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

DAVID GEORGE WILLIAMS, an individual,
on behalf of the State of California, as a private
attorney general, and on behalf of all Aggrieved
Employees,

PLAINTIFF,

v.

AMAZON.COM SERVICES LLC, a Delaware
Limited Liability Company; DOES 1 to 50,
inclusive,

DEFENDANTS.

CASE NO. 21CV00718

**PAGA REPRESENTATIVE ACTION
COMPLAINT FOR:**

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

1 Plaintiff DAVID GEORGE WILLIAMS (“Plaintiff”), on behalf of the people of the State of
2 California and as an “Aggrieved Employee” acting as a private attorney general under the Labor
3 Code Private Attorneys General Act of 2004, § 2699, *et seq.* (“PAGA”) complains of Defendants
4 AMAZON.COM SERVICES LLC and DOES 1 to 50 (collectively, “Defendants” or “Amazon”)
5 and each of them, and alleges 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 Amazon.com Services LLC and/or any related Amazon entity, who performed work in an
12 office and who were subject to stay-at-home orders and/or whose offices were closed due
13 to COVID-19 for at least one pay period during the time period from March 15, 2020 to
14 the present and ongoing (the “PAGA Period”);

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

20 **THE PARTIES**

21 3. Plaintiff David George Williams is a resident of California and at all times pertinent
22 hereto worked for Defendants.

23 4. Plaintiff and all Aggrieved Employees are, and at all times pertinent hereto, have
24 been classified as non-exempt employees by Defendants, and have been hired to work for
25 Defendants in California, performing office work before stay-at-home orders went into effect.

26 5. Amazon is an American multinational technology company based in Seattle,
27 Washington which focuses on e-commerce, cloud computing, digital streaming, and artificial
28 intelligence. Defendants employed Plaintiff and similarly situated persons as employees within
California. Defendants have done and do business throughout the State of California including in

1 Santa Cruz County.

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

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

19 **JURISDICTION AND VENUE**

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

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

28 10. Venue as to each Defendant is proper in this judicial district, pursuant to Code of

1 Civil Procedure § 395. Defendants operate within California and do business within Santa Cruz
2 County, California. The unlawful acts alleged herein have a direct effect on Plaintiff and all
3 “employees” within the State of California and Santa Cruz County.

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

10 **COMMON ALLEGATIONS**

11 12. From at least March 15, 2020 and continuing into the present, during which time
12 various work from home orders were in effect in California¹, Plaintiff and the Aggrieved
13 Employees, at the direction of Defendants and/or with Defendants’ knowledge and acquiescence,
14 have incurred home office expenses including, among other things, home internet expenses,
15 equipment expenses, electricity, and home office infrastructure expenses, in order to perform
16 necessary work-related duties. Plaintiff, who was employed by Amazon.com Services LLC, was
17 not able to work on premises at Defendants’ office location in Silicon Valley, but instead was
18 required to, and did, work from home, like the other Aggrieved Employees. To be clear,
19 Amazon.com Services LLC sent home their California-resident office-based employees during the
20 period from March 15, 2020 to the present without affirmatively reimbursing them for a reasonable
21 portion of their monthly home internet expenses.

22 13. During the COVID 19 stay at home orders in place during the PAGA Period,
23 Plaintiff and the Aggrieved Employees were expected by Defendants to pay for, and have
24 personally paid for, among other things, home internet service, electricity, and an allocated portion
25 of their home office space, in the discharge of their job duties (the “home office expenses”). These
26 home office expenses were required and necessary for work to be performed. These home internet
27 and home office expenses ranged, but typically amounted to \$50 to \$100 per month per Aggrieved

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

1 Employee.

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

10 15. California Labor Code section 2802 requires an employer to "indemnify his or her
11 employee for all necessary expenditures or losses incurred by that employee in direct consequence
12 of the discharge of his or her duties." See Cal. Labor Code section 2802(a); *see also* 2802(c) where
13 necessary is defined to include all "reasonable" costs. "The elements of a claim under Section
14 2802 are: (i) the employee made expenditures or incurred losses; (ii) the expenditures or losses
15 were incurred in direct consequence of the employee's discharge of his or her duties, or obedience
16 to the directions of the employer; and (iii) the expenditures or losses were reasonable and
17 necessary." *Marr v. Bank of America*, 2011 U.S. Dist. LEXIS 24868 (N.D. March 8,
18 2011) (*citing Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 568 (2007)). "In addition, the
19 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
20 has knowledge that employees are incurring a reimbursable expense, the employer must "exercise
21 due diligence to ensure each employee is reimbursed." *Marr*, at *1. The right of an employee to
22 expense reimbursements is not waivable. *See* Cal. Labor Code sections 2804 and 219(a). Any
23 contract to waive them is null and void. *Edwards v. Arthur Anderson*, 44 Cal. 4th 937, 951 (2008)

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

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

16 18. Defendants are aware or should have been aware that Plaintiff and the Aggrieved
17 Employees regularly incurred and incur home office and cell phone expenses in the discharge of
18 their duties as employees by virtue of Defendants’ instructions to Plaintiff and the Aggrieved
19 Employees. Defendants nevertheless have, throughout the PAGA Period, failed and refused to
20 affirmatively reimburse Plaintiff and the Aggrieved Employees for such home office and cell phone
21 expenses incurred by them in connection with their work.

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

26 19. Plaintiff, on behalf of himself and all Aggrieved Employees, realleges and
27 incorporates by reference all previous paragraphs.

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

21. 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.

22. 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.

23. Pursuant to Labor Code § 2699.3 (a), on January 11, 2021, Plaintiff gave written notice by certified mail to Defendants and to the LWDA of his claims for violations of Labor Code § 2802, including 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 his PAGA claims on behalf of himself and all other current and former Aggrieved Employees of Defendants.

24. 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;

2. A civil penalty against Defendants in the amount of \$100 for the initial violation and \$200 for each subsequent violation as specified in section 2699(f)(2) of the California Labor Code for Plaintiff and all Aggrieved Employees for each and every pay period during that occurred between March 15, 2020, and the present;

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

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

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

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6 Respectfully submitted,

7 ACKERMANN & TILAJEF, P.C.
8 JOSHUA KLUGMAN, ESQ.

9 Dated: March 18, 2021

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11 _____
12 Craig J. Ackermann, Esq.
13 Joshua Klugman, Esq.
14 Attorneys for Plaintiff and Aggrieved Employees
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