

1 JAMES F. CLAPP (145814)
jclapp@clapplegal.com
2 MARITA MURPHY LAUINGER (199242)
mlauinger@clapplegal.com
3 CLAPP & LAUINGER LLP
701 Palomar Airport Road, Suite 300
4 Carlsbad, California 92011
Tel: 760-209-6565 ext. 101
5 Fax: 760-209-6565

6 Attorneys for Plaintiffs
ALEX CHARALAMBOUS and BRIAN PULLEN
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF ALAMEDA - OAKLAND
10

11 ALEX CHARALAMBOUS and BRIAN
PULLEN, individually and on behalf of all
12 others similarly situated,

13 Plaintiffs,

14 v.

15 LIBERTY MUTUAL INSURANCE
COMPANY, LIBERTY MUTUAL GROUP
16 INC., and DOES 1 through 10, inclusive,

17 Defendants.
18
19
20

CASE NO. 21CV000432

**FIRST AMENDED CLASS ACTION
COMPLAINT**

**1. FAILURE TO INDEMNIFY FOR ALL
NECESSARY BUSINESS EXPENSES
(CAL. LAB. CODE § 2802)**

**2. VIOLATION OF CAL. BUS & PROF.
CODE § 17200**

**3. LABOR CODE PRIVATE ATTORNEYS
GENERAL ACT (CAL. LAB. CODE § 2698,
ET SEQ.)**

Jury Trial Demanded

21 Plaintiffs Alex Charalambous and Brian Pullen, on behalf of themselves and all
22 others similarly situated complain and allege as follows:

23 **INTRODUCTION**

24 1. This is a class action under California Code of Civil Procedure § 382 seeking
25 reimbursement of all unreimbursed business expenses, interest, attorney's fees and costs on
26 behalf of current and former employees of Defendants Liberty Mutual Insurance Company,
27 Liberty Mutual Group Inc. and DOES 1-10, inclusive, who were not reimbursed for
28 necessary business expenses as a result of Defendants' violations of California Labor Code

ELECTRONICALLY FILED
Superior Court of California
County of Alameda
12/09/2021

Chad Finke, Executive Officer / Clerk of the Court

By: Andrei Gospel Deputy

1 § 2802 in the last four years preceding the filing of this action.

2 2. The “Class Period” is the period from the date four years prior to filing of this
3 Complaint through the date notice is mailed to the Class. The violations have been ongoing
4 prior to the filing of this action, are continuing at present, and will continue unless enjoined
5 by the Court.

6 **JURISDICTION AND VENUE**

7 3. This Court has jurisdiction over claims bought under the California Labor
8 Code.

9 4. Venue is proper in this Court because Defendants operate offices and
10 branches within Alameda County, and some of the harms complained of herein occurred
11 within this County. Defendants have not designated a principal business office or
12 headquarters in California.

13 **PARTIES**

14 5. During the Class Period, Plaintiff Alex Charalambous was employed by
15 Defendants as a Senior Account Analyst within the State of California.

16 6. During the Class Period, Plaintiff Brian Pullen was employed by Defendants
17 as an Underwriting Officer - Marine within the State of California.

18 7. During the Class Period, Defendant Liberty Mutual Insurance Company is a
19 Massachusetts corporation with its principal place of business in Boston, Massachusetts.

20 8. During the Class Period, Defendant Liberty Mutual Group Inc. is a
21 Massachusetts corporation with its principal place of business in Boston, Massachusetts.

22 9. The true names and capacities of persons or entities, whether individual,
23 corporate, associate, or otherwise, sued herein as DOES 1 through 10, inclusive, are currently
24 unknown to Plaintiffs, and who therefore sue Defendants by such fictitious names under
25 Code of Civil Procedure § 474. Plaintiffs are informed and believe, and based thereon allege,
26 that each of the Defendants designated herein as a DOE is legally responsible in some
27 manner for the unlawful acts referred to herein. Plaintiffs will seek leave of court to amend
28 this Complaint to reflect the true names and capacities of the Defendants designated

hereinafter as DOES when such identities become known.

10. Defendants are collectively referred to herein as Defendants and/or Liberty Mutual.

11. All of Plaintiffs' claims stated herein are asserted against Defendants and any of their owners, predecessors, successors, subsidiaries, and/or assigns.

FACTUAL BACKGROUND

12. Plaintiffs and similarly situated employees of Defendants were subject to common policies, practices and/or procedures regarding reimbursement of reasonable and necessary expenses, including expenses incurred while employees worked from home during the COVID-19 pandemic.

