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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CLARA**

JOSE ROBLEDO, an individual, on behalf of
the State of California, as a private attorney
general, and on behalf of all Aggrieved
Employees,

PLAINTIFF,

v.

ACCENTURE LLC, a Delaware Limited
Liability Company; DOES 1 to 50, inclusive,

DEFENDANTS.

CASE NO. **21CV378685**

**PAGA REPRESENTATIVE ACTION
COMPLAINT FOR:**

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

1 Plaintiff JOSE ROBLED0 (“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 ACCENTURE
4 LLC and DOES 1 to 50 (collectively, “Defendants” or “Accenture”) and each of them, and alleges
5 the 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 Defendant
11 Accenture LLC and/or any related Accenture entity, who were subject to stay-at-home
12 orders and/or whose offices were closed due to the COVID-19 pandemic and/or stay-at-
13 home orders for at least one pay period during the time period from March 16, 2020 to the
present (the “PAGA Period”);

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

19 **THE PARTIES**

20 3. Plaintiff Jose Robledo is a resident of California and at all times pertinent hereto
21 worked for Defendants.

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

25 5. Accenture is a global information technology services company that provides
26 management consulting and professional services. Defendants are headquartered in Ireland, and
27 have a network of locations and operations in approximately 200 cities, across 50 countries,
28 including the United States and within the State of California. Defendants employed Plaintiff and

1 similarly situated aggrieved employees in California. Defendants have done and do business
2 throughout the State of California including in Santa Clara County.

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

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

20 **JURISDICTION AND VENUE**

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

26 9. This Court has personal jurisdiction over Defendants because Defendants have
27 caused injuries in the County of Santa Clara and State of California through their acts, and by their
28 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 Santa Clara County, California. The unlawful acts alleged herein have a direct effect on Plaintiff and all “employees” within the State of California and Santa Clara County.

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

COMMON ALLEGATIONS

12. From at least March 16, 2020 and continuing into the present, during which time various work from home orders were in effect in California,¹ 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.

13. Plaintiff, who was employed by Accenture in California, and the Aggrieved Employees were not able to work on premises at Defendants' office location(s) in California, including Defendants' Mountain View Building #391 where Plaintiff worked prior to the work from home orders, but instead were required to, and did, work from home. To be clear, Accenture 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 and/or home office expenses.

14. During the COVID 19 stay at home orders in place during the PAGA Period, Plaintiff and the Aggrieved Employees were expected by Defendants to pay for, and have

¹ On March 15, 2020, California Governor Gavin Newsom issued a stay-at-home directive to fight COVID-19, Executive Order N-27-20, which can be found here: [gov.ca.gov/wp-content/uploads/2020/03/3.15.2020-COVID-19-Facilities.pdf](https://www.gov.ca.gov/wp-content/uploads/2020/03/3.15.2020-COVID-19-Facilities.pdf).

1 personally paid for, among other things, home internet service, electricity, and an allocated portion
2 of their home office space, in the discharge of their job duties (the “home office expenses”). These
3 home office expenses were required and necessary for work to be performed. These home internet
4 and home office expenses ranged, but typically amounted to \$50 to \$200 per month per Aggrieved
5 Employee. In contrast to numerous other companies, who paid an up-front reimbursement amount
6 in March 2020 for initial home office expenses and then monthly stipends thereafter for a
7 reasonable portion of home office internet expenses of their employees, Accenture failed to
8 affirmatively reimburse Plaintiff and the Aggrieved Employees as required by law.

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

17 16. California Labor Code section 2802 requires an employer to "indemnify his or her
18 employee for all necessary expenditures or losses incurred by that employee in direct consequence
19 of the discharge of his or her duties." See Cal. Labor Code section 2802(a); *see also* 2802(c) where
20 necessary is defined to include all “reasonable” costs. “The elements of a claim under Section
21 2802 are: (i) the employee made expenditures or incurred losses; (ii) the expenditures or losses
22 were incurred in direct consequence of the employee's discharge of his or her duties, or obedience
23 to the directions of the employer; and (iii) the expenditures or losses were reasonable and
24 necessary.” *Marr v. Bank of America*, 2011 U.S. Dist. LEXIS 24868 (N.D. March 8,
25 2011) (*citing Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 568 (2007)). “In addition, the
26 employer ‘must either know or have reason to know that the employee has incurred [the] expense.’”
27 *Id.* (*citing Stuart v. RadioShack Corp.*, 641 F.Supp. 2d 901 (N.D.Cal. 2009)). Where an employer
28 has knowledge that employees are incurring a reimbursable expense, the employer must “exercise

1 due diligence to ensure each employee is reimbursed.” *Marr*, at *1. The right of an employee to
2 expense reimbursements is not waivable. *See* Cal. Labor Code sections 2804 and 219(a). Any
3 contract to waive them is null and void. *Edwards v. Arthur Anderson*, 44 Cal. 4th 937, 951 (2008).

