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E-FILED
5/24/2024 3:19 PM
Clerk of Court
Superior Court of CA,
County of Santa Clara
24CV439846
Reviewed By: M. Suarez

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CLARA

TRAVIS HOANG, an individual, on behalf of the State of California as a private attorney general, on behalf of all other Aggrieved Employees,

PLAINTIFF,

v.

COGNIZANT TECHNOLOGY SOLUTIONS U.S. CORPORATION, a Delaware Corporation; and DOES 1 to 10, inclusive,

DEFENDANTS.

CASE NO: 24CV439846

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

Plaintiff TRAVIS HOANG ("Plaintiff"), on behalf of the people of the State of California and as an "Aggrieved Employee" acting as a private attorney general under the Labor Code Private Attorneys General Act of 2004, § 2699, *et seq*. ("PAGA") complains of Defendant COGNIZANT TECHNOLOGY SOLUTIONS U.S. CORPORATION and DOES 1 to 10 ("Defendant" or "Cognizant") and alleges the following upon information and belief:

INTRODUCTION

1. This is a PAGA representative action lawsuit brought pursuant to Labor Code § 2699, *et seq*., on behalf of the State of California and a group of Aggrieved Employees.

2. The "Aggrieved Employees" are defined as follows:

> Plaintiff and all other California residents who are or were employed by Defendant for at least one pay period during the time period from March 19, 2023, to the present (the "PAGA Period").

3. Plaintiff, on behalf of himself and all Aggrieved Employees presently or formerly employed by Defendant during the PAGA Period, brings this representative action lawsuit pursuant to Labor Code § 2699, *et seq*. seeking civil penalties for Defendant's violation of California Labor Code § 2802. Based upon the foregoing, Plaintiff and all Aggrieved Employees are entitled to relief as set forth below.

THE PARTIES

4. Plaintiff Travis Hoang is a resident of California and worked for Defendant as a software engineer from May 23, 2022 to August 1, 2023

5. Plaintiff and all Aggrieved Employees are, and at all times pertinent hereto, have been employees of Defendant, and have been hired to work for Defendant in California during the PAGA Period.

6. Defendant is an American multinational information technology services and consulting company. Defendant is headquartered in College Station, Texas, with its related entities, has a network of locations and operations in the United States and within the State of California, as well as throughout the world. Defendant employed Plaintiff and similarly situated Aggrieved Employees in California. Defendant has done and does business throughout the State of California,

including in Santa Clara County.

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

8. Plaintiff is informed and believes, and based thereon alleges, that Defendant engaged, suffered, and permitted Plaintiff and all other Aggrieved Employees to perform services from which it benefitted. Moreover, the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions over Plaintiff and all Aggrieved Employees at all relevant times herein, so as to be considered the employer of all of the Aggrieved Employees. Defendant is liable for civil penalties for violations of the Labor Code as to Plaintiff and other Aggrieved Employees as set forth herein.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over any and 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.

10. This Court has personal jurisdiction over Defendant because Defendant has violated the Labor Code in the County of Santa Clara and State of California through its acts and omissions, and in violation of the California Labor Code.

11. 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 Santa Clara County, California. The unlawful acts alleged herein have a direct effect on Plaintiff and all "employees" within the State of California and Santa Clara County.

COMMON ALLEGATIONS

12. During the PAGA Period, Plaintiff, and the Aggrieved Employees, at the direction of Defendant, have incurred personal cell phone expenses to perform necessary work-related duties for Defendant. Plaintiff, like Defendant's other California employees, was instructed to, and did, download the Microsoft Authenticator application on his and their personal cell phones. Each day, Plaintiff and the other Aggrieved Employees were required to use their personal cell phones to access the Microsoft Authenticator application to log into Cognizant's systems and resources (or Cognizant's clients' systems and resources) through dual factor authentication. Plaintiff and the other Aggrieved Employees could not log into Cognizant's systems and resources (or Cognizant's client's systems and resources) and perform their work for Cognizant or Cognizant's clients without performing the dual factor authentication using the Microsoft Authenticator application on their personal cell phones. Plaintiff and the Aggrieved Employees had to authenticate security protocols via the application on their personal cell phones multiple times per day.

