses were both necessary and reasonable, because KPMG's server and its VPN system
22 could not be accessed without internet access from Plaintiff's and the aggrieved employees' home
23 offices.

24 17. California Labor Code section 2802 requires an employer to "indemnify his or her
25 employee for all necessary expenditures or losses incurred by that employee in direct consequence
26 of the discharge of his or her duties." See Cal. Labor Code section 2802(a); *see also* 2802(c) where
27 necessary is defined to include all "reasonable" costs. "The elements of a claim under Section
28 2802 are: (i) the employee made expenditures or incurred losses; (ii) the expenditures or losses

1 were incurred in direct consequence of the employee's discharge of his or her duties, or obedience
2 to the directions of the employer; and (iii) the expenditures or losses were reasonable and
3 necessary.” *Marr v. Bank of America*, 2011 U.S. Dist. LEXIS 24868 (N.D. March 8,
4 2011) (citing *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 568 (2007). “In addition, the
5 employer ‘must either know or have reason to know that the employee has incurred [the] expense.’”
6 *Id.* (citing *Stuart v. RadioShack Corp.*, 641 F.Supp. 2d 901 (N.D.Cal. 2009). Where an employer
7 has knowledge that employees are incurring a reimbursable expense, the employer must “exercise
8 due diligence to ensure each employee is reimbursed.” *Marr*, at *1. The right of an employee to
9 expense reimbursements is not waivable. *See* Cal. Labor Code sections 2804 and 219(a). Any
10 contract to waive them is null and void. *Edwards v. Arthur Anderson*, 44 Cal. 4th 937, 951 (2008)

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

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

1 have a landline, but rejecting certification of claims for home office supplies as individualized).

2 20. Moreover, in *Bender v. Lincoln Nat'l Life Ins. Co.*, 2010 U.S. Dist. LEXIS 154928
3 (C.D. Cal. November 12, 2010), the Court agreed with Plaintiff that a Defendant violated Labor
4 Code section 2802 where Defendant willfully delayed two years in making required payments
5 under section 2802. Specifically, the Court found that the Defendant violated section 2802 by
6 failing to “exercise due diligence to ensure that the employee is reimbursed” as required by the
7 statute. Therefore, even though Defendants provided retroactive reimbursement here to Plaintiff
8 and the aggrieved employees, Defendant’s failure to *timely* reimburse Plaintiff and the aggrieved
9 employees is a violation of Labor Code section 2802 because Defendants failed to exercise due
10 diligence as required by the statute. *See also, Duran v. Atl. Mem. Hosp. Assocs*, 2020 Cal. App.
11 Unpub. LEXIS 2220, at *41 (April 7, 2020) (holding that reimbursement within one month is
12 acceptable).

13 21. Furthermore, in *Gattuso*, in dicta in footnote 6 the Court held, “In the future,
14 employers that provide business expense reimbursement to employees through increases in base
15 salary or commission rates should, in providing the documentation required by section 226,
16 subdivision (a), separately identify the amounts that represent payment for labor performed and the
17 amounts that represent reimbursement for business expenses”. Here, Defendants did not itemize the
18 breakdown between pay and expenses on wage statements when retroactively reimbursing Plaintiff
19 and aggrieved employees for business expenses.

20 22. Defendants are aware or should have been aware that Plaintiff and the aggrieved
21 employees regularly incurred and incur home office and cell phone expenses in the discharge of
22 their duties as employees by virtue of Defendants’ instructions to Plaintiff and the aggrieved
23 employees. Defendants nevertheless have, throughout the PAGA Period until November 20, 2020,
24 failed and refused to affirmatively reimburse Plaintiff and the aggrieved employees and class
25 members for such home office and cell phone expenses incurred by them in connection with their
26 work. Defendants’ late November 2020 reimbursement decision was too late.

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28 ///

FIRST CAUSE OF ACTION
PENALTIES PURSUANT PAGA. LABOR CODE § 2699, *ET SEQ.* and § 210
FOR VIOLATIONS OF LABOR CODE § 2802
PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS

23. Plaintiff, on behalf of herself and all Aggrieved Employees, realleges and incorporates by reference all previous paragraphs.

24. Based on the above allegations incorporated by reference, Defendants have violated Labor Code § 2802.

25. 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.

