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Executive Officer/Clerk of Court,
By A. Oliva, Deputy Clerk

7 *Attorneys for Plaintiff on behalf of the LWDA and the other Aggrieved Employees*

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9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF LOS ANGELES**

11 SHERRI BOGARD, on behalf of the State of
12 California, as a private attorney general, and on
13 behalf of all Aggrieved Employees,

14 Plaintiff,

15 v.

16 WARNER BROS. ENTERTAINMENT INC., a
17 Delaware Corporation,

18 Defendant.

CASE NO. **23BECV01450**

**PLAINTIFF'S PAGA REPRESENTATIVE
ACTION COMPLAINT FOR PENALTIES
PURSUANT TO LABOR CODE § 2699, ET
SEQ. FOR VIOLATIONS OF
CALIFORNIA LABOR CODE § 2802**

1 Plaintiff SHERRI BOGARD (“Plaintiff”), as an “Aggrieved Employee” acting as a
2 private attorney general for the LWDA under the Labor Code Private Attorneys General Act of
3 2004, § 2699, *et seq.* (“PAGA”), and on behalf of all other Aggrieved Employees (as defined
4 below) complains of Defendant WARNER BROS. ENTERTAINMENT INC. (“Defendant”),
5 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 Aggrieved Employees against Defendant for its (1)
9 failure to reimburse its current and former employees for their home office internet and personal
10 cell phone expenses incurred while working from home when Defendant’s offices were closed in
11 California during the pandemic for which they have not been fully reimbursed in violation of
12 Labor Code section 2802.

13 2. The Aggrieved Employees are defined as follows: *all California residents who*
14 *are or were employed by Defendant and whose offices in California were closed for at least one*
15 *pay period from April 4, 2020 to September 1, 2021* (the “PAGA Period”) ¹

16 **THE PARTIES**

17 3. Plaintiff Bogard is a resident of California who, during the PAGA Period, was
18 employed by Defendant Warner Bros. Entertainment Inc. in Los Angeles County and worked
19 from home for Defendant in Los Angeles County.

20 4. Defendant Warner Bros Entertainment Inc. is a media and entertainment
21 conglomerate headquartered in Burbank, California. Warner Bros Entertainment Inc. operates
22 throughout California and also maintains corporate offices in San Francisco. Warner Bros
23 Entertainment Inc. was the employer of Plaintiff and the Aggrieved Employees during the PAGA
24 Period.

25 ///

26 ¹ Judicial Council Emergency Rule 9 tolled the statute of limitations for all civil causes of action in California from
27 April 6, 2020 until October 4, 2020, one year prior to when the first PAGA letter including these claims against
28 Defendant was submitted to the LWDA. See paragraph 17, below. Therefore, the applicable statute of limitations on
Plaintiff’s PAGA penalties claim is extended six months beyond the normal one-year statute of limitations for
PAGA penalty claims.

1 **JURISDICTION AND VENUE**

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

8 6. This Court has personal jurisdiction over Defendant because Defendant has
9 caused injuries in the County of Los Angeles and State of California through its acts as described
10 below.

11 7. Venue as to Defendant is proper in this judicial district, pursuant to Code of Civil
12 Procedure § 395. Defendant operates within California and does business within Los Angeles
13 County, California. The unlawful acts alleged herein had a direct effect on all Aggrieved
14 Employees within the State of California and Los Angeles County.

15 **FACTUAL ALLEGATIONS**

16 8. From April 4, 2020, and continuing until Defendant's offices, including
17 Defendant's offices in Burbank, California, were opened on September 1, 2021 and Defendant
18 discontinued its mandate and/or recommendations to employees to work from home, Aggrieved
19 Employees, at the direction of Defendant and/or with Defendant's knowledge and acquiescence,
20 incurred home office expenses including, among other things, home internet and personal cell
21 phone expenses, in order to perform their necessary work-related duties, including accessing
22 company servers and responding to company emails on-line. From April 2020 to early
23 September 2021, Aggrieved Employees were not able to work on premises at Defendant's
24 offices in Los Angeles and San Francisco, but instead were expected to, and did, work from
25 home.²

26 ² See, Rolling Stone article, July 30, 2020 (<https://www.rollingstone.com/pro/news/universal-warner-sony-music-remote-working-coronavirus-1036110/>); see also, Deadline article regarding return to office, March 11, 2021
27 (<https://deadline.com/2021/03/warnermedia-sets-time-frame-for-employees-to-return-1234712351/>); see also, memo
28 from Chief Human Resources Officer Jim Cummings (as we start to officially reopen offices in September...) (<https://www.imdb.com/news/ni63389350/>).

