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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

JENEE JERNIGAN, as a representative action on
behalf of the LWDA and the other aggrieved
employees,

Plaintiff,

v.

PRO UNLIMITED, INC., a New York
Corporation, and DOES 1 to 100, inclusive,

Defendants.

CASE NO: 21STCV10027

**PLAINTIFF'S PAGA REPRESENTATIVE
COMPLAINT FOR:**

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

1 Plaintiff Jenee Jernigan, ("Plaintiff"), on behalf of herself, the Aggrieved Employees and
2 the 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 Defendants PRO Unlimited, Inc., and Does 1 to 100
7 ("Defendants") for PAGA penalties based on Defendants' failure to reimburse its current and
8 former employees for their work-related home office expenses in California incurred during the
9 coronavirus pandemic for which they have not been fully or even partially reimbursed. As a result,
10 Defendants have violated California Labor Code section 2802, as described below.

11 2. The "PAGA Period" is designated as the period from March 16, 2020, when
12 California stay at home orders went into effect, 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 Los Angeles. Further,
16 Defendants keep and maintains an office in Los Angeles, California. Many of the Aggrieved
17 Employees were employed and/or performed work during the PAGA Period by Defendants in Los
18 Angeles County. Finally, many of the acts alleged herein including Defendants' failure to
19 reimburse Plaintiff and Aggrieved Employees for a reasonable portion of their home office
20 expenses, occurred in Los Angeles County. Venue is therefore proper in Los Angeles County.

21 **JURISDICTION**

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

28 ///

1 **THE PARTIES**

2 5. Plaintiff Jenee Jernigan resides in Los Angeles, California. Throughout the PAGA
3 period, Defendants employed Plaintiff in the position of professional/business services. From at
4 least March 16, 2020 through the present, Defendants' employees, including Plaintiff during her
5 employment, were required to work from home and have a home office with home internet access,
6 but were not reimbursed a reasonable portion of their home office expenses in the course of
7 carrying out their job duties in California.¹

8 6. Plaintiff represents the State of California and the following group of employees:
9 *Plaintiff and all other California residents who are or were employed by PRO Unlimited, Inc., who*
10 *were subject to stay-at-home orders and/or whose offices were closed due to the COVID-19*
11 *pandemic for at least one pay period during the time period from March 16, 2020 to the present*
12 (the "Aggrieved Employees"). All such Aggrieved Employees are and were subject to
13 Defendants' unlawful failure to reimburse practices, as described in further detail below.

14 7. Defendant PRO Unlimited, Inc. ("PRO Unlimited") is a New York Corporation
15 with its principal place of business in Bethpage, New York. Defendant is a staffing and employee
16 leasing company that leases employees to work for itself and its client customers throughout
17 California. PRO Unlimited was an employer of Plaintiff and the Aggrieved Employees during the
18 PAGA periods.

19 8. The true names and capacities, whether individual, corporate, associate, or
20 otherwise, of Defendants sued herein as DOES 1 to 100 inclusive, are currently unknown to
21 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure §
22 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
23 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to
24 herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
25 capacities of the Defendants designated hereinafter as DOES when such identities become known.

26
27 ¹ The statute of limitations for Plaintiff's PAGA claim is one year prior to Plaintiff's LWDA letter through the present;
28 however, this case is predicated on Defendants' failure to affirmatively reimburse a reasonable portion of Plaintiff and
the Aggrieved Employees' home office expenses during the time COVID-19 shelter in place orders that went into
effect state-wide on March 16, 2020.

9. 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. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff and the other Aggrieved Employees. Further, Labor Code § 558.1 explicitly allows Plaintiff to name any owner, director, officer, or managing agent of Defendant as a Doe Defendant for violations of Labor Code § 2802.

10. Plaintiff and the Aggrieved Employees were employed by Defendants in California at various times during the PAGA Period.

FACTUAL ALLEGATIONS

11. Defendants operate and, at all times during the PAGA Period, has done and does business in California. Defendants, in the course of operating their business in California during the PAGA Period, employed Plaintiff and the Aggrieved Employees.

