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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

JOHNATHAN SATELE, an individual, on
behalf of himself and others similarly situated

PLAINTIFF,

v.

KSARIA SERVICE CORPORATION; and
DOES 1 thru 50, inclusive,

DEFENDANTS.

CASE NO. 37-2023-00002198-CU-OE-CTL

[Amended as a matter of right, pursuant to
Labor Code § 2699.3(a)(2)(C)]

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

1. Failure to Reimburse Expenses Pursuant to Labor Code § 2802
2. Violation of Business & Professions Code § 17200
3. Penalties Pursuant to Labor Code §2699, et seq.

1 Plaintiff JOHNATHAN SATELE, an individual, on behalf of himself, all others similarly
2 situated, complains of Defendant KSARIA SERVICE CORPORATION (“Defendant”) and each
3 of them, as follows:

4 **I.**

5 **INTRODUCTION**

6 1. This is a Class and Representative Action, pursuant to Code of Civil Procedure §
7 382 and Labor Code §2699, *et seq.*, on behalf of Plaintiff and a Proposed Class defined as:

8 All persons who are employed or have been employed as an hourly
9 employee by KSARIA SERVICE CORPORATION, in the State of
10 California since four (4) years prior to the filing of this action to the
11 present. (“Proposed Class”)

12 2. For at least four (4) years prior to the filing of this action and continuing to the
13 present, Defendant has failed to reimburse Plaintiff and the Proposed Class for the cost of using
14 their personal cell phones for business. Defendant required Plaintiff and the Proposed Class to use
15 their cell phones to perform their job duties. These cellphones were not provided by Defendant,
16 and Defendant failed to reimburse Plaintiff and the Proposed Class for the costs associated for
17 using these personal cell phones.

18 3. Plaintiff, on behalf of himself and all Proposed Class members brings this action
19 pursuant to Labor Code § 2802; Wage Order 4-2001; and California Code of Regulations, Title 8,
20 Section 11040, seeking unreimbursed expenses, injunctive and other equitable relief, and
21 reasonable attorneys’ fees and costs.

22 4. Plaintiff, on behalf of himself and all Proposed Class members, pursuant to
23 Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and
24 disgorgement of all benefits Defendant enjoyed from its unlawful conduct as described herein.

25 5. For at least one (1) year prior to the date of the letter sent to the Labor Workforce
26 and Development Agency (“LWDA”) and Defendant giving notice of the claims pursuant to
27 PAGA and continuing to the present, Defendant has violated Labor Code provisions, as detailed
28 below, giving rise to a claim pursuant to PAGA. Plaintiff, on behalf of himself and all aggrieved
employees presently or formerly employed by Defendant during the liability period as defined in

his PAGA notice letter (*see* Exhibit “1”), brings this representative action pursuant to Labor Code §2699, et seq. seeking penalties for Defendant’s violations of Labor Code §§ 432.5 and 2802.

II.

JURISDICTION AND VENUE

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

2. This Court has personal jurisdiction over Defendant because Defendant has caused injuries in the County of San Diego and the State of California through their acts, and by their violation of the California Labor Code, California state common law, and California Business & Professions Code § 17200, *et seq.*

3. Venue as to each Defendant is proper in this judicial district, pursuant to Code of Civil Procedure § 395. Defendant operates within California and does business within San Diego County. The unlawful acts alleged herein have a direct effect on Plaintiff and all Proposed Class Members within the State of California and the county of San Diego.

4. This case should be classified as complex according to Rule 3.400 of the California Rules of Court, and assigned to a complex litigation judge and department, as it will involve substantial documentary evidence, a large number of witnesses, and is likely to involve extensive motion practice raising difficult or novel issues that will be time-consuming to resolve and would require substantial post judgment judicial supervision.

6. Plaintiff files this amended complaint adding a claim for penalties under Labor Code §2699, *et seq.* as a matter of right. (*see* Labor Code § 2699.3(a)(2)(C)).

