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ELECTRONICALLY
FILED
Superior Court of California,
County of San Francisco

03/14/2022
Clerk of the Court
BY: LAURA SIMMONS
Deputy Clerk

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10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF SAN FRANCISCO**
12

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

17 PLAINTIFF,

18 v.

19 DELOITTE SERVICES, LP, a Delaware
20 Limited Partnership,

21 DEFENDANT.
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CASE NO.

CGC-22-598662

**PAGA REPRESENTATIVE ACTION
COMPLAINT FOR:**

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

1 Plaintiff SALLY GEARY (“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
3 Private Attorneys General Act of 2004, § 2699, *et seq.* (“PAGA”) complains of Defendant
4 DELOITTE SERVICES, LP (“Defendant” or “Deloitte”), and alleges the following upon
5 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 and
11 who worked from home at any time during the time period from June 4, 2020 through
12 the present (the “PAGA Period”)¹;

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

18 3. The total number of Aggrieved Employees who are or were employed by Deloitte
19 Services, LP in California during the PAGA period is estimated to be 850.

20 **THE PARTIES**

21 4. Plaintiff Sally Geary is a resident of California and at all times pertinent hereto
22 worked for Defendant.

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

26 6. Deloitte Services LP, a subsidiary of Deloitte LLP, provides a wide variety of

27 ¹ The normal one-year PAGA period prior to Plaintiff’s LWDA letter is extended an additional six months back to
28 the onset of the pandemic, by Emergency Rule 9, which tolled all statutes of limitations related to civil actions from
April 6, 2020 until October 1, 2020.

1 internal support services to Deloitte LLP and its subsidiaries. Deloitte Services is comprised of
2 Workplace Services, Finance, Technology, Marketing and Development and Talent Services
3 (Human Resources). Defendant employed Plaintiff and similarly situated aggrieved employees in
4 California. Defendant have done and do business throughout the State of California, including in
5 San Francisco County.

6 **JURISDICTION AND VENUE**

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

13 8. This Court has personal jurisdiction over Defendant because Defendant has
14 caused injuries in the County of San Francisco and State of California through their acts, and by
15 their violation of the California Labor Code and California state common law.

16 9. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
17 Civil Procedure § 395. Defendant operates within California and does business within San
18 Francisco County, California. The unlawful acts alleged herein have a direct effect on Plaintiff
19 and all “employees” within the State of California and San Francisco County.

20 10. Further, to the extent that Defendant may claim that Plaintiff has signed an
21 arbitration agreement, venue is still appropriate in the Superior Court of San Francisco County as
22 PAGA claims are not arbitrable as a matter of law. *Iskanian v. CLS Transp. Los Angeles, LLC*,
23 59 Cal. 4th 348, 383 (2014) (holding “a PAGA claim lies outside the FAA’s coverage because it
24 is not a dispute between an employer and an employee arising out of their contractual
25 relationship. It is a dispute between an employer and the *state*”).

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1 **COMMON ALLEGATIONS**

2 11. From at least June 4, 2020 and continuing into the present,² Plaintiff and the
3 Aggrieved Employees, at the direction of Defendant and/or with Defendant's knowledge and
4 acquiescence, worked from home at any point during the relevant time period and incurred home
5 office expenses including, among other things, home internet expenses, equipment expenses,
6 electricity for business usage, and home office infrastructure expenses in order to perform
7 necessary work-related duties.

8 12. Plaintiff, who was employed by Deloitte in San Francisco, California until her
9 separation in late September 2020, and the Aggrieved Employees worked from home at any
10 point during the relevant time period.

11 13. During the PAGA Period, Plaintiff and the Aggrieved Employees were expected
12 by Defendant to pay for, and have personally paid for, among other things, home internet
13 service, equipment expenses, electricity, and an allocated portion of their home office space, in
14 the discharge of their job duties (the "home office expenses"). These home office expenses were
15 required and necessary for work to be performed.

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

26 ² On March 15, 2020, California Governor Gavin Newsom issued a stay-at-home directive to fight COVID-19,
27 Execute Order N-27-20, which can be found here: [gov.ca.gov/wp-content/uploads/2020/03/3.15.2020-COVID-19-](https://www.gov.ca.gov/wp-content/uploads/2020/03/3.15.2020-COVID-19-Facilities.pdf)
28 [Facilities.pdf](https://www.gov.ca.gov/wp-content/uploads/2020/03/3.15.2020-COVID-19-Facilities.pdf). In addition, San Francisco and several other Bay Area counties issued shelter in place orders on or
around March 16, 2020, that were periodically extended. See [https://www.statnews.com/2020/03/16/coronavirus-](https://www.statnews.com/2020/03/16/coronavirus-bay-area-counties-shelter-in-place/)
[bay-area-counties-shelter-in-place/](https://www.statnews.com/2020/03/16/coronavirus-bay-area-counties-shelter-in-place/)

1 incurred [the] expense.” *Id.* (citing *Stuart v. RadioShack Corp.*, 641 F. Supp. 2d 901 (N.D. Cal.
2 2009)). Where an employer has knowledge that employees are incurring a reimbursable expense,
3 the employer must “exercise due diligence to ensure each employee is reimbursed.” *Marr*, at *1.
4 The right of an employee to expense reimbursements is not waivable. *See* Cal. Labor Code
5 sections 2804 and 219(a). Any contract to waive them is null and void. *Edwards v. Arthur*
6 *Anderson*, 44 Cal. 4th 937, 951 (2008).

