

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

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego
11/01/2021 at 03:39:15 PM
Clerk of the Superior Court
By Mariejo Guyot, Deputy Clerk

6 **EMPLOYMENT RIGHTS LAW GROUP, APC**
7 Amir Seyedfarshi, Esq. (SBN 301656)
8 amir@employmentrightslawgroup.com
9 1180 South Beverly Drive, Suite 610
10 Los Angeles, California 90035
11 Telephone: (424) 777-0964

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

12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
13 **FOR THE COUNTY OF SAN DIEGO**

15 CASSANDRA TAPIA, individually, on behalf
16 of the State of California, as a private attorney
17 general, and on behalf of all Aggrieved
18 Employees,

18 PLAINTIFF,

19 v.

20 RIVO HOLDINGS LLC, a California Limited
21 Liability Corporation; DOES 1 to 50, inclusive,

22 DEFENDANT.

CASE NO. 37-2021-00046361-CU-OE-CTL

**PAGA REPRESENTATIVE ACTION
COMPLAINT FOR:**

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

1 Plaintiff Cassandra Tapia (“Plaintiff”), on behalf of the State of California and other
2 “Aggrieved Employees” and acting as a private attorney general under the Labor Code Private
3 Attorneys General Act of 2004, § 2699, *et seq.* (“PAGA”) complains of Defendant Rivo Holdings
4 LLC. and DOES 1 to 50 (collectively, “Defendants”) and each of them, and alleges the following
5 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 a group of Aggrieved Employees defined as follows:

9 **The “Aggrieved Employees”:**

10 Plaintiff and all other California residents who are or were employed as non-exempt
11 employees by Defendant and who were subject to stay-at-home orders, whose offices were
12 closed due to COVID-19 for at least one pay period during the PAGA Period.

13 2. The “PAGA Period” is defined as the period from one year and six months¹ prior to
14 sending of Plaintiff’s LWDA Letter, which was sent on August 23, 2021, through the present and
15 ongoing. With the emergency tolling, the PAGA period would be from March 15, 2020 to the
16 present.

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

22 **THE PARTIES**

23 4. Plaintiff Cassandra Tapia is a resident of California and at all times pertinent hereto
24 worked for Defendant, and she worked from home during the pandemic in 2020 and 2021.

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

28 ¹ Emergency Rule 9 tolled the statute of limitations for civil causes of action from April 6, 2020 until October 1, 2020.
Therefore, the applicable one-year statute of limitations on Plaintiff’s PAGA penalties claim is extended six months.

1 6. Rivo Holdings LLC is a leader in financial technology, providing support for sales
2 and customer service to underwriters. Rivo Holdings LLC is headquartered in San Diego,
3 California, and upon information and belief has one office in San Diego, California. Defendant
4 employed Plaintiff and similarly situated persons as employees within California. Defendant has
5 done and do business throughout the State of California including in San Diego County.

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

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

23 **JURISDICTION AND VENUE**

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

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

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

12. Further, to the extent that Defendant may claim that Plaintiff has signed an arbitration agreements or severance agreements, venue is still appropriate in the Superior Court of San Diego 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

13. From at least one year and six months ago 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 Defendant and/or with Defendant's knowledge and acquiescence, have expected to work from home, have worked from home and incurred home office expenses including, among other things, home internet expenses, cell phone expenses, equipment expenses, electricity, and home office infrastructure expenses, in order to perform necessary work-related duties. Plaintiff, who were employed by Defendant, were not able to work on premises at Defendant's offices but instead were expected to, and did, work from home, like the other Aggrieved Employees. To be clear, Defendant sent home their California-resident office-based employees during the period from at least one year ago and six months ago to the present without affirmatively reimbursing them for a reasonable portion of their monthly home internet and cell phone expenses.

14. During the COVID-19 stay at home orders and office closures, Plaintiff and the aggrieved employees were thus expected by Defendant to work from home, did work from home and were required to pay for, and have personally paid for, among other things, home internet

1 service, cell phone service, home electricity, and the purchase and maintenance of hardware used
2 for work-purposes, including keyboards, mouses, Bluetooth headsets, and/or cell phones, as well as
3 to allocate home office space, in the discharge of their job duties (the “home office expenses”).
4 These expenses ranged, but typically amounted from \$100 to \$200 per month per aggrieved
5 employee.

