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Attorneys for Defendant
Amazon.com Services LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DAVID GEORGE WILLIAMS, on behalf of
himself and all other similarly situated
employees,

Plaintiffs,

v.

AMAZON.COM SERVICES LLC, a
Delaware limited liability company; and
DOES 1 through 10, inclusive,

Defendants.

CASE NO. 5:22-CV-1892

**NOTICE OF REMOVAL OF ACTION BY
DEFENDANT AMAZON.COM SERVICES
LLC**

(Originally filed in Santa Cruz County Superior
Court, Case No. 21CV00718)

TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF CALIFORNIA, AND TO PLAINTIFF DAVID GEORGE WILLIAMS AND HIS COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT, pursuant to the Class Action Fairness Act of 2005 (“CAFA”), 28 U.S.C. §§ 1332(d), 1453, and 1711, Defendant Amazon.com Services LLC (“Amazon”) hereby removes to the United States District Court for the Northern District of California, San Jose Division, the above-captioned state court action, originally filed as Case No. 21CV00718 in Santa Cruz County Superior Court, State of California. Removal is proper on the following grounds:

I. TIMELINESS OF REMOVAL

1. Plaintiff David George Williams (“Plaintiff”) filed a PAGA Representative Action Complaint (“Original Complaint”) against Amazon in Santa Cruz County Superior Court, Case No. 21CV00718, on March 18, 2021. *See* Decl. of Timothy W. Loose, Ex. A.

2. On May 5, 2021, Plaintiff filed a First Amended PAGA Representative Action Complaint (“FAC”). *Id.*, Ex. E.

3. Neither the Original Complaint nor the FAC included any class action allegations or putative class claims. As such, neither set forth a basis for federal jurisdiction under CAFA.

4. On February 22, 2022, Plaintiff sought to amend his complaint to add class allegations for the first time. That day, the parties filed a stipulation with a proposed order permitting Plaintiff to file a Second Amended Complaint (“SAC”), which now raised putative class allegations. The state court signed the proposed order on February 23, 2022, rendering the SAC operative that day. *Id.*, Ex. U (SAC).

5. This notice of removal is timely because it was “filed within thirty days after receipt by the defendant ... of a copy of an amended pleading ... from which it may first be ascertained that the case is one which is or has become removable.” 28 U.S.C. § 1446(b)(3). Under § 1446(b)(3), the 30-day removal clock does not begin until “a ground for removal [is] ‘unequivocally clear and certain.’” *Dietrich v. Boeing Co.*, 14 F.4th 1089, 1091 (9th Cir. 2021). Here, the SAC submitted as an attachment to the February 22, 2022 stipulation was the first pleading in which class allegations were offered and was thus the first pleading from which Amazon ascertained that the case is removable.

Amazon timely filed this Notice of Removal fewer than 30 days after Plaintiff's SAC was accepted for filing by the Superior Court and thus became operative. *See Manos v. Wolf Firm*, 2018 WL 1737775, at *5 (C.D. Cal. Apr. 9, 2018), *aff'd*, 771 F. App'x 364 (9th Cir. 2019) (where proposed amended complaint providing federal jurisdiction is attached to request for leave to amend state court complaint, the granting of the request begins the 30-day removal period).

6. Pursuant to 28 U.S.C. § 1446(a), attached as Exhibits A – U to the Loose Declaration are true and correct copies of the process, pleadings, and orders served on Amazon in this matter.

II. SUMMARY OF PLAINTIFF'S CLASS ACTION ALLEGATIONS

7. Plaintiff purports to bring this class action on behalf of himself and all other California residents who are (or were) employed by Amazon and assigned to one of 12 specific locations in California, from March 15, 2020 to the present. SAC ¶¶ 2, 5.¹

8. Plaintiff alleges two putative class action claims against Amazon: (1) Failure to Reimburse for Business Expenses (Cal. Lab. Code § 2802) and (2) Unfair Competition Law Violations (Bus. & Profs. Code § 17200). SAC ¶¶ 21–39. Among other things, Plaintiff seeks an “award to ... Class Members [of] all unreimbursed business expenses”; “restitution to ... the Class Members due to [Amazon's] UCL violations ... in the amount of their unreimbursed business expenses”; and an award of reasonable attorney's fees. *See* SAC, Prayer for Relief at 16–17.

9. Plaintiff's theory is that Amazon required Plaintiff and the putative class members to incur various business expenses to enable them to work remotely during the COVID-19 pandemic, such as home Internet charges and electricity expenses. SAC ¶¶ 12–13.

III. GROUNDS FOR REMOVAL

10. Removal is proper pursuant to 28 U.S.C. §§ 1441 and 1453 because this Court has jurisdiction over this action and all claims asserted against Amazon under CAFA.

¹ According to the SAC, these 12 locations are: “10201 Torre Avenue, Cupertino, California 95014; 1900 University Avenue, East Palo Alto, California 94303; 475 Sansome Avenue, San Francisco, California 94111; 188 Spear Street, San Francisco, California 94105; 96 East San Fernando Street, San Jose, California 95113; 110 Cooper Street, Santa Cruz, California 95060; 1005 Monterey Street, San Luis Obispo, California 93401; 1620 26th Street, San Monica California 90404; 1100 Enterprise Way, Sunnyvale, California 94089; 40 Pacifica Avenue, Irvine, California 92618; 2400 Marine Avenue, Redondo Beach, California 90278; and 2727 Kurtz Avenue, San Diego, California 92110.” SAC ¶ 5.

11. This case is a putative “class action” under CAFA because it was brought under California Code of Civil Procedure § 382, which authorizes an action to be brought by one or more representative persons as a class action. *See* 28 U.S.C. § 1332(d)(1)(B); *see also* SAC ¶¶ 1, 20.

12. Removal of a class action is proper if: (1) there are at least 100 members in the putative class; (2) there is minimal diversity between the parties, such that at least one class member is a citizen of a state different from any defendant; and (3) the aggregate amount in controversy exceeds \$5 million, exclusive of interest and costs. *See* 28 U.S.C. §§ 1332(d), 1441.

13. Amazon denies any liability in this case, both as to Plaintiff’s individual claims and as to his putative class and PAGA claims. Further, Amazon expressly reserves all rights to oppose class certification, to strike the PAGA claim as unmanageable, and to contest the merits of all claims asserted in the SAC or any subsequent complaint. However, for purposes of the jurisdictional requirements *for removal only*, the allegations in Plaintiff’s SAC identify a putative class of more than 100 members, involve class members who are citizens of a state different from Amazon, and put in controversy an amount exceeding \$5 million. *See id.* § 1332(d). Removal to this Court is therefore proper.

A. There Are More Than 100 Members in the Putative Class

14. Based on Plaintiff’s allegations, this action satisfies CAFA’s requirement that the putative class action have at least 100 members. *See* 28 U.S.C. § 1332(d)(5)(B).

15. In addition to Plaintiff, the putative class includes “all other California residents who are or were employed by [Amazon], whose offices were closed, and who worked from home, for at least one pay period during the time period from March 15, 2020 to the present” SAC ¶ 2. Plaintiff alleges that the class consists of employees at 12 particular Amazon locations in California. SAC ¶ 5.

16. To demonstrate that removal is proper, Amazon need only show that the assumptions it makes for the purpose of showing federal jurisdiction are reasonable. *Arias v. Residence Inn by Marriott*, 936 F.3d 920, 925 (9th Cir. 2019) (“[A] removing defendant is permitted to rely on ‘a chain of reasoning that includes assumptions’ ... founded on the allegations of the complaint.” (citation omitted)).

17. Here, it is more than reasonable to conclude that the class consists of more than 100 individuals because Amazon’s internal records show that between March 15, 2020 and March 15, 2022

1 more than 4,200 California residents were assigned to the 12 locations that comprise Plaintiff's putative
 2 class. Decl. of Denicia Prather, ¶ 3.

3 18. While Amazon disputes that class treatment is appropriate, and denies that Plaintiff has
 4 properly defined any class here, for purposes of removal only, based on Plaintiff's allegations, there
 5 are well over 100 putative class members.

6 19. Accordingly, while Amazon denies that class treatment is permissible or appropriate,
 7 the proposed class satisfies CAFA's requirement that it consist of more than 100 members.

8 **B. Amazon Is Not a Citizen of the Same State as Plaintiff or Any Other Putative Class**
 9 **Member**

10 20. This Court has jurisdiction under CAFA's minimum diversity of citizenship
 11 requirement when the plaintiff or any member of the putative class is a citizen of a different state from
 12 any defendant. *See* 28 U.S.C. § 1332(d)(2)(A). This requirement is met because Plaintiff is a citizen
 13 of California, and Amazon is a citizen of Washington State and Delaware.

14 21. A natural person is a citizen of the state in which he or she is domiciled. *Kantor v.*
 15 *Wellesley Galleries, Ltd.*, 704 F.2d 1088, 1090 (9th Cir. 1983). A natural person's residence is prima
 16 facie evidence of his or her domicile. *Ayala v. Cox Auto., Inc.*, 2016 WL 6561284, at *4 (C.D. Cal.
 17 Nov. 4, 2016).

18 22. Here, the class definition is expressly limited to "California residents." SAC ¶ 2; *see*
 19 *also Ehrman v. Cox Commc'ns, Inc.*, 932 F.3d 1223, 1227 (9th Cir. 2019) (holding that defendant's
 20 "short and plain statement alleging that [the plaintiff] and the putative class members were citizens of
 21 California" was "sufficient" to establish jurisdiction for removal under CAFA because "allegations of
 22 citizenship may be based solely on information and belief" (citation omitted)). And Plaintiff alleges
 23 that he currently "is a resident of California" and that while he was "employed by [Amazon], Plaintiff
 24 lived at 222 Kingsbury Drive, Aptos, California 95003." SAC ¶ 4. Plaintiff and the other putative
 25 class members are therefore considered citizens of California for CAFA removal purposes. *See Ayala*,
 26 2016 WL 6561284, at *4.

27 23. A corporation is a citizen of its state of incorporation and the state of its principal place
 28 of business. 28 U.S.C. § 1332(c)(1). A limited liability company is a citizen of every state of which
 its members or owners are citizens. *See Johnson v. Columbia Props. Anchorage, LP*, 437 F.3d 894,

899 (9th Cir. 2006). The U.S. Supreme Court has interpreted the phrase “principal place of business” in 28 U.S.C. § 1332(c)(1) to mean “the place where a corporation’s officers direct, control, and coordinate the corporation’s activities,” *i.e.*, its “nerve center,” which “should normally be the place where the corporation maintains its headquarters—provided that the headquarters is the actual center of direction, control, and coordination” *Hertz Corp. v. Friend*, 559 U.S. 77, 93 (2010).

24. Amazon.com Services LLC, the sole defendant in this action,² is, and was at the time of the commencement of this action, a limited liability company formed under the laws of the State of Delaware with its principal place of business in the State of Washington. Prather Decl. ¶ 4. Amazon.com Services LLC’s only member is Amazon.com Sales, Inc., which is wholly owned by Amazon.com, Inc. *Id.* Amazon.com Sales, Inc. and Amazon.com, Inc. are incorporated in Delaware and each has its principal place of business in Seattle, Washington. *Id.* These entities’ Washington State headquarters constitute their “nerve center[s]” under the *Hertz* test because their high-level officers oversee each corporation’s activities from that state. *Id.* As such, Amazon.com Services LLC is a citizen of only Delaware and Washington State. *See* 28 U.S.C. § 1332(c)(1); *Johnson*, 437 F.3d at 899.

25. Accordingly, because Plaintiff is a citizen of California, and Amazon is a citizen of Washington State and Delaware, CAFA’s minimal diversity requirement is met. 28 U.S.C. § 1332(d)(2)(A).

C. The Amount in Controversy Exceeds \$5 Million

26. To remove a class action under CAFA, the total amount in controversy must exceed \$5 million, exclusive of interest and costs. 28 U.S.C. § 1332(d)(2). In calculating the amount in controversy, the Court must aggregate the claims of all individual class members. *Id.* § 1332(d)(6).

27. “[A] defendant’s notice of removal need include only a plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin Op. Co., LLC v. Owens*, 574 U.S. 81, 89 (2014). To satisfy this burden, a defendant may rely on a “chain of reasoning” that is based on “reasonable” “assumptions.” *LaCross v. Knight Transp. Inc.*, 775 F.3d 1200, 1202

² Although the caption of the SAC identifies “Does 1 to 50” as defendants, this is immaterial to a removal analysis. *Soliman v. Philip Morris Inc.*, 311 F.3d 966, 971 (9th Cir. 2002) (“The citizenship of fictitious defendants is disregarded for removal purposes”).

(9th Cir. 2015). “An assumption may be reasonable if it is founded on the allegations of the complaint.” *Arias*, 936 F.3d at 925 (citation omitted); *see also Salter v. Quality Carriers, Inc.*, 974 F.3d 959, 964 (9th Cir. 2020) (“[A] removing defendant’s notice of removal need not contain evidentiary submissions but only plausible allegations of jurisdictional elements.” (quotation marks and citations omitted)). That is because “[t]he amount in controversy is simply an estimate of the total amount in dispute, not a prospective assessment of defendant’s liability.” *Lewis v. Verizon Commc’ns, Inc.*, 627 F.3d 395, 400 (9th Cir. 2010). “[W]hen a defendant seeks federal-court adjudication, the defendant’s amount-in-controversy allegation should be accepted when not contested by the plaintiff or questioned by the court.” *Dart Cherokee*, 574 U.S. at 87. “[N]o antiremoval presumption attends cases invoking CAFA, which Congress enacted to facilitate adjudication of certain class actions in federal court.” *Id.* at 89 (citations omitted).

28. Moreover, in assessing whether the amount-in-controversy requirement has been satisfied, “a court must ‘assume that the allegations of the complaint are true and assume that a jury will return a verdict for the plaintiff on all claims made in the complaint.’” *Campbell v. Vitran Exp., Inc.*, 471 F. App’x 646, 648 (9th Cir. 2012) (quoting *Kenneth Rothschild Tr. v. Morgan Stanley Dean Witter*, 199 F. Supp. 2d 993, 1001 (C.D. Cal. 2002)). In other words, the focus of the Court’s inquiry must be on “what amount is put ‘in controversy’ by the plaintiff’s complaint, not what a defendant will *actually* owe.” *Korn v. Polo Ralph Lauren Corp.*, 536 F. Supp. 2d 1199, 1205 (E.D. Cal. 2008) (citations omitted).

29. As Amazon demonstrates below, the amount in controversy exceeds \$5 million. Thus, although Amazon denies all liability and denies that the class is entitled to any recovery, Amazon avers, for the purpose of meeting the jurisdictional requirements for removal only, that Plaintiff’s allegations put more than \$5 million in controversy.

1. Plaintiff’s Reimbursement Allegations Alone Place More Than \$5 Million in Controversy

30. Plaintiff’s claim regarding unpaid reimbursements alone places more than \$5 million in controversy.

31. California Labor Code Section 2802 provides that “[a]n 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, or of his or her obedience to the directions of the employer” Cal. Lab. Code § 2802(a). For this provision, “the term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.” *Id.* § 2802(c).

32. Plaintiff alleges that Amazon’s “expense-related policies and/or practices require and expect, and/or with [Amazon’s] knowledge thereof permit [class members] to pay for home internet and home office infrastructure expenses incurred in direct consequence of discharging ... their necessary, reasonable, and business-related job duties on behalf of [Amazon], without reimbursement *in full* by [Amazon] for such expenses, as required by California law.” SAC ¶ 14 (emphasis added). Plaintiff further alleges that the non-reimbursed expenses at issue include “equipment expenses,” “electricity” costs, and “allocated portion[s] of [class members’] home office space.” SAC ¶¶ 12–13.

33. Plaintiff alleges that the “home internet and home office expenses” at issue “typically amounted to \$50 to \$100 per month per Class Member” SAC ¶ 13.

34. Even using the lower end of Plaintiff’s alleged range of damages (an alleged \$50 per month per class member) places more than \$5 million in controversy. As described above, there are at least 4,200 members of the putative class, and Plaintiff alleges that each class member is entitled to \$50 for each month of his or her employment by Amazon during the relevant period. SAC ¶ 13; Prather Decl. ¶ 3(c). Amazon’s records reflect that the putative class members worked over 110,000 months in the aggregate during the relevant period. Prather Decl. ¶ 3(d). Multiplying \$50 per month by 110,000 months therefore places *more than* \$5,500,000 in controversy for purposes of the removal analysis. That amount doubles if one uses the high end of alleged damages (\$100 per month) that Plaintiff pleads. SAC ¶ 13.

2. Plaintiff’s Request for Attorney’s Fees Places an Additional \$1.375 Million in Controversy

35. In addition, Plaintiff requests “an award of reasonable attorneys’ fees,” pursuant to California Code of Civil Procedure § 1021.5 and California Labor Code §§ 2699(g)(1) and 2802(c). SAC ¶ 39; SAC, Prayer for Relief at 17. Prospective attorney’s fees must be included in the amount in controversy in evaluating CAFA jurisdiction. *See Arias*, 936 F.3d at 922 (“[W]hen a statute ... provides for the recovery of attorneys’ fees, prospective attorneys’ fees *must* be included in the

assessment of the amount in controversy.” (emphasis added) (citation omitted)). Under the Ninth Circuit’s well-established precedent, 25% of a common fund is generally used as a benchmark for an award of attorney’s fees. *See Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1029 (9th Cir. 1998) *overruled in irrelevant part by Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011); *Barcia v. Contain-A-Way, Inc.*, 2009 WL 587844, at *5 (S.D. Cal. Mar. 6, 2009) (“In wage and hour cases, ‘[t]wenty-five percent is considered a benchmark for attorneys’ fees in common fund cases.’” (quoting *Hopson v. Hanesbrands Inc.*, 2008 WL 3385452, at *4 (N.D. Cal. Aug. 8, 2008))); *Lucas v. Michael Kors (USA), Inc.*, 2018 WL 2146403, at *12 (C.D. Cal. May 9, 2018) (collecting cases establishing 25% as a reasonable benchmark in CAFA wage-and-hour cases). And district courts have previously applied a 25% benchmark in determining attorney’s fees for purposes of the amount in controversy in reimbursement cases. *See, e.g., Anderson v. Starbucks Corp.*, -- F. Supp. 3d --, 2020 WL 7779015, at *4 (N.D. Cal. Dec. 31, 2020) (finding 25% to be a reasonable benchmark for attorney’s fees for plaintiff’s reimbursement claims); *Cortez v. United Nat. Foods, Inc.*, 2019 WL 955001, at *7 (N.D. Cal. Feb. 27, 2019) (same).

36. Here, Amazon has shown that the amount in controversy is *more than* \$5,500,000, and Plaintiff has not indicated that he will seek less than 25% of a common fund in attorney’s fees. Indeed, Plaintiff’s counsel has recently sought and received *more than* 25% in attorney’s fees in other cases involving employment claims against other defendants. *See, e.g., Pagh v. Wyndham Vacation Ownership, Inc.*, 2021 WL 3017517, at *1, *3 (C.D. Cal. Mar. 23, 2021) (awarding Plaintiff’s counsel 30% of a settlement); *Keller v. Select Funding, LLC*, 2021 WL 6211053, at *3 (Cal. Super. Ct., Ventura Cnty. Nov. 30, 2021) (awarding Plaintiff’s counsel one-third of a settlement). Amazon denies that any attorney’s fees are or will be owed to Plaintiff or putative class members, but relies on Plaintiff’s allegation that he will be entitled to attorney’s fees for purposes of this jurisdictional analysis. Thus, although Amazon has shown that the amount in controversy without considering attorney’s fees surpasses the jurisdictional threshold, this Court must nevertheless include the potential attorney’s fees in evaluating jurisdiction. *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696, 700 (9th Cir. 2007); *Arias*, 936 F.3d at 922.

37. Using a 25% benchmark figure for attorney's fees regarding alleged Labor Code § 2802 class claims results in estimated attorney's fees of approximately \$1.375 million, which is 25% of \$5,500,000. Again, as described above, the amount would be double this amount if the high end of Plaintiff's pleaded damages range is used.

3. Amazon Has Satisfied Its Burden Under CAFA and No Exception Applies

38. In summary, Plaintiff's allegation regarding unreimbursed cell phone expenses under California Labor Code § 2802 places more than \$5,500,000 in controversy, and his request for attorney's fees places an additional \$1.375 million in controversy. In total, Plaintiff's claims, including attorney's fees, exceed the jurisdictional threshold—and this is when the figure is calculated using the low end of Plaintiff's pleaded damages range of \$50 to \$100 per month. *See Anderson*, 2020 WL 7779015, at *3–4 (finding that defendant's use of conservative estimates confirmed the estimates were reasonable).

39. Because Amazon has established federal jurisdiction over this action, Plaintiff bears the burden of proof to prove that an exception to CAFA removal applies and justifies remand. *See Serrano v. 180 Connect, Inc.*, 478 F.3d 1018, 1024 (9th Cir. 2007). Plaintiff cannot meet this burden as no exceptions apply to this action. Amazon reserves its right to contest and further brief the applicability of any exception to removal under CAFA that Plaintiff may identify in any motion for remand.

IV. THIS COURT HAS JURISDICTION AND REMOVAL IS PROPER

40. Based on the foregoing facts and allegations, this Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d) because:

- a) This is a civil action which is a class action within the meaning of § 1332(d)(1)(B);
- b) The action involves a putative class of more than 100 employees;
- c) The amount in controversy exceeds \$5 million, exclusive of interest and costs, as required by § 1332(d)(2); and
- d) The minimal diversity requirement is satisfied because Plaintiff and the putative class members are citizens of a state different from Amazon.

Accordingly, this action is properly removable under 28 U.S.C. § 1441.

1 41. The United States District Court for the Northern District of California, San Jose
2 Division is the federal judicial district and division in which the Santa Cruz County Superior Court sits.
3 28 U.S.C. § 84(a). This action was originally filed in Santa Cruz County Superior Court, rendering
4 venue in this federal judicial district and division proper. *See* Civil L.R. 3-2(e); *see also* 28 U.S.C.
5 § 1441(a).

6 42. True and correct copies of the process, pleadings and orders served upon Amazon and/or
7 filed in the state court are attached as Exhibits A – U to the Loose Declaration filed concurrently with
8 this Notice.

9 43. Upon filing the Notice of Removal, Amazon will provide written notice to Plaintiff's
10 counsel and will file and serve a copy of this Notice with the Clerk of the Santa Cruz County Superior
11 Court, pursuant to 28 U.S.C. § 1446(d). Consistent with Civil Local Rule 16-2(b), Amazon will also
12 serve Plaintiff with a copy of the Court's Order Setting Initial Case Management Conference, once
13 filed, and the supplementary materials specified in Civil Local Rule 4-2.

1 Dated: March 24, 2022

2 GIBSON, DUNN & CRUTCHER LLP
3 Timothy W. Loose
4 Lauren M. Blas
5 Kory Hines

6 By: /s/ Timothy W. Loose
7 Timothy W. Loose
8 Lauren M. Blas
9 Kory Hines

10 Attorneys for Defendant Amazon.com Services LLC
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Amazon.com Services LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DAVID GEORGE WILLIAMS, on behalf of
himself and all other similarly situated
employees,

Plaintiff,

v.

AMAZON.COM SERVICES LLC, a
Delaware Limited Liability Company; DOES 1
to 50, inclusive,

Defendants.

CASE NO. 5:22-CV-1892

**DECLARATION OF DENICIA “JP”
PRATHER IN SUPPORT OF NOTICE OF
REMOVAL**

(Originally filed in Santa Cruz County Superior
Court, Case No. 21CV00718)

1 I, Denicia “JP” Prather, declare as follows:

2 1. I am a Senior Human Resources Manager at Amazon.com Services LLC (“Amazon”).
 3 I am competent to testify, and I make this declaration based on my personal knowledge of the facts
 4 set forth in this Declaration or know them in my capacity as an employee based on business records
 5 and data that Amazon maintains in the regular course of its business. I make this declaration in
 6 support of Amazon’s Notice of Removal.

7 2. In my role as Senior Human Resources Manager, I am responsible for, among other
 8 things, providing general human resources support to Amazon employees at all job levels, including
 9 those employed at California office locations. I have been employed by Amazon since February
 10 2016.

11 3. Using the Amazon business records and data available to me in the course of my
 12 responsibilities for Amazon, I have determined the following:

- 13 a. Plaintiff David George Williams was employed by Amazon and assigned to
 14 Amazon’s location in Santa Cruz, California from March 9, 2020 to January 4, 2021.
 15 Information maintained by Amazon reflects that Mr. Williams stated he resided in
 16 Aptos, California during his employment by Amazon.
- 17 b. I have reviewed employee data for the 12 locations listed in Plaintiff’s Second
 18 Amended Complaint:
 - 19 i. 10201 Torre Avenue, Cupertino, California 95014;
 - 20 ii. 1900 University Avenue, East Palo Alto, California 94303;
 - 21 iii. 475 Sansome Avenue, San Francisco, California 94111;
 - 22 iv. 188 Spear Street, San Francisco, California 94105;
 - 23 v. 96 East San Fernando Street, San Jose, California 95113;
 - 24 vi. 110 Cooper Street, Santa Cruz, California 95060;
 - 25 vii. 1005 Monterey Street, San Luis Obispo, California 93401;¹
 - 26 viii. 1620 26th Street, San Monica California 90404;

27
 28 ¹ This address is not an Amazon location. Amazon understands this address to refer to the Amazon
 office located at 1007 Monterey Street, San Luis Obispo, California 93401.

- ix. 1100 Enterprise Way, Sunnyvale, California 94089;
- x. 40 Pacifica Avenue, Irvine, California 92618;
- xi. 2400 Marine Avenue, Redondo Beach, California 90278; and
- xii. 2727 Kurtz Avenue, San Diego, California 92110.

- c. The data shows that more than 4,200 total employees were assigned across these 12 Amazon locations from March 15, 2020 through March 15, 2022.
- d. The data shows that the employees who worked at these 12 Amazon locations worked more than 110,000 months, in the aggregate, from March 15, 2020 through March 15, 2022.

4. According to business records available to me, Amazon.com Services LLC is a limited liability company formed under the laws of the State of Delaware with its principal place of business in the State of Washington.

- a. Amazon.com Services LLC's only member is Amazon.com Sales, Inc., which is wholly owned by Amazon.com, Inc.
- b. Amazon.com Sales, Inc. and Amazon.com, Inc. are incorporated in Delaware and each has its principal place of business in Seattle, Washington.
- c. The Washington headquarters are staffed by the corporate officers and executives of these entities, who are responsible for overseeing Amazon.com Services LLC's activities.

I declare under penalty of perjury pursuant to the laws of the United States of America that the foregoing is true and correct.

Executed at Riverside, California, on this 24th day of March 2022.

DocuSigned by:
Denicia Prather
62A7949EECD24A3...

Denicia "JP" Prather

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Amazon.com Services LLC

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

DAVID GEORGE WILLIAMS, on behalf of
himself and all other similarly situated
employees,

Plaintiff,

v.

AMAZON.COM SERVICES LLC, a
Delaware Limited Liability Company; DOES 1
to 50, inclusive,

Defendants.

CASE NO. 5:22-CV-1892

**DECLARATION OF TIMOTHY W. LOOSE
IN SUPPORT OF AMAZON.COM
SERVICES LLC'S NOTICE OF REMOVAL**

(Originally filed in Santa Cruz County Superior
Court, Case No. 21CV00718)

1 I, Timothy W. Loose, declare as follows:

2 1. I am an attorney admitted to practice law before this Court and all of the Courts of the
3 State of California. I am a partner at the law firm of Gibson, Dunn & Crutcher LLP, counsel of
4 record for Defendant Amazon.com Services LLC (“Amazon” or “Defendant”) in the above-captioned
5 action. I offer this declaration in support of Amazon’s Notice of Removal of the instant action from
6 the California Superior Court, County of Santa Cruz, to the United States District Court for the
7 Northern District of California. I have personal knowledge of the facts set forth in this declaration
8 and, if called to testify, I could and would competently testify to them.

9 2. In accordance with 28 U.S.C. § 1446(a), Exhibits A through U to this declaration include
10 “all process, pleadings and orders” relevant to this action.

11 3. Attached hereto as **Exhibit A** is a true and correct copy of the Summons and Complaint
12 filed by Plaintiff David G. Williams (“Plaintiff”) in the Superior Court, County of Santa Cruz, on
13 March 18, 2021 and served on Amazon on March 22, 2021.

14 4. Attached hereto as **Exhibit B** is a true and correct copy of the Notice of Service of
15 Process filed by Plaintiff on March 23, 2021.

16 5. Attached hereto as **Exhibit C** is a true and correct copy of the Parties’ Joint Stipulation
17 regarding Defendant’s response deadline filed April 1, 2021.

18 6. Attached hereto as **Exhibit D** is a true and correct copy of Defendant’s Notice of
19 Appearances in the above-captioned action filed April 1, 2021.

20 7. Attached hereto as **Exhibit E** is a true and correct copy of the First Amended Complaint
21 served on Amazon on May 5, 2021.

22 8. Attached hereto as **Exhibit F** is a true and correct copy of Defendant’s Notice of
23 Demurrer and Demurrer to Plaintiff’s First Amended Complaint filed June 4, 2021.

24 9. Attached hereto as **Exhibit G** is a true and correct copy of Defendant’s Notice of Motion
25 and Motion to Strike Portions of Plaintiff’s First Amended Complaint filed June 4, 2021.

26 10. Attached hereto as **Exhibit H** is a true and correct copy of the Declaration of Lauren
27 Blas in Support of Amazon’s Demurrer and Motion to Strike filed June 4, 2021.

1 11. Attached hereto as **Exhibit I** is a true and correct copy of Defendant's Memorandum of
2 Points and Authorities in Support of Its Demurrer to Plaintiff's First Amended Complaint and Related
3 Motion to Strike filed June 4, 2021.

4 12. Attached hereto as **Exhibit J** is a true and correct copy of Defendant's Proof of Service
5 of Its Demurrer to Plaintiff's First Amended Complaint and Related Motion to Strike filed June 4,
6 2021.

7 13. Attached hereto as **Exhibit K** is a true and correct copy of Defendant's Proposed Order
8 Granting Its Motion to Strike filed June 4, 2021.