13. Plaintiffs and similarly situated employees incurred reasonable and necessary business expenses, including expenses incurred while working from home during the COVID-19 pandemic, including without limitation: fees and charges for internet service, cellphone and/or telephone service, telecommunications equipment, cost of home office equipment (e.g., computers, printers, scanners, extra monitors, and headsets), office supplies, increased electricity and other utility bills, and the fair rental value of space occupied by the home office.

14. Defendants knew or reasonably should have known that Plaintiffs and the Class were incurring such expenses but have failed to indemnify or reimburse Plaintiffs and similarly situated employees for these expenditures.

CLASS ACTION ALLEGATIONS

15. Plaintiffs bring this action, on behalf of themselves and all others similarly situated, as a class action pursuant to Code of Civil Procedure § 382. The "Class" that Plaintiffs seeks to represent is composed of and defined as follows:

All exempt and non-exempt employees of Liberty Mutual in California who incurred reasonable and necessary business expenses as a result of their performance of duties for Liberty Mutual during the applicable statute of limitations, including without limitation employees who incurred such expenses while working from home during the COVID-19 pandemic.

1 16. This action has been brought and may properly be maintained as a class action
2 under Code of Civil Procedure § 382 because there is a well-defined community of interest in
3 the litigation, the proposed Class is easily ascertainable, and Plaintiffs are proper
4 representatives of the Class.

5 17. Numerosity: The potential members of the proposed Class as defined are
6 numerous and therefore joinder of all the members of the Class is impracticable. While the
7 precise number of employees has not been determined at this time, Plaintiffs are informed
8 and believe that Defendants have employed well over 1,000 Class members during the Class
9 Period.

10 18. Ascertainability: The Class is ascertainable in that its members can be
11 identified and located using information contained in Defendants' payroll and personnel
12 records.

13 19. Commonality: There are questions of law and fact common to Plaintiffs and
14 to the Class that predominate over any questions affecting only individual members of the
15 Class. These common questions of law and fact include, but are not limited to, the
16 following: (a) Defendants' policies and practices for reimbursing business expenses incurred
17 by employees, including those expenses incurred while employees are working from home;
18 and (b) whether Plaintiffs and similarly situated employees incurred reasonable and
19 necessary expenses as a consequence of performing duties for Defendants, including duties
20 performed while working from home.

21 20. Typicality: Plaintiffs' claims are typical of the claims of the Class members.
22 Plaintiffs and the proposed Class members incurred unreimbursed business expenses arising
23 out of and caused by Defendants' common course of conduct and policies in violation of the
24 law as alleged herein, in similar ways and for the same types of expenses.

25 21. Adequacy of Representation: Plaintiffs are a members of the proposed Class
26 and will fairly and adequately protect the interests of the proposed Class members.
27 Plaintiffs' interests do not conflict with those of the proposed Class members. Plaintiffs'
28 counsel are competent and experienced in litigating wage and hour class actions and will

1 devote sufficient time and resources to the case and otherwise adequately represent the
2 proposed Class.

3 22. Superiority of Class Action: A class action is superior to other available
4 means for the fair and efficient adjudication of this controversy, since individual joinder of
5 all members of the proposed Class is impractical. Class action treatment will permit a large
6 number of similarly situated persons to prosecute their common claims in a single forum
7 simultaneously, efficiently and without unnecessary duplication of effort and expense that
8 numerous individual actions would engender. Furthermore, the amounts suffered by each
9 individual member of the proposed Class may be relatively small, the expenses and burden of
10 individualized litigation would make it difficult or impossible for individuals of the Class to
11 redress the wrongs done to them while an important public interest will be served by
12 addressing the manner as a class action. The cost to the court system of adjudication of such
13 individualized litigation would be substantial. Individualized litigation would also present
14 the potential for inconsistent or contradictory judgments.

15
16 **FIRST CAUSE OF ACTION**
Cal. Labor Code § 2802
17 **(Failure to Reimburse Business Expenses)**

18 23. Plaintiffs incorporates by reference the preceding paragraphs as fully set forth
19 herein.

20 24. Labor Code § 2802(a) provides: “An employer shall indemnify his or her
21 employee for all necessary expenditures or losses incurred by the employee in direct
22 consequence of the discharge of his or her duties.”

23 25. While discharging their duties for Defendants, Plaintiffs and similarly situated
24 employees have incurred reasonable and necessary work-related expenses. Such expenses
25 include, but are not limited to, work-from-home expenses such as internet service charges,
26 telephone service and equipment, cellphone service and equipment, home office equipment,
27 office supplies, mileage for work related errands or travel, increased electric or other utility
28 bills, as well as the fair rental value of home office space.