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III.
PARTIES

A. PLAINTIFF

5. Plaintiff JOHNATHAN SATELE is a resident of California.

6. Plaintiff and all Proposed Class members, were regularly required to work without being reimbursed for the use of their personal cellphones for work purposes;

7. As a result of this conduct, Defendant has engaged in unfair competition and unlawful business practices.

7. Plaintiff and all aggrieved employees as defined in his notice letter to the LWDA are “aggrieved employees” within the meaning of Labor Code § 2699, *et seq.* (see Labor Code §2699(c).

B. DEFENDANTS

8. Defendant KSARIA SERVICE CORPORATION is believed to be a New Hampshire corporation operating within the State of California. Defendant’s corporate address is believed to be 6 Wentworth Dr., Hudson, NH 03051. Upon information and belief, Defendant employed Plaintiff and similarly situated persons as hourly employees within California. Defendant has done and does business throughout the State of California.

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

10. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the

1 employer and/or joint employer of Plaintiff and the Proposed Class members.

2 11. Furthermore, Defendants acted in all respects as the employers or joint employers
3 of the Proposed Class. Defendants, and each of them, exercised control over the wages, hours or
4 working conditions of the Proposed Class, or suffered or permitted the Proposed Class to work, or
5 engaged, thereby creating a common law employment relationship, with the Proposed Class.
6 Therefore, Defendants, and each of them, employed or jointly employed the Proposed Class.

7 **IV.**

8 **FACTUAL BACKGROUND**

9 12. Plaintiff and the Proposed Class are, and at all times pertinent hereto, have been
10 classified as non-exempt employees by Defendant. Defendant hires employees who work as hourly
11 employees who are paid on an hourly basis.

12 13. Upon information and belief, Plaintiff and the Proposed Class are covered by
13 California Industrial Welfare Commission Occupational Wage Order No. 4-2001 (Title 8 Cal.
14 Code of Regs. § 11040).

15 14. On a regular and consistent basis, Plaintiff and the Proposed Class have not been
16 properly reimbursed expenses associated with the cost of using their personal cell phones
17 necessary for the completion of their job duties. Defendant required Plaintiff and the Proposed
18 Class members to use their own cell phones to perform and complete their job duties. Specifically,
19 Plaintiff and the Proposed Class had to download an app to their personal cell phones to
20 communicate with the other employees on site. These cell phones were not provided by Defendant,
21 and Defendant failed to reimburse Plaintiff and the Proposed Class for the costs associated with
22 using these personal cell phones.

23 8. As a result of the acts alleged herein, Defendant violated Labor Code §2699, *et seq.*

24 **V.**

25 **CLASS ACTION ALLEGATIONS**

26 15. Plaintiff brings this action on behalf of himself and all others similarly situated as
27 a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiff seeks to represent a
28 proposed class composed of and defined as follows:

1 All persons who are employed or have been employed as an hourly
2 employee by KSARIA SERVICE CORPORATION, in the State of
3 California since four (4) years prior to the filing of this action to the
4 present. ("Proposed Class")

5 16. Plaintiff reserves the right under Rule 3.765(b) of the California Rules of Court to
6 amend or modify the class description with greater specificity, by division into subclasses, or by
7 limitation to particular issues.

8 17. This action has been brought and may properly be maintained as a class action
9 under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined
10 community of interest in the litigation and the Proposed Classes are easily ascertainable.

11 **A. NUMEROSITY**

12 18. The potential members of the Proposed Class as defined are so numerous that
13 joinder of all the members of the Proposed Class is impracticable. While the precise number of
14 proposed Class Members has not been determined at this time, Plaintiff is informed and believes
15 that Defendant currently employ, and during the relevant time periods employed over 50 members
16 of the Proposed Class.

17 19. Plaintiff alleges that Defendant's employment records would provide information
18 as to the number and location of all Proposed Class members. Joinder of all members of the
19 Proposed Class is not practicable.

