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STEPHEN RIVERS and the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE

STEPHEN RIVERS, an individual on behalf of himself and all other similarly situated, Plaintiff, v. WAL-MART ASSOCIATES, INC., a corporation; and DOES 1 through 10, inclusive, Defendant.	CASE NO. CVRI2304209 Assigned to the Hon. Harold W. Hopp Dept. 1 **CLASS ACTION** **PLAINTIFF'S FIRST AMENDED CLASS ACTION COMPLAINT FOR:** **1. VIOLATIONS OF LABOR CODE § 2802 (FAILURE TO REIMBURSE)** **2. VIOLATIONS OF BUSINESS AND PROFESSIONS CODE § 17200** **3. VIOLATIONS OF CALIFORNIA LABOR CODE SECTION 2698 ET SEQ. - THE PRIVATE ATTORNEYS GENERAL ACT OF 2004** JURY TRIAL DEMANDED

Plaintiff Stephen Rivers ("Plaintiff") alleges as follows on knowledge as to his own acts/interactions and on information and belief as to all other matters.

<u>JURISDICTION AND VENUE</u>

1. This Court has personal jurisdiction over Defendant because it conducts business in the State of California.

2. Under California Code of Civil Procedure section 395(a), venue is proper in this County because Defendant does business in this County and the harm to Plaintiff occurred in this County.

3. The amount in controversy for Plaintiff's individual claims does not exceed seventy-five thousand dollars ($75,000), exclusive of interest and costs.

4. The amount in controversy for the aggregate claims class members is under five million dollars ($5,000,000).

<u>EXHAUSTION OF ADMINISTRATIVE REQUIREMENTS</u>

5. On August 16, 2023, counsel for Plaintiff prepared and electronically submitted a letter to the California Labor & Workforce Development Agency ("LWDA") via the California Department of Industrial Relations' "PAGA Filing" website. A copy of the letter was mailed to Defendant, also via USPS Certified Mail. The letter contained the specific provisions of the California Labor Code violated by Defendant, as well as the facts and theories in support of Plaintiff's claims.

6. Now that sixty-five (65) days have passed since Plaintiff notified Defendant of these violations, the statutory time period for the LWDA to investigate and/or respond, and for the employer to respond, has concluded. Plaintiff has exhausted the administrative requirements for bringing a claim under the PAGA for these violations.

<u>PARTIES</u>

7. Plaintiff, at all times relevant hereto, was and is a resident of the State of California.

8. Plaintiff is informed and believes that Defendant WAL-MART ASSOCIATES, INC. (“Defendant”), is a corporation organized and existing under the laws of Delaware with its principal place of business located at 702 SW 8th St., Bentonville, Arkansas 72716.

9. The true names and capacities of the Defendant named herein as Does 1 through 10, inclusive, whether individual, corporate, associate or otherwise, are unknown to Plaintiff who therefore sues such Defendant by fictitious names pursuant to California Code of Civil Procedure section 474. Plaintiff is informed and believes that all of the Doe Defendant are California residents. Plaintiff will amend this Complaint to show such true names and capacities when they have been determined.

10. Plaintiff is informed and believes that at all times relevant herein, each defendant designated, including Does 1 through 10, was the agent, managing agent, principal, owner, partner, joint venturer, representative, manager, servant, employee and/or co-conspirator of each of the other Defendant, and was at all times mentioned herein acting within the course and scope of said agency and employment, and that all acts or omissions alleged herein were duly committed with the ratification, knowledge, permission, encouragement, authorization and consent of each defendant designated herein.

PLAINTIFF’S FACTUAL ALLEGATIONS

11. Between approximately March of 2022 and present, Plaintiff works for Defendant as an exempt salaried employee, in the position of an instructional designer.

12. Plaintiff’s duties include but are not limited to digitally creating instructional materials and content based on identified needs including designing presentations, writing scripts, developing e-learning modules, or creating multimedia such as videos, graphics, and interactive activities.

13. Plaintiff and numerous other salaried exempt employees working for Defendant worked remotely (not in Defendant's offices or facilities) and were expected to work remotely for Defendant.