26. Defendants knew or reasonably should have known that Plaintiffs and the Class were incurring such expenses but have failed to indemnify or reimburse Plaintiffs and similarly situated employees for these expenditures. By requiring those employees to pay expenses they incurred in direct consequence of the discharge of their duties, Defendants have violated and continue to violate Labor Code § 2802.

27. By unlawfully failing to indemnify Plaintiffs and similarly situated employees, Defendants are liable for reasonable attorneys' fees and costs under Labor Code § 2802(c).

SECOND CAUSE OF ACTION
Cal. Business & Professions Code § 17200
(Violation of the Unfair Competition Law)

28. Plaintiffs incorporate by reference the preceding paragraphs as fully set forth herein.

29. Business & Professions Code § 17200, California’s Unfair Competition Law (“UCL”), prohibits unfair competition in the form of any unlawful, unfair, or fraudulent business act of practice. Business & Professions Code § 17204 allows “any person who has suffered injury in fact and has lost money or property” to prosecute a civil action for violation of the UCL.

30. During the Class Period, Defendants have committed unlawful, unfair, and/or fraudulent business acts and practices as defined by Business & Professions Code § 17200 by causing Plaintiffs and similarly situated employees to not be reimbursed for reasonable and necessary business expenses in violation of Labor Code § 2802.

31. As a direct and proximate result of Defendants' unlawful business practices, Plaintiffs and similarly situated employees have suffered economic injuries including, but not limited to, unreimbursed business expenses and interest accrued thereon.

32. Injunctive relief is necessary and appropriate to prevent Defendants from continuing and repeating their unlawful, unfair and fraudulent business acts and practices alleged above.

33. Plaintiffs' success in this action will enforce important rights affecting the

1 public interest. Plaintiffs will incur a financial burden in pursuing this action in the public
2 interest. Therefore, an award of reasonable attorneys' fees to Plaintiffs is appropriate
3 pursuant to Code of Civil Procedure § 1021.5.

4 **THIRD CAUSE OF ACTION**
5 **Labor Code Private Attorneys General Act**
6 **(Cal. Lab. Code § 2698, et seq.)**

7 34. Plaintiffs incorporate by reference the preceding paragraphs as fully set forth
8 herein.

9 35. As alleged above, Defendants failed to comply with the California Labor
10 Code. As such, Plaintiff Charalambous is an "aggrieved employee" as defined in Labor Code
11 § 2699(a). Pursuant to Labor Code § 2699, the Labor Code Private Attorneys General Act of
12 2004, Plaintiff Charalambous brings this action on behalf of himself and other current and
13 former exempt and non-exempt employees of Liberty Mutual in California who incurred
14 reasonable and necessary business expenses as a result of their performance of duties for
15 Liberty Mutual and seeks recovery of applicable civil penalties in accordance with Cal. Lab.
16 Code § 2699 and § 2802.

17 36. On October 4, 2021, Plaintiff served written notice via electronic submission
18 to the Labor and Workforce Development Agency ("LWDA") and via certified mail to
19 Defendants Liberty Mutual Insurance Company and Liberty Mutual Group Inc. of his intent
20 to amend his complaint to add a cause of action pursuant to Labor Code § 2699, et seq.

21 37. The LWDA did not respond to the notice or amended notice within the time
22 provided by Labor Code § 2699.3.

23 **PRAYER FOR RELIEF**

24 WHEREFORE, Plaintiffs pray for judgment against Defendants, as follows:

25 1. For an order certifying the proposed Class and designating this action as a
26 class action pursuant to Code Civ. Proc. § 382;

27 2. For an order appointing Plaintiffs and their counsel to represent the proposed
28 Class as defined herein;

3. For compensatory damages according to proof;

- 1 4. For an Order requiring Defendants to make restitution of all unreimbursed
2 business-related expenses that Plaintiffs and the Class incurred;
- 3 5. For penalties alleged herein;
- 4 6. For interest according to proof;
- 5 7. For reasonable attorneys' fees and costs; and,
- 6 8. For such other relief the Court deems just and proper.
- 7

8 Dated: December 9, 2021

CLAPP & LAUINGER LLP



JAMES F. CLAPP
MARITA MURPHY LAUINGER
Attorneys for Plaintiffs
ALEX CHARALAMBOUS and BRIAN PULLEN

14 **DEMAND FOR JURY TRIAL**

15 Plaintiffs hereby demand a jury trial.

16 Dated: December 9, 2021

CLAPP & LAUINGER LLP



JAMES F. CLAPP
MARITA MURPHY LAUINGER
Attorneys for Plaintiffs
ALEX CHARALAMBOUS and BRIAN PULLEN