9 14. Attached hereto as **Exhibit L** is a true and correct copy of Defendant's Proposed Order
10 Sustaining Its Demurrer filed June 4, 2021.

11 15. Attached hereto as **Exhibit M** is a true and correct copy of Plaintiff's Case Management
12 Statement filed June 21, 2021.

13 16. Attached hereto as **Exhibit N** is a true and correct copy of Defendant's Case
14 Management Statement filed June 29, 2021.

15 17. Attached hereto as **Exhibit O** is a true and correct copy of Plaintiff's Opposition to
16 Defendant's Demurrer and Related Motion to Strike; Memorandum of Points and Authorities; and
17 Proof of Service filed July 27, 2021.

18 18. Attached hereto as **Exhibit P** is a true and correct copy of Defendant's Reply in Support
19 of Its Demurrer to Plaintiff's First Amended Complaint and Related Motion to Strike filed August 2,
20 2021.

21 19. Attached hereto as **Exhibit Q** is a true and correct copy of the Order Over-Ruling
22 Defendant's Demurrer and Denying Motion to Strike filed August 11, 2021.

23 20. Attached hereto as **Exhibit R** is a true and correct copy of Defendant's Answer to
24 Plaintiff's First Amended Complaint served on Plaintiff on August 20, 2021.

25 21. Attached hereto as **Exhibit S** is a true and correct copy of the Stipulated Protective
26 Order and related Proof of Service filed September 16, 2021.

22. Attached hereto as **Exhibit T** is a true and correct copy of the Joint Stipulation and Order to Continue Trial Date and Trial-Related Deadlines signed by the state court on February 23, 2022.

23. Attached hereto as **Exhibit U** is a true and correct copy of the Joint Stipulation and Order for Leave to File Plaintiff's Second Amended Complaint, with the Second Amended Complaint attached as Exhibit 1 thereto, signed by the state court on February 23, 2022.

I declare under penalty of perjury pursuant to the laws of the United States of America that the foregoing is true and correct.

Executed at Los Angeles, California, on this 24th day of March 2022.

/s/ Timothy W. Loose

Timothy W. Loose

EXHIBIT A

SUM-100

SUMMONS

(CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

AMAZON.COM SERVICES LLC, a Delaware Limited Liability Company; DOES 1 to 50, inclusive

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

DAVID GEORGE WILLIAMS, an individual, on behalf of the State of California, as a private attorney general, and on behalf of all Aggrieved Employees

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
ELECTRONICALLY FILED
Superior Court of California
County of Santa Cruz
3/18/2021 2:48 PM
Alex Calvo, Clerk
By: Richard Kersten Seago, Deputy
Richard Kersten Seago

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case. ¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es): Santa Cruz Superior Court
701 Ocean Street
Santa Cruz, CA 95060

CASE NUMBER: (Número del Caso):
21CV00718

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is: (El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Craig Ackermann, Esq., 1180 South Beverly Drive, Suite 610, Los Angeles, California 90035, (310) 277-0635

DATE:
(Fecha) 3/18/2021

ALEX CALVO

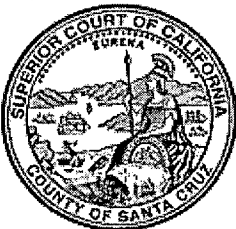
Clerk, by *Richard Kersten Seago*, Deputy
(Secretario) (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010).)


Richard Kersten Seago

[SEAL]



NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):
- ☒ on behalf of (specify): AMAZON.COM SERVICES LLC, a Delaware Limited Liability Company
under: ☐ CCP 416.10 (corporation) ☐ CCP 416.60 (minor)
☐ CCP 416.20 (defunct corporation) ☐ CCP 416.70 (conservatee)
☐ CCP 416.40 (association or partnership) ☐ CCP 416.90 (authorized person)
☒ other (specify): Limited Liability Company
- ☐ by personal delivery on (date)

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CRUZ  Santa Cruz Branch 701 Ocean Street, Room 110 Santa Cruz, CA 95060	<i>FOR COURT USE ONLY</i> FILED 3/19/2021 Alex Calvo, Clerk By: Richard Kersten Seago Deputy, Santa Cruz County
David Williams vs AMAZON.COM SERVICES LLC, a Delaware Limited Liability Company	CASE NUMBER: 21CV00718
CASE MANAGEMENT INFORMATION AND SETTING	

DEFENDANT: YOU HAVE 30 CALENDAR DAYS TO FILE A WRITTEN RESPONSE WITH THE COURT ONCE YOU HAVE BEEN SERVED WITH THE SUMMONS AND COMPLAINT.

The date below is for a Case Management Conference. If you have not responded within 30 days, this hearing MAY NOT take place.

It is the duty of each party to be familiar with the California Rules of Court and the date, time and place of the first case management conference.

A written response is not always necessary. To make this determination it is important to seek legal advice and information. Some options are:

1. Santa Cruz County Bar Association Lawyer Referral Service: 831-425-4755 (Fee Based service)
2. Santa Cruz Superior Court Self Help Center: 1 Second Street, Room 301 Watsonville, CA 95076
831-786-7200 option 4. www.santacruzcourt.org for hours.
3. Santa Cruz Law Library: 701 Ocean Street, Room 70 (Basement), Santa Cruz, CA 95060
831-420-2205 www.lawlibrary.org for hours.
4. Watsonville Law Center: 831-722-2845

PLAINTIFF: This notice MUST be served with the summons on all defendants and cross-defendants. Notice of any other pending case management conference must be served on subsequently named defendants and cross defendants.

YOUR CASE MANAGEMENT CONFERENCE DATE:

DATE: 07/19/2021 TIME: 8:30 A.M. Santa Cruz Department 4

Address of the Court: 701 Ocean Street, Santa Cruz, California

To Appear remotely through **Zoom** at your Case Management Conference visit our court website
<https://www.santacruzcourt.org/content/remote-appearance-0>



GET TEXT REMINDERS!

Text case number to (831) 208-5170 for reminders about hearing dates.



GET TEXT REMINDERS!

Text case number to (831) 208-5170 for reminders about hearing dates.

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

Craig Ackermann, CA Bar No. 229832

ACKERMANN & TILAJEF, P.C.

1180 S. Beverly Drive, Suite 610, Los Angeles, CA 90035

TELEPHONE NO.: 310-277-0614

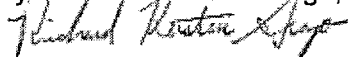
FAX NO. (Optional): 310-277-0635

ATTORNEY FOR (Name): Plaintiff, the LWDA, and the other Aggrieved Employees

FOR COURT USE ONLY

ELECTRONICALLY FILED
Superior Court of California
County of Santa Cruz
3/18/2021 2:48 PM
Alex Calvo, Clerk

By: Richard Kersten Seago, Deputy



SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CRUZ

STREET ADDRESS: 701 Ocean Street

MAILING ADDRESS: Same

CITY AND ZIP CODE: Santa Cruz, CA 95060

BRANCH NAME: Santa Cruz Civil Division

CASE NAME:

David George Williams, et al. v. Amazon.com Services LLC

CIVIL CASE COVER SHEET



Unlimited

(Amount

demanded

exceeds \$25,000)



Limited

(Amount

demanded is

\$25,000)

Complex Case Designation

☐ Counter☐ JoinderFiled with first appearance by defendant
(Cal. Rules of Court, rule 3.402)

CASE NUMBER:

21CV00718

JUDGE:

DEPT.:

Items 1-6 below must be completed (see instructions on page 2).

1. Check one box below for the case type that best describes this case:

Auto Tort

☐ Auto (22)☐ Uninsured motorist (46)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

☐ Asbestos (04)☐ Product liability (24)☐ Medical malpractice (45)☐ Other PI/PD/WD (23)

Non-PI/PD/WD (Other) Tort

☐ Business tort/unfair business practice (07)☐ Civil rights (08)☐ Defamation (13)☐ Fraud (16)☐ Intellectual property (19)☐ Professional negligence (25)☐ Other non-PI/PD/WD tort (35)

Employment

☐ Wrongful termination (36)☒ Other employment (15)

Contract

☐ Breach of contract/warranty (06)☐ Rule 3.740 collections (09)☐ Other collections (09)☐ Insurance coverage (18)☐ Other contract (37)

Real Property

☐ Eminent domain/Inverse

condemnation (14)

☐ Wrongful eviction (33)☐ Other real property (26)

Unlawful Detainer

☐ Commercial (31)☐ Residential (32)☐ Drugs (38)

Judicial Review

☐ Asset forfeiture (05)☐ Petition re: arbitration award (11)☐ Writ of mandate (02)☐ Other judicial review (39)Provisionally Complex Civil Litigation
(Cal. Rules of Court, rules 3.400-3.403)☐ Antitrust/Trade regulation (03)☐ Construction defect (10)☐ Mass tort (40)☐ Securities litigation (28)☐ Environmental/Toxic tort (30)☐ Insurance coverage claims arising from the
above listed provisionally complex case
types (41)

Enforcement of Judgment

☐ Enforcement of judgment (20)

Miscellaneous Civil Complaint

☐ RICO (27)☐ Other complaint (not specified above) (42)

Miscellaneous Civil Petition

☐ Partnership and corporate governance (21)☐ Other petition (not specified above) (43)2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:a. ☐ Large number of separately represented partiesd. ☐ Large number of witnessesb. ☐ Extensive motion practice raising difficult or novel
issues that will be time-consuming to resolvee. ☐ Coordination with related actions pending in one or more
courts in other counties, states, or countries, or in a federal
courtc. ☐ Substantial amount of documentary evidencef. ☐ Substantial postjudgment judicial supervision3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☐ punitive

4. Number of causes of action (specify): 1 - Penalties Pursuant to Labor Code Section 2699, et seq.

5. This case ☐ is ☒ is not a class action suit.

6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: March 18, 2021

Craig J. Ackermann, Esq.

(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on all other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

CM-010

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the Civil Case Cover Sheet contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the Civil Case Cover Sheet to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)—Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/
Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice—
Physicians & Surgeons
Other Professional Health Care
Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of
Emotional Distress
Negligent Infliction of
Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach—Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/
Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case—Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse
Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ—Administrative Mandamus
Writ—Mandamus on Limited Court Case Matter
Writ—Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal—Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

ELECTRONICALLY FILED
Superior Court of California
County of Santa Cruz
3/18/2021 2:48 PM

Alex Calvo, Clerk

By: Richard Kersten Seago, Deputy



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JOSHUA KLUGMAN, ESQ.
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esquirejosh@yahoo.com
1180 South Beverly Drive, Suite 610
Los Angeles, California 90035
Telephone: (424) 248-5148

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

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CRUZ**

DAVID GEORGE WILLIAMS, an individual,
on behalf of the State of California, as a private
attorney general, and on behalf of all Aggrieved
Employees,

PLAINTIFF,

v.

AMAZON.COM SERVICES LLC, a Delaware
Limited Liability Company; DOES 1 to 50,
inclusive,

DEFENDANTS.

CASE NO. 21CV00718

**PAGA REPRESENTATIVE ACTION
COMPLAINT FOR:**

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

1 Plaintiff DAVID GEORGE WILLIAMS ("Plaintiff"), on behalf of the people of the State of
 2 California and as an "Aggrieved Employee" acting as a private attorney general under the Labor
 3 Code Private Attorneys General Act of 2004, § 2699, *et seq.* ("PAGA") complains of Defendants
 4 AMAZON.COM SERVICES LLC and DOES 1 to 50 (collectively, "Defendants" or "Amazon")
 5 and each of them, and alleges the following upon information and belief:

6 INTRODUCTION

7 1. This is a representative action brought pursuant to Labor Code § 2699, *et seq.*, on
 8 behalf of the State of California and the group of Aggrieved Employees defined as follows:

9 The "Aggrieved Employees":

10 Plaintiff and all other California residents who are or were employed by Defendant
 11 Amazon.com Services LLC and/or any related Amazon entity, who performed work in an
 12 office and who were subject to stay-at-home orders and/or whose offices were closed due
 13 to COVID-19 for at least one pay period during the time period from March 15, 2020 to
 14 the present and ongoing (the "PAGA Period");

15 2. Plaintiff, on behalf of himself and all Aggrieved Employees presently or formerly
 16 employed by Defendants during the PAGA Period, brings this representative action pursuant to
 17 Labor Code § 2699, *et seq.* seeking penalties for Defendants' violation of California Labor Code §
 18 2802. Based upon the foregoing, Plaintiff and all Aggrieved Employees are Aggrieved Employees
 19 within the meaning of Labor Code §2699, *et seq.*

20 THE PARTIES

21 3. Plaintiff David George Williams is a resident of California and at all times pertinent
 22 hereto worked for Defendants.

23 4. Plaintiff and all Aggrieved Employees are, and at all times pertinent hereto, have
 24 been classified as non-exempt employees by Defendants, and have been hired to work for
 25 Defendants in California, performing office work before stay-at-home orders went into effect.

26 5. Amazon is an American multinational technology company based in Seattle,
 27 Washington which focuses on e-commerce, cloud computing, digital streaming, and artificial
 28 intelligence. Defendants employed Plaintiff and similarly situated persons as employees within
 California. Defendants have done and do business throughout the State of California including in

1 Santa Cruz County.

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

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

19 **JURISDICTION AND VENUE**

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

25 9. This Court has personal jurisdiction over Defendants because Defendants have
26 caused injuries in the County of Santa Cruz and State of California through their acts, and by their
27 violation of the California Labor Code and California state common law.

28 10. Venue as to each Defendant is proper in this judicial district, pursuant to Code of

1 Civil Procedure § 395. Defendants operate within California and do business within Santa Cruz
 2 County, California. The unlawful acts alleged herein have a direct effect on Plaintiff and all
 3 “employees” within the State of California and Santa Cruz County.

4 11. Further, to the extent that Defendants may claim that Plaintiff has signed an
 5 arbitration agreement, venue is still appropriate in the Superior Court of Santa Cruz County as
 6 PAGA claims are not arbitrable as a matter of law *Iskanian v. CLS Transp. Los Angeles, LLC*, 59
 7 Cal. 4th 348, 383 (2014) (holding “a PAGA claim lies outside the FAA’s coverage because it is not
 8 a dispute between an employer and an employee arising out of their contractual relationship. It is a
 9 dispute between an employer and the *state*”).

10 COMMON ALLEGATIONS

11 12. From at least March 15, 2020 and continuing into the present, during which time
 12 various work from home orders were in effect in California¹, Plaintiff and the Aggrieved
 13 Employees, at the direction of Defendants and/or with Defendants’ knowledge and acquiescence,
 14 have incurred home office expenses including, among other things, home internet expenses,
 15 equipment expenses, electricity, and home office infrastructure expenses, in order to perform
 16 necessary work-related duties. Plaintiff, who was employed by Amazon.com Services LLC, was
 17 not able to work on premises at Defendants’ office location in Silicon Valley, but instead was
 18 required to, and did, work from home, like the other Aggrieved Employees. To be clear,
 19 Amazon.com Services LLC sent home their California-resident office-based employees during the
 20 period from March 15, 2020 to the present without affirmatively reimbursing them for a reasonable
 21 portion of their monthly home internet expenses.

22 13. During the COVID 19 stay at home orders in place during the PAGA Period,
 23 Plaintiff and the Aggrieved Employees were expected by Defendants to pay for, and have
 24 personally paid for, among other things, home internet service, electricity, and an allocated portion
 25 of their home office space, in the discharge of their job duties (the “home office expenses”). These
 26 home office expenses were required and necessary for work to be performed. These home internet
 27 and home office expenses ranged, but typically amounted to \$50 to \$100 per month per Aggrieved

28 ¹ On March 15, 2020, California Governor Gavin Newsom issued a stay-at-home directive to fight COVID-19, Execute Order N-27-20, which can be found here: gov.ca.gov/wp-content/uploads/2020/03/3.15.2020-COVID-19-Facilities.pdf.

1 Employee.

2 14. Defendants had no policy to affirmatively reimburse all of their employees who
 3 were forced to work from home in California during the COVID 19 pandemic for a reasonable
 4 portion of their home internet and home office expenses. In sum, Defendants' expense-related
 5 policies and/or practices require and expect, and/or with Defendants' knowledge thereof permit,
 6 Plaintiff and the Aggrieved Employees to pay for home internet and home office infrastructure
 7 expenses incurred in direct consequence of discharging his and their necessary, reasonable, and
 8 business-related job duties on behalf of Defendants, without reimbursement in full by Defendants
 9 for such expenses, as required by California law.

10 15. California Labor Code section 2802 requires an employer to "indemnify his or her
 11 employee for all necessary expenditures or losses incurred by that employee in direct consequence
 12 of the discharge of his or her duties." See Cal. Labor Code section 2802(a); *see also* 2802(c) where
 13 necessary is defined to include all "reasonable" costs. "The elements of a claim under Section
 14 2802 are: (i) the employee made expenditures or incurred losses; (ii) the expenditures or losses
 15 were incurred in direct consequence of the employee's discharge of his or her duties, or obedience
 16 to the directions of the employer; and (iii) the expenditures or losses were reasonable and
 17 necessary." *Marr v. Bank of America*, 2011 U.S. Dist. LEXIS 24868 (N.D. March 8,
 18 2011) (*citing Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 568 (2007)). "In addition, the
 19 employer 'must either know or have reason to know that the employee has incurred [the] expense.'"
 20 *Id.* (*citing Stuart v. RadioShack Corp.*, 641 F.Supp. 2d 901 (N.D.Cal. 2009)). Where an employer
 21 has knowledge that employees are incurring a reimbursable expense, the employer must "exercise
 22 due diligence to ensure each employee is reimbursed." *Marr*, at *1. The right of an employee to
 23 expense reimbursements is not waivable. *See* Cal. Labor Code sections 2804 and 219(a). Any
 24 contract to waive them is null and void. *Edwards v. Arthur Anderson*, 44 Cal. 4th 937, 951 (2008)

25 16. Furthermore, under Labor Code section 2802, employers must reimburse employees
 26 for all necessary and/or reasonable work-related expenses, regardless of whether or not the
 27 employees incurred any additional out-of-pocket expense from that work-related use. *See, Cochran*
 28 *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.”).

17. Where, as here, employees in California are expected or mandated to use their internet at home for work, courts have held that they incurred cell phone 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 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).

18. Defendants are aware or should have been aware that Plaintiff and the Aggrieved Employees regularly incurred and incur home office and cell phone expenses in the discharge of their duties as employees by virtue of Defendants’ instructions to Plaintiff and the Aggrieved Employees. Defendants nevertheless have, throughout the PAGA Period, failed and refused to affirmatively reimburse Plaintiff and the Aggrieved Employees for such home office and cell phone 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

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

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

21. 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.

22. 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.

23. Pursuant to Labor Code § 2699.3 (a), on January 11, 2021, Plaintiff gave written notice by certified mail to Defendants and to the LWDA of his claims for violations of Labor Code § 2802, including theories supporting these claims as alleged herein. As of the date of this Complaint, the LWDA has not responded to Plaintiff's PAGA letter. 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 Defendants.

24. 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 March 15, 2020, and the present;

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;

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

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

5
6 Respectfully submitted,

7 ACKERMANN & TILAJEF, P.C.
8 JOSHUA KLUGMAN, ESQ.

9 Dated: March 18, 2021


10 
11 _____
12 Craig J. Ackermann, Esq.
13 Joshua Klugman, Esq.
14 Attorneys for Plaintiff and Aggrieved Employees
15
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EXHIBIT B



Notice of Service of Process

null / ALL
Transmittal Number: 22945025
Date Processed: 03/23/2021

Primary Contact: Ms. Lynn Radliff
Amazon.Com, Inc.
440 Terry Ave N
Seattle, WA 98109-5210

Electronic copy provided to: Vivian Ching
Lynn Foley-Jefferson
Joell Parks
Lizette Fernandez
Stephanie Habben
Sara Rawson
Theresa Nixon
Gianmarco Vairo
Eugide Matondo
Michelle King
Rebecca Hartley
Jesse Jensen
Rochelle Lewis
Karen Curtis
Kimberly Thomas
Maria Catana
Stephen Swisher

Entity: Amazon.com Services LLC
Entity ID Number 2102616

Entity Served: Amazon.com Services LLC

Title of Action: David George Williams vs. Amazon.com Services LLC

Matter Name/ID: David George Williams vs. Amazon.com Services LLC (11071911)

Document(s) Type: Summons/Complaint

Nature of Action: Labor / Employment

Court/Agency: Santa Cruz County Superior Court, CA

Case/Reference No: 21CV00718

Jurisdiction Served: California

Date Served on CSC: 03/22/2021

Answer or Appearance Due: 30 Days

Originally Served On: CSC

How Served: Personal Service

Sender Information: Craig J. Ackermann
310-277-0614

Client Requested Information: Amazon Case Type: Employment Litigation

Information contained on this transmittal form is for record keeping, notification and forwarding the attached document(s). It does not constitute a legal opinion. The recipient is responsible for interpreting the documents and taking appropriate action.

To avoid potential delay, please do not send your response to CSC

251 Little Falls Drive, Wilmington, Delaware 19808-1674 (888) 690-2882 | sop@cscglobal.com

EXHIBIT C

ELECTRONICALLY FILED
Superior Court of California
County of Santa Cruz
4/1/2021 11:39 AM
Alex Calvo, Clerk
By: Helena Hanson, Deputy

Helena J. Hanson

TIMOTHY W. LOOSE, SBN 241037
tloose@gibsondunn.com
LAUREN M. BLAS, SBN 296823
lblas@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
Telephone: 213.229.7000
Facsimile: 213.229.7520

Counsel for Defendant
AMAZON.COM SERVICES LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CRUZ

David George WILLIAMS, an individual, on
behalf of the State of California, as a private
attorney general, and on behalf of all
Aggrieved Employees,

Plaintiff,

v.

AMAZON.COM SERVICES LLC, a
Delaware Limited Liability Company; DOES 1
to 50, inclusive,

Defendants.

CASE NO. 21CV00718

**JOINT STIPULATION TO EXTEND TIME
TO RESPOND TO THE COMPLAINT BY 15
DAYS**

ASSIGNED FOR ALL PURPOSES TO:
HON. REBECCA CONNOLLY
DEPARTMENT 4

Action Filed: March 18, 2021

Trial Date: None

1 Pursuant to California Rule of Court 3.110(d), Plaintiff David George Williams (“Plaintiff”)
2 and Defendant Amazon.com Services LLC (“Amazon”) stipulate and agree as follows:

3 WHEREAS, Plaintiff filed his Complaint in the above-captioned matter on March 18, 2021;

4 WHEREAS, Plaintiff filed a Proof of Service on March 24 indicating that he served the
5 Summons and Complaint on Amazon on March 22, 2021;

6 WHEREAS, pursuant to California Rules of Court Rule 1.10, Amazon’s response to Plaintiff’s
7 Complaint is currently due on April 21, 2021;

8 WHEREAS, there have been no prior stipulations to extend Amazon’s deadline to respond to
9 Plaintiff’s Complaint;

10 WHEREAS, the parties submit this Joint Stipulation without prejudice to Amazon’s right to
11 seek, if warranted and with leave of Court, a further extension of time to respond to Plaintiff’s
12 Complaint;

13 WHEREAS, the parties agree to extend Amazon’s deadline to respond to Plaintiff’s Complaint
14 by 15 days, pursuant to California Rule of Court 3.110(d);

15 WHEREAS, a 15-day extension extends the deadline for Amazon to file its response to
16 Plaintiff’s Complaint to Thursday, May 6, 2021;

17 IT IS HEREBY STIPULATED between Plaintiff and Amazon that the deadline for Amazon to
18 respond to Plaintiff’s Complaint shall be Thursday, May 6, 2021.

19 IT IS SO STIPULATED.
20
21
22
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25
26
27
28

1 DATED: April 1, 2021

2 **GIBSON, DUNN & CRUTCHER LLP**

3 Timothy W. Loose

4 Lauren M. Blas

5 By: 

6 Timothy W. Loose

7 Counsel for Defendant

8 DATED: March 31, 2021

9 **ACKERMANN & TILAJEF, P.C.**

10 Craig J. Ackermann, SBN 229832

11 **JOSHUA KLUGMAN, ESQ.**

12 Joshua Klugman, SBN 236905

13 By: 

14 Craig J. Ackermann

15 Counsel for Plaintiff

1 **PROOF OF SERVICE**

2 I, Lorelei Gerdine, declare as follows:

3 I am employed in the County of Los Angeles, State of California, I am over the age of
4 eighteen years and am not a party to this action; my business address is 333 S. Grand Avenue, Los
5 Angeles, California, 90017, in said County and State. On April 1, 2021, I served the following
6 document(s):

7 **JOINT STIPULATION TO EXTEND TIME TO RESPOND TO THE**
8 **COMPLAINT BY 15 DAYS**

9 on the parties stated below, by the following means of service:

10 Craig J. Ackermann
11 ACKERMANN & TILAJEF, P.C.
12 1180 South Beverly Drive, Suite 610
13 Los Angeles, CA 90035

Counsel for Plaintiff
Tel 310.277.0614
Fax 310.277.0635
cja@ackermanntilajef.com

14 Joshua Klugman
15 JOSHUA KLUGMAN, ESQ.
16 1180 South Beverly Drive, Suite 610
17 Los Angeles, CA 90035

Counsel for Plaintiff
Tel 424.248.5148
esquirejosh@yahoo.com

18 ☒ **BY ELECTRONIC SERVICE:** On the above-mentioned date, based on a court order or an agreement of the
19 parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the
20 electronic notification addresses as shown above.

21 ☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is
22 true and correct.

23 Executed on April 1, 2021.

24 _____
25 */s/ Lorelei Gerdine*
26 Lorelei Gerdine

27 *Case 3:21-cv-01885-AC Document 1-2 Filed 03/31/21 Page 2 of 2*

EXHIBIT D

ELECTRONICALLY FILED
Superior Court of California
County of Santa Cruz
4/1/2021 11:39 AM
Alex Calvo, Clerk
By: Helena Hanson, Deputy



TIMOTHY W. LOOSE, SBN 241037
tloose@gibsondunn.com
LAUREN M. BLAS, SBN 296823
lblas@gibsondunn.com
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
Telephone: 213.229.7000
Facsimile: 213.229.7520

Counsel for Defendant
AMAZON.COM SERVICES LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CRUZ

David George WILLIAMS, an individual, on
behalf of the State of California, as a private
attorney general, and on behalf of all
Aggrieved Employees,

Plaintiff,

v.

AMAZON.COM SERVICES LLC, a
Delaware Limited Liability Company; DOES 1
to 50, inclusive,

Defendants.

CASE NO. 21CV00718

NOTICE OF APPEARANCES AS COUNSEL

ASSIGNED FOR ALL PURPOSES TO:
HON. REBECCA CONNOLLY
DEPARTMENT 4

Action Filed: March 18, 2021
Trial Date: None

**TO THE CLERK OF THE COURT AND ALL PARTIES AND THEIR COUNSEL OF
RECORD:**

PLEASE TAKE NOTICE that Timothy W. Loose, Lauren M. Blas, and Courtney L. Spears of Gibson, Dunn & Crutcher LLP hereby appear on behalf of Defendant Amazon.com Services LLC in this action, and are authorized to receive service of all pleadings, notices, orders, and other papers regarding this action on its behalf. Their addresses, telephone and facsimile numbers, and email addresses are as follows:

Timothy W. Loose, SBN 241037
Lauren M. Blas, SBN 296823
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-3197
Telephone: 213.229.7000
Facsimile: 213.229.7520
Email: tloose@gibsondunn.com
lblas@gibsondunn.com

Courtney L. Spears, SBN 329521
3161 Michelson Drive
Irvine, CA 92612-4412
Telephone: 949.451.3800
Facsimile: 949.451.4220
Email: cspears@gibsondunn.com

DATED: April 1, 2021

GIBSON, DUNN & CRUTCHER LLP
Timothy W. Loose
Lauren M. Blas
Courtney L. Spears

By: /s/ Timothy W. Loose
Timothy W. Loose

Counsel for Defendant

PROOF OF SERVICE

I, Lorelei Gerdine, declare as follows:

I am employed in the County of Los Angeles, State of California, I am over the age of eighteen years and am not a party to this action; my business address is 333 S. Grand Avenue, Los Angeles, California, 90017, in said County and State. On April 1, 2021, I served the following document(s):

NOTICE OF APPEARANCES OF COUNSEL

on the parties stated below, by the following means of service:

Craig J. Ackermann
ACKERMANN & TILAJEF, P.C.
1180 South Beverly Drive, Suite 610
Los Angeles, CA 90035

Counsel for Plaintiff
Tel 310.277.0614
Fax 310.277.0635
cja@ackermanntilajef.com

Joshua Klugman
JOSHUA KLUGMAN, ESQ.
1180 South Beverly Drive, Suite 610
Los Angeles, CA 90035

Counsel for Plaintiff
Tel 424.248.5148
esquirejosh@yahoo.com

☒ **BY ELECTRONIC SERVICE:** On the above-mentioned date, based on a court order or an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses as shown above.

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

Executed on April 1, 2021.

/s/ Lorelei Gerdine
Lorelei Gerdine

EXHIBIT E

ACKERMANN & TILAJEF, P.C.

Craig J. Ackermann, Esq. (SBN 229832)

cja@ackermanntilajef.com

1180 South Beverly Drive, Suite 610

Los Angeles, California 90035

Telephone: (310) 277-0614

Facsimile: (310) 277-0635

JOSHUA KLUGMAN, ESQ.

Joshua Klugman, Esq. (SBN 236905)

esquirejosh@yahoo.com

1180 South Beverly Drive, Suite 610

Los Angeles, California 90035

Telephone: (424) 248-5148

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

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CRUZ**

DAVID GEORGE WILLIAMS, an individual,
on behalf of the State of California, as a private
attorney general, and on behalf of all Aggrieved
Employees,

PLAINTIFF,

v.

AMAZON.COM SERVICES LLC, a Delaware
Limited Liability Company; DOES 1 to 50,
inclusive,

DEFENDANTS.

