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*Attorneys for Plaintiff, the LWDA, and the other Aggrieved Employees***SUPERIOR COURT OF THE STATE OF CALIFORNIA****FOR THE COUNTY OF LOS ANGELES**

GABRIELLA D. MCFALL, an individual, on
behalf of the State of California, as a private
attorney general, and on behalf of all Aggrieved
Employees,

PLAINTIFF,

v.

OBJECTWIN TECHNOLOGY, INC., a Texas
Corporation; SONY PICTURES
ENTERTAINMENT INC., a Delaware
Corporation; and DOES 1 to 50, inclusive,

DEFENDANTS.

CASE NO. 22STCV01633**PLAINTIFF'S PAGA REPRESENTATIVE
ACTION COMPLAINT FOR:****PENALTIES PURSUANT TO LABOR
CODE § 2699, ET SEQ. FOR
VIOLATIONS OF CALIFORNIA LABOR
CODE § 2802**

1 Plaintiff GABRIELLA D. MCFALL (“Plaintiff”), on behalf of the people of the State of
2 California, and as an “Aggrieved Employee” acting as a private attorney general for the LWDA
3 under the Labor Code Private Attorneys General Act of 2004, § 2699, *et seq.* (“PAGA”) complains
4 of Defendants OBJECTWIN TECHNOLOGY, INC. (“ObjectWin”), SONY PICTURES
5 ENTERTAINMENT INC. (“Sony”), and DOES 1 to 50 (collectively, “Defendants”) and each of
6 them, and alleges the following upon information and belief:

7 **INTRODUCTION**

8 1. This is a representative action brought pursuant to Labor Code § 2699, *et seq.*, on
9 behalf of the State of California against Defendants for PAGA penalties based on Defendants’
10 failure to reimburse its current and former employees for their home office expenses in California
11 during the pandemic for which they have not been fully reimbursed.

12 2. The Aggrieved Employees are defined as follows: Plaintiff and all other California
13 residents who are or were employed and/or jointly employed by Defendants, or either Defendant,
14 and who worked at home because their offices were closed for at least one pay period during the
15 period from May 9, 2020¹ through the present and ongoing (the “PAGA Period”).

16 **THE PARTIES**

17 3. Plaintiff is a resident of California. During the PAGA Period, Defendants employed
18 and/or jointly employed Plaintiff and all Aggrieved Employees were subject to Defendants’
19 unlawful failure to reimburse practices, as described further below.

20 4. Defendant ObjectWin is a staffing company headquartered in Houston, Texas and
21 does business throughout the United States and within the State of California. ObjectWin directly
22 employed and/or jointly employed Plaintiff and similarly situated persons as employees within
23 California. ObjectWin has done and does business throughout the State of California including in
24 Los Angeles County.

25 5. Defendant Sony is a mass media and entertainment studio conglomerate
26 headquarters in Los Angeles, California and does business throughout the United States and within

27 ¹ Emergency Rule 9 tolled the statute of limitations for civil causes of action from May 9, 2020 until October 1, 2020.
28 Therefore, the applicable statute of limitations on Plaintiff’s PAGA penalty claim is extended six months, back to May
9, 2020.

1 the State of California. During the PAGA Period, Sony directly employed and/or jointly employed
2 Plaintiff and similarly situated persons as employees within California. Sony has done and does
3 business throughout the State of California including in Los Angeles County

4 6. Courts in California have recognized that staffing agencies and their clients can both
5 be joint employers or co-employers for purposes of liability under Section 2802 of the Labor Code.
6 *See, e.g., Bush v. Vaco Tech Servs*, 2020 US Dist. LEXIS 24585 (N.D.Cal. Feb, 12, 2020)
7 (“Google, however, may be liable for [Labor Code section 2802] violations committed against
8 individuals hired through other staffing agencies ... Google’s liability is not necessarily limited to
9 individuals hired through VTS; it may also extend to individuals hired through another staffing
10 agency or directly by Google ...”). Indeed, where, as here, an employer would be independently
11 liable under the specific statute at issue, that same entity in a joint employment relationship is also
12 liable for the underlying Labor Code violations. *See Noe v. Superior Court* (2015) 237 Cal.App.4th
13 316, 333-334; *Serrano v. Aerotek, Inc.* (2018) 21 Cal.App.5th 773, 784-785.

14 **JURISDICTION AND VENUE**

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

20 8. This Court has personal jurisdiction over Defendants because Defendants have
21 caused injuries in the County of Los Angeles and State of California through their acts, and by their
22 violation of the California Labor Code and California state common law.