14. Plaintiff is informed and believes that these remote positions include but are not limited to: instructional designer, software engineer, network engineer, data analyst, technical project manager, product manager, project manager, strategic account manager, customer service representative, trainer, training manager and director, account manager, campaign manager, virtual mental health therapist, telemedicine physician, and other employees that work remotely. Further, numerous positions were required to work from home remotely during the coronavirus pandemic.

15. At the direction of Defendant and/or with Defendant's knowledge and acquiescence, Plaintiff and other members of the Class have incurred home office expenses including, *inter alia*, internet expenses, cell phone expenses (cell phone is required to authenticate the VPN to log in to the computer a few times per day), landline expenses, monthly home office electricity and home office infrastructure expenses (such as desk, chair, laptop stand, Wi-Fi router, ethernet cable, etc.), that are necessary to perform necessary work-related duties.

16. Discharging Plaintiff's duties and the duties of the other Class members require the use of physical space, internet, electricity, and cell phones. See Williams v. Amazon.com Serv. LLC., No. 22-cv-01892-VC, 2022 U.S. Dist. LEXIS 97920, at *2 (N.D. Cal. June 1, 2022).

17. California Labor Code § 2802 requires an employer to "indemnify [its] employee[s] for all necessary expenditures or losses incurred by the employee[s] in direct consequence of the discharge of [their] duties." Section 2802's purpose is "to prevent employers from passing their operating expenses on to their employees." Gattuso v. Harte-Hanks Shoppers, Inc., 42 Cal. 4th 554, 562 (2007).

18. California law requires an employer to provide its employees with the devices and technology necessary for them to perform their duties, at the employer's expense, or to reimburse the employees for any such devices and technology that employees procure themselves. The Court of Appeal has held 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." Cochran v. Schwan's Home Service, Inc., 228 Cal. App. 4th 1137, 1140 (2014); accord Tehrani v. Macys W. Stores, Inc., No. 1cv-07286-JAK, 2016 U.S. Dist. LEXIS 51713, at *8 (C.D. Cal. Apr. 18, 2016) (same). This holding applies with equal force to internet-access fees incurred while working from home at an employer's direction, as well as to the reasonable value of device time and wear and tear when an employer requires an employee to perform work duties using personal devices.

19. 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) (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) (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).

20. Plaintiff's experiences exemplify Defendant's widespread and systematic failure to either provide or reimburse employees for the costs associated with obtaining and using office equipment, technological devices, and services such as home internet and electricity necessary for them to perform their jobs.

21. Plaintiff specifically requested reimbursement for these necessary business expenses but was informed by his manager that it is Defendant's policy not to reimburse remote employees for these necessary business expenses.

22. Defendant was aware or should have been aware that Plaintiff and the Class regularly incurred and incur home office internet, cell phone expenses, electricity for the home office, and/or other infrastructure expenses in the discharge of their duties as employees, by virtue of Defendant's instructions to Plaintiff and the Class to work from home.

23. Plaintiff and the Class could not perform their job duties for Defendant without internet service, cell phone service, electricity for the home office, and/or video conferencing services. Defendant has nevertheless failed and refused to affirmatively reimburse Plaintiff and the Class for such expenses incurred by them in connection with their work.

24. The right of an employee to expense reimbursements is not waivable. <u>See</u> Cal. Labor Code sections 2804 and 219(a). Any contract to waive expense reimbursements is null and void. <u>Edwards v. Arthur Anderson</u>, 44 Cal. 4th 937, 951 (2008).

CLASS ACTION ALLEGATIONS

25. This class action is filed under the provisions of Code of Civil Procedure section 382, which provides that a class action may be brought when the question is one of common interest to many persons, or when the number of persons is numerous and it is impractical to bring them all before the court. This action is properly maintained as a class action as set forth below.