CASE NO. 21CV00718

**FIRST AMENDED PAGA
REPRESENTATIVE ACTION
COMPLAINT FOR:**

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

1 Plaintiff DAVID GEORGE WILLIAMS (“Plaintiff”), on behalf of the people of the State of
 2 California and as an “Aggrieved Employee” acting as a private attorney general under the Labor
 3 Code Private Attorneys General Act of 2004, § 2699, *et seq.* (“PAGA”) complains of Defendants
 4 AMAZON.COM SERVICES LLC and DOES 1 to 50 (collectively, “Defendants” or “Amazon”)
 5 and each of them, and alleges the following upon information and belief:

6 INTRODUCTION

7 1. This is a representative action brought pursuant to Labor Code § 2699, *et seq.*, on
 8 behalf of the State of California and the group of Aggrieved Employees defined as follows:

9 The “Aggrieved Employees”:

10 Plaintiff and all other California residents who are or were employed by Defendant
 11 Amazon.com Services LLC and/or any related Amazon entity, who performed work in an
 12 office and who were subject to stay-at-home orders and/or whose offices were closed due
 13 to COVID-19 for at least one pay period during the time period from March 15, 2020 to
 14 the present and ongoing (the “PAGA Period”);

15 2. Plaintiff, on behalf of himself and all Aggrieved Employees presently or formerly
 16 employed by Defendants during the PAGA Period, brings this representative action pursuant to
 17 Labor Code § 2699, *et seq.* seeking penalties for Defendants’ violation of California Labor Code §
 18 2802. Based upon the foregoing, Plaintiff and all Aggrieved Employees are Aggrieved Employees
 19 within the meaning of Labor Code §2699, *et seq.*

20 THE PARTIES

21 3. Plaintiff David George Williams is a resident of California and at all times pertinent
 22 hereto worked for Defendants as a Senior Software Development Engineer. Plaintiff’s job duties
 23 included developing software for Defendants’ Alex voice assistant (in the Swift language for
 24 iPhone and in Java for cloud based web services), writing design documents for software systems
 25 and reviewing those designs with various teams, performing code reviews for other developers, and
 26 being on call for production system. While employed by Defendants, Plaintiff lived at 222
 27 Kingsbury Drive, Aptos, California 95003. During the stay at home orders and while Defendants’
 28 offices were closed, Plaintiff worked remotely from his home address in California. On information
 and belief, the vast majority, if not all, of the Aggrieved Employees also worked from home while

1 residing in California during the stay and home orders and while Defendants' offices were closed.

2 4. Plaintiff and all Aggrieved Employees are, and at all times pertinent hereto, have
3 been classified as non-exempt employees by Defendants, and have been hired to work for
4 Defendants in California, performing office work before stay-at-home orders went into effect.

5 5. Amazon is an American multinational technology company based in Seattle,
6 Washington which focuses on e-commerce, cloud computing, digital streaming, and artificial
7 intelligence. Defendants employed Plaintiff and similarly situated persons as employees within
8 California. Defendants have done and do business throughout the State of California including in
9 Santa Cruz County.

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

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

27 **JURISDICTION AND VENUE**

28 8. 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.

9. This Court has personal jurisdiction over Defendants because Defendants have caused injuries in the County of Santa Cruz and State of California through their acts, and by their violation of the California Labor Code and California state common law.

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

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

COMMON ALLEGATIONS

12. From at least March 15, 2020 and continuing into the present, during which time various work from home orders were in effect in California¹, Plaintiff and the Aggrieved Employees, at the direction of Defendants and/or with Defendants’ knowledge and acquiescence, have incurred home office expenses including, among other things, home internet expenses, equipment expenses, electricity, and home office infrastructure expenses, in order to perform necessary work-related duties. Plaintiff, who was employed by Amazon.com Services LLC, was not able to work on premises at Defendants’ office location in Silicon Valley, but instead was required to, and did, work from home, like the other Aggrieved Employees. To be clear, Amazon.com Services LLC sent home their California-resident office-based employees during the

¹ On March 15, 2020, California Governor Gavin Newsom issued a stay-at-home directive to fight COVID-19, Execute Order N-27-20, which can be found here: gov.ca.gov/wp-content/uploads/2020/03/3.15.2020-COVID-19-Facilities.pdf.

1 period from March 15, 2020 to the present without affirmatively reimbursing them for a reasonable
2 portion of their monthly home internet expenses.

3 13. During the COVID 19 stay at home orders in place during the PAGA Period,
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5 personally paid for, among other things, home internet service, electricity, and an allocated portion
6 of their home office space, in the discharge of their job duties (the “home office expenses”). These
7 home office expenses were required and necessary for work to be performed. These home internet
8 and home office expenses ranged, but typically amounted to \$50 to \$100 per month per Aggrieved
9 Employee.

10 14. Defendants had no policy to affirmatively reimburse all of their employees who
11 were forced to work from home in California during the COVID 19 pandemic for a reasonable
12 portion of their home internet and home office expenses. In sum, Defendants’ expense-related
13 policies and/or practices require and expect, and/or with Defendants’ knowledge thereof permit,
14 Plaintiff and the Aggrieved Employees to pay for home internet and home office infrastructure
15 expenses incurred in direct consequence of discharging his and their necessary, reasonable, and
16 business-related job duties on behalf of Defendants, without reimbursement in full by Defendants
17 for such expenses, as required by California law.

18 15. California Labor Code section 2802 requires an employer to "indemnify his or her
19 employee for all necessary expenditures or losses incurred by that employee in direct consequence
20 of the discharge of his or her duties." See Cal. Labor Code section 2802(a); *see also* 2802(c) where
21 necessary is defined to include all “reasonable” costs. “The elements of a claim under Section
22 2802 are: (i) the employee made expenditures or incurred losses; (ii) the expenditures or losses
23 were incurred in direct consequence of the employee's discharge of his or her duties, or obedience
24 to the directions of the employer; and (iii) the expenditures or losses were reasonable and
25 necessary.” *Marr v. Bank of America*, 2011 U.S. Dist. LEXIS 24868 (N.D. March 8,
26 2011) (*citing Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 568 (2007)). “In addition, the
27 employer ‘must either know or have reason to know that the employee has incurred [the] expense.’”
28 *Id.* (*citing Stuart v. RadioShack Corp.*, 641 F.Supp. 2d 901 (N.D.Cal. 2009)). Where an employer

1 has knowledge that employees are incurring a reimbursable expense, the employer must “exercise
2 due diligence to ensure each employee is reimbursed.” *Marr*, at *1. The right of an employee to
3 expense reimbursements is not waivable. *See* Cal. Labor Code sections 2804 and 219(a). Any
4 contract to waive them is null and void. *Edwards v. Arthur Anderson*, 44 Cal. 4th 937, 951 (2008)

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

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

24 18. Defendants are aware or should have been aware that Plaintiff and the Aggrieved
25 Employees regularly incurred and incur home office and cell phone expenses in the discharge of
26 their duties as employees by virtue of Defendants’ instructions to Plaintiff and the Aggrieved
27 Employees. Defendants nevertheless have, throughout the PAGA Period, failed and refused to
28 affirmatively reimburse Plaintiff and the Aggrieved Employees for such home office and cell phone

1 expenses incurred by them in connection with their work.

2 19. Concerning Defendants’ potential defenses based on its issuance of its written
3 reimbursement policies allowing California resident employees to seek reimbursement for home
4 internet expenses during the pandemic, the various decisions issued by Judge Edward Chen
5 in *RadioShack* are instructive. To begin, in his decision granting class certification in *Stuart v.*
6 *Radio Shack*, 2009 US Dist. LEXIS 12337 (N.D.Cal. Feb. 5, 2009), Judge Chen first discussed
7 RadioShack’s argument and defenses, similar to Defendants’ here, that: (1) RadioShack had
8 promulgated a uniform and largely compliant written mileage reimbursement policy allowing its
9 assistant managers to seek reimbursement for mileage expenses incurred during work-related trips
10 in their personal vehicles between its stores (Id. at *10-11); and (2) that unique defenses would
11 arise as applied to the named plaintiff, sufficient to defeat class certification, because the named
12 plaintiff either lacked knowledge of the applicable written policy and/or had waived his claims to
13 reimbursement for his mileage expenses by failing to seek reimbursement under RadioShack’s
14 written reimbursement policies (Id. at *18-19).

15 20. Describing RadioShack’s proffered defense as “something akin to exhaustion” (Id.
16 at *19), the Court summarized RadioShack’s position that its “obligation [to reimburse] was not
17 triggered unless and until an employee actually made a claim for reimbursement...” Id. The Court
18 noted that resolution of this exhaustion defense would “turn largely on common and relatively
19 simple facts”. Id. at *24. The Court went back and forth on the arguments, dealing with them for
20 the first time. The Court noted, for instance, later in the decision that the exhaustion defense
21 applied to numerous employees since “many employees did not submit formal reimbursement
22 requests.” (Id. at *47-48). It added: “there is a question whether the exhaustion defense is even
23 viable”. Id. The Court then summarized the plaintiff’s view that Section 2804 of the Labor Code
24 precludes the exhaustion defense as a matter of law, and he expressed doubts as to that argument.
25 Id. at *48. The Court then noted the possibility that although the statute indicates that employers
26 “shall” reimburse business expenses, which seems mandatory, it may not mean that they have to do
27 so “when there has been no request” (Defendants’ position here). Id. at *49. The Court opined that,
28 practically speaking, employers ordinarily need information about an expense incurred before they

1 can reimburse employees for such expenses. Id. at *50. On the other hand, the Court added that
2 employers should not be able to sit back and wait for a claim for reimbursement, at least where the
3 employer has deterred employees from seeking reimbursement. Id. In conclusion, at the initial
4 certification phase, the Court concluded:

5 “While the Court need not decide precisely the parameters of the employer's obligation
6 under Section 2802 to inform and perhaps encourage employees to submit reimbursement
7 claims (or whether an exhaustion defense applies at all), the relevant question here is
8 whether the exhaustion defense (if available) requires such individualized determination
9 such that common questions do not predominate. The Court concludes it does not. The
10 parameters of the employer's obligation, and thus conversely the viability of the exhaustion
11 defense, are likely to be judged by a reasonable person standard. Most of the relevant facts
12 (the terms of the reimbursement policy, its general interpretation by management, whether it
13 was publicized companywide, etc.) are common. While there might be some individualized
14 inquiries as to whether actions of individual store or district managers might have taken
15 steps to fulfill the employer's obligation under the California Labor Code (e.g., by actively
16 encouraging employees to submit reimbursement claims), the common questions are likely
17 to predominate. Moreover, as noted above, even if the exhaustion defense were found to be
18 viable, its impact on class member's entitlement to relief will be a simple matter to
19 determine. That determination will not undermine the overarching common questions on the
20 core question of liability -- did RadioShack violate Section 2802 by not reimbursing
21 employees for ICSTs [inter-store transfers]?” (Id. at *52-53).

22 In a nutshell, after this initial foray into the intellectual landscape of the possible ways of
23 understanding Section 2802 and the employer’s obligation to reimburse and when it is triggered,
24 the Court simply certified the Class and punted on the exact parameters of when liability may be
25 triggered and whether there could be an exhaustion defense.

26 21. Several months later, however, Judge Chen specifically addressed the contours of
27 when liability is triggered by employers under Section 2802 and RadioShack’s exhaustion and
28 other waivers defenses. *See Stuart v. RadioShack Corp.*, 641 F.Sup.2nd 901 (April 30, 2009). The

1 Court at that time summarized its thinking as follows:

2 “The Court is not persuaded that either party's construction is appropriate. Mr. Stuart’s
 3 contention is that the duty to reimburse is triggered once the expense is incurred by the
 4 employee irrespective of any other circumstance. However, if the employer had no
 5 knowledge or reason to know that the expense was incurred and the employee withheld that
 6 information, it would hardly seem fair to hold the employer accountable, particularly when,
 7 under the California Labor Code Private Attorneys General Act, an employer may be held
 8 liable for civil penalties and attorney's fees for a failure to reimburse in accordance
 9 with Section 2802. See Cal. Lab. Code section 2699(a), (f), (g). In turn, RadioShack’s
 10 contention is that the duty to reimburse is triggered *only* when an employee makes a request
 11 for reimbursement even if the employer knew or had reason to know the expense was
 12 incurred. While the employee, rather than the employer, is in the best position to know
 13 when he or she has incurred an expense and the details of that expense, see Docket No. 65
 14 (Order at 24), such a narrow construction is at war with Section 2802's "strong public policy
 15 ... favor[ing] the indemnification (and defense) of employees by their employers for claims
 16 and liabilities resulting from the employees' acts within the course and scope of their
 17 employment." *Edwards v. Arthur Anderson*, 44 Cal.4th 937, 952 (2008) (internal quotation
 18 marks omitted). ... The Court concludes that a fair interpretation of Sections 2802 and
 19 2804 which produces ‘practical and workable results,’ *Gattuso*, at 567, consistent with the
 20 public policy underlying those sections, focuses not on whether an employee makes a
 21 request for reimbursement but rather on whether the employer either knows or has reason to
 22 know that the employee has incurred a reimbursable expense. If it does, it must exercise due
 23 diligence to ensure that each employee is reimbursed.” *Id.* at 902-903.

24 Accordingly, based on this standard and applying this test, RadioShack’s defenses premised on the
 25 failure of employees to submit for reimbursement, including estoppel, waiver, laches, equitable
 26 estoppel, were all subsequently rejected by the Court. *See Stuart v. RadioShack Corp.*, 259 F.R.D.
 27 200, 202-203 (N.D. Cal. August 28, 2009) (quoting its earlier rulings). The Court’s rationale for
 28 rejecting RadioShack’s estoppel defenses is particularly pertinent here:

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

2
3 Respectfully submitted,

4 ACKERMANN & TILAJEF, P.C.
5 JOSHUA KLUGMAN, ESQ.

6 Dated: May 5, 2021

Joshua Klugman


7 _____
8 Craig J. Ackermann, Esq.

9 Joshua Klugman, Esq.

10 Attorneys for Plaintiff and Aggrieved Employees
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CRUZ

DAVID GEORGE WILLIAMS, an individual,
on behalf of the State of California, as a private
attorney general, and on behalf of all
Aggrieved Employees,

Plaintiff,

v.

AMAZON.COM SERVICES LLC, a
Delaware Limited Liability Company; DOES 1
to 50, inclusive,

Defendants.

CASE NO. 21CV00718

**DEFENDANT AMAZON'S NOTICE OF
DEMURRER AND DEMURRER TO
PLAINTIFF'S FIRST AMENDED
COMPLAINT**

ASSIGNED FOR ALL PURPOSES TO:
HON. REBECCA CONNOLLY
DEPARTMENT 4

*[Notice of Motion to Strike and Motion to Strike;
Memorandum of Points and Authorities in
Support of Demurrer and Motion to Strike;
Declaration of Lauren M. Blas; [Proposed]
Order Sustaining Demurrer; [Proposed] Order
Granting Motion to Strike; and Proof of Service
filed concurrently herewith]*

HEARING:

Date: August 9, 2021
Time: 8:30 a.m.
Dept: 4

Action Filed: March 18, 2021
Trial Date: None

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 9, 2021, at 8:30 a.m., or as soon thereafter as counsel may be heard in Department 4 of the above-captioned Court, located at 701 Ocean Street, Santa Cruz, California 95060, Defendant Amazon.com Services, LLC (“Amazon”) by and through its counsel of record, will and hereby does demur to Plaintiff’s First Amended Complaint pursuant to California Code of Civil Procedure sections 430.10(e) and 430.30(a). Consistent with California Rule of Court 3.1322(a), Amazon’s Demurrer “must be noticed for hearing and heard at the same time” as its concurrently filed Motion to Strike.

Plaintiff’s First Amended Complaint fails to state a claim under Labor Code section 2802 for at least three reasons. First, Plaintiff fails to adequately plead that his alleged expenses were caused by Amazon. Second, Plaintiff fails to plead sufficient facts showing that Amazon knew or had reason to know that he incurred any reimbursable expenses. And finally, Plaintiff fails to plead sufficient facts showing that any such expenses were “necessary” to discharge his job duties. Therefore, the Demurrer should be sustained. Because he has already amended his complaint once, Plaintiff should not be granted further leave to amend.

Before filing this Demurrer, the parties met and conferred and were not able to resolve the matters raised by this Demurrer. (*See* Decl. of Lauren M. Blas ¶ 4; *see* Code Civ. Proc. § 430.41(a).)

This Demurrer is based on this Notice of Demurrer and Demurrer to Plaintiff’s First Amended Complaint, the accompanying Memorandum of Points and Authorities, the Declaration of Lauren M. Blas, the files and records in this action, and such further evidence and arguments as may be presented at the hearing on the Demurrer.

DATED: June 4, 2021

GIBSON, DUNN & CRUTCHER LLP
TIMOTHY W. LOOSE
LAUREN M. BLAS
COURTNEY L. SPEARS

By: /s/ Timothy W. Loose
Timothy W. Loose

Attorneys for Defendant
AMAZON.COM SERVICES LLC

**DEFENDANT AMAZON’S DEMURRER TO PLAINTIFF’S FIRST AMENDED
COMPLAINT**

Pursuant to California Code of Civil Procedure section 430.10, Defendant Amazon generally and specially demurs to the sole cause of action against it in the First Amended Complaint (“Complaint”) on the following ground:

GENERAL DEMURRER TO FIRST CAUSE OF ACTION
(PAGA Penalties Pursuant to Labor Code Section 2699, *et seq.*
For violations of Labor Code Section 2802)

Pursuant to Code of Civil Procedure Section 430.10(e), the First Cause of Action fails to state facts sufficient to constitute a cause of action against Amazon.

PRAYER

Wherefore Amazon prays:

1. That Amazon’s Demurrer to Plaintiff’s First Amended Complaint be sustained;
2. That Plaintiff’s First Cause of Action against Amazon be dismissed with prejudice;
3. For any other or further relief as this Court deems just and proper.

DATED: June 4, 2021

GIBSON, DUNN & CRUTCHER LLP
TIMOTHY W. LOOSE
LAUREN M. BLAS
COURTNEY L. SPEARS

By: /s/ Timothy W. Loose
Timothy W. Loose

Attorneys for Defendant
AMAZON.COM SERVICES LLC

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Attorneys for Defendant
AMAZON.COM SERVICES LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CRUZ

DAVID GEORGE WILLIAMS, an individual,
on behalf of the State of California, as a private
attorney general, and on behalf of all
Aggrieved Employees,

Plaintiff,

v.

AMAZON.COM SERVICES LLC, a
Delaware Limited Liability Company; DOES 1
to 50, inclusive,

Defendants.

CASE NO. 21CV00718

**DEFENDANT AMAZON'S NOTICE OF
MOTION AND MOTION TO STRIKE
PORTIONS OF PLAINTIFF'S FIRST
AMENDED COMPLAINT**

ASSIGNED FOR ALL PURPOSES TO:
HON. REBECCA CONNOLLY
DEPARTMENT 4

*[Defendant's Notice of Demurrer and Demurrer;
Memorandum of Points and Authorities in
Support of Demurrer and Motion to Strike;
Declaration of Lauren M. Blas; [Proposed]
Order Sustaining Demurrer; [Proposed] Order
Granting Motion to Strike; and Proof of Service
filed concurrently herewith]*

HEARING:

Date: August 9, 2021
Time: 8:30 a.m.
Dept: 4

Action Filed: March 18, 2021
Trial Date: None

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that on August 9, 2021, at 8:30 a.m., or as soon thereafter as counsel may be heard in Department 4 of the above-captioned Court, located at 701 Ocean Street, Santa Cruz, California 95060, Defendant Amazon.com Services, LLC (“Amazon”) by and through its counsel of record, will and hereby does move to strike various portions of Plaintiff’s First Amended Complaint (“Complaint”) under California Code of Civil Procedure sections 435 and 436 because they constitute “irrelevant, false, or improper” matters. (Code Civ. Proc. § 436(a).) Consistent with California Rule of Court 3.1322(b), Amazon’s motion to strike “must be noticed for hearing and heard at the same time” as its concurrently filed Demurrer.

Amazon moves to strike Plaintiff’s improper allegations contending that Amazon must reimburse Plaintiff’s routine housing and electricity expenses on the grounds that these expenses do not qualify as the “reasonable costs” contemplated by California Labor Code section 2802. Specifically, pursuant to California Rule of Court 3.1322(a), Amazon requests that this Court strike the following portions of Plaintiff’s Complaint:

1. Page 4, Paragraph 12, Line 23, as follows: “electricity, and home office infrastructure expenses”

2. Page 5, Paragraph 13, Lines 5–6, as follows: “electricity, and an allocated portion of their home office space”

Grounds for Striking: Under section 2802, reimbursable expenses are limited to “reasonable costs.” (Cal. Lab. Code § 2802(c).) Plaintiff’s allegations that Amazon should be required to pay for Plaintiff’s ordinary living expenses, including his housing and electricity expenses, are unreasonable and must be stricken. (*Willis v. City of Carlsbad* (2020) 48 Cal.App.5th 1104, 1113, 1133 n.6, *reh’g denied* (May 29, 2020), *review denied* (July 22, 2020) [affirming grant of motion to strike allegations from Labor Code claim because the plaintiff could only recover for “acts of retaliation” that occurred within a certain time period]; *Juarez v. Villafan* (E.D. Cal., Dec. 29, 2017) 2017 WL 6629529, at pp. *10–11, *report & recommendation adopted* (E.D. Cal., June 13, 2018) 2018 WL 4372784 [dismissing section 2802 claim for reimbursement of “drinking water” because such an expense is “necessarily required for every profession as [it is] required to sustain life”].)

1 Pursuant to section 435.5 of the Code of Civil Procedure, on May 28, 2021, counsel for the
2 parties conferred regarding the grounds for Amazon's Motion to Strike, but were unable to resolve
3 their disputes. (*See* Decl. of Lauren M. Blas ¶ 4.)

4 This Motion to Strike is based on this Notice and Motion, the accompanying Memorandum of
5 Points and Authorities, the Declaration of Lauren M. Blas, the files and records in this action, and such
6 further evidence and arguments as may be presented at the hearing.

7
8 DATED: June 4, 2021

9 GIBSON, DUNN & CRUTCHER LLP
10 TIMOTHY W. LOOSE
11 LAUREN M. BLAS
12 COURTNEY L. SPEARS

13 By: /s/ Timothy W. Loose
Timothy W. Loose

14 Attorneys for Defendant
15 AMAZON.COM SERVICES LLC
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EXHIBIT H

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CRUZ

DAVID GEORGE WILLIAMS, an individual,
on behalf of the State of California, as a private
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AMAZON.COM SERVICES LLC, a
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to 50, inclusive,

Defendants.

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By ~~Declar Salsedo~~, Deputy

CASE NO. 21CV00718

**DECLARATION OF LAUREN M. BLAS IN
SUPPORT OF DEFENDANT AMAZON'S
DEMURRER AND MOTION TO STRIKE**

ASSIGNED FOR ALL PURPOSES TO:
HON. REBECCA CONNOLLY
DEPARTMENT 4

*[Defendant's Notice of Demurrer and Demurrer;
Notice of Motion and Motion to Strike;
Memorandum of Points and Authorities in
Support of Demurrer and Motion to Strike;
[Proposed] Order Sustaining Demurrer;
[Proposed] Order Granting Motion to Strike; and
Proof of Service filed concurrently herewith]*

HEARING:

Date: August 9, 2021
Time: 8:30 a.m.
Dept: 4

Action Filed: March 18, 2021
Trial Date: None

1 I, Lauren M. Blas, declare and state as follows:

2 1. I am an attorney duly licensed to practice before all courts in the State of California. I
3 am a partner at the law firm of Gibson, Dunn & Crutcher LLP, counsel of record for Defendant
4 Amazon.com Services LLC ("Amazon") in the above-captioned action. I make this Declaration in
5 support of Amazon's Demurrer and Motion to Strike. I am personally familiar with the facts set forth
6 herein and, if called upon to do so, could and would competently testify to them. I submit this
7 Declaration pursuant to California Code of Civil Procedure § 430.41(a)(3).

8 2. On April 28, 2021, I met and conferred by telephone with Plaintiff's counsel, Craig
9 Ackermann and Joshua Klugman, and discussed Amazon's anticipated Demurrer and Motion to Strike
10 Plaintiff's Complaint. As a result of that conversation, Plaintiff agreed to amend the Complaint.

11 3. On May 5, 2021, Plaintiff filed his First Amended Complaint.

12 4. On May 28, 2021, I met and conferred again by telephone with Plaintiff's counsel,
13 Joshua Klugman, and discussed Amazon's anticipated Demurrer and Motion to Strike Plaintiff's First
14 Amended Complaint. During this discussion, the parties were not able to resolve the matters raised by
15 Amazon's Demurrer and Motion to Strike Plaintiff's First Amended Complaint. Mr. Klugman stated
16 that Plaintiff was unlikely to amend the First Amended Complaint at this time.

17
18 I declare under penalty of perjury under the laws of the State of California that the foregoing is
19 true and correct and that this Declaration was executed on June 4, 2021 in Los Angeles, California.

20
21 

22 Lauren M. Blas
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EXHIBIT I

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Plaintiff,

v.

AMAZON.COM SERVICES LLC, a
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to 50, inclusive,

Defendants.

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By: ~~Declar Salsedo~~, Deputy

CASE NO. 21CV00718

**DEFENDANT AMAZON'S MEMORANDUM
OF POINTS AND AUTHORITIES IN
SUPPORT OF ITS DEMURRER TO
PLAINTIFF'S FIRST AMENDED
COMPLAINT AND RELATED MOTION TO
STRIKE**

ASSIGNED FOR ALL PURPOSES TO:
HON. REBECCA CONNOLLY
DEPARTMENT 4

*[Notice of Demurrer and Demurrer; Notice of
Motion to Strike and Motion to Strike;
Declaration of Lauren Blas; [Proposed] Orders,
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HEARING:

Date: August 9, 2021
Time: 8:30 a.m.
Dept: 4

Action Filed: March 18, 2021
Trial Date: None

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I. **INTRODUCTION AND SUMMARY OF ARGUMENT**

Plaintiff David Williams’ lawsuit is an ill-disguised effort to exploit the COVID-19 pandemic and the resulting work-from-home government mandates. As Plaintiff details in his Complaint, state and local orders required him to work from home by prohibiting him from working out of Amazon’s offices. Plaintiff never alleges that he ever asked Amazon to reimburse any of his work-from-home expenses, yet he nevertheless has sued, arguing that Amazon should not have waited for a reimbursement request. Instead, it should have just issued him checks in unspecified amounts sufficient to cover not only his Internet and phone expenses, but also things like his housing and electricity expenses. Labor Code section 2802, which allows for reimbursement of “necessary expenditures ... incurred by the employee in direct consequence of the discharge of his duties,” does not require any such result. Amazon’s Demurrer should be sustained for three primary reasons:

First, Plaintiff fails to plead that his alleged expenses were caused by any affirmative decision by Amazon, his employer. To the contrary, Plaintiff concedes that California’s work-from-home orders required him to work remotely, and the remote work is the source of the claimed expenses. Because section 2802 only applies to expenses that are “direct consequences of the discharge of his duties,” and Plaintiff’s expenses were direct consequences of government mandates, his effort to hold Amazon liable fails.

Second, Plaintiff fails to plead facts showing that Amazon knew or had reason to know that he incurred any expenses, as Plaintiff fails to plead that he *ever* asked Amazon to reimburse *any* of his remote-work expenses, or even notified Amazon that he had incurred such expenses.

Third, Plaintiff fails to allege how the expenses he allegedly incurred were “necessary” to discharge his job duties.

In addition, Plaintiff impermissibly seeks reimbursement for ordinary living expenses that were preexisting, independent expenditures unrelated to his job duties. At a minimum, if the Demurrer is not sustained in its entirety, Plaintiff’s request for reimbursement of these expenses should be stricken.

For these reasons, the Court should sustain Amazon’s Demurrer and reject Plaintiff’s opportunistic attempt to use the California work-from-home orders, and his failure to submit any reimbursement requests, to receive a windfall.

II. RELEVANT BACKGROUND

Plaintiff asserts that Amazon failed to reimburse him for expenses he incurred while working remotely during the COVID-19 pandemic because of various government work-from-home orders that were in effect throughout the relevant period. (First Am. Compl. (“Compl.”) ¶ 12.) Plaintiff does not allege that he made a request for reimbursement that was denied, nor does he allege advising Amazon in any way that he was incurring these expenses. The remote-work expenses that he now sues over include, “among other things, home internet expenses, equipment expenses, electricity, and home office infrastructure expenses.” (*Id.* ¶¶ 12–13.) Plaintiff further seeks reimbursement for “cell phone expenses” and “an allocated portion of [his] home office space.” (*Id.* ¶¶ 13, 18.) Plaintiff does not articulate how much these expenses were or when they were incurred. These allegations largely rehash similar allegations filed by Plaintiff’s counsel against two other employers on behalf of other plaintiffs.¹

Invoking California’s Private Attorneys General Act (PAGA), Plaintiff purports to represent other “Aggrieved Employees” who “performed work in an office” “and “were subject to the stay-at-home orders” and who were not “affirmatively reimburse[d]” for “home office expenses” they incurred while working remotely for Amazon during the pandemic. (*Id.* ¶¶ 1, 12.) The PAGA period is defined as March 15, 2020 to “present.” (*Id.* ¶ 1.)

III. LEGAL STANDARDS

A. **Demurrer Standard**

A demurrer must be sustained if the “pleading does not state facts sufficient to constitute a cause of action.” (Code Civ. Proc., § 430.10(e).) To survive a demurrer, a “plaintiff must set forth factual allegations that sufficiently state all required elements of the cause of action, and allegations must be factual and specific, not vague or conclusory.” (*Rakestraw v. Cal. Physicians’ Serv.* (2000) 81 Cal.App.4th 39, 43–44 [cleaned up].) “The court does not assume the truth of contentions, deductions or conclusions of law.” (*Aubry v. Tri-City Hosp. Dist.* (1992) 2 Cal.4th 962, 967 [cleaned up].) “[F]acts not alleged are presumed *not* to exist.” (*Kramer v. Intuit Inc.* (2004) 121 Cal.App.4th 574, 578 [cleaned

¹ These cookie-cutter complaints were filed on March 15, 2021 in *Jernigan v. Pro Unlimited, Inc.* (Super. Ct. L.A. Cnty., 2021, No. 21STCV10027), and on March 26, 2021 in *Robledo v. Accenture LLC* (Super. Ct. Santa Clara Cnty., 2021, No. 21CV378685).

up, italics added].)