12. From at least March 16, 2020 and continuing into the present, during which time various work from home orders were in effect, Plaintiff and the aggrieved employees, at the direction of Defendants and/or with Defendants' knowledge and acquiescence, have incurred home office expenses including, among other things, home internet expenses, equipment expenses, electricity and home office infrastructure expenses in order to perform necessary work-related duties. Plaintiff, who was employed by PRO Unlimited, Inc. and was assigned to work on job assignments for Airbnb, Inc., was not able to work on premises at Defendant' AirBnB's office (or PRO Unlimited's office), but instead was required to, and did, work from home, like the other aggrieved employees. Attached hereto as **Exhibit A** is an email from Defendant PRO Unlimited to Plaintiff, and others contracting for AirBnB, Inc., confirming that it was expected that Plaintiff and the Aggrieved Employees would work from home. On information and belief, this was true for all of Defendants' clients in California during the pandemic. To be clear, Plaintiff alleges that PRO Unlimited, Inc. sent home their California-resident employees during the period from March 16, 2020 to the present without affirmatively reimbursing them for a reasonable portion of their monthly home internet expenses in violation of Labor Code section 2802.

1 13. During the COVID 19 stay at home orders in place during the PAGA Period,
2 Plaintiff and the aggrieved employees were thus expected by Defendants to pay for, and have
3 personally paid for, among other things, home internet service, electricity, an allocated portion of
4 their home office space, in the discharge of their job duties (the “home office expenses”). These
5 home office expenses were required and necessary for work to be performed as illustrated in
6 Defendant PRO Unlimited’s Employee Data Sheet, attached hereto as **Exhibit B**, which includes
7 Plaintiff’s job description for the position with AirBnB including cloud software that needs a wi-fi
8 connection to access files. These home internet and home office expenses ranged, but typically
9 amounted to \$50 to \$150 per month per aggrieved employee. On information and belief, Wi-fi
10 was required for all of Defendants’ employees who worked from home during the COVID 19
11 pandemic throughout California regardless of which client the employee was assigned to.

12 14. Defendants had no policy to affirmatively reimburse all of their employees and/or
13 joint employees who were forced to work from home during the COVID 19 pandemic for a
14 reasonable portion of their home internet and home office expenses. In sum, Defendants’ expense-
15 related policies and/or practices require and expect, and/or with Defendants’ knowledge thereof
16 permit, Plaintiff and the aggrieved employees and Class Members to pay for home internet and
17 home office infrastructure expenses incurred in direct consequence of discharging her and their
18 necessary, reasonable and business-related job duties on behalf of Defendants, without
19 reimbursement in full by Defendants for such expenses, as required by California law.

20 15. California Labor Code section 2802 requires an employer to "indemnify his or her
21 employee for all necessary expenditures or losses incurred by that employee in direct consequence
22 of the discharge of his or her duties." See Cal. Labor Code section 2802(a); *see also* 2802(c)
23 where necessary is defined to include all “reasonable” costs. “The elements of a claim under
24 Section 2802 are: (i) the employee made expenditures or incurred losses; (ii) the expenditures or
25 losses were incurred in direct consequence of the employee's discharge of his or her duties, or
26 obedience to the directions of the employer; and (iii) the expenditures or losses were reasonable
27 and necessary.” *Marr v. Bank of America*, 2011 U.S. Dist. LEXIS 24868 (N.D. March 8,
28 2011) (*citing Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 568 (2007)). “In addition, the

1 employer ‘must either know or have reason to know that the employee has incurred [the]
2 expense.’” *Id.* (citing *Stuart v. RadioShack Corp.*, 641 F.Supp. 2d 901 (N.D.Cal. 2009)). Where an
3 employer has knowledge that employees are incurring a reimbursable expense, the employer must
4 “exercise due diligence to ensure each employee is reimbursed.” *Marr*, at *1. The right of an
5 employee to expense reimbursements is not waivable. *See* Cal. Labor Code sections 2804 and
6 219(a). Any contract to waive them is null and void. *Edwards v. Arthur Anderson*, 44 Cal. 4th 937,
7 951 (2008). Defendant thus cannot hide behind a written reimbursement policy where, as here, it
8 knows that its employees are incurring home internet expenses on a monthly basis. *See Stuart v.*
9 *RadioShack Corp.*, 641 F.Supp.2nd 901, 902-3 (April 30, 2009) (“The Court concludes that a fair
10 interpretation of Sections 2802 and 2804 which produces ‘practical and workable results,’ *Gattuso*,
11 at 567, consistent with the public policy underlying those sections, focuses not on whether an
12 employee makes a request for reimbursement but rather on whether the employer either knows or
13 has reason to know that the employee has incurred a reimbursable expense. If it does, it must
14 exercise due diligence to ensure that each employee is reimbursed.”).