26. Plaintiff brings this action on behalf of himself and all others similarly situated in the "Class", as follows: All persons within California who worked for Defendant as a salaried (exempt) employee at any time on or after on or after August 16, 2019 whose job was done remotely (not in Defendant's offices or facilities) and who incurred unreimbursed costs – including but not limited to: cell phone expenses, landline expenses, monthly home office electricity and home office infrastructure expenses (such as desk, chair, laptop stand, Wi-Fi router, ethernet cable, etc.). This includes but is not limited to positions that were required to work from home remotely during the coronavirus pandemic.

27. Plaintiff reserves the right to amend or otherwise alter the class definition presented to the Court at the appropriate time, or to propose, in response to facts learned through discovery, legal arguments advanced by Defendant or otherwise.

28. Numerosity: Plaintiff does not know the number of members in the defined Class but believes, that the number is in the hundreds, if not substantially higher. Thus, joinder of all the defined Class members is impractical due to the size and relatively small value of each member's claim.

29. Typicality: Plaintiff's claims are typical of the claims of each member of the Class because Plaintiff did not receive reimbursement of necessary business expenses in compliance with the requirements of California law.

30. Commonality: The members of the Class share a well-defined community of interest regarding questions of law and fact, which predominate over questions that may affect individual members of the Class. There are common questions of law and fact and a community of interest amongst Plaintiff and the claims of the Class concerning Defendant's policy and practice of failing to reimburse employees for all business-related expenses, including the costs associated with cell phone expenses, landline expenses, monthly home office electricity and home office infrastructure expenses (such as desk,

chair, laptop stand, Wi-Fi router, ethernet cable, etc.), in violation of Labor Code section 2802.

31. Predominance: The questions that are common to all Class members predominate over any questions that are unique to individual Class members because the answers to these questions will determine Defendant's liability to all class members.

32. Superiority: A class action is vastly superior to other available means for the fair and efficient adjudication of class members' claims. Because this case involves large numbers of employees, most, if not all, of whom have relatively small individual claims, it would be beneficial to the parties and this Court to allow them to simultaneously and efficiently prosecute their common claims in a single forum without the unnecessary duplication of effort and expense that numerous individual actions would entail. Additionally, because the monetary amounts due to many individual class members are likely to be relatively small, it would make it difficult, if not impossible, for individual class members to both seek and obtain relief. Moreover, a class action will serve an important public interest by permitting class members to effectively pursue the recovery of moneys owed to them. Further, a class action will prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

33. Ascertainable Class: The members of the Class can be easily ascertained from Defendant's records.

34. Adequacy of Class Representatives: Plaintiff will fairly and adequately represent and protect the interests of the Class in that Plaintiff have no interests antagonistic to any member of the Class. There are no material conflicts between the claims of Plaintiff and the members of the Class that would make class certification inappropriate.

35. Adequacy of Class Counsel: Plaintiff has retained counsel experienced in handling class action claims and wage & hour claims.

FIRST CAUSE OF ACTION

VIOLATION OF LABOR CODE § 2802 – FAILURE TO REIMBURSE NECESSARY EXPENDITURES

(BY PLAINTIFF AND THE CLASS AGAINST DEFENDANT)

36. Plaintiff incorporates by reference all preceding and subsequent paragraphs.

37. California Labor Code § 2802, in relevant part, states: "An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties."

38. As alleged above, Defendant violated the foregoing statute by not reimbursing Plaintiff or the Class for their necessary business expenses.

39. Subsection (c) of Labor Code § 2802 states, "[f]or the purposes of this section, the terms 'necessary expenditure or losses' shall include all reasonable costs, including but not limited to, attorneys' fees incurred by the employee enforcing the rights granted by this section." Accordingly, Plaintiff seeks damages for all necessary expenditures and loses, including attorney's fees and costs pursuant to Labor Code § 2802(c).

SECOND CAUSE OF ACTION

VIOLATION OF CALIFORNIA BUSINESS & PROFESSIONS CODE § 17200

(BY PLAINTIFF AND THE CLASS AGAINST DEFENDANT)

40. Plaintiff incorporates by this reference all preceding and subsequent paragraphs.

41. Business and Professions Code section 17200, et seq. ("UCL"), defines unfair competition to include any "unfair," "unlawful," or "fraudulent" business practice.