7 15. Furthermore, under Labor Code section 2802, employers must reimburse
8 employees for all necessary and/or reasonable work-related expenses, regardless of whether or
9 not employees incurred any additional out-of-pocket expense from that work-related use, and
10 regardless of whether or not the employer decisions to send workers home that triggered the
11 home internet and home office costs were made in response to government orders. *See Cochran*
12 *v. Schwan’s Home Service, Inc.*, 228 Cal. App. 4th 1137 (Cal. 2014) (“We hold that when
13 employees must use their personal cell phones for work-related calls, Labor Code section 2802
14 requires the employer to reimburse them. Whether the employees have cell phone plans with
15 unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of
16 their cell phone bills.”); *see also* Cal. Dept. of Industrial Relations, *Safe Reopening FAQs for*
17 *Workers and Employers* (July 8, 2021), *available at*
18 https://www.dir.ca.gov/covid19/FAQs_COVID-19_Safe_Reopening.htm.³

19 ³ FAQ 10, titled “Medical Checks, Testing, and Vaccinations,” provides the following:

20 **“10. Q: Must my employer pay me for time spent at my employer’s worksite completing certain medical**
21 **checks (including temperature checks) before beginning a shift?**

22 A: Yes. Employers must pay workers for all hours worked, including time that a worker is under the control of the
23 employer. Employers that require their workers to complete a medical check in order to begin a shift, even if it is
24 recommended under public health orders, must compensate workers for that time worked.

25 The term “hours worked” means the time during which a worker is subject to the control of an employer, and
26 includes all the time the worker is suffered or permitted to work, whether or not required to do so. Under this
27 definition, one way to determine whether time a worker spends performing a task is compensable—that is, whether
28 it is time “worked”—is whether the employer exercised control over the worker by requiring the worker to perform
that task.

If an employer requires that all workers perform a medical check (such as a temperature check) onsite before
beginning a shift, the time completing the medical check, including any time waiting in line, would constitute time
worked. *This requirement applies even if such tasks were performed pursuant to a state or local public health*
guideline, because the check is done at the request and thus under the control of the employer.” (Emphasis
added).

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

13 17. Moreover, the mere presence of a written policy allowing individuals to submit
14 for reimbursement is not sufficient to insulate an employer from liability when it knows that
15 employees are incurring monthly recurring business expenses. Accordingly, the employer
16 defense that it had promulgated a written reimbursement policy, but employees *en masse* failed
17 to submit for home internet and other home office expense reimbursement, including related
18 defenses of estoppel, waiver, laches, and equitable estoppel, were all rejected by the Court in
19 *RadioShack. See Stuart v. RadioShack Corp.*, 259 F.R.D. 200, 202-03 (N.D. Cal. 2009) (quoting
20 its earlier rulings). The Court’s rationale for rejecting RadioShack’s waiver defenses is equally
21 applicable here.

22 18. Moreover, in *Bender v. Lincoln Nat’l Life Ins. Co.*, 2010 U.S. Dist. LEXIS
23 154928 (C.D. Cal. Nov. 12, 2010), the Court agreed with Plaintiff that a Defendant violated
24 Labor Code section 2802 where Defendant willfully delayed two years in making required
25 payments under section 2802.

26 19. Accordingly, even if Defendant at some later point retroactively reimbursed some
27 of the Aggrieved Employees for some of their work-related home office and home internet
28 expenses, Defendant did not do so on a timely basis, and its exposure to PAGA penalties thus

remains intact. In addition, if Defendant did retroactively reimburse some of the Aggrieved Employees for some of their home internet and home expenses, Defendant would certainly have to continue to do so on a forward going basis, as opposed to just a one-time payment, throughout the duration of employees working from home, since Defendant's retroactive reimbursement payments would operate, in effect, as an admission that such amounts were, at a minimum, owed to employees for their past months of business-related expenses, and the same logic would apply on a forward going basis.

20. Defendant is, was, or should have been aware that Plaintiff and the Aggrieved Employees regularly incurred and continue to incur home office internet and infrastructure expenses in the discharge of their duties as employees in California by virtue of Defendant's instructions to Plaintiff and the Aggrieved Employees to work from home. Defendant nevertheless has, throughout the PAGA Period, failed and refused to affirmatively reimburse Plaintiff and the Aggrieved Employees for a reasonable portion of her and their home office expenses incurred by them in connection with their work.

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 DEFENDANT

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

22. Based on the above allegations incorporated by reference, Defendant has violated Labor Code § 2802.

23. 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.

24. Courts in California have held that the stepped-up \$200 per pay period PAGA penalties are only triggered after Plaintiff's LWDA letter is submitted and Defendant is thus

placed on notice of the claim. *See Amaral v. Cintas Corp.* No. 2, 163 Cal. App. 4th 1157, 1209 (2008); see also *Bernstein v. Virgin Am., Inc.*, No. 19-15382, 2021 WL 867583 (9th Cir. Feb. 23, 2021) (stepped up penalties only triggered by ruling against employer on the merits).

25. These PAGA 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, as set forth in Labor Code section 2699(i).

26. Pursuant to Labor Code § 2699.3 (a), on June 4, 2021, Plaintiff gave written notice by certified mail to Defendant, and to the LWDA of her 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. Plaintiff has already paid the required \$75 fee and has otherwise satisfied all prerequisites to filing suit. 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 Defendant.

27. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code § 2699, *et seq.* because of Defendant's 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 Defendant's violation of, without limitation, Labor Code § 2802;

2. A civil penalty against Defendant 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 June 4, 2020, and the present;

3. An award of reasonable attorney's fees against Defendant 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;

4. An award of all costs incurred by the undersigned counsel for Plaintiff in

1 connection with Plaintiff's and the Aggrieved Employees' claims against Defendant as allowed
2 by law, including without limitation, Labor Code § 2699(g)(1);

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

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5 Dated: March 11, 2022

Respectfully submitted,

6 ACKERMANN & TILAJEF, P.C.

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9 Craig J. Ackermann, Esq.

Attorneys for Plaintiff and Aggrieved Employees