B. Motion to Strike Standard

This Court has broad authority to “[s]trike out any irrelevant, false, or improper matter inserted in any pleading” or “all or any part of any pleading not drawn or filed in conformity with the laws of this state, a court rule, or an order of the court.” (Code Civ. Proc., § 436.) In contrast to a demurrer, which lies to an entire cause of action, a motion to strike lies to those “portion[s] of a cause of action” that are “substantively defective on the face of the complaint.” (*PH II, Inc. v. Super. Ct.* (1995) 33 Cal.App.4th 1680, 1681–1683.) A successful motion to strike protects a defendant who “should not have to suffer discovery and navigate the often dense thicket of proceedings in summary adjudication” of improper allegations. (*Id.* at p. 1682.) In evaluating a motion to strike, a court must hold the plaintiff to its burden of pleading “the ultimate facts showing an entitlement to” the relief requested. (*Clauson v. Super. Ct.* (1998) 67 Cal.App.4th 1253, 1255.)

C. The Elements of a Labor Code Section 2802 Reimbursement Claim

California Labor Code section 2802² requires an employer to “indemnify his or her employee for all necessary expenditures ... incurred by the employee in direct consequence of the discharge of his or her duties,” with “necessary expenditures” limited to “all reasonable costs.” (Cal. Lab. Code, § 2802 subds. (a), (c).) The primary elements of a section 2802 claim 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.” (*Cassady v. Morgan, Lewis & Bockius LLP* (2006) 145 Cal.App.4th 220, 230.) In addition to pleading all of these elements, to trigger an employer’s reimbursement duty, a section 2802 claimant must plead that the employer “knew or had reason to know” that the employee incurred a qualifying business-related expense. (*Stuart v. RadioShack Corp.* (N.D. Cal. 2009) 641 F.Supp.2d 901, 905 [*Stuart II*].)

² All further references to “section 2802” are to the Labor Code.

IV. ARGUMENT

A. **Plaintiff's Alleged Expenses Were Not "Direct Consequences" of His Job Duties, But of State and Local Work-From-Home Orders**

Plaintiff's attempt to invoke section 2802 in connection with state and local work-from-home orders fails because the statute is limited to expenses incurred "in direct consequence" of the discharge of an employee's duties and is "not intended" to allow employees to recover expenses "incurred without the employer's fault." (*Roberts v. U.S.O. Camp Shows* (1949) 91 Cal.App.2d 884, 886.) The "direct consequence" requirement accordingly has been interpreted as requiring reimbursement only of those expenses "which *an employer causes* an employee to incur." (*Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 565 [italics added, quoting Cal. Div. of Lab. Standards Enf't ("DLSE") Op. Letter No. 1998.11.05].) California courts have therefore made clear that when an expense is incurred not because of an employer requirement, but rather in response to a legal mandate, the employer need not provide reimbursement under section 2802. In *In re Acknowledgment Cases* (2015) 239 Cal.App.4th 1498, the City of Los Angeles required new police officers to attend an academy at which they satisfied both state- and employer-mandated training requirements. The court held that the costs associated with the state-mandated portions of the training were not "expense[s] of discharging the duties of employment, within the meaning of Labor Code section 2802." (*Id.* at p. 1507.) The court distinguished between legally mandated training, which does not trigger an employer's indemnity obligations, and employer-mandated training, which would be a reimbursable expense. (*Id.* [citing DLSE Op. Letter No. 1994.11.17].)

Here, Plaintiff's work-from-home status was the result of legal mandates from both state and local government authorities. (Compl. ¶ 12.) Because the acts of California officials required Plaintiff to work from home, section 2802 does not require Amazon to reimburse any expenses that resulted from those official acts. (*Earll v. McCoy* (1953) 116 Cal.App.2d 44, 46 [requiring a "direct, unbroken connection between the [expenses] and the discharge of the duties" to trigger the reimbursement obligation].)

Plaintiff is not the first to try to capitalize on the pandemic in a lawsuit brought under section 2802. In *Hess v. United Parcel Service, Inc.* (N.D. Cal., Apr. 29, 2021) 2021 WL 1700162, the

plaintiff was a warehouse supervisor who sued for reimbursement of masks and other personal protective equipment expenses. The court dismissed the claim because such items were not required by the plaintiff's specific job duties, were only purchased in response to local health ordinances, and thus were not necessary "business expenditures" incurred "for the benefit of" the employer. (*Id.* at pp. *1, 5; see also *Townley v. BJ's Rests., Inc.* (2019) 37 Cal.App.5th 179, 185 [employer not obligated to reimburse employee for slip-resistant shoes she was required to wear on the job because they were "generally usable in the [restaurant] occupation"]; *Lemus v. Denny's Inc.* (9th Cir. 2015) 617 F. App'x 701, 703 [same].)

The same goes for Plaintiff's alleged expenses here: The work-from-home orders forced *all* non-essential California employees to work remotely; any resulting work-from-home expenses were not consequences of the discharge of an employee's job duties, but rather the result of government mandates. (*Gattuso*, 42 Cal.4th at p. 565 [section 2802 limited to expenses "cause[d]" by employer].)

B. Plaintiff Fails to Plead that He Informed Amazon of the Expenses

The Demurrer should be sustained for the separate reason that the Complaint lacks a critical factual allegation: that Amazon knew about the expenses Plaintiff purportedly incurred. (*Uschold v. Carriage Servs., Inc.* (N.D. Cal., Feb. 21, 2018) 2018 WL 8221266, at p. *2.) Plaintiff does not allege that he ever submitted a request for reimbursement, and the Complaint's only references to Amazon's knowledge of the alleged expenses are unsupported legal conclusions and generalizations. Plaintiff's failure to allege that he *ever* gave Amazon "reason to know" of his purported expenses—through a reimbursement request or otherwise—dooms his Complaint. (*Hammitt v. Lumber Liquidators, Inc.* (S.D. Cal. 2014) 19 F.Supp.3d 989, 1000 [judgment for employer where employee "did not submit reimbursement requests and voluntarily chose not to do so"].)

Plaintiff's failure to provide notice to Amazon of his expenses, and his decision to forgo Amazon's reimbursement process, prevents the "practical and workable" operation of section 2802 because "the employee, rather than the employer, is in the best position to know when he or she has incurred an expense and the details of that expense." (*Stuart II*, 641 F.Supp.2d at p. 903.) As the *Stuart II* court observed, "it makes sense that the employee [should] provide some request for and information about reimbursement" because, as "a practical matter, an employer needs information

about the expense before it can reimburse the employee.” (*Stuart v. Radioshack Corp.* (N.D. Cal., Feb. 5, 2009) 2009 WL 281941, at p. *17 [*Stuart I*].)

Plaintiff may claim that Amazon should have simply assumed that Plaintiff was incurring expenses while working remotely and “affirmatively” sent Plaintiff reimbursement checks in unspecified amounts. (Compl. ¶ 22.) That argument necessarily fails because Amazon does not, and could not, know *which* expenses Plaintiff was supposedly incurring as a result of the work-from-home orders, much less *how much* Plaintiff was incurring. Nor could Amazon make any assessment as to whether some or all of those expenses were necessary to discharge Plaintiff’s job duties. (*Green v. Lawrence Serv. Co.* (C.D. Cal., July 23, 2013) 2013 WL 3907506, at p. *11 [although employee used a personal printer for work, no judgment for employee because employer did not know “exactly what [the employee] had to buy or use and how much it cost”].) For example, in *Zayers v. Kiewit Infrastructure West Co.* (C.D. Cal., Nov. 9, 2017) 2017 WL 7058141, the employer required the plaintiff “to wear steel toe boots” on the job and “had reimbursed [other] employees for such purchases in the past.” Yet the court found that these facts “did not trigger [the employer’s] duty to reimburse” the plaintiff for *his* boots because the plaintiff “never told anyone” that he had purchased his own boots for work. (*Id.* at pp. *6–7.)

Here, the Complaint lacks even a single factual allegation that Plaintiff ever notified Amazon of any expense he incurred. The law does not require Amazon to make assumptions about expenses that Plaintiff may or may not be incurring. (*Id.* [citing *Hammitt*, 19 F.Supp.3d at pp. 1000–1001].) On the contrary, Amazon must have had both reason to know what *specific expenses* were incurred and the *specific amount* of those expenses that were necessarily incurred for Plaintiff to perform his job duties. (*Green*, 2013 WL 3907506, at p. *11 [employee failed to show “the *specific* necessary expenses incurred”]; *Piccarreto v. Presstek, LLC* (C.D. Cal., Aug. 24, 2017) 2017 WL 3671153, at p. *3 [employer knew employee had relocated, but had no reason to know “the *exact* relocation expenses he incurred to trigger Section 2802’s requirement” [italics added]].)

Plaintiff’s failure to identify even a “single instance ” in which he actually incurred a specific expense of which Amazon was aware dooms his claims. (*Krauss v. Wal-Mart, Inc.* (E.D. Cal., Nov. 20, 2019) 2019 WL 6170770, at p. *5 [dismissing claim where plaintiff failed to “allege even a single

instance when [the employer] did not reimburse her for reimbursement-eligible items”]; *Franke v. Anderson Merchandisers LLC* (C.D. Cal., July 28, 2017) 2017 WL 3224656, at p. *7 [dismissing claim where employees alleged “use of personal phones for business-related purposes, costs incurred to comply with [employer’s] dress code, and costs incurred using their personal vehicles for work travel,” but “fail[ed] to provide a single instance when such a cost was incurred” [quotation marks omitted]]; *Chavez v. RSCR Calif., Inc.* (E.D. Cal., Mar. 26, 2019) 2019 WL 1367812, at pp. *3–4 [though plaintiff alleged that he used “personal vehicles to perform errands for clients, and the use of personal cellular phones to communicate with [employer] and to record work time,” court nonetheless dismissed claim for failure to “provide a single instance when such a cost was actually incurred”].) Without such allegations, Amazon—and this Court—“cannot reasonably infer these expenses” were actually incurred by Plaintiff and known to Amazon. (*Franke*, 2017 WL 3224656, at p. *7.)

Without any reimbursement requests, Amazon had no way of knowing *how much* Plaintiff actually paid for any of his alleged expenses. For instance, Plaintiff faults Amazon for allegedly failing to reimburse him for a “reasonable percentage” of his cell phone bills—but Amazon cannot possibly know what “reasonable percentage” of Plaintiff’s calls were for work calls versus personal endeavors. (Compl. ¶ 16.) Nor does Amazon have any way of knowing how much Plaintiff paid for his cellphone plan. It is Plaintiff’s obligation to first “provide some request for and information about” his claimed expenses, which he has completely failed to do. (*Stuart I*, 2009 WL 281941, at p. *17; *Green*, 2013 WL 3907506, at p. *11 [no judgment for plaintiff who failed to show “exactly what [he] had to buy or use and how much it cost”].) All Plaintiff needed to do was submit a simple reimbursement request, which Amazon would have then processed under its generous reimbursement policy. Plaintiff’s preference for litigation and filing a complaint over a simple reimbursement request is puzzling and yet another reason to sustain this Demurrer.

C. Plaintiff Fails to Plead His Purported Expenses Were Necessary

In addition to the foregoing defects in the Complaint, Plaintiff fails to allege even a single fact that, if proven, would establish *how* the expenses he incurred were necessary to fulfill his job duties.

Plaintiff may not substitute the conclusions in his Complaint for facts; the cases make clear that far more is required than a barebones assertion that the expenses were, in his own view, “necessary.”

(*Hawkins v. TACA Int'l Airlines, S.A.* (2014) 223 Cal.App.4th 466, 478–479 [a plaintiff may not “state a claim [by] transferring the language of the statute to a form complaint”].) For that reason, in *Wert v. U.S. Bancorp* (S.D. Cal., June 23, 2014) 2014 WL 2860287, the court dismissed a section 2802 claim because there were no factual allegations explaining why the expenses were required to discharge the plaintiff’s duties. (*Id.* at p. *6.) In *Silva v. AvalonBay Communities, Inc.* (C.D. Cal., Oct. 8, 2015) 2015 WL 11422302, the court likewise dismissed a section 2802 claim because the plaintiff pleaded only conclusions that the expenses were “necessary,” without any supporting factual allegations explaining why. (*Id.* at p. *11; see also *Brecher v. Citigroup Glob. Mkts., Inc.* (S.D. Cal., Aug. 8, 2011) 2011 WL 3475299, at p. *8 [“statement that ‘necessary expenditures’ were made without reimbursement is precisely the type of bare assertion and conclusory statement” that must be dismissed]; *Dawson v. HITCO Carbon Composites, Inc.* (C.D. Cal., Jan. 20, 2017) 2017 WL 7806618, at pp. *7–8 [same]; *Foon v. Centene Mgmt. Co., LLC* (E.D. Cal., May 5, 2020) 2020 WL 2127078, at p. *3 [same].)

Only those expenses that were incurred specifically for the job, and that the job could not be completed without, are reimbursable. (*Soto v. Castlerock Farming & Transp., Inc.* (E.D. Cal., Dec. 23, 2013) 2013 WL 6844377, at p. *21, *report & recommendation adopted* (E.D. Cal., Jan. 16, 2014) 2014 WL 200706 [scissors plaintiff “chose to purchase” from his employer were not reimbursable because plaintiff could “return to his home and retrieve those he had forgotten”]; see also *Hassell v. Uber Techs., Inc.* (N.D. Cal., Dec. 7, 2020) 2020 WL 7173218, at pp. *2–3 [dismissing claim because Uber driver would have incurred the same gas, insurance, and phone expenses anyway regardless of his alleged employment].)

Although Plaintiff’s Complaint heavily features the decision in *Cochran v. Schwan’s Home Service, Inc.* (2014) 228 Cal.App.4th 1137, that case does not relieve him of his pleading burden. Plaintiff must state facts explaining *why* he incurred his purported expenses in discharging his job duties and *why* he could not have done his job without incurring those specific expenses. (*Sagastume v. Psychomedics Corp.* (C.D. Cal., Nov. 30, 2020) 2020 WL 8175597, at p. *7 [dismissing section 2802 claim because plaintiff “failed to provide sufficient information about her job and duties for the Court to infer why she would require the use of her vehicle and cell phone for work-related purposes”]; *Perez*

1 *v. DNC Parks & Resorts at Asilomar, Inc.* (E.D. Cal., Oct. 31, 2019) 2019 WL 5618169, at pp. *10–
 2 11 [dismissing section 2802 claim because plaintiff did not “explain why cell [phone] usage was
 3 required for his job”].)

4 Plaintiff cannot ask this Court to simply assume the link between his job duties and the claimed
 5 expenses; that position ignores the maxim that “facts not alleged are presumed *not* to exist.” (*Kramer*,
 6 121 Cal.App.4th at p. 578 [cleaned up, italics added].) Plaintiff’s failure to plead basic facts explaining
 7 how his purported expenses were “necessary” to his job duties requires that Amazon’s Demurrer be
 8 sustained.

9 **D. At a Minimum, Plaintiff’s Allegations Related to Housing and Electricity Expenses**
 10 **Should Be Stricken**

11 If the Court does not sustain the Demurrer in full, then it should strike Plaintiff’s improper
 12 allegations that Amazon is required to reimburse his routine housing and electricity expenses. (Code
 13 Civ. Proc., § 436(b); see *PH II*, 33 Cal.App.4th at pp. 1682–1683 [“when a substantive defect is clear
 14 from the face of a complaint ... a defendant may attack that portion of the cause of action by filing a
 15 motion to strike”]; *Willis v. City of Carlsbad* (2020) 48 Cal.App.5th 1104, 1113, 1133 fn.6, *reh’g*
 16 *denied* (May 29, 2020), *review denied* (July 22, 2020) [affirming grant of motion to strike allegations
 17 from Labor Code claim because the plaintiff could only recover for “acts of retaliation” that occurred
 18 within a certain time period].)

19 Under section 2802, reimbursable expenses are limited to “reasonable costs.” (Cal. Lab. Code,
 20 § 2802(c).) And in assessing reimbursement claims, courts are “required to construe section 2802 in a
 21 manner that produces a workable and reasonable result.” (*Gattuso*, 42 Cal.4th at p. 570.) Plaintiff’s
 22 allegations that Amazon should be required to pay for Plaintiff’s ordinary living expenses—such as his
 23 housing (*i.e.*, “an allocated portion of [his] home office space”) and electricity expenses (Compl. ¶¶ 12–
 24 13)—based on the rationale that these all turned into reimbursable expenses because the government
 25 required him to “work from home” are unreasonable and, at a minimum, must be stricken. (*Juarez v.*
 26 *Villafan* (E.D. Cal., Dec. 29, 2017) 2017 WL 6629529, at pp. *10–11, *report & recommendation*
 27 *adopted* (E.D. Cal., June 13, 2018) 2018 WL 4372784 [dismissing section 2802 claim for
 28

1 reimbursement of “drinking water” because such an expense is “necessarily required to some extent
2 for every profession as [it is] required to sustain life”).)

3 **V. CONCLUSION**

4 Plaintiff could have simply submitted a reimbursement request for reasonable, necessary
5 expenses that he incurred when the state and local governments issued orders requiring him to work
6 from home. He chose not to do so. His preference for filing a Complaint instead of a simple
7 reimbursement request is improper, and the law does not require Amazon to preemptively send Plaintiff
8 checks because government authorities issued work-from-home mandates. The Court should sustain
9 the Demurrer and dismiss the Complaint without leave to amend.

10
11 DATED: June 4, 2021

12 GIBSON, DUNN & CRUTCHER LLP
13 TIMOTHY W. LOOSE
14 LAUREN M. BLAS
15 COURTNEY L. SPEARS

16 By: /s/ Timothy W. Loose
Timothy W. Loose

17 Attorneys for Defendant
18 AMAZON.COM SERVICES LLC
19
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EXHIBIT J

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Attorneys for Defendant
AMAZON.COM SERVICES LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CRUZ

DAVID GEORGE WILLIAMS, an individual,
on behalf of the State of California, as a private
attorney general, and on behalf of all
Aggrieved Employees,

Plaintiff,

v.

AMAZON.COM SERVICES LLC, a
Delaware Limited Liability Company; DOES 1
to 50, inclusive,

Defendants.

CASE NO. 21CV00718

PROOF OF SERVICE

ASSIGNED FOR ALL PURPOSES TO:
HON. REBECCA CONNOLLY
DEPARTMENT 4

*[Notice of Demurrer and Demurrer; Notice of
Motion to Strike and Motion to Strike;
Memorandum of Points and Authorities in
Support of Demurrer and Motion to Strike;
Declaration of Lauren M. Blas; [Proposed]
Order Sustaining Demurrer; and [Proposed]
Order Granting Motion to Strike filed
concurrently herewith]*

HEARING:

Date: August 9, 2021
Time: 8:30 a.m.
Dept: 4

Action Filed: March 18, 2021
Trial Date: None

PROOF OF SERVICE

I, Courtney Spears, declare as follows:

I am employed in the County of Orange, State of California, I am over the age of eighteen years and am not a party to this action; my business address is 3161 Michelson Drive, Irvine, CA 92612-4412, in said County and State. On June 4, 2021, I served the following document(s):

DEFENDANT AMAZON'S NOTICE OF DEMURRER AND DEMURRER TO PLAINTIFF'S FIRST AMENDED COMPLAINT

DEFENDANT AMAZON'S NOTICE OF MOTION AND MOTION TO STRIKE PORTIONS OF PLAINTIFF'S FIRST AMENDED COMPLAINT

DEFENDANT AMAZON'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS DEMURRER TO PLAINTIFF'S FIRST AMENDED COMPLAINT AND RELATED MOTION TO STRIKE

DECLARATION OF LAUREN M. BLAS IN SUPPORT OF DEFENDANT AMAZON'S DEMURRER AND MOTION TO STRIKE

[PROPOSED] ORDER SUSTAINING DEFENDANT AMAZON'S DEMURRER TO PLAINTIFF'S FIRST AMENDED COMPLAINT

[PROPOSED] ORDER GRANTING DEFENDANT AMAZON'S MOTION TO STRIKE PORTIONS OF PLAINTIFF'S FIRST AMENDED COMPLAINT

on the parties stated below, by the following means of service:

Craig J. Ackermann
ACKERMANN & TILAJEF, P.C.
1180 South Beverly Drive, Suite 610
Los Angeles, CA 90035

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JOSHUA KLUGMAN, ESQ.
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Tel 424.248.5148
Fax 310.277.0635
esquirejosh@yahoo.com

☒ **BY ELECTRONIC SERVICE THROUGH AN EFSP:** On the above-mentioned date, I caused the documents to be sent to a court-approved Electronic Filing Service Provider ("EFSP"), for electronic service and filing. Electronic service will be accomplished by the EFSP's case-filing system at the electronic notification addresses as shown above.

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

Executed on June 4, 2021.



Courtney Spears

104623107 1

EXHIBIT K

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CRUZ

DAVID GEORGE WILLIAMS, an individual,
on behalf of the State of California, as a private
attorney general, and on behalf of all
Aggrieved Employees,

Plaintiff,

v.

AMAZON.COM SERVICES LLC, a
Delaware Limited Liability Company; DOES 1
to 50, inclusive,

Defendants.

CASE NO. 21CV00718

**[PROPOSED] ORDER GRANTING
DEFENDANT AMAZON'S MOTION TO
STRIKE PORTIONS OF PLAINTIFF'S
FIRST AMENDED COMPLAINT**

ASSIGNED FOR ALL PURPOSES TO:
HON. REBECCA CONNOLLY
DEPARTMENT 4

Action Filed: March 18, 2021
Trial Date: None

1 Defendant Amazon.com Services LLC’s Motion to Strike Portions of Plaintiff’s First Amended
2 Complaint (“Motion”) was heard on August 9, 2021 at 8:30 a.m. before the Honorable Rebecca
3 Connolly in Department 4 of the above-entitled Court.

4 Having reviewed the papers submitted in support of the Motion and any opposition and reply
5 thereto, and having considered the argument of counsel, and for good cause shown, the Motion is
6 **GRANTED** and the following portions of the First Amended Complaint are stricken:

7 **1. Page 4, Paragraph 12, Line 23, as follows:** “electricity, and home office infrastructure
8 expenses”

9 **2. Page 5, Paragraph 13, Lines 5–6, as follows:** “electricity, and an allocated portion of their
10 home office space”

11
12 **IT IS SO ORDERED.**

13
14 DATED: _____, 2021

15
16 _____
17 Hon. Rebecca Connolly
18 Judge of the Superior Court
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EXHIBIT L

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CRUZ

DAVID GEORGE WILLIAMS, an individual,
on behalf of the State of California, as a private
attorney general, and on behalf of all
Aggrieved Employees,

Plaintiff,

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AMAZON.COM SERVICES LLC, a
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to 50, inclusive,

Defendants.

CASE NO. 21CV00718

**[PROPOSED] ORDER SUSTAINING
DEFENDANT AMAZON'S DEMURRER TO
PLAINTIFF'S FIRST AMENDED
COMPLAINT**

ASSIGNED FOR ALL PURPOSES TO:
HON. REBECCA CONNOLLY
DEPARTMENT 4

Action Filed: March 18, 2021
Trial Date: None

1 Defendant Amazon.com Services LLC's Demurrer to Plaintiff's First Amended Complaint was
2 heard on August 9, 2021 at 8:30 a.m. before the Honorable Rebecca Connolly in Department 4 of the
3 above-captioned Court.

4 Having reviewed the papers submitted in support of and in opposition to the Demurrer, and
5 having considered the argument of counsel, and for good cause shown, the Demurrer to Plaintiff's First
6 Amended Complaint is **SUSTAINED** without leave to amend. The sole cause of action in the First
7 Amended Complaint does not state facts sufficient to constitute a cause of action under Labor Code
8 section 2802. The First Amended Complaint is dismissed in its entirety with prejudice.

9
10 **IT IS SO ORDERED.**

11
12 DATED: _____, 2021

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14 _____
15 Hon. Rebecca Connolly
16 Judge of the Superior Court
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EXHIBIT M

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

- CM-110 [Rev. January 1, 2005]

PLAINTIFF/PETITIONER: Plaintiff-David Williams & all aggrieved employees DEFENDANT/RESPONDENT: AMAZON.COM SERVICES, LLC	CASE NUMBER: 21CV00718
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4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)*

From March 2020 to the present, Defendant closed its offices in California due to stay at home orders and the COVID 19 pandemic. During these closures, Defendant sent its office workers home but required that they continue performing their jobs during the pandemic, including logging into the internet and Defendant's servers to perform their jobs. Defendant did not have a policy to reimburse home office expenses, including monthly home internet expenses that were known or should have been known to Defendant. Plaintiff's legal position is that Defendant had an affirmative obligation to reimburse expenses, like home internet, that were known to have been incurred every month and were recurring pursuant to Labor Code section 2802 and applicable case law. Plaintiff seeks damages of \$100 per employee per pay period for each Amazon current and former employee who worked from home in California from March 2020 to the present, pursuant to Labor Code section 2699 and 2802.

☐ *(If more space is needed, check this box and attach a page designated as Attachment 4b.)*

5. Jury or nonjury trial

The party or parties request ☐ a jury trial ☒ a nonjury trial *(if more than one party, provide the name of each party requesting a jury trial):*

PAGA penalty cases like this one are tried to the Court.

6. Trial date

a. ☐ The trial has been set for *(date)*:

b. ☒ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain)*: Plaintiff will be ready for trial in late November or early December 2022.

c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability)*:
OCTOBER 2022 BECAUSE OF RELIGIOUS HOLIDAYS

7. Estimated length of trial

The party or parties estimate that the trial will take *(check one)*:

a. ☒ days *(specify number)*: 5

b. ☐ hours (short causes) *(specify)*:

8. Trial representation (to be answered for each party)

The party or parties will be represented at trial ☒ by the attorney or party listed in the caption ☐ by the following:

a. Attorney: CRAIG ACKERMANN, ESQ. FIRST CHAIR

b. Firm: ACKERMANN & TILAJEF

c. Address: 1180 S. BEVERLY

d. Telephone number: 310-277-0614

e. Fax number: 310-277-0635

f. E-mail address: cja@ackermanntilajef.com

g. Party represented: PLAINTIFF

☐ Additional representation is described in Attachment 8.

9. Preference

☐ This case is entitled to preference *(specify code section)*:

10. Alternative Dispute Resolution (ADR)

a. Counsel ☒ has ☐ has not provided the ADR information package identified in rule 201.9 to the client and has reviewed ADR options with the client.

b. ☐ All parties have agreed to a form of ADR. ADR will be completed by *(date)*:

c. ☐ The case has gone to an ADR process *(indicate status)*:

PLAINTIFF/PETITIONER: Plaintiff-David Williams & all aggrieved employees	CASE NUMBER: 21CV00718
DEFENDANT/RESPONDENT: AMAZON.COM SERVICES, LLC	

10. d. The party or parties are willing to participate in (*check all that apply*):

- (1) ☒ Mediation
 (2) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to close 15 days before arbitration under Cal. Rules of Court, rule 1612)
 (3) ☐ Nonbinding judicial arbitration under Code of Civil Procedure section 1141.12 (discovery to remain open until 30 days before trial; order required under Cal. Rules of Court, rule 1612)
 (4) ☒ Binding judicial arbitration
 (5) ☐ Binding private arbitration
 (6) ☐ Neutral case evaluation
 (7) ☐ Other (*specify*):

- e. ☐ This matter is subject to mandatory judicial arbitration because the amount in controversy does not exceed the statutory limit.
 f. ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.
 g. ☐ This case is exempt from judicial arbitration under rule 1601 (b) of the California Rules of Court (*specify exemption*):

11. Settlement conference

- ☒ The party or parties are willing to participate in an early settlement conference (*specify when*):
 PLAINTIFF IS WILLING TO PARTICIPATE IN PRIVATE MEDIATION BY THE END OF 2021.

12. Insurance

- a. ☐ Insurance carrier, if any, for party filing this statement (*name*):
 b. Reservation of rights: ☐ Yes ☐ No
 c. ☐ Coverage issues will significantly affect resolution of this case (*explain*):

13. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case, and describe the status.

- ☐ Bankruptcy ☐ Other (*specify*):

Status:

14. Related cases, consolidation, and coordination

- a. ☐ There are companion, underlying, or related cases.
 (1) Name of case:
 (2) Name of court:
 (3) Case number:
 (4) Status:
☐ Additional cases are described in Attachment 14a.
 b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by (*name party*):

15. Bifurcation

- ☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (*specify moving party, type of motion, and reasons*):

16. Other motions

- ☒ The party or parties expect to file the following motions before trial (*specify moving party, type of motion, and issues*):
 DEFENDANT'S DEMURRER-AUGUST 9, 2021

PLAINTIFF/PETITIONER: Plaintiff-David Williams & all aggrieved employees	CASE NUMBER: 21CV00718
DEFENDANT/RESPONDENT: AMAZON.COM SERVICES, LLC	

17. Discovery

- a. ☐ The party or parties have completed all discovery.
- b. ☒ The following discovery will be completed by the date specified (*describe all anticipated discovery*):

<u>Party</u>	<u>Description</u>	<u>Date</u>
PLAINTIFF	Form Interrogatories	30 days before trial
PLAINTIFF	Special Interrogatories	30 days before trial
PLAINTIFF	Defendant's Depositions	30 days before trial
PLAINTIFF	Request for Admissions	30 days before trial
PLAINTIFF	Request for Production of Documents	30 days before trial

- c. ☒ The following discovery issues are anticipated (*specify*): Obtaining from Defendant the names and contact information for all current and former PAGA aggrieved employees in California who worked from home during the pandemic. Plaintiff will also take Defendant's PMQ deposition on matters related to Plaintiff's claims.

18. Economic Litigation

- a. ☐ This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90 through 98 will apply to this case.
- b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (*if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case*):

19. Other issues

- ☒ The party or parties request that the following additional matters be considered or determined at the case management conference (*specify*):
1. Bellaire west notice procedure and administrator.
 2. Defendant's EPLI coverage (claims under Labor Code 2802 are not excluded from coverage).
 3. Related or overlapping cases.

20. Meet and confer

- a. ☒ The party or parties have met and conferred with all parties on all subjects required by rule 212 of the California Rules of Court (*if not, explain*):
- b. After meeting and conferring as required by rule 212 of the California Rules of Court, the parties agree on the following (*specify*):

21. Case management orders

Previous case management orders in this case are (*check one*): ☒ none ☐ attached as Attachment 21.