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

12 18. Where, as here, employees in California are expected or mandated to use their
13 internet at home for work, courts have held that they incurred cell phone expenses in “direct
14 consequence of the discharge of his or her duties” and were entitled to reimbursement. *See Aguilar*
15 *v. Zep, Inc.*, 2014 US Dist LEXIS 120315, *54 (N.D.Cal. Aug. 27, 2014) (Hon. Edward Chen)
16 (where outside sales reps used home internet and computers for work, and even admitted that they
17 would have incurred the same expenses without work duties, the court nevertheless held that the
18 employer was obligated to reimburse some reasonable portion of these expenses); *see also Ritchie*
19 *v. Blue Shield of California*, 2014 WL 6982943, at *21 (N.D.Cal. Dec. 9, 2014) (Hon. Edward
20 Chen) (certifying class of home office claims processors with 2802 phone reimbursement claims
21 for landline reimbursements where company required claims processors working from home to
22 have a landline, but rejecting certification of claims for home office supplies as individualized). The
23 mere presence of a written policy allowing individuals to submit for reimbursement is not sufficient
24 to insulate an employer from liability when it knows that employees are incurring monthly
25 recurring business expenses. In *Stuart v. RadioShack Corp.*, 641 F.Supp.2nd 901 (April 30, 2009).
26 Judge Edward Chen wrote as follows:

27 “ ... Mr. Stuart’s contention is that the duty to reimburse is triggered once the expense is
28 incurred by the employee irrespective of any other circumstance. However, if the employer

1 had no knowledge or reason to know that the expense was incurred and the employee
2 withheld that information, it would hardly seem fair to hold the employer accountable,
3 particularly when, under the California Labor Code Private Attorneys General Act, an
4 employer may be held liable for civil penalties and attorney's fees for a failure to reimburse
5 in accordance with Section 2802. *See* Cal. Lab. Code section 2699(a), (f), (g). In
6 turn, RadioShack's contention is that the duty to reimburse is triggered *only* when an
7 employee makes a request for reimbursement even if the employer knew or had reason to
8 know the expense was incurred. While the employee, rather than the employer, is in the best
9 position to know when he or she has incurred an expense and the details of that
10 expense, *see* Docket No. 65 (Order at 24), such a narrow construction is at war with Section
11 2802's "strong public policy . . . favor[ing] the indemnification (and defense) of employees
12 by their employers for claims and liabilities resulting from the employees' acts within the
13 course and scope of their employment." *Edwards v. Arthur Anderson*, 44 Cal.4th 937, 952
14 (2008) (internal quotation marks omitted). . . . "

15 The Court thus summarized its thinking on the appropriate standard as follows:

16 "The Court concludes that a fair interpretation of Sections 2802 and 2804 which produces
17 'practical and workable results,' *Gattuso*, at 567, consistent with the public policy
18 underlying those sections, focuses not on whether an employee makes a request for
19 reimbursement but rather on whether the employer either knows or has reason to know that
20 the employee has incurred a reimbursable expense. ***If it does, it must exercise due diligence
21 to ensure that each employee is reimbursed.***" *Id.* at 902-903 (emphasis added).

22 19. Accordingly, the employer defense that it had promulgated a written reimbursement
23 policy, but employees *en masse* failed to submit for [home internet and other home office expense]
24 reimbursement, including related defenses of estoppel, waiver, laches, and equitable estoppel, were
25 all rejected by the Court in RadioShack. *See Stuart v. RadioShack Corp.*, 259 F.R.D. 200, 202-203
26 (N.D. Cal. August 28, 2009) (quoting its earlier rulings). The Court's rationale for rejecting
27 RadioShack's waiver defenses is equally applicable here.