1 9. Aggrieved Employees’ home internet and personal cell phone expenses typically
2 amounted to from \$50 to \$150 per month per Aggrieved Employee, or more. Defendant had no
3 policy to affirmatively reimburse their employees who were forced to work from home during
4 the COVID-19 pandemic for a reasonable percentage of their recurring monthly home internet
5 and personal cell phone expenses. In sum, Defendant’s expense-related policies and/or practices
6 required and expected, the Aggrieved Employees to pay for monthly home internet and personal
7 cell phone expenses incurred in direct consequence of discharging their necessary, reasonable
8 and business-related job duties on behalf of Defendant, without reimbursement in full by
9 Defendant for a reasonable percentage of such expenses, as required by California law.

10 10. 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
12 consequence of the discharge of his or her duties." See Cal. Labor Code section 2802(a); *see*
13 *also* 2802(c) where necessary is defined to include all “reasonable” costs. “The elements of a
14 claim under Section 2802 are: (i) the employee made expenditures or incurred losses; (ii) the
15 expenditures or losses were incurred in direct consequence of the employee's discharge of his or
16 her duties, or obedience to the directions of the employer; and (iii) the expenditures or losses
17 were reasonable and necessary.” *Marr v. Bank of America*, 2011 U.S. Dist. LEXIS 24868 (N.D.
18 March 8, 2011) (*citing Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 568 (2007)). “In
19 addition, the employer ‘must either know or have reason to know that the employee has incurred
20 [the] expense.’” *Id.* (*citing Stuart v. RadioShack Corp.*, 641 F.Supp. 2d 901 (N.D.Cal. 2009)).
21 Where, as here, an employer has knowledge that its employees are incurring a reimbursable
22 business-related expense, the employer must “exercise due diligence to ensure each employee is
23 reimbursed.” *Marr*, at *1. The right of an employee to expense reimbursements is not
24 waivable. *See* Cal. Labor Code sections 2804 and 219(a). Any contract to waive them is null and
25 void. *Edwards v. Arthur Anderson*, 44 Cal. 4th 937, 951 (2008)

26 11. Furthermore, under Labor Code section 2802, employers must reimburse
27 employees for a reasonable percentage of all necessary and/or reasonable work-related expenses,
28 regardless of whether or not the employees incurred any additional out-of-pocket expense from

1 that work-related use, and regardless of whether or not the employer decisions to send workers
2 home that triggered the home internet and personal cell phone costs were made in response to
3 government orders. *See, Cochran v. Schwan's Home Service, Inc.*, 228 Cal.App.4th 1137 (Cal.
4 Aug. 12, 2014) (“We hold that when employees must use their personal cell phones for work-
5 related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the
6 employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement
7 owed is a reasonable percentage of their cell phone bills.”); *see also, Herrera v. Zumiez*, F.3d,
8 2020 WL 1301057, at *11 (9th Cir. Mar. 19, 2020) (“Zumiez protests that Herrera did not allege
9 it was necessary to use a cell phone to comply with the call-in policy, suggesting that employees
10 could use free communications services like WhatsApp or Skype. But using WhatsApp or Skype
11 often requires personal expenses associated with internet service and a phone or computer, for
12 which a ruling consistent with *Cochran* might require reimbursement of a portion of the bills.).

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

26 13. Defendant was aware or should have been aware that the Aggrieved Employees
27 regularly incurred monthly home office internet and personal cell phone expenses in the
28 discharge of their duties as employees by virtue of Defendant’s instructions to the Aggrieved

1 Employees to work from home and/or their announcements of office closures during the
2 COVID-19 pandemic from April 2020 until early September 2021.

3 14. In addition, the Aggrieved Employees were and are required to use their personal
4 cell phones as authentication devices when working remotely to securely access Defendant's
5 online Virtual Private Network (VPN) system to work. Employees are required to login to
6 Defendant's VPN system, using their personal cell phones and cell phones plans as described
7 below, and simply cannot perform any work for Defendant without first doing so. The VPN
8 system allows Defendant's employees to access Defendant's online work platform, including
9 Defendant's files, telephonic systems, and timekeeping networks, while working in the field
10 and/or at home. In short, without logging into the VPN system, Defendant's employees, cannot
11 access any programs used to perform their job duties for Defendant. As stated above, the
12 Aggrieved Employees could not access Defendant's VPN system while working from home
13 during the PAGA Period without the use of their personal cell phones and a personal cell phone
14 plan (Defendant's authentication process required Aggrieved Employees to have an active
15 personal cell phone plan for their cell phones, with a major cell phone carrier), which are used to
16 authenticate the user logging on.