13. During the PAGA Period, Plaintiff and the Aggrieved Employees were thus expected by Defendant to pay for, and have personally paid for, cell phone service in the discharge of their job duties. These personal cell phone expenses were required and necessary for work to be performed for Cognizant. These monthly personal cell phone expenses ranged, but typically amounted to approximately $50 per month per Aggrieved Employee. Defendant was obligated to reimburse some reasonable fraction of these expenses but did not do so.

14. Despite requiring application downloads on all Aggrieved Employees' cell phones, Defendant had no policy to affirmatively reimburse their employees for a reasonable portion of their personal cell phone expenses. To be clear, Defendant's expense-related policies and/or practices require and expect Plaintiff and the Aggrieved Employees to pay for personal cell phone service expenses incurred in direct consequence of discharging his and their necessary, reasonable and business-related job duties on behalf of Defendant, without reimbursement of a reasonable portion of such expenses by Defendant, as required by California law.

15. Defendant's policy and practice violates California Labor Code Section 2802 which 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 section 2802(a) cause of action, as delineated by the statutory language, are: (1) the employee made expenditures or incurred losses; (2) 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 (3) the expenditures or losses were necessary. *See*, *Thai v. International Business Machines Corp.*, 93 Cal. App. 5th 364, 370 (July 11, 2023). Additionally, Section 2802 is subject to an anti-waiver provision. *See*, Labor Code § 2804.

16. In evaluating claims for reimbursements under Section 2802, courts in California have adopted a "knew or should have known" standard for employer liability—that is, when an "employer either knows or has reason to know that the employee has incurred a reimbursable expense ... it must exercise due diligence to ensure that each employee is reimbursed." *Stuart v. RadioShack Corp.,* 641 F. Supp. 2d 901, 903 (N.D. Cal. 2009) (Hon. Edward Chen); *Abdullah et al. v. U.S. Security Associates,* 09-CV-9554-GHK (C.D. Cal. 2011) (Hon. George King) (adopting the standard set forth in *RadioShack*: "the law requires that once an employer knows or has reason to know that the employee has incurred an expense, then it has the duty to exercise due diligence and take any and all reasonable steps to ensure that the employee is reimbursed for the expense"); *Marr v. Bank of America*, 2011 WL 845914 (N.D. Cal. 2011) (Hon. William Alsup) (adopting "knew or should have known standard"). Knowledge of expenses being incurred by employees triggering reimbursement obligations can be inferred. *See e.g., Tan* v. *Grubhub*, Inc., 171 F. Supp.3d 998, 1005 (N.D. 2016) (rejecting Grubhub's motion to dismiss argument that plaintiffs failed to allege it knew or had reason to know of business expenditures, and finding that the plaintiffs' allegations that they were required to bear expenses related to "their vehicles, gas, parking, phone data, and other expenses" suffice because "[i]t is plausible to infer that Defendants were aware that class members incurred these expenses from the nature of their business—an app based food delivery service that requires drivers to use their cars and cell phones."); *see also Taylor v. W. Marine Prod., Inc.*, 2014 WL 1778279, * 6 (N.D. Cal. May 3, 2014) (the court *inferred* notice of expenses for 2802 purposes where employees had to drive long distances for work that was not walkable, and were not

reimbursed for gas mileage, which was sufficient to trigger a reimbursement obligation).

17. In order to discharge their duties for Cognizant during the PAGA Period, Plaintiff and all of the other similarly situated Aggrieved Employees regularly incurred personal cell phone expenses in the discharge of their duties as employees by virtue of Defendant's instructions to Plaintiff and the Aggrieved Employees to download cell phone applications to their personal cell phones and to perform dual factor authentications to and from their cell phones regularly before being able to log into Cognizant's systems and resources (or Cognizant's client's systems and resources). Such work-related usage of personal cell phones was known to Cognizant. Nevertheless, Cognizant has, throughout the PAGA Period, failed to reimburse Plaintiff and the Aggrieved Employees for a reasonable fraction of such personal cell phone expenses incurred by them in connection with their work.