26. 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.

27. Pursuant to Labor Code § 2699.3 (a), on November 12, 2020, Plaintiff gave written notice by certified mail to Defendants, and to the LWDA of his claims for violations of Labor Code § 2802, and theories supporting these claims as alleged herein. As of the date of this Complaint, the LWDA has not responded to Plaintiff's PAGA letter. Accordingly, Plaintiff has fulfilled all administrative prerequisites to the filing and pursuit of her PAGA claims on behalf of herself and all other current and former Aggrieved Employees of Defendants.

28. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code § 2699, et seq. because of Defendants' violation of Labor Code § 2802.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For penalties and other relief allowable under Labor Code § 2699, *et seq.* for Plaintiff and all Aggrieved Employees because of Defendants' violation of, without limitation, Labor Code § 2802;

1 2. A civil penalty against Defendants in the amount of \$100 for the initial violation and
2 \$200 for each subsequent violation as specified in section 2699(f)(2) of the California Labor Code
3 for Plaintiff and all Aggrieved Employees for each and every pay period during that occurred
4 between November 12, 2019, and November 20, 2021;

5 3. An award of reasonable attorney's fees against Defendants as allowed by law,
6 including without limitation, in Labor Code § 2699(g)(1), for all the work performed by the
7 undersigned counsel in connection with the PAGA claims;

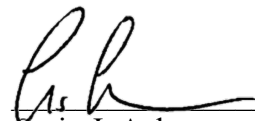
8 4. An award of all costs incurred by the undersigned counsel for Plaintiff in connection
9 with Plaintiff's and the Aggrieved Employees' claims against Defendants as allowed by law,
10 including without limitation, Labor Code § 2699(g)(1);

11 5. Such other and further relief as this Court may deem proper and just.

12
13 Respectfully submitted,

14 ACKERMANN & TILAJEF, P.C.
15 INDIA LIN BODIEN, ATTORNEY AT LAW

16 Dated: February 17, 2021

17 

18 Craig J. Ackermann, Esq.

19 India Lin Bodien, Esq.

20 Attorneys for Plaintiff and Aggrieved Employees
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EXHIBIT A



FINANCE & ACCOUNTING

Expense Reimbursement Policies

KPMG LLP



ABOUT THIS DOCUMENT

3.01 Individuals are required to submit timely, complete, and accurate semi-monthly expense reports through TIMEnX. KPMG reimburses individuals for appropriately authorized, reasonable and documented business expenses that comply with these policies. Expenses should generally be submitted no later than the cycle following the date incurred to ensure that charges are billed and reported timely. ***Expenses submitted more than three months after the incurred date will not be reimbursed unless [approved by a functional leader, as defined in section 2.02.](#)***

3.02 This document describes expenditures that are reimbursable through the semi-monthly TIMEnX reporting process. To qualify for reimbursement, expenditures must meet the criteria and the documentation standards set forth herein.

3.03 Certain expenditures require approval or pre-approval by a functional leader or engagement partner. Hyperlinks are provided in the applicable sections of this document to the [Expense Approval Request](#) form which must be completed. The form may also be accessed via the DASC website (T&E/Expense Approval Request). The system generated e-mail evidencing approval must be submitted with other supporting documentation.

Policy Changes

3.04 Changes to our internal operations and regulated environment will result in occasional updates to this document. Policy changes will be updated via messaging on KPMG Today and/or scrolling notifications on the TIMEnX homepage. Personnel are expected to be familiar with policy updates and to review, understand and apply policy changes when submitting their claims for reimbursement.

Questions regarding these policies or suggested updates and changes to this document are welcomed, and can be e-mailed to [US-Finance & Accounting](#).

A current copy of this document is accessible via the TIMEnX, KWorld, and Finance & Accounting homepages.

Training

3.05 All individuals are required to complete expense reimbursement and compliance training. This web-based training requires successful completion of a brief exam to ensure that all individuals understand their roles and responsibilities with respect to the firm's expense reimbursement policies.

Additional training is available for the following groups: newly hired partners and employees; administrative assistants who prepare expense reports on behalf of others; newly appointed functional leaders; and ExpRT reviewers (refer to Appendix C).