17 15. In addition, when the Aggrieved Employees needed to access Defendant's VPN
18 system (which is their entire work platform), they use their personal home internet service plans
19 to connect to the internet, then received a phone call or text message on their personal cell
20 phones to authenticate their login before being granted access to Defendant's VPN system and
21 all of its files and programs. The Aggrieved Employees were and are required to authenticate
22 their entry to Defendant's VPN system multiple times per day, on some days up to every 30
23 minutes when the internet connection is unreliable, using their personal cell phones and personal
24 cell phone service plans in each instance. In addition, Defendant required or assumed the
25 Aggrieved Employees would use their home internet connections for work during the PAGA
26 Period without reimbursing for a reasonable portion of monthly home internet expenses.

27 16. In sum, the Aggrieved Employees could not perform their job duties for
28 Defendant without the use of their personal internet plans, cell phones and personal cell phone

plans and Defendant provided no monthly affirmative reimbursement to Aggrieved Employees for use of their personal internet plans, personal cell phones or personal cell phones plans, and did not provide the Aggrieved Employees with a company wifi/mifi or cell phone or cell phone plan.

17. Pursuant to Labor Code § 2699.3 (a), on October 4, 2021 and November 9, 2021, written notice was provided by certified mail to Defendant, and to the LWDA of the PAGA claims alleged here based on Defendant's violations of Labor Code § 2802, and the theories supporting these claims as alleged herein. Plaintiff's November 9, 2021 LWDA notice relates back to the October 4, 2021 LWDA notice submitted by Khoi Dinh because this Complaint rests on the same general set of facts, involves the same injury, and involves the same "instrumentality" or cause of injury. All these requirements are met because the Dinh LWDA notice dated October 4, 2021 involves the same set of facts and legal theories under PAGA as the Bogard PAGA letter dated November 9, 2021 and the instant case (Defendant's failure to reimburse for home internet and cell phone expenses including during the work from home period of the pandemic), involves the same injury (PAGA penalties based on unreimbursed expenses under Labor Code section 2802), and involves the same "instrumentality" or cause of injury (Defendant's failure to reimburse). Moreover, Defendant was aware of the PAGA claims due to Dinh's LWDA letter. Accordingly, Plaintiff has fulfilled all administrative prerequisites to the filing and pursuit of the PAGA penalty claims on behalf of the Aggrieved Employees.

18. On October 24, 2022, Plaintiff and Defendant entered into an agreement to toll the statute of limitations on the claims alleged herein to until the California Supreme Court decides the *Adolph v. Uber Technologies* case, Case No. GO59860.³

CAUSE OF ACTION
PENALTIES PURSUANT PAGA. LABOR CODE § 2699, ET SEQ.
FOR VIOLATIONS OF LABOR CODE § 2802
ALL AGGRIEVED EMPLOYEES AGAINST DEFENDANT

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

³ The *Adolph* case was fully briefed and argued on May 10, 2023 and a decision in *Adolph* is imminent.

20. Based on the above allegations incorporated by reference, Defendant has violated Labor Code § 2802, for all the Aggrieved Employees' pay periods worked from April 2020 to September 2021.

21. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation during the PAGA Period, the Aggrieved Employees and the LWDA 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 Aggrieved Employees. See Labor Code section 2699(i).

23. As noted above, Plaintiff has fulfilled all administrative prerequisites to the pursuit of the PAGA claim on behalf of the LWDA and the Aggrieved Employees.

24. As a result of the acts alleged above, Plaintiffs seek penalties on behalf of the LWDA and Aggrieved Employees under Labor Code § 2699, et seq. because of Defendant's violations of Labor Code § 2802.

RELIEF REQUESTED

WHEREFORE, Plaintiff on behalf of the LWDA and Aggrieved Employees prays for the following relief:

1. That the Court find and declare that Defendant's business expense policies and/or practices violated California law, including Labor Code § 2802, from April 2020 until September 2021, by mandating and/or requiring work from home and failing to reimburse all business expenses reasonably incurred by Aggrieved Employees in the discharge of their duties in California as employees of Defendant who were working from home;

2. For penalties and other relief allowable under Labor Code § 2699, et seq. for the LWDA and the Aggrieved Employees because of Defendant's violation of, without limitation, Labor Code § 2802 during the PAGA Period;

3. Civil penalties against Defendant in the amount of \$100 for the initial violation

1 and \$200 for each subsequent violation as specified in section 2699(f)(2) of the California Labor
2 Code for all Aggrieved Employees for each and every pay period during the PAGA Period;

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

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

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

10 Respectfully submitted,

11
12 ACKERMANN & TILAJEF, P.C.

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14 

15 Dated: June 27, 2023

16 Craig J. Ackermann, Esq.

17 *Attorneys for Plaintiff on behalf of the LWDA and*
18 *the other Aggrieved Employees*