6 15. Defendant had no policy to affirmatively reimburse all of its employees who were
7 forced to work from home during the COVID-19 pandemic for their monthly recurring home office
8 expenses, other than one initial \$500 stipend specifically designated for home office equipment.
9 Notably, Defendant did not provide any monthly recurring reimbursement thereafter for monthly
10 home office, home internet, home electricity, or cell phone expenses. In sum, Defendant’s
11 expense-related policies and/or practices require and expect, and/or with Defendant’s knowledge
12 thereof permit, Plaintiff and the Aggrieved Employees to pay for monthly home internet, cell
13 phone, and home office infrastructure expenses incurred in direct consequence of discharging their
14 necessary, reasonable and business-related job duties on behalf of Defendant, without
15 reimbursement in full by Defendant for such expenses, as required by California law.

16 16. 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 consequence
18 of the discharge of his or her duties." See Cal. Labor Code section 2802(a); *see also* 2802(c) where
19 necessary is defined to include all “reasonable” costs. “The elements of a claim under Section
20 2802 are: (i) the employee made expenditures or incurred losses; (ii) the expenditures or losses
21 were incurred in direct consequence of the employee's discharge of his or her duties, or obedience
22 to the directions of the employer; and (iii) the expenditures or losses were reasonable and
23 necessary.” *Marr v. Bank of America*, 2011 U.S. Dist. LEXIS 24868 (N.D. March 8,
24 2011) (*citing Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 568 (2007). “In addition, the
25 employer ‘must either know or have reason to know that the employee has incurred [the] expense.’”
26 *Id.* (*citing Stuart v. RadioShack Corp.*, 641 F.Supp. 2d 901 (N.D.Cal. 2009). Where an employer
27 has knowledge that employees are incurring a reimbursable expense, the employer must “exercise
28 due diligence to ensure each employee is reimbursed.” *Marr*, at *1. The right of an employee to

1 expense reimbursements is not waivable. *See* Cal. Labor Code sections 2804 and 219(a). Any
2 contract to waive them is null and void. *Edwards v. Arthur Anderson*, 44 Cal. 4th 937, 951 (2008)

3 17. Furthermore, under Labor Code section 2802, employers must reimburse employees
4 for all necessary and/or reasonable work-related expenses, regardless of whether or not the
5 employees incurred any additional out-of-pocket expense from that work-related use. *See, Cochran*
6 *v. Schwan's Home Service, Inc.*, 228 Cal.App.4th 1137 (Cal. Aug. 12, 2014) ("We hold that when
7 employees must use their personal cell phones for work-related calls, Labor Code section 2802
8 requires the employer to reimburse them. Whether the employees have cell phone plans with
9 unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their
10 cell phone bills."); *see also, Herrera v. Zumiez*, F.3d, 2020 WL 1301057, at *11 (9th Cir. Mar. 19,
11 2020) (same). The same logic would obviously apply to monthly home internet expenses.

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).

23 19. Defendant are aware or should have been aware that Plaintiff and the Aggrieved
24 Employees regularly incurred and incur monthly home office internet, cell phone, and home
25 electricity and other infrastructure expenses in the discharge of their duties as employees by virtue
26 of Defendant's instructions to Plaintiff and the Aggrieved Employees to work from home order
27 and/by their announcements of office closures during the COVID-19 pandemic.² Specifically,

28 ² Numerous employment law firms representing California employers advised their clients to make monthly
reimbursement payments to workers working from home during the pandemic. *See*,

1 Plaintiff regularly communicated with managers on their personal cell phones, and Plaintiff and all
2 other Aggrieved Employees were required to use their personal cell phones for VPN authentication
3 to access Defendant's servers from their home/remote locations. Plaintiff and the Aggrieved
4 Employees could not perform their job duties at home for Defendant without accessing Defendant's
5 servers and network via the internet. Defendant nevertheless has, throughout the PAGA Period, and
6 specifically during work from home orders and office closures during the COVID-19 pandemic,
7 failed and refused to affirmatively reimburse Plaintiff and the Aggrieved Employees for such
8 monthly recurring home internet, cell phone, and home office expenses incurred by them in
9 connection with their work.

10 **FIRST CAUSE OF ACTION**
11 **PENALTIES PURSUANT PAGA. LABOR CODE § 2699, *ET SEQ.***
12 **FOR VIOLATIONS OF LABOR CODE § 2802**
13 **PLAINTIFF ON BEHALF OF THE LWDA AND ALL AGGRIEVED EMPLOYEES AGAINST DEFENDANT**

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

16 21. Based on the above allegations incorporated by reference, Defendant has violated
17 Labor Code § 2802, throughout the PAGA period.