18. Notably, under Labor Code section 2802, employers in California must reimburse employees for all necessary and/or reasonable work-related expenses, regardless of whether or not employees incurred any additional out-of-pocket expenses from that work-related use. *See Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 176 Cal. Rptr. 3d at 412-13 (Cal. 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***."); *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); *Krauss v. Wal-Mart, Inc.*, 2020 U.S. Dist. LEXIS 66535, *18-19 (E.D. Cal. Apr. 14, 2020) ("The Court previously found this allegation also failed because Plaintiff did not provide a "single instance when such a cost was actually incurred and not reimbursed." Order at 11. In light of *Cochran*, ***the Court no longer finds Plaintiff needs to allege such an instance. The Court therefore now finds Plaintiff has properly plead the reimbursement claim as to her phone app allegation***."). The Eastern District's decision in *Krauss* is directly on

point. In that case, the Court denied Wal-Mart's motion to dismiss plaintiff's unreimbursed business expenses claim predicated on Wal-Mart's requirement that employees download a cell phone application utilized for work communication. *Id.*

19. In sum, under Labor Code Section 2802, employers must reimburse employees for 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 usage. Defendant is or should have been aware that Plaintiff and the Aggrieved Employees regularly incurred and incur personal cell phone expenses in the discharge of their duties as employees by virtue of Defendant's instructions to Plaintiff and the Aggrieved Employees to download the Microsoft Authenticator application on their personal cell phones and to perform dual factor authentication on their personal cell phones to log into Cognizant's systems and resources (or Cognizant's client's systems and resources). Defendant nevertheless has, throughout the PAGA Period, failed to affirmatively reimburse Plaintiff and the Aggrieved Employees for a reasonable portion of such monthly personal cell phone expenses incurred by them in connection with their work. Pursuant to Labor Code §§ 2699.5 and 2699(f)(2), their failure to comply with § 2802 triggers PAGA penalties of $100 per employee, per pay period during the PAGA Period.

20. Defendant nevertheless has, throughout the PAGA Period, failed and refused to affirmatively reimburse Plaintiff and the aggrieved employees for a reasonable portion of such personal monthly cell phone expenses incurred by them in connection with their work.

FIRST CAUSE OF ACTION
CIVIL PENALTIES PURSUANT TO PAGA, LABOR CODE § 2699, *et seq.*
[For Violations of Labor Code § 2802]
Plaintiff, the LWDA, and All Aggrieved Employees Against Defendant

21. Plaintiff, on behalf of himself, the LWDA, and all Aggrieved Employees, realleges and incorporates by reference all previous paragraphs.

22. Based on the above allegations incorporated by reference, Defendant has violated Labor Code § 2802. During the PAGA Period, Defendant failed to reimburse Aggrieved Employees for a reasonable percentage of their personal cell phone expenses.

23. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation during the

PAGA Period, 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.

24. These PAGA 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, as set forth in Labor Code section 2699(i).

25. Pursuant to Labor Code § 2699.3 (a), on March 19, 2024, Plaintiff gave written notice by certified mail to Defendant, and to the LWDA of his claims for violations of Labor Code § 2802, and theories supporting these claims as alleged herein. As of the date of this Complaint, the LWDA has not responded to Plaintiff's PAGA letter. Plaintiff has already paid the required $75 fee and has otherwise satisfied all prerequisites to filing suit. Accordingly, Plaintiff has fulfilled all administrative prerequisites to the filing and pursuit of his PAGA claims on behalf of himself and all other current and former Aggrieved Employees of Defendant.

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 section 2802.

RELIEF REQUESTED

WHEREFORE, Plaintiff prays for the following relief:

1. For civil penalties allowable under Labor Code § 2699, *et seq.* for Plaintiff and all Aggrieved Employees because of Defendant's violation of Labor Code section 2802 during the PAGA Period in the amount of $100 per pay period per employee as authorized by section 2699(f)(2) of the California Labor Code for Plaintiff and all Aggrieved Employees for each and every month during which Defendant violated a provision of the Labor Code during the PAGA Period;

2. An award of reasonable attorney's fees against Defendant 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;

3. An award of all costs incurred by the undersigned counsel for Plaintiff in connection with Plaintiff's and the Aggrieved Employees' claims against Defendant as allowed by law,

including without limitation, Labor Code § 2699(g)(1);

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

Dated: May 24, 2024

Respectfully submitted,

ACKERMANN & TILAJEF, P.C.

By: ______________________________

Craig Ackermann, Esq.
Attorneys for Plaintiff, the LWDA, and all other Aggrieved Employees