23 9. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
24 Civil Procedure § 395. Defendants operate within California and do business within Los Angeles
25 County, California. The unlawful acts alleged herein have a direct effect on Plaintiff and all
26 “employees” within the State of California and Los Angeles County.

27 **FACTUAL ALLEGATIONS**

28 10. From at least May 9, 2020 and continuing into the present, Plaintiff and the

aggrieved employees, at the direction of Defendants and/or with Defendants' knowledge and acquiescence, have incurred home office expenses including, *inter alia*, monthly home internet expenses, and monthly home office electricity and home office infrastructure expenses, in order to perform necessary work-related duties. Plaintiff, who was jointly employed by Defendants, was not able to work on premises at Defendants' offices but instead was expected to, and did, work from home, like the other Aggrieved Employees.

11. During the PAGA Period, Plaintiff and the aggrieved employees were thus expected by Defendants to pay for, and have personally paid for, among other things, home internet service, and home office electricity expenses, in the discharge of their job duties (the "home office expenses"). These expenses ranged, but typically amounted from \$100 to \$200 per month per Aggrieved Employee. Defendants had no policy to affirmatively reimburse all employees who were forced to work from home during the COVID-19 pandemic for their monthly recurring home office expenses, other than one initial \$500 stipend specifically designated for home office equipment. Notably, Defendants did not affirmatively provide any monthly recurring reimbursement thereafter for such expenses. Instead, Defendants only allowed reimbursement for meals and travel and only if pre-authorized by Defendant. In sum, Defendants' expense-related policies and/or practices require and expect, and/or with Defendants' knowledge thereof permit, Plaintiff and the Aggrieved Employees to pay for monthly home internet, electricity, and home office infrastructure expenses incurred in direct consequence of discharging their necessary, reasonable and business-related job duties on behalf of Defendants, without reimbursement in full by Defendants for such expenses, as required by California law.

12. California Labor Code section 2802 requires an employer to "indemnify his or her employee for all necessary expenditures or losses incurred by that employee in direct consequence of the discharge of his or her duties." See Cal. Labor Code section 2802(a); *see also* 2802(c) where necessary is defined to include all "reasonable" costs. "The elements of a claim under Section 2802 are: (i) the employee made expenditures or incurred losses; (ii) the expenditures or losses were incurred in direct consequence of the employee's discharge of his or her duties, or obedience to the directions of the employer; and (iii) the expenditures or losses were reasonable and

necessary.” *Marr v. Bank of America*, 2011 U.S. Dist. LEXIS 24868 (N.D. March 8, 2011) (citing *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 568 (2007)). “In addition, the 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 has knowledge that employees are incurring a reimbursable expense, the employer must “exercise due diligence to ensure each employee is reimbursed.” *Marr*, at *1. The right of an employee to expense reimbursements is not waivable. *See* Cal. Labor Code sections 2804 and 219(a). Any contract to waive them is null and void. *Edwards v. Arthur Anderson*, 44 Cal. 4th 937, 951 (2008)

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

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

15. Defendants are aware or should have been aware that Plaintiff and the aggrieved employees regularly incurred and incur home office internet, electricity for the home office, and/or home electricity and other infrastructure expenses in the discharge of their duties as employees, by virtue of Defendants' instructions to Plaintiff and the Aggrieved Employees to work from home and/or their announcements of office closures during the COVID-19 pandemic. Plaintiff and the Aggrieved Employees could not perform their job duties for Defendants without internet service, electricity for the home office, and/or video conferencing services. Defendants nevertheless have, throughout the PAGA Period, failed and refused to affirmatively reimburse Plaintiff and the Aggrieved Employees for such monthly home internet and home office expenses incurred by them in connection with their work.

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

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

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

18. 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.

19. 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.

20. Pursuant to Labor Code § 2699.3 (a), on November 9, 2021, Plaintiff gave written notice by certified mail to Defendants, and to the LWDA of her claims for violations of Labor Code § 2802, and theories supporting these claims as alleged herein. 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 Defendants.

21. 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 May 9, 2020, and the date of judgment and/or approval of settlement;

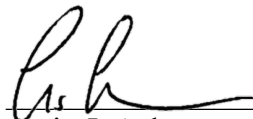
3. An award of reasonable attorney's fees against Defendants as allowed by law, including without limitation, in Labor Code § 2699(g)(1), for all the work performed by the undersigned counsel in connection with the PAGA claims;

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

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

Respectfully submitted,

ACKERMANN & TILAJEF, P.C.



Dated: January 13, 2022

Craig J. Ackermann, Esq.

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