22. Total number of pages attached (*if any*): _____

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and ADR, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: 6/21/21

JOSHUA KLUGMAN

(TYPE OR PRINT NAME)

► /S/

(SIGNATURE OF PARTY OR ATTORNEY)

CRAIG ACKERMANN

(TYPE OR PRINT NAME)

► /S/

(SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached

EXHIBIT N

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): Timothy W. Loose (SBN 241037); Lauren M. Blas (SBN 296823) GIBSON, DUNN & CRUTCHER LLP 333 South Grand Avenue Los Angeles, CA 90071-3197 TELEPHONE NO.: 213.229.7000 FAX NO. (Optional): 213.229.7520 E-MAIL ADDRESS (Optional): tloose@gibsondunn.com; lblas@gibsondunn.com ATTORNEY FOR (Name): Defendant Amazon.com Services LLC	FOR COURT USE ONLY ELECTRONICALLY FILED Superior Court of California County of Santa Cruz 6/29/2021 2:25 PM Alex Galvo, Clerk By: Dajani de los Santos, Deputy
SUPERIOR COURT OF CALIFORNIA, COUNTY OF STREET ADDRESS: 701 Ocean St. MAILING ADDRESS: CITY AND ZIP CODE: Santa Cruz 95060 BRANCH NAME: Santa Cruz County Courthouse	PLAINTIFF/PETITIONER: David George Williams DEFENDANT/RESPONDENT: Amazon.com Services LLC
CASE MANAGEMENT STATEMENT (Check one): <input checked="" type="checkbox"/> UNLIMITED CASE (Amount demanded exceeds \$25,000) <input type="checkbox"/> LIMITED CASE (Amount demanded is \$25,000 or less)	
CASE NUMBER: 21CV00718	
A CASE MANAGEMENT CONFERENCE is scheduled as follows: Date: 07/19/2021 Time: 8:30 a.m. Dept.: 4 Div.: Room: Address of court (if different from the address above): <input checked="" type="checkbox"/> Notice of Intent to Appear by Telephone, by (name): Lauren Blas & Timothy Loose	

INSTRUCTIONS: All applicable boxes must be checked, and the specified information must be provided.

1. **Party or parties (answer one):**
 - a. ☒ This statement is submitted by party (name): Defendant Amazon.com Services, Inc.
 - b. ☐ This statement is submitted jointly by parties (names):

2. **Complaint and cross-complaint (to be answered by plaintiffs and cross-complainants only)**
 - a. The complaint was filed on (date): 03/18/2021
 - b. ☐ The cross-complaint, if any, was filed on (date):

3. **Service (to be answered by plaintiffs and cross-complainants only)**
 - a. ☒ All parties named in the complaint and cross-complaint have been served, have appeared, or have been dismissed.
 - b. ☐ The following parties named in the complaint or cross-complaint
 - (1) ☐ have not been served (specify names and explain why not):
 - (2) ☐ have been served but have not appeared and have not been dismissed (specify names):
 - (3) ☐ have had a default entered against them (specify names):
 - c. ☐ The following additional parties may be added (specify names, nature of involvement in case, and date by which they may be served):

4. **Description of case**
 - a. Type of case in ☒ complaint ☐ cross-complaint (Describe, including causes of action):
PAGA

PLAINTIFF/PETITIONER: David George Williams	CASE NUMBER:
DEFENDANT/RESPONDENT: Amazon.com Services LLC	21CV00718

4. b. Provide a brief statement of the case, including any damages. *(If personal injury damages are sought, specify the injury and damages claimed, including medical expenses to date [indicate source and amount], estimated future medical expenses, lost earnings to date, and estimated future lost earnings. If equitable relief is sought, describe the nature of the relief.)*

Plaintiff claims Defendant had an obligation to "affirmatively reimburse" employees who were required by state and local law to work from home during the COVID-19 pandemic for certain expenses. Defendant has at all relevant times had a policy authorizing employees to seek reimbursement for those expenses, but Plaintiff never sought reimbursement for any of the expenses listed in his complaint. Defendant denies that it is liable for the harms alleged.

☐ *(If more space is needed, check this box and attach a page designated as Attachment 4b.)*

5. **Jury or nonjury trial**

The party or parties request ☐ a jury trial ☒ a nonjury trial. *(If more than one party, provide the name of each party requesting a jury trial):*

6. **Trial date**

a. ☐ The trial has been set for (date):

b. ☒ No trial date has been set. This case will be ready for trial within 12 months of the date of the filing of the complaint *(if not, explain)*: The parties will be ready for trial by November/December 2022.

c. Dates on which parties or attorneys will not be available for trial *(specify dates and explain reasons for unavailability)*:

None, presently.

7. **Estimated length of trial**

The party or parties estimate that the trial will take *(check one)*:

a. ☒ days *(specify number)*: 5

b. ☐ hours *(short causes) (specify)*:

8. **Trial representation (to be answered for each party)**

The party or parties will be represented at trial ☒ by the attorney or party listed in the caption ☐ by the following:

a. Attorney:

b. Firm:

c. Address:

d. Telephone number:

f. Fax number:

e. E-mail address:

g. Party represented:

☐ Additional representation is described in Attachment 8.

9. **Preference**

☐ This case is entitled to preference *(specify code section)*:

10. **Alternative dispute resolution (ADR)**

a. **ADR information package.** Please note that different ADR processes are available in different courts and communities; read the ADR information package provided by the court under rule 3.221 for information about the processes available through the court and community programs in this case.

(1) For parties represented by counsel: Counsel ☒ has ☐ has not provided the ADR information package identified in rule 3.221 to the client and reviewed ADR options with the client.

(2) For self-represented parties: Party ☐ has ☐ has not reviewed the ADR information package identified in rule 3.221.

b. **Referral to judicial arbitration or civil action mediation (if available).**

(1) ☐ This matter is subject to mandatory judicial arbitration under Code of Civil Procedure section 1141.11 or to civil action mediation under Code of Civil Procedure section 1775.3 because the amount in controversy does not exceed the statutory limit.

(2) ☐ Plaintiff elects to refer this case to judicial arbitration and agrees to limit recovery to the amount specified in Code of Civil Procedure section 1141.11.

(3) ☐ This case is exempt from judicial arbitration under rule 3.811 of the California Rules of Court or from civil action mediation under Code of Civil Procedure section 1775 et seq. *(specify exemption)*:

PLAINTIFF/PETITIONER: David George Williams	CASE NUMBER: 21CV00718
DEFENDANT/RESPONDENT: Amazon.com Services LLC	

10. c. Indicate the ADR process or processes that the party or parties are willing to participate in, have agreed to participate in, or have already participated in (*check all that apply and provide the specified information*):

	The party or parties completing this form are willing to participate in the following ADR processes (<i>check all that apply</i>):	If the party or parties completing this form in the case have agreed to participate in or have already completed an ADR process or processes, indicate the status of the processes (<i>attach a copy of the parties' ADR stipulation</i>):
(1) Mediation	<input checked="" type="checkbox"/>	<input type="checkbox"/> Mediation session not yet scheduled <input type="checkbox"/> Mediation session scheduled for (date): <input checked="" type="checkbox"/> Agreed to complete mediation by (date): 12/17/2021 <input type="checkbox"/> Mediation completed on (date):
(2) Settlement conference	<input type="checkbox"/>	<input type="checkbox"/> Settlement conference not yet scheduled <input type="checkbox"/> Settlement conference scheduled for (date): <input type="checkbox"/> Agreed to complete settlement conference by (date): <input type="checkbox"/> Settlement conference completed on (date):
(3) Neutral evaluation	<input type="checkbox"/>	<input type="checkbox"/> Neutral evaluation not yet scheduled <input type="checkbox"/> Neutral evaluation scheduled for (date): <input type="checkbox"/> Agreed to complete neutral evaluation by (date): <input type="checkbox"/> Neutral evaluation completed on (date):
(4) Nonbinding judicial arbitration	<input type="checkbox"/>	<input type="checkbox"/> Judicial arbitration not yet scheduled <input type="checkbox"/> Judicial arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete judicial arbitration by (date): <input type="checkbox"/> Judicial arbitration completed on (date):
(5) Binding private arbitration	<input type="checkbox"/>	<input type="checkbox"/> Private arbitration not yet scheduled <input type="checkbox"/> Private arbitration scheduled for (date): <input type="checkbox"/> Agreed to complete private arbitration by (date): <input type="checkbox"/> Private arbitration completed on (date):
(6) Other (<i>specify</i>):	<input type="checkbox"/>	<input type="checkbox"/> ADR session not yet scheduled <input type="checkbox"/> ADR session scheduled for (date): <input type="checkbox"/> Agreed to complete ADR session by (date): <input type="checkbox"/> ADR completed on (date):

PLAINTIFF/PETITIONER: David George Williams	CASE NUMBER:
DEFENDANT/RESPONDENT: Amazon.com Services LLC	21CV00718

11. Insurance

- a. ☐ Insurance carrier, if any, for party filing this statement (*name*):
- b. Reservation of rights: ☐ Yes ☐ No
- c. ☐ Coverage issues will significantly affect resolution of this case (*explain*):

12. Jurisdiction

Indicate any matters that may affect the court's jurisdiction or processing of this case and describe the status.

☐ Bankruptcy ☐ Other (*specify*):

Status:

13. Related cases, consolidation, and coordination

- a. ☐ There are companion, underlying, or related cases.
- (1) Name of case:
- (2) Name of court:
- (3) Case number:
- (4) Status:
- ☐ Additional cases are described in Attachment 13a.
- b. ☐ A motion to ☐ consolidate ☐ coordinate will be filed by (*name party*):

14. Bifurcation

- ☐ The party or parties intend to file a motion for an order bifurcating, severing, or coordinating the following issues or causes of action (*specify moving party, type of motion, and reasons*):

15. Other motions

- ☒ The party or parties expect to file the following motions before trial (*specify moving party, type of motion, and issues*):

Demurrer/motion to strike (Aug. 9, 2021); motion for summary judgment or summary adjudication; discovery motions

16. Discovery

- a. ☐ The party or parties have completed all discovery.
- b. ☒ The following discovery will be completed by the date specified (*describe all anticipated discovery*):

<u>Party</u>	<u>Description</u>	<u>Date</u>
Defendant	Special Interrogatories, RFPs, RFAs	12/31/2021
Defendant	Deposition of Plaintiff	12/31/2021

- c. ☒ The following discovery issues, including issues regarding the discovery of electronically stored information, are anticipated (*specify*):

Depending on the size and scope of the PAGA group, Defendant may consider a motion to sequence discovery.

PLAINTIFF/PETITIONER: David George Williams	CASE NUMBER: 21CV00718
DEFENDANT/RESPONDENT: Amazon.com Services LLC	

17. Economic litigation

- a. ☐ This is a limited civil case (i.e., the amount demanded is \$25,000 or less) and the economic litigation procedures in Code of Civil Procedure sections 90-98 will apply to this case.
- b. ☐ This is a limited civil case and a motion to withdraw the case from the economic litigation procedures or for additional discovery will be filed (if checked, explain specifically why economic litigation procedures relating to discovery or trial should not apply to this case):

18. Other issues

- ☐ The party or parties request that the following additional matters be considered or determined at the case management conference (specify):

19. Meet and confer

- a. ☒ The party or parties have met and conferred with all parties on all subjects required by rule 3.724 of the California Rules of Court (if not, explain):
- b. After meeting and conferring as required by rule 3.724 of the California Rules of Court, the parties agree on the following (specify):

20. Total number of pages attached (if any): _____

I am completely familiar with this case and will be fully prepared to discuss the status of discovery and alternative dispute resolution, as well as other issues raised by this statement, and will possess the authority to enter into stipulations on these issues at the time of the case management conference, including the written authority of the party where required.

Date: 06/29/2021

Timothy W. Loose


(TYPE OR PRINT NAME)

Lauren M. Blas

(TYPE OR PRINT NAME)

▶ 

(SIGNATURE OF PARTY OR ATTORNEY)

▶ 

(SIGNATURE OF PARTY OR ATTORNEY)

☐ Additional signatures are attached.

PROOF OF SERVICE

I, Courtney Spears, declare as follows:

I am employed in the County of Orange, State of California, I am over the age of eighteen years and am not a party to this action; my business address is 3161 Michelson Drive, Irvine, CA 92612-4412, in said County and State. On June 29, 2021, I served the following document(s):

CASE MANAGEMENT STATEMENT

on the parties stated below, by the following means of service:

Craig J. Ackermann
ACKERMANN & TILAJEF, P.C.
1180 South Beverly Drive, Suite 610
Los Angeles, CA 90035

Attorneys for Plaintiff
Tel 310.277.0614
Fax 310.277.0635
cja@ackermanntilajef.com

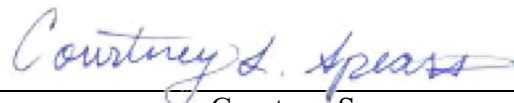
Joshua Klugman, Esq.
JOSHUA KLUGMAN, ESQ.
1180 South Beverly Drive, Suite 610
Los Angeles, CA 90035

Attorneys for Plaintiff
Tel 424.248.5148
Fax 310.277.0635
esquirejosh@yahoo.com

☒ **BY ELECTRONIC SERVICE THROUGH AN EFSP:** On the above-mentioned date, I caused the documents to be sent to a court-approved Electronic Filing Service Provider ("EFSP"), for electronic service and filing. Electronic service will be accomplished by the EFSP's case-filing system at the electronic notification addresses as shown above.

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

Executed on June 29, 2021.



Courtney Spears

EXHIBIT O

ACKERMANN & TILAJEF, P.C.

Craig J. Ackermann, Esq. (SBN 229832)

cja@ackermanntilajef.com

Sam Vahedi, Esq. (SBN 282660)

sv@svalawyers.com

1180 South Beverly Drive, Suite 610

Los Angeles, California 90035

Telephone: (310) 277-0614

Facsimile: (310) 277-0635

JOSHUA KLUGMAN, ESQ.

Joshua Klugman, Esq. (SBN 236905)

esquirejosh@yahoo.com

1180 South Beverly Drive, Suite 610

Los Angeles, California 90035

Telephone: (424) 248-5148

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

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CRUZ**

DAVID GEORGE WILLIAMS, an individual,
on behalf of the State of California, as a private
attorney general, and on behalf of all Aggrieved
Employees,

PLAINTIFF,

v.

AMAZON.COM SERVICES LLC, a Delaware
Limited Liability Company; DOES 1 to 50,
inclusive,

DEFENDANTS.

CASE NO. 21CV00718

Judge: Hon. Rebecca Connolly

**PLAINTIFF DAVID WILLIAMS'S
OPPOSITION TO DEFENDANT'S
DEMURRER AND RELATED MOTION
TO STRIKE;**

**MEMORANDUM OF POINTS &
AUTHORITIES;
PROOF OF SERVICE**

Date: August 9, 2021

Time: 8:30AM

Dept: 4

Action Filed: March 18, 2021

Trial Date: None set

MEMORANDUM OF POINTS & AUTHORITIES

Plaintiff DAVID GEORGE WILLIAMS (“Plaintiff”), hereby opposes AMAZON.COM SERVICES, LLC’s (“Amazon” or “Defendant”) demurrer and related motion to strike to the First Amended Complaint as follows:

I. INTRODUCTION

This action is brought by Plaintiff on behalf of the State of California and all current and former aggrieved employees of Defendant pursuant to the Labor Code Private Attorneys General Act of 2004, § 2699, *et seq.* (“PAGA”). The action is centered around Amazon’s failure to reimburse aggrieved employees for their expenses reasonably incurred in connection with their work at Amazon, specifically during their time working from outside of Amazon’s offices during the COVID-19 pandemic.

“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.” *Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 568. Amazon demurs to Plaintiff’s First Amended Complaint (“FAC”) on three distinct grounds: (1) that Plaintiff does not establish that his alleged expenses were “direct consequences of the discharge of his duties”; (2) that Plaintiff does not plead that Amazon knew or had reason to know that aggrieved employees had unreimbursed expenses; and (3) that Plaintiff does not plead that the incurred expenses were “necessary.” (Demurrer, 6:12-25). As discussed below, each of these contentions are readily defeated by a plain review of the FAC and applicable law.

II. THE FAC SUFFICIENTLY ESTABLISHES THAT PLAINTIFF’S EXPENSES WERE DIRECT CONSEQUENCES OF THE DISCHARGE OF HIS DUTIES

A. The FAC Explicitly Alleges That the Expenses Plaintiff and the Other Aggrieved Employees Incurred Were the Direct Consequence of the Discharge of Their Job Duties

As a preliminary matter, contrary to Amazon’s assertions, the FAC clearly and unambiguously pleads that the expenses for which Plaintiff seeks reimbursement were the direct consequences of the discharge of his job duties while working for Amazon:

- 1 ▪ FAC ¶ 13: “During the COVID 19 stay at home orders in place during the PAGA
- 2 Period, Plaintiff and the Aggrieved Employees were expected by Defendants to pay for,
- 3 and have personally paid for, among other things, home internet service, electricity, and
- 4 an allocated portion of their home office space, **in the discharge of their job duties...**”
- 5 ▪ FAC ¶ 14: “Defendants’ expense-related policies and/or practices require and expect,
- 6 and/or with Defendants’ knowledge thereof permit, Plaintiff and the Aggrieved
- 7 Employees to pay for home internet and home office infrastructure expenses incurred in
- 8 direct consequence of discharging his and their necessary, reasonable, and business-
- 9 related job duties on behalf of Defendants, without reimbursement in full by Defendants
- 10 for such expenses, as required by California law.”
- 11 ▪ FAC ¶ 17: “Where, as here, employees in California are expected or mandated to use
- 12 their internet at home for work, courts have held that they incurred cell phone expenses
- 13 in “direct consequence of the discharge of his or her duties” and were entitled to
- 14 reimbursement. *See Aguilar v. Zep, Inc.*, 2014 US Dist LEXIS 120315, *54 (N.D.Cal.
- 15 Aug. 27, 2014).”
- 16 ▪ FAC ¶ 18: “Defendants are aware or should have been aware that Plaintiff and the
- 17 Aggrieved Employees regularly incurred and incur home office and cell phone expenses
- 18 in the discharge of their duties as employees by virtue of Defendants’ instructions to
- 19 Plaintiff and the Aggrieved Employees.”

20 Plaintiff has met the pleading requirements Defendant contends are lacking.

21 **B. An Executive Order Does Not Obviate or Relieve Defendant of Compliance with the**
 22 **California Labor Code**

23 Defendant provides the Court with a blatant misinterpretation of the law and confuses the facts
 24 of the case in contending that “when an expense is incurred not because of an employer requirement,
 25 but rather in response to a legal mandate, the employer need not provide reimbursement under section
 26 2802.” (Demurrer at 9:10-14). This blanket assertion not only contradicts legal principles, but also has
 27 no relevance to the facts of this case, as none of the expenses that Plaintiff incurred in discharge of his
 28 job duties for Amazon were mandated by the government. Plaintiff’s requirement to utilize the internet,

1 his personal cell phone, a home office, etc. were not mandated by the government—they were
 2 mandated by Amazon. The COVID-19 Stay at Home Order was tangential and at best, indirectly
 3 related to these requirements imposed by Amazon. While Plaintiff was working from Amazon’s
 4 offices, Amazon covered all or most of these expenses as necessary business expenditures that were
 5 required by Amazon for the discharge of its employees’ duties. When Plaintiff started working from
 6 home, he was forced to pay for these same expenses out of pocket and Amazon failed to compensate
 7 him and his fellow employees for such expenses. (FAC ¶¶ 13-14, 17-18).

8 Defendant misguidedly relies on *In re Acknowledgment Cases* (2015) 239 Cal.App.4th 1498
 9 (“*Acknowledgment*”), which has no relevance to the expenses at issue here. *Acknowledgment* is entirely
 10 distinguishable because the expenses at issue were license fees in connection with training for licensure
 11 that was required by statute in order for police officers to maintain their licensure. *Id.* at 1505 (“the
 12 training recruits receive is mandated by law under the peace officer standards and training (POST)
 13 legislation [Pen.Code, §§ 832, 13510 et seq.]”). The city defendant did not mandate those requirements,
 14 and the Court accordingly held that the fees in connection therewith were not “mandated by the
 15 employer.” Here, Amazon *does* require its employees to use internet, cell phones, and other items that
 16 cost money for aggrieved employees, and for which it fails to reimburse. The court also followed the
 17 guidance of the Department of Labor Standards Enforcement (“DLSE”) as to the specific issue of
 18 government mandated training costs for professional licensure mandated by the government:

19 “ ‘There is generally no requirement that an employer pay for training leading to
 20 licensure or the cost of licensure for an employee. While the license may be a
 21 requirement of the employment, it is not the type of cost encompassed by Labor Code
 22 [section] 2802. The most important aspect of licensure is that it is required by the state
 23 or locality as a result of public policy. It is the employee who must be licensed and
 unless there is a specific statute which requires the employer to assume part of the cost,
 the cost of licensing must be borne by the employee.’ ”

24 *Id.* at 1505.

25 Both the DLSE and the *Acknowledgment* court made sure to distinguish this unique scenario
 26 from other common scenarios in which Labor Code § 2802 does apply, and to make clear that the scope
 27 of court’s holding was narrowly limited to licensure/training fees mandated by the government, not
 28 regular business expenses:

1 “ ‘There may be situations, however, where licensure is not actually required by statute
2 or ordinance but the employer requires either the training or the licensing (or both)
3 simply as a requirement of employment. In that case, the provisions of Labor Code
[section] 2802 would require the employer to reimburse the cost.’ ”

4 *Id.* (citing DLSE Op. Ltr. (Nov. 17, 1994) at p. 1)

5 The *Acknowledgment* court summarized the rule as follows: “...where an individual must, as a
6 matter of law, have a license to carry out the duties of his or her employment, the employee must bear
7 the cost of obtaining the license. It is also consistent with this purpose to require an employer to bear
8 the cost of training that is not required to obtain the license but is intended solely to enable the
9 employee to discharge his or her duties.” *Id.* at 1506.

10 *Acknowledgment* is inapposite here because there is nothing remotely related to costs of training
11 or licensure mandated by statute or ordinance at issue. The expenses sought in the FAC are in
12 connection with critical elements in performing basic job functions for Amazon, as required by
13 Amazon. Plaintiff alleges that his job duties “included developing software for Defendants’ Alexa
14 voice assistant (in the Swift language for iPhone and in Java for cloud based web services), writing
15 design documents for software systems and reviewing those designs with various teams, performing
16 code reviews for other developers, and being on call for production system.” (FAC ¶ 3). It is plainly
17 obvious that these duties inherently require the use of internet and telephone. No part of these duties
18 was imposed by the government or any other third party. Thus, the costs associated therewith are
19 Amazon’s duty to reimburse under Labor Code § 2802.

20 Defendant’s reliance on the unpublished federal trial court decision *Hess v. United Parcel*
21 *Service, Inc.* (N.D. Cal., Apr. 29, 2021) 2021 WL 1700162 is also misguided for the same reasons—the
22 plaintiff in that case sought reimbursement for face masks mandated by the government in response to
23 the COVID-19 pandemic. Mask expenses were not required by the plaintiff’s employer, nor were they
24 specific to his job duties. His masks were only purchased in response to local health ordinances, and
25 thus were not necessary “business expenditures” incurred “for the benefit of” the employer. *Id.* at pp.
26 *1, 5. The third-party mandate required plaintiff to wear those masks in any public indoor location—
27 this was not a job requirement set forth by the employer and had no connection to the work performed.
28 In contrast, Plaintiff’s use of the internet and phone to develop software for Amazon are indisputably

for the benefit of Amazon, not for general health, safety, licensure, or otherwise. The two other cases Defendant summarily string-cites—*Townley v. BJ's Rests., Inc.* (2019) 37 Cal.App.5th 179 and *Lemus v. Denny's Inc.* (9th Cir. 2015) 617 F. App'x 701—are similarly inapplicable as they narrowly apply to reimbursement for non-uniform clothing. The holdings in both cases are the same: “a restaurant employer must only pay for its employees’ work clothing if the clothing is a ‘uniform’ or if the clothing qualifies as certain protective apparel regulated by CAL/OSHA or OSHA.” *Townley v. BJ's Rests., Inc.* (2019) 37 Cal.App.5th 179, 184. Uniforms are not at issue here; none of these cases are on point.

To the contrary, courts *have* held that the expenses alleged in the FAC are the employers’ duty to reimburse under Labor Code § 2802. *See, Cochran v. Schwan's Home Service, Inc.* (2014) 228 Cal.App.4th 1137 (“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) (employer was obligated to reimburse some reasonable portion of home internet and computer for work for outside sales reps; 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, but rejecting certification of claims for home office supplies as individualized).

III. THE FAC ESTABLISHES THAT AMAZON KNEW OR SHOULD HAVE KNOWN ABOUT, AND HAD AN AFFIRMATIVE DUTY TO REIMBURSE THE EXPENSES

A. The FAC Alleges That Defendant Knew or Should Have Known of the Expenses

Amazon again erroneously contends that the FAC “lacks a critical factual allegation: that Amazon knew about the expenses Plaintiff purportedly incurred.” (Demurrer at 10:14-15). Once again, this is false; the FAC does, indeed, explicitly allege that Defendant had knowledge of the expenses:

- FAC ¶ 12: “Plaintiff and the Aggrieved Employees, at the direction of Defendants and/or **with Defendants’ knowledge and acquiescence**, have incurred home office expenses...”

- 1 ▪ FAC ¶ 14: “In sum, Defendants’ expense-related policies and/or practices require and
- 2 expect, and/or with **Defendants’ knowledge thereof** permit, Plaintiff and the Aggrieved
- 3 Employees to pay for home internet and home office infrastructure expenses
- 4 incurred...”
- 5 ▪ FAC ¶ 18: “**Defendants are aware or should have been aware** that Plaintiff and the
- 6 Aggrieved Employees regularly incurred and incur home office and cell phone expenses
- 7 in the discharge of their duties as employees by virtue of Defendants’ instructions to
- 8 Plaintiff and the Aggrieved Employees.”
- 9 ▪ FAC ¶ 27: “... on January 11, 2021, Plaintiff gave written notice by certified mail to
- 10 Defendants and to the LWDA of his claims for violations of Labor Code § 2802,
- 11 including theories supporting these claims as alleged herein.”

12 **B. Submission of a Request for Reimbursement is Not a Pleading Requirement for a**
 13 **Cause of Action under Labor Code § 2802**

14 Amazon imposes an imaginary pleading requirement when arguing that “Plaintiff fails to plead
 15 that he informed Amazon of the expenses.” (Demurrer at 10:13). There is no such pleading
 16 requirement. There is no element of Labor Code § 2802 that requires “informing” an employer of
 17 expenses or that he sought reimbursement; it is sufficient to allege that Defendant “knows or ha[d]
 18 reason to know” that expenses were incurred. *Stuart v. RadioShack Corp.* (N.D. Cal. 2009) 641
 19 F.Supp.2d 901. Moreover, to the extent that Amazon is arguing the merits of Plaintiff’s claim, that is
 20 not the function of a demurrer. A demurrer can be used only to challenge defects that appear on
 21 the face of the pleading under attack. *Blank v. Kirwan* (1985) 39 Cal.App.3d 311, 318. The FAC pleads
 22 that Amazon knew and should have known about the expenses but failed to reimburse them. That is
 23 sufficient.

24 The FAC discusses *Stuart v. RadioShack Corp.* (N.D. Cal. 2009) 641 F.Supp.2d 901 wherein
 25 the defendant employer raised the same arguments as Amazon does here regarding a requirement to
 26 notify. (See FAC ¶¶ 19-22). The court concluded:

27 “... the proper inquiry focuses on the employer’s state of knowledge. Once an employer
 28 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. **Promulgating the RadioShack policies alone did not fulfill that duty.**"

Id. at 905 (emphasis added).

The *RadioShack* court specifically rejected what he referred to as the "exhaustion defense," namely, that to trigger 2802 payments, an employee would have to put in a request for reimbursement, what Amazon refers to as a notice to the company of the expense:

The Court concludes that a fair interpretation of Sections 2802 and 2804 which produces 'practical and workable results,' *Gattuso*, at 567, consistent with the public policy underlying those sections, focuses not on whether an employee makes a request for reimbursement but rather on whether the employer either knows or has reason to know that the employee has incurred a reimbursable expense. If it does, it must exercise due diligence to ensure that each employee is reimbursed." *Id.* at 902-903.

This standard and the mechanics of how § 2802 operates have been repeatedly adopted as law by various courts since the issuance of Judge Chen's thoughtful series of decisions in *RadioShack*. *See e.g., Wilson v. Kiewit Pacific Co.*, 2010 W.L. 5059522 (N.D. Cal.) (Hon. Susan Illston) (adopting *RadioShack* "knew or should have known" standard and noting that database records of inter-store transfers constitutes common proof of actual notice of mileage expenses, triggering duty to reimburse under Section 2802); *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"); *Morse v. Servicemaster Global Holdings, Inc.*, 2011 WL 2470252 (N.D.Cal.2011) (Hon. Susan Illston) (rejecting strict liability "ensure" standard in favor of the "knew or should have known" standard from *Radioshack*).

Where, as here, where Amazon closed its offices and sent all employees to work from home, and to use their home internet, etc. in California, Amazon knew or should have known that business related expenses are being incurred by employees, and it cannot simply hide behind its reimbursement policy or an "exhaustion defense" and fail to affirmatively reimburse employees. Furthermore, Plaintiff

has explicitly pleaded that Amazon knew or had reason to know that the employee has incurred expenses, and the FAC provides a factual basis for how it had such knowledge. (FAC ¶¶ 12, 14, 18, 27). It is also patently obvious that Amazon had a reason to know that Plaintiff was incurring home internet, telephone, and other expenses, as it instructed and required Plaintiff to use the internet, telephone, and a home office while he was working from home. These things cost money. No further allegations are required with respect to knowledge or notice to overcome the Demurrer.

In addition, the FAC alleges that “... on January 11, 2021, Plaintiff gave written notice by certified mail to Defendants and to the LWDA of his claims for violations of Labor Code § 2802, including theories supporting these claims as alleged herein.” (FAC ¶ 27). This written notice to Defendants constitutes the exact notice that Defendant claims was missing. Even if, *arguendo*, Amazon had not had constructive notice of the expenses (which it did), the written notice alleged in the FAC indisputably constitutes *actual* notice of the expenses.

