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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO AT NORTH COUNTY**

NOELLE NAKAGAKI, an individual, on
behalf of the State of California, as a private
attorney general, and on behalf of all
Aggrieved Employees,

Plaintiff,

v.

MARQUEE STAFFING, a California
Corporation; **ADVANTAGE SALES AND
MARKETING LLC**, a California Limited
Liability Company; and **DOES 1 to 50**,
inclusive,

Defendants.

CASE NO. 37-2022-00016876-CU-OE-NC

**PLAINTIFF'S PAGA
REPRESENTATIVE ACTION
COMPLAINT FOR:**

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

1 Plaintiff NOELLE NAKAGAKI (“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 MARQUEE STAFFING, ADVANTAGE SALES AND MARKETING LLC
5 (“Advantage”), and DOES 1 to 50, inclusive, (collectively, “Defendants”), and alleges the
6 following upon information and belief.

7 **INTRODUCTION**

8 1. This is a representative action brought pursuant to Labor Code § 2699, *et seq.*, on behalf
9 of the State of California against Defendants for PAGA penalties based on Defendants’ failure to
10 reimburse their current and former employees for their home office expenses including a
11 reasonable percentage of their cell phone and home internet expenses incurred on behalf of
12 Defendants during the COVID-19 pandemic.

13 2. The Aggrieved Employees are defined as follows: Plaintiff and all other California
14 residents who are or were employed and/or jointly employed by Defendants, or either Defendant,
15 who were subject to stay-at-home orders, and who worked at home for at least one pay period
16 during the period from February 22, 2021 through the present (the “PAGA Period”).

17 **THE PARTIES**

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

21 4. Defendant Marquee Staffing is a California corporation headquartered in Irvine, California
22 and does business within the State of California, including San Diego County. Marquee Staffing
23 directly employed and/or jointly employed Plaintiff and similarly situated persons as employees
24 within California.

25 5. Defendant Advantage Sales and Marketing LLC is a Limited Liability Company
26 headquartered in Irvine, California and does business throughout the United States and within the
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1 State of California. Advantage directly employed and/or jointly employed Plaintiff and similarly
2 situated persons as employees within California. Advantage has done and does business
3 throughout the State of California including San Diego County

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

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

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

5 **JURISDICTION AND VENUE**

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

11 8. This Court has personal jurisdiction over Defendants because Defendants have caused
12 injuries in the County of San Diego and State of California through their acts, and by their violation
13 of the California Labor Code and California state common law.

14 9. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil
15 Procedure § 395. Defendants operate within California and do business within North County of
16 San Diego County, California. The unlawful acts alleged herein have a direct effect on Plaintiff
17 and all Aggrieved Employees within the State of California and San Diego County.

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

24 **FACTUAL ALLEGATIONS**

25 10. From at least February 22, 2021 and continuing through the present (the “PAGA Period”),
26 Plaintiff and/or the Aggrieved Employees, at the direction of Defendants and/or with Defendants’
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1 knowledge and acquiescence, incurred home office expenses including, *inter alia*, monthly cell
2 phone service expenses, home internet expenses, software subscription expenses, equipment
3 expenses, and monthly home electricity and home office infrastructure expenses, to perform
4 necessary work-related duties for Defendants. Plaintiff, who was jointly employed by Defendants,
5 was not able to work on the premises at Defendants' offices everyday but instead was expected to,
6 and did, work from home, like the other Aggrieved Employees several days per week due to the
7 Defendants' policies to keep safety distance protocols in its offices.

8 11. During the PAGA Period, Plaintiff and the Aggrieved Employees were thus expected by
9 Defendants to pay for, and have personally paid for, *inter alia*, cell phone service, home internet
10 service, software subscriptions, home electricity, and the purchase and maintenance of hardware
11 used for work-purposes, including keyboards, mice, as well as to allocate home office space, in
12 the discharge of their job duties (the "home office expenses"). These expenses typically ranged
13 from \$100 to \$200 per month per Aggrieved Employee.