20 **B. COMMONALITY**

21 20. There are questions of law and fact common to the Proposed Class that predominate
22 over any questions affecting only individual Proposed Class members. These common questions
23 of law and fact include, without limitation:

24 a. Whether Defendants violated Labor Code § 2802 and/or Wage Order 4-
25 2001 or other applicable IWC Wage Orders by failing to reimburse out of pocket expenses for the
26 cost of personal cell phone usage;

27 b. Whether Defendant violated § 17200, *et seq.* of the Business & Professions
28 Code by engaging in the acts previously alleged; and

c. Whether Plaintiff and the members of the Proposed Class are entitled to
equitable relief pursuant to Business & Professions Code § 17200, *et seq.*

d. Whether Defendant violated Labor Code § 2699, *et seq.* by engaging in the acts alleged herein.

C. TYPICALITY

21. The claims of Plaintiff are typical of the claims of the Proposed Class. Plaintiff and all members of the Proposed Class sustained injuries and damages arising out of and caused by Defendant's common course of conduct in violation of laws, regulations that have the force and effect of law, and statutes as alleged herein.

D. ADEQUACY OF REPRESENTATION

22. Plaintiff will fairly and adequately represent and protect the interests of the members of the proposed Class.

23. Counsel who represent Plaintiff and the Proposed Class are competent and experienced in litigating large employment class actions.

E. SUPERIORITY OF CLASS ACTION

24. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Proposed Class Members is not practicable, and questions of law and fact common to the Proposed Class predominate over any questions affecting only individual members of the Proposed Class. Each member of the Proposed Class has been damaged and is entitled to recovery by reason of Defendant's illegal policy and/or practice of failing to reimburse expenses.

25. Class action treatment will allow those similarly situated persons to litigate their claims in the manner that is most efficient and economical for the parties and the judicial system. Plaintiff is unaware of any difficulties that are likely to be encountered in the management of this action that would preclude its maintenance as a class action.

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1 **VI.**

2 **FIRST CAUSE OF ACTION**

3 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

4 **FAILURE TO REIMBURSE EXPENSES PURSUANT TO**

5 **LABOR CODE § 2802**

6 26. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
7 by reference all previous paragraphs.

8 27. Labor Code § 2802 requires employers to indemnify employees for all necessary
9 expenditures incurred by employees in the discharge of their duties.

10 28. Defendants have failed to reimburse Plaintiff and the Proposed Class for the cost
11 of using their personal cell phones that were not provided by Defendant but were necessary for the
12 performance of Plaintiff and the Proposed Class's job duties. Defendant required Plaintiff and all
13 Proposed Class members to use their own cellphones to perform and complete their job duties.
14 Specifically, Plaintiff and the Proposed Class had to download an app to their personal cell phones
15 to communicate with the other employees on site.

16 29. These cell phones were not provided by Defendant and Defendant failed to
17 reimburse Plaintiff and the Proposed Class for the costs of regular and consistent cellular phone
18 usage despite the fact that these expenditures were necessary for business related purposes.

19 30. As a result of the unlawful acts of Defendants, Plaintiff and the Proposed Class
20 have been deprived of reimbursement in the amounts to be determined at trial, and are entitled to
21 recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs.

22 **VII.**

23 **SECOND CAUSE OF ACTION**

24 **PLAINTIFF ON BEHALF OF HIMSELF AND THE PROPOSED CLASS**

25 **UNFAIR COMPETITION PURSUANT TO BUSINESS & PROFESSIONS CODE § 17200**

26 31. Plaintiff, on behalf of himself and the Proposed Class, realleges and incorporates
27 by reference all previous paragraphs.