IV. THE FAC SATISFIES THE “NECESSARY” ELEMENT

Amazon summarily argues that “Plaintiff fails to allege even a single fact that, if proven, would establish *how* the expenses he incurred were necessary to fulfill his job duties.” (Demurrer at 12:25-26). Plaintiff indeed alleges sufficient facts to establish that the expenses were necessary:

- FAC ¶ 12: “Plaintiff and the Aggrieved Employees, at the direction of Defendants and/or with Defendants’ knowledge and acquiescence, have incurred home office expenses including, among other things, home internet expenses, equipment expenses, electricity, and home office infrastructure expenses, in order to perform necessary work-related duties.”
- FAC ¶ 13: “During the COVID 19 stay at home orders in place during the PAGA Period, Plaintiff and the Aggrieved Employees were expected by Defendants to pay for, and have personally paid for, among other things, home internet service, electricity, and an allocated portion of their home office space, in the discharge of their job duties (the “home office expenses”). These home office expenses **were required and necessary for work to be performed.**”
- FAC ¶ 14: “In sum, Defendants’ expense-related policies and/or practices require and

1 expect... Employees to pay for home internet and home office infrastructure
2 expenses...”

3 Defendant fails to provide any authority that anything beyond these allegations would be
4 required to satisfy the “necessary” element. Unlike in the *Sagastume v. Psychemedics Corp.* (C.D. Cal.,
5 Nov. 30, 2020) 2020 WL 8175597 federal district court decision that Defendant cites, Plaintiff properly
6 alleges her job duties and why the expenses were necessary. The FAC provides that Amazon is a
7 technology company (FAC ¶ 5) and Plaintiff and the aggrieved employees are and were charged with
8 performing computer-based tasks for Amazon that required them to log into Amazon’s servers to
9 perform their job responsibilities. (FAC ¶ 3). It is further plainly alleged that Amazon instructed
10 Plaintiff and the aggrieved employees to use internet and cell phones to perform their job duties (FAC
11 ¶¶ 12-14), and that such electronics require the use of electricity. Nothing is left to the imagination
12 here. “On demurrer the allegations of the complaint are assumed to be true.” *Ramsden v. Western*
13 *Union* (1977) 71 Cal.App.3d 873, 879.

14 Furthermore, Labor code § 2802(c) provides: “For purposes of this section, the term ‘necessary
15 expenditures or losses’ shall include *all reasonable costs...*” Clearly, the use of the internet and
16 telephone are reasonable costs when Plaintiff’s job is entirely centered upon use of such devices.
17 Plaintiff sufficiently pleads that the expenses were necessary.

18 **V. ALLEGATIONS OF REIMBURSEMENT FOR HOME ELECTRICITY EXPENSES**
19 **ARE PROPER**

20 Defendant argues that the Court “should strike Plaintiff’s improper allegations that Amazon is
21 required to reimburse his routine housing and electricity expenses” because such costs “are
22 unreasonable.” (Demurrer 14:11-25). Here, Amazon improperly asks the Court to make a premature
23 factual determination as to whether reimbursement of home electricity costs are “reasonable.”
24 However, a motion to strike is not proper to challenge matter which can properly be decided only on an
25 extensive evidentiary showing. *Mediterranean Exports, Inc. v. Superior Court* (1981) 119 Cal. App. 3d
26 605. The question of reasonableness of any costs are merits-based questions to be decided by the
27 factfinder at trial. Defendant fails to cite *any* authority remotely holding that Labor Code § 2802
28 precludes reimbursement for electricity expenses. Therefore, the request to strike this allegation is

PROOF OF SERVICE
STATE OF CALIFORNIA

I am over the age of 18 years and am employed in the county of Los Angeles, State of California. I am not a party to this action. My business address is 1180 S. Beverly Drive, Ste. 610, Los Angeles, California 90035.

On the date below, I served the foregoing document(s) described as:

- **PLAINTIFF DAVID WILLIAMS'S OPPOSITION TO DEFENDANT'S DEMURRER AND RELATED MOTION TO STRIKE; MEMORANDUM OF POINTS & AUTHORITIES; PROOF OF SERVICE**

to the following parties, in the following manner:

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(By Mail)

I caused such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Los Angeles, California. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid in Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.



(By Electronic Service)

Based on a court order, local rule, or agreement of the parties to accept service by email or electronic transmission, I caused the documents to be sent to the person(s) at the email address(es) listed herein. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed at Los Angeles, California on July 27, 2021.



Jacklyn Blackwell

EXHIBIT P

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CRUZ

DAVID GEORGE WILLIAMS, an individual,
on behalf of the State of California, as a private
attorney general, and on behalf of all
Aggrieved Employees,

Plaintiff,

v.

AMAZON.COM SERVICES LLC, a
Delaware Limited Liability Company; DOES 1
to 50, inclusive,

Defendants.

CASE NO. 21CV00718

**DEFENDANT AMAZON'S REPLY IN
SUPPORT OF ITS DEMURRER TO
PLAINTIFF'S FIRST AMENDED
COMPLAINT AND RELATED MOTION TO
STRIKE**

ASSIGNED FOR ALL PURPOSES TO:
HON. REBECCA CONNOLLY
DEPARTMENT 4

HEARING:

Date: August 9, 2021
Time: 8:30 a.m.
Dept: 4

Action Filed: March 18, 2021
Trial Date: None

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I. INTRODUCTION AND SUMMARY OF ARGUMENT

Plaintiff's Opposition doubles down on conclusory allegations, and attempts to excuse his failure to plead particularized facts by arguing that it is "obvious" that Amazon caused the expenses he allegedly incurred, that it had reason to know about those expenses, and that the expenses were necessary to Plaintiff's job. But Plaintiff's argument is just that—argument. It is no substitute for the well-pleaded, particular *facts* he must allege to state a claim. Plaintiff's failure in this regard is no surprise, though, because Amazon did not issue the orders that directly led Plaintiff to incur his alleged remote-work expenses—the government did, and mandated that Amazon follow them. But for those orders, Plaintiff would not have incurred the purported expenses. And the failure to adequately plead causation is just one of many fatal defects in Plaintiff's First Amended Complaint ("FAC"). He also fails to allege *any* facts showing that Amazon had the requisite "reason to know" of his expenses, let alone the specific types or amounts of those expenses. And while he sprinkles both his FAC and Opposition with references to Amazon's supposed failure to "affirmatively" reimburse him, he neither explains this theory of liability nor cites a single case supporting it. Equally absent from the FAC is any nexus between the alleged expenses and how they were "necessary" to his job duties. For these and the other reasons stated below, the Court should sustain Amazon's Demurrer and dismiss the FAC with prejudice.

II. ARGUMENT

A. **Plaintiff Fails to Allege Facts Showing That His Alleged Expenses Were "Direct Consequences" of His Job Duties**

As Amazon described in its Demurrer, to establish entitlement to reimbursement under Labor Code section 2802, Plaintiff must plead particular facts demonstrating that Amazon caused Plaintiff to incur work-from-home expenses. That is, Plaintiff must plead facts showing that his allegedly "necessary expenditures" were incurred "in direct consequence of the discharge of his ... duties." (Cal. Lab. Code § 2802.)¹ Plaintiff asserts that he has adequately pleaded the "direct consequences" element, but the "facts" he cites do not come close to carrying his pleading burden; his attempts to distinguish

¹ All further references to "section 2802" are to the Labor Code.

the cases Amazon cited in its Demurrer fail; and his effort to shore up his allegations by inserting unpleaded facts in his Opposition is insufficient to avoid dismissal.

First, Plaintiff contends that he adequately pleaded causation by pointing to four paragraphs in the FAC that merely parrot the words of section 2802. (Opp’n at pp. 2–3.) Courts have repeatedly rejected this type of effort to “state a claim [by] transferring the language of the statute to a form complaint.” (*Hawkins v. TACA Int’l Airlines, S.A.* (2014) 223 Cal.App.4th 466, 478–479.) That is because “[w]here, as here, statutory remedies are invoked, the facts must be pleaded with particularity.” (*Carter v. Prime Healthcare Paradise Valley LLC* (2011) 198 Cal.App.4th 396, 410, *as modified* (Aug. 24, 2011) [italics added, citation and quotation marks omitted]; *see also Hawkins*, 223 Cal.App.4th at p. 478 [requiring that facts be pleaded “with particularity” to state a Labor Code claim].) For example, Plaintiff points to his allegation that he has “personally paid for [various expenses] *in the discharge of [his] job duties*.” (Opp’n at p. 3 [italics in original, citing FAC ¶ 13].) Absent, however, is any information about “exactly how or in what manner” these expenses were *caused* by any job duties or requirements imposed by Amazon. (*Carter*, 198 Cal.App.4th at p. 410; *Green v. Grimes-Stassforth Stationery Co.* (1940) 39 Cal.App.2d 52, 56 [allegation that defendant had acted “with the wrongful and unlawful intent to discriminate” was a “mere legal conclusion[]” and “surplusage”].) The same goes for the other allegations Plaintiff highlights in asserting that he has met his burden on this element—one of which (Paragraph 17) merely quotes a case, saying nothing about the *facts* of this case. (Opp’n at p. 3 [citing FAC ¶¶ 14, 17–18].)

Second, Plaintiff fundamentally misunderstands Amazon’s argument with respect to the significance of the work-from-home orders and assigns an unduly narrow reading to Amazon’s cases. Section 2802 is not intended to allow employees to recover expenses “incurred without the employer’s fault.” (*Roberts v. U.S.O. Camp Shows* (1949) 91 Cal.App.2d 884, 886.) Under that logic, expenses that an employee incurs as a result of a government order that his employer is required to follow are precisely the kind of expenses that are “without the employer’s fault.” (*Id.*) *Hess v. United Parcel Service, Inc.* is directly on point: There, the court acknowledged that a work-from-home “order required businesses to require their employees to wear a face covering while working; but the order [did] not say that employers must supply the masks or reimburse employees for the costs of masks”

1 ((N.D. Cal., Apr. 29, 2021) 2021 WL 1700162, at p. *5.) Here, similarly, Plaintiff alleges that, for the
 2 full duration of the PAGA period, work-from-home orders required Amazon to require Plaintiff to
 3 work from home. (FAC ¶¶ 12–13.) As such, *Hess* is indistinguishable from this case: In both cases,
 4 a work-from-home order, and not the employer, caused a section 2802 plaintiff to allegedly incur
 5 reimbursable expenses.

6 Plaintiff’s attempt to distinguish *In re Acknowledgment Cases* (2015) 239 Cal.App.4th 1498
 7 not only fails but actually supports Amazon’s position. As Plaintiff observes, when an expense “is not
 8 actually required by statute ... but *the employer* requires ... the [expense] simply as a requirement of
 9 employment ... section 2802 would require the employer to reimburse the cost.” (Opp’n at p. 5
 10 [quoting *Acknowledgment Cases*, 239 Cal.App.4th at p. 1506, italics added].) Put more simply, when
 11 the employer is the *sole* cause (or at “fault”) for the expenses, it may be required to reimburse qualifying
 12 expenses; but where the expenses were caused because the employer was required to follow a
 13 government mandate, the employer is not at “fault” and is under no such obligation. (Dem. at p. 9.)
 14 Plaintiff admits at page four of his Opposition that “[w]hile Plaintiff was working from Amazon’s
 15 offices, Amazon covered all or most of [the alleged] expenses as necessary business expenditures,” and
 16 the only thing that has changed is that the government required Amazon to send all nonessential
 17 employees home. As such, any expenses incurred by Plaintiff in the discharge of his job duties were
 18 not “requirements of employment” imposed by Amazon, but were caused by the work-from-home
 19 orders, thereby bringing this case squarely within the ambit of *Acknowledgment Cases*’s holding.

20 **B. Plaintiff Fails to Adequately Plead That Amazon Had “Reason to Know” of His**
 21 **Expenses**

22 Even if the Court finds that Plaintiff has sufficiently pleaded that Amazon caused him to incur
 23 his alleged expenses, Plaintiff falls far short of pleading that Amazon had “reason to know” that
 24 Plaintiff had incurred those expenses—a prerequisite for Amazon to issue any reimbursements,
 25 especially the “affirmative[.]” reimbursement that Plaintiff contends is required here.

26 First, once again, as with the “direct consequence” element of his section 2802 claim, Plaintiff
 27 relies on conclusory statements in the FAC that do nothing more than “parrot[] the language of the
 28 statute.” (*Gentry v. eBay, Inc.* (2002) 99 Cal.App.4th 816, 826; Opp’n at pp. 6–7 [citing FAC ¶¶ 12,

14, 18, 27].) The barebones conclusion that “Defendants are aware or should have been aware” of the expenses (FAC ¶ 18) hardly provides the particularity that the pleading standards require. (*Carter*, 198 Cal.App.4th at p. 410.) Plaintiff also insists that it is “patently obvious that Amazon had a reason to know that Plaintiff was incurring” various expenses and hence “[n]o further allegations are required with respect to knowledge.” (Opp’n at p. 9.) But Plaintiff’s subjective belief about what is “obvious” is no substitute for facts: “Since the liability sought to be imposed ... is statutory, it is necessary to plead *facts* to support each of the requirements of the statute.” (*Feingold v. Los Angeles County* (1967) 254 Cal.App.2d 622, 625 [italics added].) And courts have rejected invitations, like Plaintiff’s, to water down the pleading standards for knowledge-based elements of legal claims. (*Oakes v. E.I. Du Pont de Nemours & Co.* (1969) 272 Cal.App.2d 645, 651–652 [where “[k]nowledge, actual or constructive, [is] a necessary element,” “courts do not imply allegations to furnish necessary unpleaded allegations”].)

Second, Plaintiff devotes more than a full page of his Opposition to arguing that an employer’s obligation to reimburse an employee is not dependent on whether a formal reimbursement request has been made (the so-called “exhaustion defense”), but rather on whether the employer knew or had “reason to know” of the employee’s necessary business expense. (Opp’n at pp. 7–8.) This is a strawman argument that mischaracterizes Amazon’s position: To the contrary, Amazon plainly acknowledged the “reason to know” standard in its Demurrer, citing the very case Plaintiff cites in his Opposition. (*Id.*; Dem. at p. 8 [citing *Stuart v. RadioShack Corp.* (N.D. Cal. 2009) 641 F.Supp.2d 901, 905 [*Stuart II*]].) The issue is not whether Plaintiff was *required* to submit a reimbursement request—Amazon has never contended that such a requirement exists; rather, the issue is whether Plaintiff has pleaded facts sufficient to show that he gave Amazon “reason to know” of his claimed expenses. One way he could have done so, *for example*, is submitting a formal reimbursement request pursuant to Amazon’s generous reimbursement policies. (Dem. at p. 10 [“Plaintiff’s failure to allege that he *ever* gave Amazon ‘reason to know’ of the purported expenses—through a reimbursement request *or otherwise*—dooms his Complaint.” [latter italics added]].) But here, Plaintiff has pleaded no such facts—only conclusions.

Third, Plaintiff’s arguments about whether the “reason to know” standard has been satisfied must be considered in light of his legal theory that Amazon violated section 2802 by failing to

“affirmatively” reimburse him. (Opp’n at pp. 6, 8; FAC ¶¶ 12, 14, 18, 22.) Though he never explains precisely what he means by “affirmatively,” it appears that Plaintiff is taking a position specifically rejected by *Stuart II*, namely, that “the duty to reimburse is triggered once the expense is incurred by the employee irrespective of any other circumstance.” (*Stuart II*, 641 F.Supp.2d at p. 902; Opp’n at pp. 8–9 [arguing Amazon should have “affirmatively” reimbursed him because it was “patently obvious” that he must have been incurring expenses while working from home].) As Plaintiff’s own FAC makes clear (FAC ¶ 21 [citing *Stuart II*, 641 F.Supp.2d at pp. 902–903]), this is not the law, and tellingly, Plaintiff does not cite a *single* case interpreting section 2802 as requiring employers to “affirmatively” reimburse employees in this manner. It is unsurprising that Plaintiff is unable to support his “affirmative” reimbursement theory with any legal authority. Requiring an employer to guess what “necessary” expenses its employees are incurring and in what amounts would impose an “excessive burden on the employer,” (*Stuart v. Radioshack Corp.* (N.D. Cal., Feb. 5, 2009) 2009 WL 281941, at p. *17 [*Stuart I*]), and hence would not lead to the “practical and workable result[]” that the Court’s interpretation of section 2802 must reach. (*Gattuso v. Harte-Hanks Shoppers, Inc.* (2007) 42 Cal.4th 554, 567.)

In part for this reason, courts routinely reject complaints that fail to plead the requisite “reason to know” element. (Dem. at pp. 10–12, citing cases.) Those cases confirm that an employer need not assume—as Plaintiff requests here—that its employees are incurring expenses (much less “necessary” ones). Rather, the employer’s duty to reimburse is triggered only upon obtaining “reason to know” of an employee’s *specific* expenses and the *exact amounts* of those expenses. (See, e.g., *Zayers v. Kiewit Infrastructure W. Co.* (C.D. Cal., Nov. 9, 2017) 2017 WL 7058141, at pp. *6–7 [although employer required plaintiff “to wear steel toe boots” on the job and “had reimbursed [other] employees for such purchases,” no “duty to reimburse” plaintiff for *his* boots because plaintiff “never told anyone” that he had purchased his own boots]); *Piccarreto v. Presstek, LLC* (C.D. Cal., Aug. 24, 2017) 2017 WL 3671153, at p. *3 [employer knew employee had relocated, but had no reason to know “the *exact* relocation expenses he incurred to trigger Section 2802’s requirement” [*italics added*]].) Even as of the date of this filing, Amazon *still* does not know exactly the expenses for which Plaintiff seeks to be reimbursed or the specific amounts he believes he is owed. Indeed, Plaintiff’s FAC and Opposition

have confusingly and inconsistently referred to and emphasized in varying degrees an array of possible expenses: Internet, cellphone, electricity, “an allocated portion of [his] home office space,” home office “infrastructure,” and “equipment.” (FAC ¶¶ 12–14, 18, 22; Opp’n at pp. 3–5, 8–11.) And his PAGA letter failed to provide any further detail or specificity. (Further, at least one of these categories (“an allocated portion of his home office space”) has now been abandoned entirely (*see post* at p. 11).)

C. Plaintiff Fails to Plead His Purported Expenses Were Necessary

Plaintiff’s allegations that he incurred expenses “to perform necessary work-related duties” fail for the same reasons his allegations regarding the “direct consequence” and knowledge elements fail: They are threadbare legal conclusions, not facts particular to Plaintiff’s case. (*See, e.g.*, Opp’n at p. 9 [quoting FAC ¶ 12 [expenses were incurred “to perform necessary work-related duties”], ¶ 13 [“expenses were required and necessary for work to be performed”]].) Plaintiff then tries to save his case by improperly alleging new facts in his Opposition that are not in the FAC. (*Nealy v. County of Orange* (2020) 54 Cal.App.5th 594, 597 fn.1, *review denied* (Dec. 16, 2020) [disregarding “additional facts not found in plaintiff’s complaint” in “reviewing a trial court’s ruling sustaining a demurrer”].) For instance, Plaintiff claims that he was required to perform tasks “that required [him] to log into Amazon’s servers to perform [his] job responsibilities,” and cites Paragraph 3 of the FAC. (Opp’n at p. 10.) But nowhere in the FAC is there any reference to “servers” or “logging in.” Likewise, the FAC does not allege, as the Opposition improperly does, that “Plaintiff’s job is entirely centered upon use of [Internet and telephone] devices.” (*Id.*) Because “facts not alleged are presumed *not* to exist,” (*Kramer v. Intuit Inc.* (2004) 121 Cal.App.4th 574, 578 [cleaned up, italics added]), the Court should not permit Plaintiff to amend the FAC without leave by way of his Opposition. (*Garton v. Title Ins. & Tr. Co.* (1980) 106 Cal.App.3d 365, 375 “[T]he complaint, when appropriately challenged ... must stand or fall by its own force. Nothing [outside] the pleading itself can be considered” [citation and quotation marks omitted]).

Plaintiff is equally off base in arguing that Amazon “fail[ed] to provide any authority that anything beyond [his] allegations would be required to satisfy the ‘necessary’ element.” (Opp’n at p. 10.) In fact, Amazon cited more than a half dozen cases in which courts rejected as insufficient allegations just as conclusory as Plaintiff’s here. (Dem. at pp. 12–14.) As just one example (*id.* at

p. 13), the plaintiff in *Dawson v. HITCO Carbon Composites, Inc.* pleaded that he “incurred necessary business-related expenses and costs that were not fully reimbursed” and “no other allegations in support of [his section 2802] claim.” ((C.D. Cal., Jan. 20, 2017) 2017 WL 7806618, at p. *7.) And the court properly dismissed his claim due to those deficiencies. (*Id.* at p. *8.) Plaintiff ignored *Dawson* and Amazon’s other cited authorities, and his virtually identical allegations should fail for the same reasons.

D. The Court Should Strike the Abandoned Claim for Housing Expenses and the Unreasonable Claim for Electricity Expenses

In response to Amazon’s motion to strike his claims for housing and electricity expenses, Plaintiff has forfeited his claim for housing expenses (*i.e.*, “an allocated portion of his home office space”) by failing to respond to Amazon’s challenge to it (*Hacker v. Homeward Residential, Inc.* (2018) 26 Cal.App.5th 270, 281 fn.10 [“The failure to object in the trial court is a forfeiture, because a person who fails to preserve a claim [for appeal] forfeits that claim.” [cleaned up]]), and his request for reimbursement of electricity expenses fares no better.

Plaintiff makes two related arguments with respect to the electricity expenses: that Amazon’s motion to strike is procedurally improper (Opp’n at pp. 10–11), and that the question of whether electricity expenses are subject to reimbursement under section 2802 is a question of fact that cannot be resolved on the pleadings. (*Id.* at p. 11.) Neither of these arguments has merit.

Plaintiff cites *Mediterranean Exports, Inc. v. Superior Court* (1981) 119 Cal.App.3d 605, in arguing that Amazon’s motion to strike is procedurally improper because the question of whether he is entitled to reimbursement of electricity expenses “can properly be decided only on an extensive evidentiary showing.” (Opp’n at p. 10.) That is not true, but even if it were, *Mediterranean* does not support Plaintiff’s argument regarding the propriety of Amazon’s motion to strike. There, the appellate court held that the “extensive evidentiary showing” held by the trial court on the motion to strike was “*not* authorized by Code of Civil Procedure section 435,” and hence the appellate court treated the motion to strike “as if it were a motion for summary judgment.” (*Mediterranean*, 119 Cal.App.3d at p. 615 [italics in original, citations omitted].) Amazon has not requested an evidentiary hearing, nor has either party submitted any evidence to the Court.

Next, Plaintiff argues that because section 2802(c) defines “necessary” expenses as “reasonable costs,” the “question of reasonableness of any costs are merits-based questions to be decided by the factfinder at trial.” (Opp’n at p. 10.) While it is true that “whether expenses were necessarily incurred by an employee is generally [an] issue of fact ... that rule does not apply here.” (*Novak v. Boeing Co.* (C.D. Cal., July 20, 2011) 2011 WL 9160940, at p. *3.) In *Novak*, the court found that certain expenses incurred by remote workers were not reimbursable “[a]s a matter of law” because of the voluntary nature of the employer’s remote-work policy. (*Id.*) Courts will also strike claims that would lead to an “absurd result” with respect to the construction of section 2802, and here, the Court should find that, as a matter of law, permitting Plaintiff to shift his electricity expenses to Amazon would be precisely this type of “absurd result.” (*Gattuso*, 42 Cal.4th at p. 567 [courts must give section 2802 “a reasonable and commonsense interpretation ... which upon application will result in wise policy rather than mischief or absurdity” [citations and quotation marks omitted]]; *see also Juarez v. Villafan* (E.D. Cal., Dec. 29, 2017) 2017 WL 6629529, at pp. *10–11, *report & recommendation adopted* (E.D. Cal., June 13, 2018) 2018 WL 4372784 [dismissing section 2802 claim for reimbursement of “drinking water” as a supposedly “necessary” expense because such an expense, like electricity and housing, is “necessarily required to some extent for every profession as [it is] required to sustain life”].)

Nor is it Amazon’s duty to provide authority that electricity expenses are not eligible for reimbursement under section 2802 as Plaintiff contends (Opp’n at p. 10). It is *Plaintiff’s* burden to adequately plead that an expense is reimbursable under section 2802—not Amazon’s burden to show that it is not. And revealingly, Plaintiff does not cite a single case in which a court permitted reimbursement of electricity expenses under section 2802. The Court should accordingly strike the requests for housing and electricity expenses.

III. CONCLUSION

Contrary to Plaintiff’s suggestion that “[n]othing is left to the imagination here” (*id.*), Plaintiff’s FAC asks the Court and Amazon to imagine a great deal, given the absence of well-pleaded, particular facts that, if proven, would entitle Plaintiff to reimbursement for *any* of his purported expenses. The Court accordingly should sustain the Demurrer and dismiss the FAC. Furthermore, because Plaintiff

1 has already amended his complaint once and has not requested leave to amend, the Court should dismiss
2 this action with prejudice.²

3 DATED: August 2, 2021

4 GIBSON, DUNN & CRUTCHER LLP
5 TIMOTHY W. LOOSE
6 LAUREN M. BLAS
7 COURTNEY L. SPEARS

8 By: /s/ Timothy W. Loose
Timothy W. Loose

9 Attorneys for Defendant
10 AMAZON.COM SERVICES LLC
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26 ² (*See, e.g., Rubenstein v. The Gap, Inc.* (2017) 14 Cal.App.5th 870, 881–882 [no abuse of discretion
27 denying leave to amend where plaintiff did not “explain how she would further amend her
28 complaint if given leave or offer any additional facts she could allege” in her “demurrer opposition
papers”]; *PGA W. Residential Ass’n, Inc. v. Hulven Int’l, Inc.* (2017) 14 Cal.App.5th 156, 189, *as
modified* (Aug. 23, 2017) [plaintiff “forfeited” “the issue of leave to amend” because it “did not
request leave to amend in its principal or supplemental briefs”].)

PROOF OF SERVICE

I, Courtney Spears, declare as follows:

I am employed in the County of Orange, State of California, I am over the age of eighteen years and am not a party to this action; my business address is 3161 Michelson Drive, Irvine, CA 92612-4412, in said County and State. On August 2, 2021, I served the following document(s):

DEFENDANT AMAZON'S REPLY IN SUPPORT OF ITS DEMURRER TO PLAINTIFF'S FIRST AMENDED COMPLAINT AND RELATED MOTION TO STRIKE

on the parties stated below, by the following means of service:

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☒ **BY ELECTRONIC SERVICE THROUGH AN EFSP:** On the above-mentioned date, I caused the documents to be sent to a court-approved Electronic Filing Service Provider ("EFSP"), for electronic service and filing. Electronic service will be accomplished by the EFSP's case-filing system at the electronic notification addresses as shown above.

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

Executed on August 2, 2021.



Courtney Spears

EXHIBIT Q

8/9/2021 2:59 PM

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County of Santa Cruz
August 11, 2021
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By Deputy, Salsedo, Declan

8/11/2021 8:21:09 AM

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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 SANTA CRUZ**

DAVID GEORGE WILLIAMS, an individual,
on behalf of the State of California, as a private
attorney general, and on behalf of all Aggrieved
Employees,

PLAINTIFF,

v.

AMAZON.COM SERVICES LLC, a Delaware
Limited Liability Company; DOES 1 to 50,
inclusive,

DEFENDANTS.

CASE NO. 21CV00718

Judge: Hon. Rebecca Connolly
(Hearing Judge: Hon. Timothy Volkmann)

**[PROPOSED] ORDER OVER-RULING
DEFENDANT'S DEMURRER AND
DENYING MOTION TO STRIKE**

Date: August 9, 2021
Time: 8:30AM
Dept: 4 (Oral Argument heard in Dept. 5)

Action Filed: March 18, 2021
Trial Date: August 15, 2022

**[PROPOSED] ORDER OVER-RULING DEFENDANT'S DEMURRER AND
DENYING DEFENDANT'S MOTION TO STRIKE**

On August 9, 2021, at 8:30AM, Defendant's Demurrer and Motion to Strike, was heard in Dept. 5, the **Honorable Judge Timothy Volkmann** presiding. Previously, on August 6, 2021, the Court, the **Honorable Judge Rebecca Connolly** in Dept. 4 presiding, had issued a tentative over-ruling Defendant's Demurrer and Denying the Motion to Strike. A true and correct copy of the Court's tentative ruling is attached hereto as **EXHIBIT A** and incorporated by reference. Defendant had challenged the tentative ruling and had requested oral argument. Judge Volkmann in Dept. 5 indicated at oral argument that he had examined and reviewed Judge Connolly's tentative ruling. After hearing oral argument from counsel, the Court **AFFIRMED** the prior tentative rulings and thereby confirmed its decision to over-rule the Demurrer and Deny the motion to strike. It is so Ordered.

JUDGE OF THE SUPERIOR COURT



Hon. Timothy Volkmann

Dated 8/10/2021 3:45:14 PM

Agreed to as to Form:
ACKERMANN & TILAJEF, P.C.
JOSHUA KLUGMAN, ESQ.

Dated: August 9, 2021



Sam Vahedi, Esq.

Craig J. Ackermann, Esq.

Joshua Klugman, Esq.

*Attorneys for Plaintiff and the Aggrieved
Employees*

Dated: August 9, 2021



Lauren Blas, Esq.
Gibson Dunn & Crutcher, LLP
Approved as to Form
Attorneys for Defendant

EXHIBIT A

LAW AND MOTION TENTATIVE RULINGS
DATE: AUGUST 9, 2021 TIME: 8:30 A.M.

TENTATIVE RULINGS ARE NOT POSTED IN UNLAWFUL DETAINER CASES

No. 21CV00718

WILLIAMS v AMAZON

DEMURRER TO FAC

First, as to whether the First Cause of action fails to state sufficient facts to constitute a cause of action because Plaintiff's alleged expenses were not "Direct Consequences" of his job duties, but of State and Local Work-from-home-orders, the reviewing court gives the complaint a reasonable interpretation, and treats the demurrer as admitting all material facts properly pleaded. (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966-967) As a general rule, in testing a pleading against a demurrer the facts alleged in the pleading are deemed to be true, however improbable they may be. (*Del E. Webb Corp. v. Structural Materials Co.* (1981) 123 Cal.App.3d 593, 604.) The question of plaintiff's ability to prove these allegations, or the possible difficulty in making such proof does not concern the reviewing court. (*Committee on Children's Television, Inc. v. General Foods Corp.* (1983) 35 Cal.3d 197, 214.) Finally, a demurrer is simply not the appropriate procedure for determining the truth of disputed facts. (*Fremont Indemnity Co. v. Fremont General Corp.*, (2007) 148 Cal. App. 4th 97, 113-114.)