18 22. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiff and

19 (continued...)

20 <https://www.fisherphillips.com/news-insights/covid-19-litigation-testing-limits-california-expense.html> ("When remote
21 work is mandatory – even if ordered by California or local authorities – employees must be reimbursed for the
22 necessary expenses they incur while working at home.") (3/21/21); <https://www.morganlewis.com/-/media/files/publication/presentation/webinar/2020/californiaemploymentlawupdatejasscwebinar92920.pdf> ("In
23 response to lockdowns, employers have required employees to work from home. Strong argument that many expenses
24 needed to facilitate work from home are reimbursable.") (Slide at p. 52); <https://www.acc.com/sites/default/files/2020-04/COVID-19%20CA%20Slides.pdf> ("Telecommuting Considerations Q. Must employers reimburse employees for
25 expenses incurred while teleworking? A. Yes. California employers are required to reimburse employees for "all
26 necessary expenditures or losses incurred by the employee" in the course of the employee's job, as well as for any
27 expenses arising out of an employer's directive. Cal. Labor Code section 2802. This question is likely to be implicated
28 if employees are asked to work from home. ...") (Cozen O'Conner; Slide 23/28, 3/26/20); and <https://www.jdsupra.com/legalnews/when-how-much-to-pay-for-work-from-home-8302177/> ("During the pandemic
when workplaces were closed and employees had to work from home due to Covid-19 restrictions, employers were
required to either provide the equipment needed to work from home (such as internet access and a computer/phone), or
to reimburse employees for those costs. Case law interpreting Cal. Labor Code Section 2802 holds that employers
cannot benefit from employees' use of their own equipment, even if it doesn't cost the employee extra to use their
phone or internet. Bottomline: Some portion must be paid, typically in some sort of Work From Home or Phone
Allowance.").

1 all other Aggrieved Employees are entitled to penalties in an amount to be shown subject to the
2 following formula:

3 \$100 for the initial violation per employee per pay period; and

4 \$200 for each subsequent violation per employee per pay period.

5 23. These penalties shall be allocated seventy-five percent (75%) to the Labor and
6 Workforce Development Agency (LWDA) and twenty-five percent (25%) to the affected
7 employees.

8 24. Pursuant to Labor Code § 2699.3 (a), on August 23, 2021, Plaintiff gave written
9 notice by certified mail to Defendant and to the LWDA of their claims for violations of Labor Code
10 § 2802, including theories supporting these claims as alleged herein. As of the date of this
11 Complaint, the LWDA has not responded to Plaintiff's PAGA letter. Plaintiff has also paid the
12 required \$75 filing fees. Accordingly, Plaintiff has fulfilled all administrative prerequisites to the
13 filing and pursuit of their PAGA claims on behalf of themselves and all other current and former
14 Aggrieved Employees of Defendant.

15 25. As a result of the acts alleged above, Plaintiff seek penalties under Labor Code
16 § 2699, et seq. because of Defendant's violation of Labor Code § 2802.

17 **RELIEF REQUESTED**

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

19 1. For penalties and other relief allowable under Labor Code § 2699, *et seq.* for
20 Plaintiff, the LWDA, and all Aggrieved Employees because of Defendant's violation of Labor
21 Code § 2802;

22 2. A civil penalty against Defendant in the amount of \$100 for the initial violation and
23 \$200 for each subsequent violation as specified in section 2699(f)(2) of the California Labor Code
24 for Plaintiff and all Aggrieved Employees for each and every pay period during that occurred
25 during the PAGA Period;

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

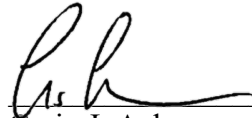
1 4. An award of all costs incurred by the undersigned counsel for Plaintiff in connection
2 with Plaintiff's, the LWDA's and the Aggrieved Employees' claims against Defendant as allowed
3 by law, including without limitation, Labor Code § 2699(g)(1);

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

5
6 Respectfully submitted,

7 ACKERMANN & TILAJEF, P.C.
8 EMPLOYMENT RIGHTS LAW GROUP, APC

9 Dated: November 1, 2021



10 _____
Craig J. Ackermann, Esq.

11 Amir Seyedfarshi, Esq.

12 Attorneys for Plaintiff, the LWDA, and the Aggrieved
13 Employees
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28