28 32. This is a Class Action for Unfair Business Practices. Plaintiff, on behalf of himself,

1 on behalf of the general public, and on behalf of the Proposed Class, bring this claim pursuant to
2 Business & Professions Code § 17200, *et seq.* The conduct of Defendant as alleged in this
3 Complaint has been and continues to be unfair, unlawful, and harmful to Plaintiff, the general
4 public, and the Proposed Class. Plaintiff seeks to enforce important rights affecting the public
5 interest within the meaning of Code of Civil Procedure § 1021.5.

6 33. Plaintiff is a “person” within the meaning of Business & Professions Code § 17204,
7 and therefore has standing to bring this cause of action for injunctive relief, restitution, and other
8 appropriate equitable relief.

9 34. Business & Profession Code § 17200, *et seq.* prohibits unlawful and unfair business
10 practices.

11 35. California’s wage and hour laws express fundamental public policies. Providing
12 employees with proper wages and compensation are fundamental public policies of this State and
13 of the United States. Labor Code § 90.5(a) articulates the public policies of this State to enforce
14 vigorously minimum labor standards, to ensure that employees are not required or permitted to
15 work under substandard and unlawful conditions, and to protect law-abiding employers and their
16 employees from competitors who lower their costs by failing to comply with minimum labor
17 standards.

18 36. Defendant has violated statutes and public policies as alleged herein. Through the
19 conduct alleged in this Complaint, Defendant has acted contrary to these public policies, have
20 violated specific provisions of the Labor Code, and have engaged in other unlawful and unfair
21 business practices in violation of Business & Profession Code § 17200, *et seq.*, depriving Plaintiff,
22 and all persons similarly situated, and all interested persons of rights, benefits, and privileges
23 guaranteed to all employees under law.

24 37. Defendant’s conduct, as alleged hereinabove, constitutes unfair competition in
25 violation of § 17200, *et seq.* of the Business & Professions Code.

26 38. Defendant, by engaging in the conduct herein alleged, either knew or in the exercise
27 of reasonable care, should have known that the conduct was unlawful. As such it is a violation of
28 § 17200, *et seq.* of the Business & Professions Code.

39. As a proximate result of the above-mentioned acts of Defendant, Plaintiff and others similarly situated have been damaged in a sum as may be proven.

40. Unless restrained, Defendant will continue to engage in the unlawful conduct as alleged above. Pursuant to the Business & Professions Code, this court should make such orders or judgments, including the appointment of a receiver, as may be necessary to prevent the use or employment by Defendant, its agents, or employees, of any unlawful or deceptive practices prohibited by the Business & Professions Code, and/or, including but not limited to, restitution and disgorgement of profits which may be necessary to restore Plaintiff and members of the proposed Class the money Defendant has unlawfully failed to pay.

VIII.

THIRD CAUSE OF ACTION

PENALTIES PURSUANT TO LABOR CODE §2699, ET SEQ. FOR VIOLATION OF

LABOR CODE §432.5

41. Plaintiff, on behalf of himself and all aggrieved employees, realleges and incorporates by reference all previous paragraphs.

42. As a result of the acts alleged above and specifically incorporated herein, Plaintiff seeks penalties under Labor Code §2699, *et seq.* use of Defendant's violation of Labor Code §§ 432.5 and 2802; Wage Order 4-2001; and California Code of Regulations, Title 8, Section 11040, which call for civil penalties.

43. In addition to the reimbursement claim alleged in detail above, Plaintiff also alleges an additional claim under Labor Code § 432.5 as the basis for a PAGA claim on behalf of the aggrieved employees as defined in Plaintiff's notice letter.

44. For at least one (1) year prior to the date of the letter sent to the Labor Workforce Development Agency and Defendant giving notice of these PAGA claims and continuing to the present, Defendant has violated Defendant has violated Labor Code § 432.5. Labor Code § 432.5 provides that no employer shall require any employee to agree, in writing, to any term or condition which is known by the employer to be prohibited by law. Here, Defendant requires, as a condition of employment, that Plaintiff and other aggrieved employees sign a “Nondisclosure, Inventions

and Noncompetition Agreement” which includes numerous terms that are prohibited by law, including but not limited to the following:

a. Employees agree that when they are employed by the Company and for 18 months after their employment terminates for any reason, employees will not, directly or indirectly, solicit or endeavor to entice away from the Company, or otherwise interfere with the business relationship of the Company with any person who is, or was within the prior year, employed by or working for the Company.