Plaintiff pleads that Plaintiff and the Aggrieved Employees regularly incurred and incur home office and cell phone expenses in the discharge of their duties as employees by virtue of Defendants' instructions to Plaintiff and the Aggrieved Employees. (FAC ¶ 18)

Therefore, Plaintiff has pleaded sufficient facts to constitute a cause of action and the demurrer is overruled on this ground.

Turning to whether Plaintiff failed to plead that he informed Amazon of the expense, "A fair interpretation of §§ 2802 and 2804 ... focuses not on whether an employee makes a request for reimbursement but rather on whether the employer either knows or has reason to know that the employee has incurred a reimbursable expense. (*Stuart v. Radioshack Corp.* (N.D.Cal. 2009) 641 F.Supp.2d 901, 903.)

LAW AND MOTION TENTATIVE RULINGS

DATE: AUGUST 9, 2021 TIME: 8:30 A.M.

Plaintiff alleges that from at least March 15, 2020... Plaintiff and the Aggrieved Employees, at the direction of Defendants and/or with Defendants' knowledge and acquiescence, have incurred home office expenses including, among other things, home internet expenses, equipment expenses, electricity, and home office infrastructure expenses, in order to perform necessary work-related duties.(FAC ¶ 12)

Again, because the reviewing court gives the complaint a reasonable interpretation, and treats the demurrer as admitting all material facts properly pleaded, (*Aubry v. Tri-City Hospital Dist.* (1992) 2 Cal.4th 962, 966-967) the demurrer is overruled on this ground.

Finally, as to whether the Demurrer should be sustained because Plaintiff fails to plead that his expenses were necessary, Plaintiff pleads: "During the COVID 19 stay at home orders in place during the PAGA Period, Plaintiff and the Aggrieved Employees were expected by Defendants to pay for, and have personally paid for, among other things, home internet service, electricity, and an allocated portion of their home office space, in the discharge of their job duties. These home office expenses were required and necessary for work to be performed. (FAC ¶ 13)

Therefore, Plaintiff has pleaded sufficient facts to constitute a cause of action and the demurrer is overruled on this ground.

In summary, Labor Code § 2802 has a "strong public policy . . . favor[ing] the indemnification (and defense) of employees by their employers for claims and liabilities resulting from the employees' acts within the course and scope of their employment." (*Stuart v. Radioshack Corp.* (N.D.Cal. 2009) 641 F.Supp.2d 901, 903.) Plaintiff has alleged sufficient facts to constitute a cause of action, therefore the demurrer is overruled.

MOTION TO STRIKE PORTIONS OF FAC

As to Amazon's contention that Plaintiff's allegations re: housing and electric expenses should be stricken because Labor Code § 2802 limits reimbursable expenses to reasonable costs and the allocated portion of home office space and electricity expenses are not reasonable,(MPA in support of demurrer and motion to strike p.14:19-25.) in passing on the correctness of a ruling

LAW AND MOTION TENTATIVE RULINGS

DATE: AUGUST 9, 2021 TIME: 8:30 A.M.

on a motion to strike, judges read allegations of a pleading subject to a motion to strike as a whole, all parts in their context, and assume their truth... courts do not read allegations in isolation. (*Clauson v. Superior Court* (1998) 67 Cal.App.4th 1253, 1255.)

In addition, in the construction of a pleading, for the purpose of determining its effect, its allegations must be liberally construed, with a view to substantial justice between the parties (CA CCP § 452), therefore the motion to strike is denied.

PROOF OF SERVICE
STATE OF CALIFORNIA

I am over the age of 18 years and am employed in the county of Los Angeles, State of California. I am not a party to this action. My business address is 1180 S. Beverly Drive, Ste. 610, Los Angeles, California 90035.

On the date below, I served the foregoing document(s) described as:

[PROPOSED] ORDER OVER-RULING DEFENDANT'S DEMURRER AND DENYING MOTION TO STRIKE

to the following parties, in the following manner:

GIBSON, DUNN & CRUTCHER LLP
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(By Mail)

I caused such envelope, with postage thereon fully prepaid, to be placed in the United States mail at Los Angeles, California. I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice, it would be deposited with the U.S. postal service on that same day with postage thereon fully prepaid in Los Angeles, California in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit.



(By Electronic Service)

Based on a court order, local rule, or agreement of the parties to accept service by email or electronic transmission, I caused the documents to be sent to the person(s) at the email address(es) listed herein. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed at Los Angeles, California on August 9, 2021.



Jacklyn Blackwell

EXHIBIT R

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SANTA CRUZ

DAVID GEORGE WILLIAMS, an individual,
on behalf of the State of California, as a private
attorney general, and on behalf of all
Aggrieved Employees,

Plaintiff,

v.

AMAZON.COM SERVICES LLC, a
Delaware Limited Liability Company; DOES 1
to 50, inclusive,

Defendants.

CASE NO. 21CV00718

**DEFENDANT AMAZON'S ANSWER TO
PLAINTIFF'S FIRST AMENDED
COMPLAINT**

ASSIGNED FOR ALL PURPOSES TO:
HON. REBECCA CONNOLLY
DEPARTMENT 4

Action Filed: March 18, 2021
Trial Date: August 15, 2022

1 By submitting this Answer, Defendant Amazon.com Services LLC (“Amazon”) reserves and
2 does not waive any rights or remedies available under federal, state, local, or common law, including
3 but not limited to its right to challenge or appeal any rulings issued on Amazon’s challenges to the First
4 Amended Complaint (“FAC”), filed on May 5, 2021. Amazon, for itself and no other individual or
5 entity, submits its Answer to the unverified FAC of Plaintiff David G. Williams (“Plaintiff”) in the
6 above-captioned matter, as follows.

7 **GENERAL DENIAL**

8 Pursuant to California Code of Civil Procedure section 431.30(d), Amazon generally denies
9 each and every allegation in the FAC. Amazon further denies that Plaintiff or the group of purportedly
10 aggrieved employees is entitled to any relief and denies that Plaintiff was damaged in any manner or
11 nature to any extent. Further, Amazon denies that Plaintiff has sustained any injury, damage, or loss
12 by reason of any conduct, action, error, or omission by Amazon, or any agent, employee, or other
13 person acting under Amazon’s authority or control. Amazon does not waive and expressly reserves
14 any rights and remedies available under federal, state, local, and common law with respect to
15 challenging any allegation in the FAC or any rulings issued with respect to the FAC.

16 **AFFIRMATIVE DEFENSES**

17 Without admitting any fact alleged in the FAC, Amazon asserts and alleges the following
18 separate and additional defenses, without prejudice to Amazon’s right to argue that Plaintiff bears the
19 burden of proof as to any one or more of those defenses. Furthermore, all such defenses are pled in the
20 alternative and do not constitute an admission of liability or an admission that Plaintiff is entitled to
21 any relief whatsoever. As for separate and additional defenses to Plaintiff’s purported cause of action,
22 Amazon alleges as follows:

23 **FIRST SEPARATE AND ADDITIONAL AFFIRMATIVE DEFENSE**

24 **(Failure to State a Cause of Action)**

25 Plaintiff’s cause of action for civil penalties under Private Attorneys General Act of 2004,
26 California Labor Code section 2698, *et seq.* (“PAGA”) is barred, in whole or in part, because it fails to
27 state facts sufficient to constitute a cause of action against Amazon and fails to state facts sufficient to
28 constitute a claim upon which relief can be granted.

1 **SECOND SEPARATE AND ADDITIONAL AFFIRMATIVE DEFENSE**

2 **(Failure to Provide Notice and Exhaust Administrative Remedies)**

3 Plaintiff's cause of action for civil penalties under PAGA is barred, in whole or in part, because
4 Plaintiff failed to satisfy all the administrative, procedural, notice, and jurisdictional prerequisites
5 necessary to maintain a cause of action under the California Labor Code, including without limitation
6 failing to provide the Labor & Workforce Development Agency sufficient notice of his claim, the
7 names of the members of the group of purportedly aggrieved employees on whose behalf he seeks
8 penalties, or the facts underlying his claim to permit the Agency to make a reasoned determination
9 regarding whether to investigate.

10 **THIRD SEPARATE AND ADDITIONAL AFFIRMATIVE DEFENSE**

11 **(Standing/No Entitlement to Representative Action Relief)**

12 Plaintiff's cause of action for civil penalties under PAGA is barred, in whole or in part, because
13 Plaintiff lacks standing to assert claims for relief on behalf of the purported group of aggrieved
14 employees. Amazon contends that discovery and investigation may reveal that Plaintiff lacks standing
15 because Plaintiff is not an "aggrieved employee," against whom one or more of the alleged violations
16 was committed within the meaning of California Labor Code section 2698, *et seq.* Plaintiff's cause of
17 action for civil penalties under PAGA cannot be adjudicated on a representative basis.

18 **FOURTH SEPARATE AND ADDITIONAL AFFIRMATIVE DEFENSE**

19 **(No Damages or Harm)**

20 Plaintiff's cause of action for civil penalties under PAGA is barred, in whole or in part, because
21 Plaintiff has not been damaged or harmed in any sum or manner at all.

22 **FIFTH SEPARATE AND ADDITIONAL AFFIRMATIVE DEFENSE**

23 **(Not Knowing, Willful, or Intentional)**

24 Plaintiff's cause of action for civil penalties under PAGA is barred, in whole or in part, to the
25 extent it is predicated on alleged knowing, willful, or intentional conduct on the part of Amazon.

26 **SIXTH SEPARATE AND ADDITIONAL AFFIRMATIVE DEFENSE**

27 **(Compliance with the Law)**

28 Plaintiff's cause of action for civil penalties under PAGA is barred, in whole or in part, because

1 Amazon and its agents at all relevant times complied or substantially complied with all applicable
2 statutes, Wage Orders, regulations, and laws. Amazon has performed and fully discharged any and all
3 obligations and legal duties to Plaintiff and the allegedly aggrieved employees as defined in the FAC.

4 **SEVENTH SEPARATE AND ADDITIONAL AFFIRMATIVE DEFENSE**

5 **(Good Faith)**

6 Plaintiff's cause of action for civil penalties under PAGA is barred, in whole or in part, because
7 Amazon acted in good faith and on a reasonable belief that its actions did not violate the California
8 Labor Code and did not willfully, knowingly, or intentionally engage in any conduct that may have
9 violated such laws.

10 **EIGHTH SEPARATE AND ADDITIONAL AFFIRMATIVE DEFENSE**

11 **(In Pari Delicto and Lack of Proximate Cause)**

12 Plaintiff's cause of action for civil penalties under PAGA is barred, in whole or in part, by the
13 doctrine of in pari delicto. Moreover, to the extent the injuries and damages alleged in the FAC
14 occurred, such injuries were proximately caused by and were contributed to by Plaintiff's and the group
15 of purportedly aggrieved employees' own acts or failures to act. Amazon contends that discovery and
16 investigation may reveal that Plaintiff and other purportedly aggrieved employees contributed to any
17 injuries or damages that occurred by their own conduct, including because they failed to avail themselves
18 of Amazon's internal remedies.

19 **NINTH SEPARATE AND ADDITIONAL AFFIRMATIVE DEFENSE**

20 **(Conduct Outside Scope of Employment)**

21 Plaintiff's cause of action for civil penalties under PAGA is barred, in whole or in part, because
22 any alleged wrongful acts of Amazon's employee(s), including, but not limited to, any alleged failure
23 to reimburse necessary expenditures or losses incurred by Plaintiff or any other member of the group
24 of purportedly aggrieved employees in direct consequence of the discharge of their duties, were not
25 authorized by Amazon, were inconsistent with Amazon's policies and practices, were not in
26 furtherance of Amazon's business, and were contrary to Amazon's good-faith efforts to comply with
27 all applicable laws. Amazon alleges that any actions inconsistent with the Labor Code as alleged in
28 the FAC were committed by individuals acting outside the course and scope of employment, and thus,

Amazon may not be held liable for such conduct pursuant to the doctrine of respondeat superior.

TENTH SEPARATE AND ADDITIONAL AFFIRMATIVE DEFENSE

(Release/Accord and Satisfaction)

The claims of some or all purported group members for civil penalties under PAGA are barred, in whole or in part, because, in exchange for good and valuable consideration, they released Amazon from all liability to them for the claim alleged in the FAC. Amazon contends that investigation and discovery may reveal that some or all of the group of purportedly aggrieved employees have executed releases of all claims against Amazon, including those encompassed by Plaintiff's cause of action under PAGA.

ELEVENTH SEPARATE AND ADDITIONAL AFFIRMATIVE DEFENSE

(Equitable Defenses)

Plaintiff's cause of action for civil penalties under PAGA is barred, in whole or in part, by the equitable doctrines of consent, unclean hands, estoppel, and waiver.

TWELFTH SEPARATE AND ADDITIONAL AFFIRMATIVE DEFENSE

(Unjust Enrichment)

Plaintiff's cause of action for civil penalties under PAGA is barred, in whole or in part, to the extent it results in an unjust enrichment to Plaintiff or any person on whose behalf relief is sought.

THIRTEENTH SEPARATE AND ADDITIONAL AFFIRMATIVE DEFENSE

(Failure to Mitigate)

Plaintiff's cause of action for civil penalties under PAGA is barred, in whole or in part, because at all times mentioned in the FAC, Plaintiff and the group of purportedly aggrieved employees were properly reimbursed for all expenses, if any, pursuant to the requirements of the California Labor Code and because Plaintiff and the group of purportedly aggrieved employees unreasonably failed to prevent or to avoid such harm or diminish the extent of the harm by failing to notify Amazon of allegedly unreimbursed necessary expenditures incurred by Plaintiff or the group of purportedly aggrieved employees.

1 **FOURTEENTH SEPARATE AND ADDITIONAL AFFIRMATIVE DEFENSE**

2 **(Avoidable Consequences)**

3 Plaintiff's cause of action for civil penalties under PAGA is barred, in whole or in part, under
4 the avoidable consequences doctrine. Amazon, at all relevant times, has had procedures in place for
5 reporting work-related issues, including but not limited to business expense reimbursement issues.
6 Plaintiff and the group of purportedly aggrieved employees failed to utilize Amazon's preventive and
7 corrective measures. Reasonable use of Amazon's preventive and corrective measures would have
8 prevented some or all of the harm Plaintiff and the group of purportedly aggrieved employees allegedly
9 suffered.

10 **FIFTEENTH SEPARATE AND ADDITIONAL AFFIRMATIVE DEFENSE**

11 **(Failure to Comply with Reasonable Directions)**

12 Plaintiff's cause of action for civil penalties under PAGA is barred, in whole or in part, by
13 California Labor Code sections 2854 and 2856 in that, based on allegations that Plaintiff and the group
14 of purportedly aggrieved employees allegedly were not reimbursed for business expenses, Plaintiff and
15 the group of purportedly aggrieved employees failed to use ordinary care and diligence in the
16 performance of their duties, including by failing to report some or all allegedly reimbursable business
17 expenses, and failing to substantially comply with Amazon's reasonable directions to submit all
18 business expenses for reimbursement. Had Plaintiff and the group of purportedly aggrieved employees
19 followed Amazon's policies with regard to the performance of their duties, they would not have
20 sustained any of the alleged damages.

21 **SIXTEENTH SEPARATE AND ADDITIONAL AFFIRMATIVE DEFENSE**

22 **(Due Process and Equal Protection)**

23 Plaintiff's cause of action for civil penalties under PAGA is barred, in whole or in part, to the
24 extent it seeks exemplary penalties in violation of Amazon's rights to equal protection under the U.S.
25 and California Constitutions, Amazon's rights to procedural due process under the Fourteenth
26 Amendment of the U.S. Constitution and Article I, Section 7 of the California Constitution, and
27 Amazon's rights to substantive due process under the Fifth and Fourteenth Amendments of the U.S.
28 Constitution. Therefore, Plaintiff fails to state a cause of action upon which exemplary penalties may

1 be awarded.

2 **SEVENTEENTH SEPARATE AND ADDITIONAL AFFIRMATIVE DEFENSE**

3 **(Facial Due Process)**

4 Plaintiff's cause of action for civil penalties under PAGA is barred, in whole or in part, because
5 it fails to identify the manner in which penalties for violations of the California Labor Code accrue and
6 thus is facially ambiguous and violates Amazon's rights to due process guaranteed by the U.S. and
7 California Constitutions.

8 **EIGHTEENTH SEPARATE AND ADDITIONAL AFFIRMATIVE DEFENSE**

9 **(PAGA Unconstitutionality – Vagueness)**

10 Plaintiff's cause of action for civil penalties under PAGA is barred, in whole or in part, because
11 any finding of liability under PAGA would violate the Due Process Clause of the Fourteenth
12 Amendment of the U.S. Constitution as well as Article I, Section 7 of the California Constitution,
13 because the standards of liability under Labor Code section 2698, *et seq.* are unduly vague and
14 subjective, and they also permit retroactive, random, arbitrary, and capricious punishment that serves
15 no legitimate government interest.

16 **NINETEENTH SEPARATE AND ADDITIONAL AFFIRMATIVE DEFENSE**

17 **(PAGA Unconstitutionality – Due Process)**

18 Plaintiff's cause of action for civil penalties under PAGA is barred, in whole or in part, because
19 allowing this action to proceed on a group or representative basis, given the facts and circumstances of
20 this case, including any requirement to identify, locate, or notify absent persons on whose behalf this
21 action is allegedly prosecuted, would constitute a denial of Amazon's substantive and procedural due
22 process rights, in violation of the Fifth and Fourteenth Amendments to the U.S. Constitution and Article
23 I, Section 7 of the California Constitution.

24 **TWENTIETH SEPARATE AND ADDITIONAL AFFIRMATIVE DEFENSE**

25 **(Excessive Fines Under PAGA)**

26 Plaintiff's cause of action for civil penalties under PAGA is barred, in whole or in part, to the
27 extent the claims of Plaintiff and the group of purportedly aggrieved employees he purports to represent
28 seek to recover civil penalties under PAGA that are disproportionate to the actual harm suffered, if any.

1 An award of civil penalties under the circumstances of this case would constitute an excessive fine and
2 would otherwise violate Amazon's due process and other rights under the U.S. and California
3 Constitutions, including but not limited to Article 1, Section 17 of the California Constitution and the
4 Eighth Amendment of the U.S. Constitution.

5 **TWENTY-FIRST SEPARATE AND ADDITIONAL AFFIRMATIVE DEFENSE**

6 **(Unjust, Arbitrary and Oppressive, and Confiscatory Penalties)**

7 Plaintiff's cause of action for civil penalties under PAGA is barred, in whole or in part, because
8 neither Plaintiff nor any member of the group of purportedly aggrieved employees is entitled to recover
9 any civil penalties because, under the circumstances of this case, any such recovery would be unjust,
10 arbitrary and oppressive, and confiscatory.

11 **TWENTY-SECOND SEPARATE AND ADDITIONAL AFFIRMATIVE DEFENSE**

12 **(Penalties Cannot Be Determined on a Representative Basis)**

13 Plaintiff's cause of action for civil penalties under PAGA is barred, in whole or in part, because
14 such penalties cannot be determined on a representative basis.

15 **TWENTY-THIRD SEPARATE AND ADDITIONAL AFFIRMATIVE DEFENSE**

16 **(Unmanageable Representative PAGA Action)**

17 Plaintiff's cause of action for civil penalties under PAGA is barred, in whole or in part, because
18 the representative PAGA claim is unmanageable. Amazon contends that discovery and investigation
19 may reveal that Plaintiff's PAGA claim is unmanageable because Amazon would need to conduct a
20 multitude of individualized assessments, including without limitation, analyses of the various locations
21 the members of the group of purportedly aggrieved employees worked, the duties they performed, any
22 expenses they may have incurred, whether they sought or received reimbursement for those expenses,
23 the necessity and reasonableness of those expenses, whether they were assigned to Amazon offices in
24 California, whether the expenses were incurred in California, whether the expenses were incurred in
25 the course of discharging their job duties, whether they personally paid the expenses, and whether
26 Amazon had actual or constructive knowledge of the expenses.

1 **TWENTY-FOURTH SEPARATE AND ADDITIONAL AFFIRMATIVE DEFENSE**

2 **(Additional Affirmative Defenses)**

3 Amazon reserves the right to amend this Answer to assert additional defenses and supplement,
4 alter, or change this Answer as may be warranted by the revelation of information during discovery
5 and investigation.

6 **PRAYER FOR RELIEF**

7 WHEREFORE, Defendant prays for relief as follows:

- 8 1. That Plaintiff, and each person on whose behalf relief is sought, takes nothing by this
9 action;
- 10 2. That the FAC and all purported causes of action alleged therein be dismissed with
11 prejudice;
- 12 3. That Amazon be awarded its costs of suit and reasonable attorneys' fees, including
13 without limitation those permitted by California Labor Code section 218.5; and
- 14 4. That Amazon be awarded such further relief as this Court deems appropriate.

15 DATED: August 20, 2021

16 GIBSON, DUNN & CRUTCHER LLP
17 TIMOTHY W. LOOSE
18 LAUREN M. BLAS
19 COURTNEY L. SPEARS

20 By: /s/ Timothy W. Loose
Timothy W. Loose

21 Attorneys for Defendant
22 AMAZON.COM SERVICES LLC
23
24
25
26
27
28

PROOF OF SERVICE

I, Courtney L. Spears, declare as follows:

I am employed in the County of Orange, State of California, I am over the age of eighteen years and am not a party to this action; my business address is 3161 Michelson Drive, Irvine, CA 92612-4412, in said County and State. On August 20, 2021, I served the following document(s):

DEFENDANT AMAZON'S ANSWER TO PLAINTIFF'S FIRST AMENDED COMPLAINT

on the parties stated below, by the following means of service:

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☒ **BY ELECTRONIC SERVICE THROUGH AN EFSP:** On the above-mentioned date, I caused the documents to be sent to a court-approved Electronic Filing Service Provider ("EFSP"), for electronic service and filing. Electronic service will be accomplished by the EFSP's case-filing system at the electronic notification addresses as shown above.

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

Executed on August 20, 2021.

/s/ Courtney L. Spears
Courtney L. Spears

EXHIBIT S

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Attorneys for Defendant
AMAZON.COM SERVICES LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CRUZ

DAVID GEORGE WILLIAMS, an individual,
on behalf of the State of California, as a private
attorney general, and on behalf of all
Aggrieved Employees,

Plaintiff,

v.

AMAZON.COM SERVICES LLC, a
Delaware Limited Liability Company; DOES 1
to 50, inclusive,

Defendants.

CASE NO. 21CV00718

STIPULATED PROTECTED ORDER

ASSIGNED FOR ALL PURPOSES TO:
HON. PAUL MARIGONDA
DEPARTMENT 10

Action Filed: March 18, 2021
Trial Date: None

1. PURPOSES AND LIMITATIONS

Disclosure and discovery activity in this action are likely to involve production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the Parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order. The Parties further acknowledge, as set forth in Section 12.3, below, that this Order does not entitle them to file confidential information under seal; California Rule of Court 2.551 sets forth the procedures that must be followed and the standards that will be applied when a Party seeks permission from the Court to file material under seal.

2. DEFINITIONS

2.1 Challenging Party: a Party or Non-Party that challenges the designation of information or items under this Order.

2.2 “CONFIDENTIAL” (designation): information (regardless of how it is generated, stored, or maintained) or tangible things that qualify for protection under California Code of Civil Procedure section 2031.060(b) or that contain private information that provides a competitive advantage in the marketplace or personal identifying information.

2.3 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well as their support staff).

2.4 Designating Party: a Party or Non-Party that designates information or items that were produced in disclosures or in the course of discovery as “CONFIDENTIAL.”

2.5 Disclosure or Discovery Material: all items or information, including from any Non-Party, regardless of the medium or manner in which it is generated, stored, or maintained (including, among other things, testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses to discovery in this matter.

2.6 Expert: a person with specialized knowledge or experience in a matter pertinent to the litigation, along with his or her employees and support personnel, who has been retained by a Party or its Counsel to serve as an expert witness or as a consultant in this action.

2.7 House Counsel: attorneys who are employees of a Party to this action. House Counsel does not include Outside Counsel of Record or any other outside counsel.

2.8 Non-Party: any natural person, partnership, corporation, association, or other legal entity not named as a Party to this action.

2.9 Outside Counsel of Record: attorneys who are not employees of a Party to this action but are retained to represent or advise a Party to this action and have appeared in this action on behalf of that Party or are affiliated with a law firm which has appeared on behalf of that Party.

2.10 Party: any Party to this action, including all of its officers, directors, employees (including House Counsel), consultants, retained Experts, and Outside Counsel of Record (and their support staffs).

2.11 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material in this action.

2.12 Professional Vendors: persons or entities that provide litigation support services (e.g., photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing, or retrieving data in any form or medium) and their employees and subcontractors.

2.13 Protected Material: any Disclosure or Discovery Material that is designated as “CONFIDENTIAL.”

2.14 Receiving Party: a Party that receives Disclosure or Discovery Material from a Producing Party.

3. SCOPE

The protections conferred by this Order cover not only Protected Material (as defined above), but also (1) any information copied or extracted from Protected Material; (2) all copies, excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations, or presentations by Parties or their Counsel that utilizes Protected Material. However, the protections conferred by this Order do not cover the following information: (a) any information that is in the public domain at the time of disclosure to a Receiving Party or becomes part of the public domain after its disclosure to a Receiving Party as a result of publication not involving a violation of this Order, including becoming part of the public record through trial or otherwise; and (b) any information

obtained by the Receiving Party after the disclosure from a source who obtained the information lawfully and under no obligation of confidentiality to the Designating Party. The Parties reserve their rights to modify the scope of this Order with respect to the use of Protected Material at trial.

4. DURATION

Even after final disposition of this litigation, the confidentiality obligations imposed by this Order shall remain in effect until a Designating Party agrees otherwise in writing or a Court order otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and defenses in this action, with or without prejudice; and (2) final judgment after the completion and exhaustion of all appeals, rehearings, remands, trials (and retrials), or reviews of this action, including the time limits for filing any motions or applications for extensions of time pursuant to applicable law. After the final disposition of this action, this Court shall retain jurisdiction to enforce the terms of this Order. This Court's retention of jurisdiction pursuant to this paragraph shall not exceed five (5) years after final disposition; however, all Parties to this Order shall be bound by its obligations in perpetuity.

5. DESIGNATING PROTECTED MATERIAL

5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party or Non-Party that designates information or items for protection under this Order must take care to limit any such designation to specific material that qualifies under the appropriate standards.

If it comes to a Designating Party's attention that Disclosure or Discovery Material that it designated for protection do not qualify for protection, that Designating Party must within a reasonable time notify all other Parties that it is withdrawing the mistaken designation.

5.2 Manner and Timing of Designations. Except as otherwise provided in this Order, or as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

Designation in conformity with this Order requires:

(a) For information in documentary form (e.g., paper or electronic documents, but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing Party affix the legend "CONFIDENTIAL" to each page that contains protected material. Within 30 days of

1 receipt, any Receiving Party may designate any documents received from the Producing Party as
2 “CONFIDENTIAL.”

3 (i) A Party or Non-Party that makes original documents or materials available for
4 inspection need not designate them for protection until after the inspecting Party has indicated which
5 Disclosure or Discovery Material it would like copied and produced. During the inspection and before
6 the designation, all Disclosure or Discovery Material made available for inspection shall be deemed
7 “CONFIDENTIAL.” After the inspecting Party has identified the Disclosure or Discovery Material
8 that it wants copied and produced, the Parties shall have 30 days to designate documents as
9 “CONFIDENTIAL.” The Producing Party must affix the “CONFIDENTIAL” legend to each page
10 that contains Protected Material. Once 30 days have passed after the inspection, identification, or
11 production of the Disclosure or Discovery Material, any Disclosure or Discovery Material not
12 designated “CONFIDENTIAL” shall no longer be treated as “CONFIDENTIAL.”

13 (b) For testimony given in a deposition, hearing, or other proceeding, the Designating Party
14 may either:

15 (i) identify on the record before the close of the deposition, hearing, or other proceeding,
16 all the “CONFIDENTIAL” testimony by specifying the portions of the testimony that qualify for
17 protection; or

18 (ii) designate the entirety of the testimony as “CONFIDENTIAL” (before the deposition,
19 hearing, or other proceeding is concluded) with the right to have up to 30 days after receipt of the final
20 transcript of the deposition, hearing, or other proceeding to identify the specific portions of the
21 testimony qualifying for protection as “CONFIDENTIAL” testimony. Only those portions of the
22 testimony that are appropriately designated for protection within the 30 days of receipt of the final
23 transcript shall be covered by the provisions of this Order, unless the Designating Party specifies that
24 the entire transcript shall be treated as “CONFIDENTIAL.”

25 (c) Information produced in some form other than documentary, and for any other tangible
26 items, the Producing Party shall affix in a prominent place on the exterior of the container or containers
27 in which the information or item is stored the legend “CONFIDENTIAL.”
28

5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to designate qualified information or items does not, standing alone, waive the Designating Party's right to secure protection under this Order for such material. Upon timely correction of a designation, the Receiving Party must make reasonable efforts to assure that the material is treated in accordance with the provisions of this Order.

6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of confidentiality at any time. Unless a prompt challenge to a Designating Party's confidentiality designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic burdens, or a significant disruption or delay of the litigation, a Party does not waive its right to challenge a confidentiality designation by electing not to mount a challenge promptly after the original designation is disclosed.

6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process by providing written notice of each designation it is challenging. To avoid ambiguity as to whether a challenge has been made, the written notice must recite that the challenge to confidentiality is being made in accordance with this specific paragraph of this Order. The parties shall attempt to resolve each challenge in good faith and must begin the process by conferring directly (in voice-to-voice dialogue or written communication) within 14 days of the date of service of notice. In conferring, the Designating Party must explain the basis for its belief that the confidentiality designation was proper and the Challenging Party must give the Designating Party an opportunity to review the challenged Protected Material, and, if no change in designation is offered, to explain the basis for the chosen designation. A Challenging Party may proceed to the next stage of the challenge process only if it has engaged in this meet and confer process first or establishes that the Designating Party is unwilling to participate in the meet and confer process in a timely manner.