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

23 17. Where, as here, employees in California are expected or mandated to use their
24 internet at home for work, courts have held that they incurred home internet expenses in “direct
25 consequence of the discharge of his or her duties” and were entitled to reimbursement. *See Aguilar*
26 *v. Zep, Inc.*, 2014 US Dist LEXIS 120315, *54 (N.D.Cal. Aug. 27, 2014) (Hon. Edward Chen)
27 (where outside sales reps used home internet and computers for work, and even admitted that they
28 would have incurred the same expenses without work duties, the court nevertheless held that the

1 employer was obligated to reimburse some reasonable portion of these expenses); see also *Ritchie*
2 *v. Blue Shield of California*, 2014 WL 6982943, at *21 (N.D.Cal. Dec. 9, 2014) (Hon. Edward
3 Chen) (certifying class of home office claims processors with 2802 phone reimbursement claims
4 for landline reimbursements where company required claims processors working from home to
5 have a landline, but rejecting certification of claims for home office supplies as individualized).

6 18. Defendants are aware or should have been aware that Plaintiff and the aggrieved
7 employees and class members regularly incurred and incur home office internet and infrastructure
8 expenses in the discharge of their duties as employees by virtue of Defendants' instructions to
9 Plaintiff and the aggrieved employees and class members to work from home during the pending
10 pandemic. Defendants nevertheless have, throughout the PAGA Period and Class Period, and
11 specifically during work from home orders issued because of the COVID-19 pandemic, failed and
12 refused to affirmatively reimburse Plaintiff and the aggrieved employees and class members for a
13 reasonable portion of such home office expenses incurred by them in connection with their work.

14 19. Plaintiff has fully and completely exhausted and/or will have fully and completed
15 and exhausted her administrative remedies under PAGA prior to proceeding with the PAGA claim.
16 On December 31, 2020, Plaintiff filed her PAGA Notice online with the Labor Workforce
17 Development Agency ("LWDA") and sent a letter by certified mail to Defendant PRO Unlimited
18 setting forth the facts and theories of the violations alleged against Defendants, as prescribed by
19 Labor Code § 2698 *et seq.* As required by PAGA, Plaintiff submitted the \$75.00 filing fee with the
20 LWDA by regular mail. Pursuant to Labor Code § 2699.3(a)(2)(A), Since sixty-five (65) calendar
21 days have elapsed since the postmark date of the PAGA notice, all administrative prerequisites have
22 now been satisfied.

23 **FIRST CAUSE OF ACTION**
24 **PENALTIES UNDER CALIFORNIA'S PRIVATE ATTORNEY GENERAL ACT BASED**
25 **ON UNDERLYING VIOLATIONS OF LABOR CODE SECTION 2802**
26 **[Cal. Labor Code §§ 2698-2699.5; 2802]**
27 **On Behalf of Plaintiff, the LWDA, and the Aggrieved Employees Against Defendants**

28 20. 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.

21. Based on the above allegations incorporated by reference, Defendants have violated Labor Code § 2802 by failing to reimburse Plaintiff and the Aggrieved Employees for a reasonable percentage of their reasonable and necessary home office related expenses, including home internet expenses, associated with their home offices during the COVID-19 pandemic.

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

23. 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 up until Plaintiff's LWDA letter; and \$200 for each subsequent violation per employee per pay period since then.

24. Since Defendants paid Plaintiff and the Aggrieved Employees on a weekly basis, and there have been 12 months since the commencement of the stay-at-home orders and office closures, Plaintiff estimates that, for each Aggrieved Employee who worked for Defendants throughout the pandemic, there have been approximately 48 pay periods as of the present date, with an additional 4 pay periods accruing per month for each Aggrieved Employee.

25. 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).