28 20. Moreover, in *Bender v. Lincoln Nat'l Life Ins. Co.*, 2010 U.S. Dist. LEXIS 154928
(C.D. Cal. November 12, 2010), the Court agreed with Plaintiff that a Defendant violated Labor
Code section 2802 where Defendant willfully delayed two years in making required payments
under section 2802. Specifically, the Court found that the Defendant violated section 2802 by
failing to "exercise due diligence to ensure that the employee is reimbursed" as required by the
statute. Therefore, Defendant's failure to *timely* and *affirmatively* reimburse Plaintiff and the
aggrieved employees here is and was a violation of Labor Code section 2802, because there was a
failure by Accenture to exercise due diligence to reimburse its employees in California for home

1 office and internet expenses that the company knew were being incurred every month by its
2 California workforce, as required by Section 2802. *Cf. Duran v. Atl. Mem. Hosp. Assocs*, 2020 Cal.
3 App. Unpub. LEXIS 2220, at *41 (April 7, 2020) (holding that employer reimbursement within one
4 month of expenses being incurred is acceptable).

5 21. Defendants are, were, or should have been aware that Plaintiff and the Aggrieved
6 Employees regularly incurred and continue to incur home office internet and infrastructure
7 expenses in the discharge of their duties as employees in California by virtue of Defendants'
8 instructions to Plaintiff and the Aggrieved Employees to work from home during the pending
9 pandemic, pursuant to applicable orders from state and city officials. Defendants nevertheless have,
10 throughout the PAGA Period, failed and refused to affirmatively reimburse Plaintiff and the
11 Aggrieved Employees for a reasonable portion of his and their home office expenses incurred by
12 them in connection with their work.

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

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

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

21 24. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiff and
22 all other Aggrieved Employees are entitled to penalties in an amount to be shown at the time of trial
23 subject to the following formula:

24 \$100 for the initial violation per employee per pay period; and

25 \$200 for each subsequent violation per employee per pay period.

26 25. Courts in California have held that the stepped-up \$200 per pay period PAGA
27 penalties are only triggered after Plaintiff's LWDA letter is submitted and Defendant is thus placed
28 on notice of the claim. *See, Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1209 (2008);
see also, In re Taco Bell Wage & Hour Actions 2016 U.S. Dist. LEXIS 48557, No. 1:07-cv-01314-

1 SAB at *24-25 (E.D. Cal. Apr. 8, 2016) (holding that the subsequent penalties under PAGA applied
2 for each pay period following the filing of the lawsuit because “[a]fter being served with this
3 lawsuit, Defendants would have been on notice that their autopay policy of only paying one half
4 hour of compensation for each missed or short lunch period would be a violation of California
5 law...As of this date, Defendant was clearly notice of the violation based on the prior lawsuit, and
6 thus all further violations as set forth herein should be subject to subsequent violation penalties.”).

7 26. These PAGA penalties shall be allocated seventy-five percent (75%) to the Labor
8 and Workforce Development Agency (LWDA) and twenty-five percent (25%) to the affected
9 employees, as set forth in Labor Code section 2699(i).

10 27. Pursuant to Labor Code § 2699.3 (a), on January 19, 2021, Plaintiff gave written
11 notice by certified mail to Defendants, and to the LWDA of his claims for violations of Labor Code
12 § 2802, and theories supporting these claims as alleged herein. As of the date of this Complaint, the
13 LWDA has not responded to Plaintiff’s PAGA letter. Plaintiff has already paid the required \$75 fee
14 and has otherwise satisfied all prerequisites to filing suit. Accordingly, Plaintiff has fulfilled all
15 administrative prerequisites to the filing and pursuit of his PAGA claims on behalf of himself and
16 all other current and former Aggrieved Employees of Defendants.

17 28. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code
18 § 2699, *et seq.* because of Defendants’ violation of Labor Code § 2802.

19 **RELIEF REQUESTED**

20 **WHEREFORE**, Plaintiff prays for the following relief:

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

24 2. A civil penalty against Defendants in the amount of \$100 for the initial violation and
25 \$200 for each subsequent violation as specified in section 2699(f)(2) of the California Labor Code
26 for Plaintiff and all Aggrieved Employees for each and every pay period during that occurred
27 between March 16, 2020, and the present;

28 3. An award of reasonable attorney’s fees against Defendants as allowed by law,

1 including without limitation, in Labor Code § 2699(g)(1), for all the work performed by the
2 undersigned counsel in connection with the PAGA claims;

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

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

7
8 Respectfully submitted,

9 ACKERMANN & TILAJEF, P.C.
10 INDIA LIN BODIEN, ATTORNEY AT LAW

11 Dated: March 26, 2021



12 Craig J. Ackermann, Esq.

13 India Lin Bodien, Esq.

14 *Attorneys for Plaintiff and Aggrieved Employees*
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