45. Provisions of Defendant’s Agreement, as described above, that Plaintiff and all aggrieved employees were required to sign as a condition of employment, explicitly violate several provisions of California law and public policy. Plaintiff and the aggrieved employees were required to agree to an unlawful non-compete provision. As such, Plaintiff is an aggrieved employee and Defendant has violated Labor Code § 432.5 with respect to Plaintiff and all aggrieved employees.

46. Defendant’s violation of Labor Code § 432.5 was all done on a regular and consistent basis.

47. As a result of the acts alleged above, Plaintiff, on behalf of himself and all other aggrieved employees as defined in his notice letter, seeks penalties under Labor Code § 2699, et seq. because of Defendant’s violation of Labor Code § 432.5, for which a civil penalty applies under PAGA.

48. As a result of the acts alleged above Plaintiff seeks penalties under Labor Code § 2699, et seq. because of Defendant’s violation of Labor Code §§ 432.5 and 2802, for which a civil penalty applies under PAGA.

49. For each such penalty, Plaintiff and the aggrieved employees are entitled to penalties in an amount to be shown at trial, subject to the following formula:

a. \$100 for the initial violation per employee per pay period.

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

50. These penalties shall be allocated seventy-five percent (75%) to the LWDA and twenty-five percent (25%) to the affected employees.

51. Pursuant to Labor Code § 2699.3(a)(1), Plaintiff uploaded a notice letter to the

1 LWDA¹ and mailed a letter by certified mail to each of the Defendant's entity address, 6
2 Wentworth Dr. Hudson, NH 03051, as proscribed by the Code on January 17, 2023, describing
3 Defendants' conduct in violation of Labor Code §§ 432.5 and 2802, and IWC Wage Order 4-2001.
4 (*see* Exhibit "1.") Plaintiff obtained an e-filing confirmation from the LWDA confirming receipt
5 of the notice (*see* Exhibit "2").

6 52. As no letter evidencing the LWDA's intention to investigate was received by
7 Plaintiff's Counsel within sixty-five (65) calendar days, Plaintiff is entitled to commence a civil
8 action as though the LWDA had not chosen to investigate pursuant to Labor Code
9 §2699.3(a)(2)(A). Plaintiff will also provide the LWDA with a filed-stamped copy of the First
10 Amended Class and Representative Action Complaint immediately.

11 **RELIEF REQUESTED**

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

- 13 1. For compensatory damages in the amount of Plaintiff's and each Proposed Class
14 Members' unreimbursed out of pocket expenses as a requirement of employment;
- 15 2. An award of prejudgment and post judgment interest;
- 16 3. An order enjoining Defendant and its agents, servants, and employees, and all
17 persons acting under, in concert with, or for it from providing Plaintiff with reimbursed out of
18 pocket expenses pursuant to Labor Code § 2802, and IWC 4-2001;
- 19 4. For restitution for unfair competition pursuant to Business & Professions Code
20 § 17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;
- 21 5. An award providing for payment of costs of suit;
- 22 6. An award of attorneys' fees; and
- 23 7. Such other and further relief as this Court may deem proper and just.
- 24 8. For penalties under Labor Code §2699, *et seq.* for Defendant's violation of Labor
25 Code §§ 432.5, 2802, and Wage Order 4-2001;

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27 ¹ Plaintiff electronically filed a PAGA Claim Notice to the LWDA, via the State of California
28 Labor and Workforce Development Agency / Department of Industrial Relations website
(<https://dir.tfaforms.net/308>).

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DATED: March 24, 2023

By:

Attorneys for Plaintiff and the Proposed Class