PRAYER FOR RELIEF

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

1. A civil penalty against Defendants in the amount of \$100 for each initial violation per employee per each weekly pay period prior to the submission of her LWDA letter, and \$200

1 for each subsequent violation per employee per each weekly pay period post submission of her
2 LWDA letter as specified in section 2699(f)(2) of the California Labor Code for Plaintiff and the
3 Aggrieved Employees during all of the pay periods in the PAGA Period since March 16, 2020 and
4 on-going until the violations are corrected;

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

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

11 4. All other relief as this Court deems proper.
12

13 Dated: March 15, 2021

Respectfully submitted,

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

16 By: 
17 _____

Craig Ackermann, Esq.

India Lin Bodien, Esq.

*Counsel for Plaintiff as the representative of the
LWDA and the Aggrieved Employees*

EXHIBIT A

ProUnlimited OnsiteTeam <prounlimitedonsiteteam@ext.airbnb.com> (sent by meghan.bennett@ext.airbnb.com)

Thu, Mar 5, 1:20 PM



to Jennifer, Jeremie, Katie, Lauren, Meghan, bcc: me

Hi All,

The coronavirus (COVID-19) situation continues to evolve. We're tracking global cases, local regulations, and other companies' responses to inform the guidance we're providing around work, travel and office operations. Your health, safety and security are our priorities.

Below is our updated global guidance for team members providing services to Airbnb. If a relevant, local government agency issues additional specific guidance, we will follow that guidance, and share the update with relevant team members.

- 1. Work from home.** Effective immediately, team members who feel more comfortable working from home are welcome to do so, provided your Airbnb manager and employer of record are aware. Please make sure you take your laptop and any personal belongings home with you. If you need any IT support, please refer to AirSupport's [Working from Home protocols](#) or reach out to [AirSupport@](#). Team members that have critical functions requiring in-office presence can discuss with their manager how to proceed.
 - Consistent with King County [guidance issued on Wednesday](#), Seattle team members should work from home, effective immediately. The Seattle office will remain open should you need to use it.
- 2. Office operations.** Offices in China, Japan, Korea and Italy are closed (Italy effective March 6). Singapore is partially open. We will continue to monitor local offices daily in case closing or re-opening is warranted. All other offices are open and complying with recommended guidelines to the best of our ability to keep them clean and safe.
- 3. Travel guidance.** Travel is prohibited to all countries currently in the [Centers for Disease Control and Prevention \(CDC\) level 3 travel alert countries](#). Anyone returning from a CDC Level 3 country will need to stay home for 14 days before visiting any Airbnb office. Any team member, anywhere in the world uncomfortable with air travel at this time, should inform their employer of record and Airbnb manager in a timely manner of their decision not to travel.

As a reminder, global and local guidance is available at [air/safety](#), along with travel advisory information. Take care of each other, and do your part to [practice preventive actions](#).

Thank you,

The Pro Unlimited Team

 Reply all

 Reply

 Forward

EXHIBIT B

PROUnlimited

Last Name:		First Name:		Middle Initial:
Jernigan		Jenee		Nicole
Street Address:		City:	State:	Zip Code:
2435 Workman St		Los Angeles	CA	90031
Home Phone #	Business Phone #		Cell Phone #	
9099362415				
Email Address:				
jeneejernigan@gmail.com				
Job Title:				
Experience Designer - 1				
Job Description:				
Duties We are seeking a Contract Experience Designer to support the host and guest products of Airbnb Adventures. The focus of the team is to (i) build the foundational product for our host community to onboarding and manage their Adventures, and (ii) build awareness for guests looking for a once in a lifetime trip. Portfolio required to apply. Responsibilities Partner with the product and operation teams to define problems & goals map user flows prototype interactions oversee the building process Design elegant flows & interactions for a global audience across platforms Give and solicit feedback from designers and cross-disciplinary partners Execute in a fast-paced environment with ambiguity Be the voice of the user Required Based in Los Angeles, CA and willing to commute to Playa Vista daily 5+ years of experience A love for working on design systems UX experience with strong visual design skills Excellent communication skills, high energy and optimistic attitude Lo-fi & hi-fi prototyping skills; ideally experience in Figma and Principle Have contributed as a leader in design and a strong collaborator with product managers and engineers Demonstrate experience with end-to-end product design Have shipped product-specific work Have cross-platform design experiences (Web, android, iOS, emails) Experience working on tools is a plus Ability to excel in a fast paced environment, comfortable with turning out work very quickly (within a single workday) Resilient, doesn't let changes in strategy/direction get them down Comfortable driving workstreams alone, requires little oversight				