14 12. Defendants had no policy to affirmatively reimburse all employees who were forced to
15 work from home during the COVID-19 pandemic for their monthly recurring home office
16 expenses. In sum, Defendants' expense-related policies and/or practices required and expected,
17 and/or with Defendants' knowledge thereof permit, Plaintiff and the Aggrieved Employees to pay
18 for monthly home internet, monthly personal cell phone, and home office infrastructure expenses
19 incurred in direct consequence of discharging their necessary, reasonable, and business-related job
20 duties on behalf of Defendants, without reimbursement in full by Defendants for such expenses,
21 as required by California law.

22 13. California Labor Code section 2802 requires an employer to "indemnify his or her
23 employee for all necessary expenditures or losses incurred by that employee in direct consequence
24 of the discharge of his or her duties." *See* Cal. Labor Code section 2802(a); *see also* 2802(c) where
25 necessary is defined to include all "reasonable" costs. "The elements of a claim under Section
26 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 Am.*, 2011 U.S. Dist. LEXIS 24868 (N.D. Mar. 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)

14. Furthermore, under Labor Code section 2802, employers must reimburse employees for all necessary and/or reasonable work-related expenses, whether or not the employees incurred any additional out-of-pocket expense from that work-related use. *See, Cochran v. Schwan’s Home Serv., 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.”).

15. Where, as here, employees in California are expected or mandated to use their home internet and/or personal cell phones for work, or otherwise paid for work-related subscriptions 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 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*

1 v. *Blue Shield of Cal.*, 2014 WL 6982943, at *21 (N.D. Cal. Dec. 9, 2014) (Hon. Edward Chen)
2 (certifying class of home office claims processors with 2802 phone reimbursement claims for
3 landline reimbursements where company required claims processors working from home to have
4 a landline, but rejecting certification of claims for home office supplies as individualized).

5 16. Defendants were aware or should have been aware that Plaintiff and the Aggrieved
6 Employees regularly incurred home office internet, cell phone service, home electricity and other
7 home office expenses in the discharge of their duties as employees, by virtue of Defendants'
8 instructions to Plaintiff and the Aggrieved Employees to work from home during the COVID-19
9 pandemic. Plaintiff and the Aggrieved Employees could not perform their job duties for
10 Defendants without cell phone plans, subscriptions for internet service, and other components of
11 a home office infrastructure. Throughout the PAGA Period, Defendants nevertheless failed and
12 refused to affirmatively reimburse Plaintiff and the Aggrieved Employees for such monthly cell
13 phone, home internet, and home office expenses incurred by them in connection with their work.

14 **FIRST CAUSE OF ACTION**

15 **PENALTIES PURSUANT TO PAGA, LABOR CODE § 2699, *ET SEQ.***

16 **FOR VIOLATIONS OF LABOR CODE § 2802**

17 **PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST ALL DEFENDANTS**

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

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

22 18. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiff and all other
23 Aggrieved Employees are entitled to penalties in an amount to be shown at the time of trial subject
24 to the following formula:

25 \$100 for the initial violation per employee per pay period; and

26 \$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 February 22, 2022, 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.¹ 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 during the PAGA Period, between August 22, 2020, and February 22, 2022;

3. An award of reasonable attorneys' 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;

¹ On January 26, 2022, Plaintiff provided notice by certified mail to the LWDA and to Defendant Marquee Staffing and to Quantum Networks, LLC. After examining the issue in more detail, Plaintiff filed a supplemental PAGA letter on February 22, 2022 that substituted the correct joint employer-Defendant Advantage Sales and Marketing LLC for Quantum Networks, LLC. The revised PAGA letter also corrected Plaintiff's name from "Noelle Nagasaki" to "Noelle Nakagaki."

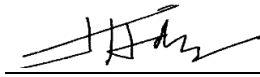
1 4. An award of all costs incurred by the undersigned counsel for Plaintiff in connection with
2 Plaintiff's and the Aggrieved Employees' claims against Defendants as allowed by law, including
3 without limitation, Labor Code § 2699(g)(1);

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

5 Respectfully submitted,

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7 ACKERMANN & TILAJEF, P.C.
8 LAW OFFICE OF TATIANA HERNANDEZ, P.C.

9 Dated: May 02, 2022

10 

11 Craig J. Ackermann, Esq.

12 Tatiana Hernández, Esq.

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