42. At all times relevant herein the UCL was in full force and effect and binding on Defendant.

43. The actions alleged herein by Defendant were "unlawful" under the UCL based on the violations of each of the statutes and regulations alleged herein.

Defendant's conduct, as alleged herein, has been, and continues to be, unfair, unlawful and harmful to Plaintiff, members of the Class, the general public, and to Defendant's competitors.

44. Plaintiff and members of the Class have been personally injured by Defendant's unlawful business acts and practices as alleged herein, including, but not necessarily limited to, the loss of money and/or property.

45. Pursuant to California Business & Professions Code sections 17200, et seq., Plaintiff and members of the Class are entitled to restitution of business expenditures; and a permanent injunction requiring Defendant to reimburse all outstanding business expenditures due to Plaintiff and the other members of the Class.

THIRD CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT OF 2004, LABOR CODE SECTION 2698 ET SEQ.

(REPRESENTATIVE ACTION BY PLAINTIFF AND AGGRIEVED EMPLOYEES AGAINST DEFENDANTS)

46. Plaintiff incorporates by this reference preceding and subsequent paragraphs.

47. Plaintiff on behalf of himself and other salaried exempt employees who worked or are working for Defendant remotely in the state of California ("aggrieved employees") seeks penalties pursuant to PAGA for based on Defendants' following violation of the California Labor Code: California Labor Code § 2802 and IWC Wage Order (failure to reimburse business expenses).

48. Plaintiff on behalf of himself and all other aggrieved employees seeks civil penalties due to Plaintiff, other aggrieved employees, and the State of California according to proof, pursuant to the California Labor Code, including California Labor Code §§ 2699(a) and 2699(f), which provides for $100 for each initial violation and $200 for each subsequent violation per employee pay period.

49. Plaintiff on behalf of himself and all other aggrieved employees was compelled to retain the services of counsel to file this action to protect Plaintiff's interests and the interests of other similarly aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff on behalf of himself and all other aggrieved employees has thereby incurred attorneys' fees and costs, which Plaintiff is entitled to recover under California Labor Code § 2699(g).

JURY TRIAL DEMANDED

50. Plaintiff demands a jury as to all causes of action permitted for a jury trial under applicable law.

PRAYER FOR RELIEF

51. WHEREFORE, Plaintiff respectfully requests the Court grant Plaintiff and the Class the following relief against Defendant:

a. For an order certifying the Class under California Code of Civil Procedure section 382;

b. For appointment of Plaintiff as the representatives of the Class;

c. For general economic and non-economic damages according to proof;

d. For statutory damages according to proof;

e. For special damages according to proof;

f. For penalties where allowed by law;

g. For prejudgment interest pursuant to California Labor Code section 218.6, California Civil Code section 3287, California Civil Code section 3288, and/or any other provision of law providing for prejudgment interest;

h. For attorneys' fees where allowed by law;

i. For costs of suit incurred herein; and

j. For such other and further relief as this Court deems just and proper.

Dated: March 5, 2024

Respectfully submitted,
AZADIAN LAW GROUP, PC

By: ______________________
GEORGE S. AZADIAN
Attorneys for Plaintiff, STEPHEN RIVERS
and the Proposed Class

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I reside in the State of California. I am over the age of 18. My business address is 707 Foothill Blvd., Suite 200, La Cañada, California 91011.

On March 5, 2024, I served the foregoing documents described as:

PLAINTIFF'S FIRST AMENDED CLASS ACTION COMPLAINT

on all interested parties in this as follows:

Aaron T. Winn
Natalie Bare
Brittany Wunderlich
Anita La Fuze
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xxxx **BY EMAIL**: I caused a copy of the documents to be sent from the email address George@azadianlawgroup.com to the persons at the email address listed above. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

xxxx **(STATE)**: I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on March 5, 2024, at La Cañada, California.

Camille L Banks

CAMILLE L. BANKS