7. ACCESS TO AND USE OF PROTECTED MATERIAL

7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or produced by a Party or Non-Party in connection with this case only for prosecuting, defending, or attempting to settle this litigation. Protected Material may be disclosed only to the categories of persons

1 and under the conditions described in this Order. Protected Material must be stored and maintained by
2 a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons
3 authorized under this Order.

4 7.2 Disclosure of Protected Material. Unless otherwise ordered by the Court or permitted
5 in writing by the Designating Party, a Receiving Party may disclose any information or item designated
6 “CONFIDENTIAL” only to:

7 (a) the Receiving Party’s Outside Counsel of Record in this action, as well as employees of
8 Outside Counsel of Record; or individuals retained by Outside Counsel of Record for the purposes of
9 this litigation;

10 (b) the current or former officers, directors, and employees (including House Counsel) of
11 the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed
12 the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

13 (c) Experts (as defined in this Order) of the Receiving Party to whom disclosure is
14 reasonably necessary for this litigation and who have signed the “Acknowledgment and Agreement to
15 Be Bound” (Exhibit A);

16 (d) the Court and its personnel;

17 (e) court reporters and their staff, professional jury or trial consultants, mock jurors, and
18 Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have
19 signed the “Acknowledgment and Agreement to Be Bound” (Exhibit A);

20 (f) during their depositions, trials, or hearings, any witnesses in the action to whom
21 disclosure is reasonably necessary. Pages of transcribed deposition testimony or exhibits to depositions
22 that reveal Protected Material must be separately bound by the court reporter and may not be disclosed
23 to anyone except as permitted under this Order;

24 (g) the author or recipient of a document containing the information or a custodian or other
25 person who otherwise possessed or knew the information; and

26 (h) any mediator who is assigned to hear this matter, and his or her staff, who have signed
27 the “Acknowledgement and Agreement to Be Bound” (Exhibit A).
28

8. PROTECTED MATERIAL REQUESTED, SUBPOENAED OR ORDERED PRODUCED IN
OTHER LITIGATION

8.1 If a Party is served with a document request, investigatory demand for documents, subpoena, or a court order issued in other litigation or government investigation that compels or purports to compel disclosure of any Protected Material, that Party must:

(a) promptly notify in writing the Designating and Producing Parties. Such notification shall include a copy of the subpoena, court order, or document request/demand;

(b) promptly notify in writing the party who caused the subpoena, court order, or document request/demand to issue in the other litigation that some or all of the material covered by the subpoena, court order, or document request/demand is subject to this Order. Such notification shall include a copy of this Order; and

(c) cooperate with respect to all reasonable procedures requested by the Designating and/or Producing Parties whose Protected Material may be affected.

8.2 If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any Protected Material before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party's permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material and nothing in this Order shall be construed as authorizing or encouraging a Receiving Party in this action to disobey a lawful directive from another court. This Order is not intended to, and does not, restrict in any way the procedures set forth in California Code of Civil Procedure section 1985.

9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS
LITIGATION

(a) The terms of this Order are applicable to Protected Material produced by a Non-Party in this action. Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in this Order shall be construed as prohibiting a Non-Party from seeking additional protections.

(b) If a Party is required, by a valid discovery request, to produce a Non-Party's confidential Disclosure or Discovery Material in its possession, and the Party is subject to an agreement with the Non-Party not to produce the Non-Party's confidential Disclosure or Discovery Material, then the Party shall:

(1) promptly notify in writing the Requesting Party and the Non-Party that some or all of the Disclosure or Discovery Material requested is subject to a confidentiality agreement with a Non-Party;

(2) promptly provide the Non-Party with a copy of this Order, the relevant discovery request(s), and a reasonably specific description of the Disclosure or Discovery Material requested; and

(3) make the Disclosure or Discovery Material requested available for inspection by the Non-Party.

(c) If the Non-Party fails to object or seek a protective order from this Court within 14 days of receiving the notice and accompanying Disclosure or Discovery Material, the Receiving Party may produce the Non-Party's confidential Disclosure or Discovery Material responsive to the discovery request. If the Non-Party timely seeks a protective order, the Receiving Party shall not produce any Disclosure or Discovery Material in its possession or control that is subject to the confidentiality agreement with the Non-Party before a determination by the Court. Absent a Court order to the contrary, the Non-Party shall bear the burden and expense of seeking protection in this Court of its Disclosure or Discovery Material.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized by this Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) ask such person or persons to execute the "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A. Notwithstanding the foregoing, nothing in this paragraph shall be construed as limiting a

Designating Party's rights or remedies relating to the unauthorized disclosure of its Protected Material or any injury resulting therefrom.

11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE PROTECTED MATERIAL

If Disclosure or Discovery Material subject to a claim of attorney-client privilege, work product protection, or other privilege or protection from discovery is inadvertently produced, such production shall not constitute automatic waiver of such privilege or protection pursuant to California Evidence Code section 912. When a Producing Party gives notice to Receiving Parties that certain inadvertently produced material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties are those set forth in *Rico v. Mitsubishi Motors Corp.* (2007) 42 Cal. 4th 807, 810 (“[A]n attorney in these circumstances may not read a[n inadvertently disclosed] document any more closely than is necessary to ascertain that it is privileged. Once it becomes apparent that the content is privileged, counsel must immediately notify opposing counsel and try to resolve the situation[.]”). In addition, the Receiving Party must promptly return or destroy the inadvertently produced Disclosure or Discovery Material. If the Receiving Party wishes to challenge the Producing Party's claim of privilege or protection, it must sequester and not review or distribute to any person or entity the inadvertently produced Disclosure or Discovery Material until the challenge is resolved.

12. MISCELLANEOUS

12.1 Right to Further Relief. Nothing in this Order abridges the right of any person to seek its modification by the Court in the future. Nothing in this Order shall be construed to preclude any Party from asserting in good faith that certain Protected Materials require additional protections. The Parties shall meet and confer to discuss the terms of such additional protection.

12.2 Right to Assert Other Objections. By stipulating to the entry of this Order, no Party waives any right it otherwise would have to object to disclosing or producing any Disclosure or Discovery Material on any ground not addressed in this Order. Similarly, no Party waives any right to object on any ground to use in evidence of any Disclosure or Discovery Material covered by this Order.

12.3 Filing Protected Material. Without written permission from the Designating Party or a Court order secured after appropriate notice to all interested persons, a Party may not file in the public

1 record in this action any Protected Material. A Party that seeks to file under seal any Protected Material
2 must comply with California Rule of Court 2.551. Protected Material may only be filed under seal
3 pursuant to a Court order authorizing the sealing of the specific Protected Material at issue. Pursuant
4 to Rule 2.551, a sealing order will issue only upon a request establishing that the Protected Material at
5 issue presents an overriding interest that overcomes the right of public access to the record. If such an
6 application is denied in part, the filing Party shall file a revised document, with only the portion of such
7 filing found to fall within the requirements of California Code of Civil Procedure section 2031.060(b)
8 and Rule 2.551 being filed under seal. Pending the ruling on the application, the papers or portions
9 thereof subject to the sealing application shall be lodged under seal. If a Receiving Party's request to
10 file Protected Material under seal pursuant to Rule 2.551 is denied by the Court, then the Receiving
11 Party may file the information in the public record pursuant to Rule 2.551(b) unless otherwise
12 instructed by the Court.

13 12.4 Return or Destruction of Disclosure or Discovery Material. Within 30 days after the
14 final disposition of this action, including the exhaustion of any appeals or periods of time in which to
15 appeal any aspect of this action, each Receiving Party shall return or destroy all Disclosure or Discovery
16 Material produced by any other Party or Non-Party and notify within 30 days, in writing, any such
17 other Party or Non-Party that its Disclosure or Discovery Material has been returned or destroyed.
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1 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

2 DATED: September 16, 2021

3 GIBSON, DUNN & CRUTCHER LLP
4 TIMOTHY W. LOOSE
5 LAUREN M. BLAS
6 COURTNEY L. SPEARS

7 By: /s/ Timothy W. Loose
8 Timothy W. Loose

9 Attorneys for Defendant AMAZON.COM
10 SERVICES LLC

11 DATED: September 16, 2021

12 ACKERMANN & TILAJEF, P.C.
13 CRAIG J. ACKERMANN
14 SAM VAHEDI

15 JOSHUA KLUGMAN, P.C.
16 JOSHUA KLUGMAN

17 By: /s/ Sam Vahedi
18 Sam Vahedi

19 Attorneys for Plaintiff DAVID GEORGE WILLIAMS
20
21
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28

PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: _____, 2021

Hon. Paul Marigonda
Judge of the Superior Court

EXHIBIT AACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the Stipulated Protective Order that was issued by the Santa Cruz County Superior Court of California on [date] in the case of *David G. Williams v. Amazon.com Services LLC, et al.*, Case No. 21CV00718. I agree to comply with and to be bound by all the terms of this Stipulated Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to this Stipulated Protective Order to any person or entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the Santa Cruz County Superior Court of California for the purpose of enforcing the terms of this Stipulated Protective Order, even if such enforcement proceedings occur after termination of this action.

I hereby appoint _____ [print or type full name] of _____ [print or type full address and telephone number] as my California agent for service of process in connection with this action or any proceedings related to enforcement of this Stipulated Protective Order.


Date: _____

City and State where sworn and signed: _____

Printed name: _____

Signature: _____

EXHIBIT T

Electronically Filed
Superior Court of California
County of Santa Cruz
February 24, 2022
Alex Calvo, Clerk
 By Deputy, Salsedo, Declan

2/24/2022 8:52:08 AM

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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 SANTA CRUZ**

DAVID GEORGE WILLIAMS, an individual,
on behalf of the State of California, as a private
attorney general, and on behalf of all Aggrieved
Employees,

PLAINTIFF,

v.

AMAZON.COM SERVICES LLC, a Delaware
Limited Liability Company; DOES 1 to 50,
inclusive,

DEFENDANTS.

CASE NO. 21CV00718

**JOINT STIPULATION AND
~~PROPOSED~~ ORDER TO CONTINUE
TRIAL DATE AND TRIAL-RELATED
DEADLINES**

Judge: Hon. Paul Marigonda
Dept: 10

Action Filed: January 21, 2020
FAC Filed: May 5, 2021
Trial Date: August 15, 2022

JOINT STIPULATION AND [PROPOSED] ORDER TO
CONTINUE TRIAL DATE AND TRIAL-RELATED
DEADLINES

Plaintiff David George Williams (“Plaintiff”), on behalf of himself and all others similarly situated, and Defendant Amazon.com Services, LLC (“Defendant”) (together referred to as the “Parties”), by and through their respective counsel of record, stipulate as follows.

WHEREAS, on March 18, 2021, Plaintiff filed his PAGA representative action complaint against Defendant alleging claims for PAGA penalties based on Defendant’s alleged failure to reimburse home internet expenses;

WHEREAS, on May 5, 2021, Plaintiff filed his First Amended Complaint;

WHEREAS, the Parties have stipulated to Plaintiff filing his Second Amended Complaint to add two additional causes of action on behalf of himself and a class of similarly situated individuals: (1) failure to reimburse business expenses in violation of Labor Code section 2802; and (2) UCL violations based on the foregoing pursuant to Cal. Bus & Prof. Code sections 17200-17204;

WHEREAS, this Stipulation is predicated on the Court’s acceptance of Plaintiff’s filing of the Second Amended Complaint;

WHEREAS, trial is currently set for August 15, 2022, and a trial calendar call is set for August 4, 2022;

WHEREAS, no previous trial continuances have been requested or obtained;

WHEREAS, the Parties agree that a continuance of the trial and all related deadlines is preferable and the Court should instead set a schedule for the Parties to conclude discovery and for briefing of class certification in light of Plaintiff’s forthcoming Second Amended Complaint which will include class claims;

WHEREAS, the Parties agree to the following schedule:

- Class discovery for an additional 120 days—until June 14, 2022.
- Plaintiff’s motion for class certification to be filed on or before June 15, 2022.
- Defendant’s opposition to class certification motion to be filed on July 15, 2022.
- Plaintiff’s reply in support of class certification to be filed by July 31, 2022.

- Hearing on the class certification motion: the week of August 22, 2022 in the Court's discretion and based on availability.
- The hearing on class certification should also coincide with another Case Management Conference to schedule cross briefing on dispositive motions for the class and PAGA claims.

WHEREAS, the Parties agree that this continuance of the current August 15, 2022 trial date and all trial-related dates will not prejudice either Plaintiff or Defendant; and

WHEREAS, this stipulation is made in good faith and is not made to delay these proceedings or for any other improper purpose.


THEREFORE, pursuant to California Rule of Court 3.1332, it is hereby stipulated and agreed as follows:

1. The trial date in this matter, currently scheduled for August 15, 2022, is continued to a date to be determined after the Court's hearing on class certification.
2. The trial calendar call in this matter, currently scheduled for August 4, 2022, shall be continued to a date to be determined after the Court's hearing on class certification.
3. Class discovery for an additional 120 days—until June 14, 2022.
4. Plaintiff's motion for class certification to be filed on or before June 15, 2022.
5. Defendant's opposition to class certification motion to be filed on July 15, 2022.
6. Plaintiff's reply in support of class certification to be filed by July 31, 2022.
7. Hearing on the class certification motion: the week of August 22, 2022 in the Court's discretion and based on availability.
8. The hearing on class certification should also coincide with another Case Management Conference to schedule cross briefing on dispositive motions for the class and PAGA claims.

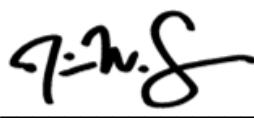
IT IS SO STIPULATED.

Respectfully submitted on February 18, 2022,

ACKERMANN & TILAJEF, P.C.
JOSHUA KLUGMAN, ATTORNEY AT LAW

By: 
Craig J. Ackermann, Esq.
Joshua Klugman, Esq.
*Attorneys for Plaintiff, the LWDA, and the Aggrieved
Employees*

GIBSON, DUNN & CRUTCHER LLP

By: 
Timothy W. Loose
Attorney for Defendant

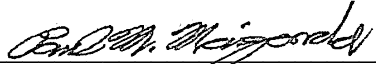
~~PROPOSED~~ ORDER

Having considered the Stipulation of the Parties, the Court hereby orders as follows:

1. The trial of this action shall be continued from August 15, 2022 to a date to be determined after the Court's hearing on class certification;
2. The trial calendar call shall be continued from August 4, 2022 to a date to be determined after the Court's hearing on class certification;
3. Class discovery shall continue until June 14, 2022;
4. Plaintiff's motion for class certification shall be filed on or before June 15, 2022;
5. Defendant's opposition to Plaintiff's class certification motion to be filed on July 15, 2022;
6. Plaintiff's reply in support of class certification to be filed by August 1, 2022;
7. Hearing on the class certification motion scheduled for August 24, 2022 which shall also coincide with another Case Management Conference to schedule cross briefing on dispositive motions for the class and PAGA claims.

IT IS SO ORDERED.

DATED: February 23, 2022



Hon. Paul Marigonda
Judge of the Superior Court, Santa Cruz

PROOF OF SERVICE
STATE OF CALIFORNIA

I am over the age of 18 years and am employed in the county of Los Angeles, State of California. I am not a party to this action. My business address is 1180 S. Beverly Drive, Ste. 610, Los Angeles, California 90035.

On the date below, I served the foregoing document(s) described as:

- JOINT STIPULATION AND [PROPOSED] ORDER TO CONTINUE TRIAL DATE AND TRIAL-RELATED DEADLINES

to the following parties, in the following manner:

GIBSON, DUNN & CRUTCHER LLP
TIMOTHY W. LOOSE - tloose@gibsondunn.com
LAUREN M. BLAS - lblas@gibsondunn.com
333 South Grand Avenue
Los Angeles, CA 90071-3197

Attorneys for Defendant AMAZON.COM SERVICES LLC

GIBSON, DUNN & CRUTCHER LLP
COURTNEY L. SPEARS - cspears@gibsondunn.com
3161 Michelson Drive
Irvine, CA 92612-4412



(By Electronic Service)

Based on a court order, local rule, or agreement of the parties to accept service by email or electronic transmission, I caused the documents to be sent to the person(s) at the email address(es) listed herein. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed at Los Angeles, California on February 21, 2022.


Jaclyn Blackwell

EXHIBIT U

ELECTRONICALLY RECEIVED DS
2/22/2022 12:13 PM

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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 SANTA CRUZ**

DAVID GEORGE WILLIAMS, an individual,
on behalf of the State of California, as a private
attorney general, and on behalf of all Aggrieved
Employees,

PLAINTIFF,

v.

AMAZON.COM SERVICES LLC, a Delaware
Limited Liability Company; DOES 1 to 50,
inclusive,

DEFENDANTS.

CASE NO. 21CV00718

**JOINT STIPULATION AND
~~PROPOSED~~ ORDER FOR LEAVE TO
FILE SECOND AMENDED
COMPLAINT**

Judge: Hon. Paul Marigonda
Dept: 10

Action Filed: March 18, 2021
FAC Filed: May 5, 2021
Trial Date: August 15, 2022



1 Plaintiff David George Williams (“Plaintiff”), on behalf of himself and all others similarly
2 situated, and Defendant Amazon.com Services, LLC (“Defendant”) (together referred to as the
3 “Parties”), by and through their respective counsel of record, hereby submit this Joint Stipulation
4 for Leave to File Plaintiff’s Second Amended Complaint.

5 WHEREAS, on March 18, 2021, Plaintiff filed his PAGA representative action complaint
6 against Defendant alleging claims for PAGA penalties based on Defendant’s alleged failure to
7 reimburse home internet expenses;

8 WHEREAS, on May 5, 2021, Plaintiff filed his First Amended Complaint;

9 WHEREAS, after meeting and conferring with counsel for Defendant, Plaintiff discovered
10 that Plaintiff did not sign an arbitration agreement with Defendant which would otherwise arguably
11 preclude Plaintiff from bringing claims under than PAGA;

12 WHEREAS, Plaintiff seeks to amend his First Amended Complaint to add two additional
13 causes of action on behalf of himself and a class of similarly situated individuals: (1) failure to
14 reimburse business expenses in violation of Labor Code section 2802; and (2) UCL violations
15 based on the foregoing pursuant to Cal. Bus & Prof. Code sections 17200-17204;

16 WHEREAS, Defendant expressly reserves all rights and legal remedies to challenge the
17 substance of the proposed Second Amended Complaint, but does not object to Plaintiff’s request
18 for leave to file the Second Amended Complaint;


19 WHEREAS, a copy of Plaintiff’s proposed Second Amended Complaint is attached hereto
20 as **Exhibit 1**.

21 NOW, THEREFORE, IT IS HEREBY STIPULATED by and between the parties hereto
22 through their respective attorneys of record that, based on the foregoing, Plaintiff may file his
23 Second Amended Complaint, a copy of which is attached hereto as **Exhibit 1**.

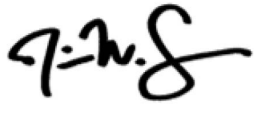
24 **IT IS SO STIPULATED.**
25
26
27

Respectfully submitted,

ACKERMANN & TILAJEF, P.C.
JOSHUA KLUGMAN, ATTORNEY AT LAW

By: 
Craig J. Ackermann, Esq.
Joshua Klugman, Esq.
*Attorneys for Plaintiff, the LWDA, and the Aggrieved
Employees*

GIBSON, DUNN & CRUTCHER LLP


By: _____
Timothy W. Loose
Attorney for Defendant

~~PROPOSED~~ ORDER

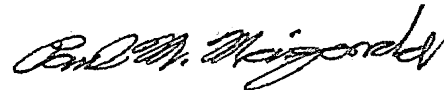


Having considered the Stipulation of the Parties, the Court hereby orders as follows:

1. Plaintiff is granted leave to file his Second Amended Complaint. Plaintiff shall file his Second Amended Complaint within 10 calendar days of the signing of this order;

IT IS SO ORDERED.

DATED: February 23, 2022



Hon. Paul Marigonda
Judge of the Superior Court, Santa Cruz

EXHIBIT 1

ACKERMANN & TILAJEF, P.C.

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

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SANTA CRUZ**

DAVID GEORGE WILLIAMS, an individual,
on behalf of the State of California, as a private
attorney general, and on behalf of all Aggrieved
Employees,

PLAINTIFF,

v.

AMAZON.COM SERVICES LLC, a Delaware
Limited Liability Company; DOES 1 to 50,
inclusive,

DEFENDANTS.

CASE NO. 21CV00718

**PLAINTIFF'S SECOND AMENDED
CLASS AND PAGA REPRESENTATIVE
ACTION COMPLAINT FOR:**

**(1) FAILURE TO REIMBURSE
BUSINESS EXPENSES (LABOR CODE §
2802);
(2) UCL VIOLATIONS (CAL. BUS. AND
PROF. CODE §§ 17200-17204); AND
(3) PENALTIES PURSUANT TO LABOR
CODE § 2699, ET SEQ.**

1 Plaintiff DAVID GEORGE WILLIAMS (“Plaintiff”), on behalf of the Aggrieved
 2 Employees, the State of California, and all others similarly situated (hereinafter “Class Members”)
 3 complains of Defendants AMAZON.COM SERVICES LLC and DOES 1 to 50 (collectively,
 4 “Defendants” or “Amazon”) and each of them, and alleges the following upon information and
 5 belief:

6 **INTRODUCTION**

7 1. This is a class action brought pursuant to Code of Civil Procedure section 382 and a
 8 representative action brought pursuant to Labor Code § 2699, *et seq.*, on behalf of the State of
 9 California against Defendants for its (1) failure to reimburse its current and former employees for
 10 their home office expenses in California for which they have not been fully reimbursed; (2) unfair
 11 business practices based on the foregoing; and (3) PAGA penalties based on the foregoing.

12 2. The Class is defined as follows: Plaintiff and all other California residents who are
 13 or were employed by Defendants, whose offices were closed, and who worked from home, for at
 14 least one pay period during the time period from March 15, 2020, to the present and ongoing (the
 15 “Class Period”).

16 3. The Aggrieved Employees are defined as: Plaintiff and all other California residents
 17 who are or were employed by Defendants, whose offices were closed and who worked from home
 18 for at least one pay period during the time period from March 15, 2020 to the present and ongoing
 19 (the “PAGA Period”).

20 **THE PARTIES**

21 4. Plaintiff David George Williams is a resident of California and at all times pertinent
 22 hereto worked for Defendants as a Senior Software Development Engineer. Plaintiff’s job duties
 23 included developing software for Defendants’ Alex voice assistant (in the Swift language for
 24 iPhone and in Java for cloud-based web services), writing design documents for software systems
 25 and reviewing those designs with various teams, performing code reviews for other developers, and
 26 being on call for production system. While employed by Defendants, Plaintiff lived at 222
 27 Kingsbury Drive, Aptos, California 95003. During the stay at home orders and while Defendants’
 28 offices were closed, Plaintiff worked remotely from his home address in California. On information

1 and belief, the vast majority, if not all, of the Aggrieved Employees and Class Members also
 2 worked from home while residing in California during the stay and home orders and while
 3 Defendants' offices were closed.

4 5. Plaintiff and all Aggrieved Employees are, and at all times pertinent hereto, have
 5 been employees of Defendants, and have been hired to work for Defendants in California,
 6 performing office work before stay-at-home orders went into effect. To further clarify, the Class we
 7 seek to represent are those employees who were based at the following office locations that were
 8 closed at various times during the pandemic:

- 9 • 10201 Torre Avenue, Cupertino, California 95014;
- 10 • 1900 University Avenue, East Palo Alto, California 94303;
- 11 • 475 Sansome Avenue, San Francisco, California 94111;
- 12 • 188 Spear Street, San Francisco, California 94105
- 13 • 96 East San Fernando Street, San Jose, California 95113;
- 14 • 110 Cooper Street, Santa Cruz, California 95060;
- 15 • 1005 Monterey Street, San Luis Obispo, California 93401;
- 16 • 1620 26th Street, San Monica, California 90404;
- 17 • 1100 Enterprise Way, Sunnyvale, California 94089;
- 18 • 40 Pacifica Avenue, Irvine, California 92618;
- 19 • 2400 Marine Avenue, Redondo Beach, California 90278; and
- 20 • 2727 Kurtz Avenue, San Diego, California 92110.

21 6. Amazon is an American multinational technology company based in Seattle,
 22 Washington which focuses on e-commerce, cloud computing, digital streaming, and artificial
 23 intelligence. Defendants employed Plaintiff and similarly situated persons as employees within
 24 California. Defendants have done and do business throughout the State of California including in
 25 Santa Cruz County.

26 7. The true names and capacities, whether individual, corporate, associate, or
 27 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to
 28 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure §

1 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
2 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to
3 herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
4 capacities of the Defendants designated hereinafter as DOES when such identities become known.

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

16 **JURISDICTION AND VENUE**

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

22 10. This Court has personal jurisdiction over Defendants because Defendants have
23 caused injuries in the County of Santa Cruz and State of California through their acts, and by their
24 violation of the California Labor Code and California state common law.

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

FACTS

12. From at least March 15, 2020, and continuing into the present, during which time various work from home orders were in effect in California¹, Plaintiff, the Class, and the Aggrieved Employees, at the direction of Defendants and/or with Defendants' knowledge and acquiescence, have incurred home office expenses including, among other things, home internet expenses, equipment expenses, electricity, and home office infrastructure expenses, in order to perform necessary work-related duties. Plaintiff, who was employed by Amazon.com Services LLC, was not able to work on premises at Defendants' office location in Silicon Valley, but instead was required to, and did, work from home, like the other Class Members and Aggrieved Employees. To be clear, Amazon.com Services LLC sent home their California-resident office-based employees during the period from March 15, 2020 to the present without affirmatively reimbursing them for a reasonable portion of their monthly home internet expenses.

13. During the COVID 19 stay at home orders in place during the Class Period, Plaintiff the Class, and the Aggrieved Employees were expected by Defendants to pay for, and have personally paid for, among other things, home internet service, electricity, and an allocated portion of their home office space, in the discharge of their job duties (the "home office expenses"). These home office expenses were required and necessary for work to be performed. These home internet and home office expenses ranged, but typically amounted to \$50 to \$100 per month per Class Member and Aggrieved Employee.

14. Defendants had no policy to affirmatively reimburse all of their employees who were forced to work from home in California during the COVID 19 pandemic for a reasonable portion of their home internet and home office expenses. In sum, Defendants' expense-related policies and/or practices require and expect, and/or with Defendants' knowledge thereof permit, Plaintiff, the Class, and the Aggrieved Employees to pay for home internet and home office infrastructure expenses incurred in direct consequence of discharging his and their necessary, reasonable, and business-related job duties on behalf of Defendants, without reimbursement in full

¹ On March 15, 2020, California Governor Gavin Newsom issued a stay-at-home directive to fight COVID-19, Execute Order N-27-20, which can be found here: [gov.ca.gov/wp-content/uploads/2020/03/3.15.2020-COVID-19-Facilities.pdf](https://www.gov.ca.gov/wp-content/uploads/2020/03/3.15.2020-COVID-19-Facilities.pdf).

by Defendants for such expenses, as required by California law. 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). 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.”).

15. Where, as here, employees in California are expected or mandated to use their internet at home for work, courts have held that they incurred

16. 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

1 for work, and even admitted that they would have incurred the same expenses without work duties,
2 the court nevertheless held that the employer was obligated to reimburse some reasonable portion
3 of these expenses); see also *Ritchie v. Blue Shield of California*, 2014 WL 6982943, at *21
4 (N.D.Cal. Dec. 9, 2014) (Hon. Edward Chen) (certifying class of home office claims processors
5 with 2802 phone reimbursement claims for landline reimbursements where company required
6 claims processors working from home to have a landline, but rejecting certification of claims for
7 home office supplies as individualized).

8 17. Defendants are aware or should have been aware that Plaintiff, the Class, and the
9 Aggrieved Employees regularly incurred and incur home office expenses in the discharge of their
10 duties as employees by virtue of Defendants' instructions to Plaintiff, the Class, and the Aggrieved
11 Employees. Defendants nevertheless have, throughout the Class and PAGA Periods, failed and
12 refused to affirmatively reimburse Plaintiff, the Class, and the Aggrieved Employees for such home
13 office expenses incurred by them in connection with their work.

14 18. Concerning Defendants' potential defenses based on its issuance of its written
15 reimbursement policies allowing California resident employees to seek reimbursement for home
16 internet expenses during the pandemic, the various decisions issued by Judge Edward Chen
17 in *RadioShack* are instructive. To begin, in his decision granting class certification in *Stuart v.*
18 *Radio Shack*, 2009 US Dist. LEXIS 12337 (N.D.Cal. Feb. 5, 2009), Judge Chen first discussed
19 RadioShack's argument and defenses, similar to Defendants' here, that: (1) RadioShack had
20 promulgated a uniform and largely compliant written mileage reimbursement policy allowing its
21 assistant managers to seek reimbursement for mileage expenses incurred during work-related trips
22 in their personal vehicles between its stores (Id. at *10-11); and (2) that unique defenses would
23 arise as applied to the named plaintiff, sufficient to defeat class certification, because the named
24 plaintiff either lacked knowledge of the applicable written policy and/or had waived his claims to
25 reimbursement for his mileage expenses by failing to seek reimbursement under RadioShack's
26 written reimbursement policies (Id. at *18-19).

27 19. Describing RadioShack's proffered defense as "something akin to exhaustion" (Id.
28 at *19), the Court summarized RadioShack's position that its "obligation [to reimburse] was not

1 triggered unless and until an employee actually made a claim for reimbursement...” Id. The Court
2 noted that resolution of this exhaustion defense would “turn largely on common and relatively
3 simple facts.” Id. at *24. The Court went back and forth on the arguments, dealing with them for
4 the first time. The Court noted, for instance, later in the decision that the exhaustion defense applied
5 to numerous employees since “many employees did not submit formal reimbursement requests.”
6 (Id. at *47-48). It added: “there is a question whether the exhaustion defense is even viable.” Id.
7 The Court then summarized the plaintiff’s view that Section 2804 of the Labor Code precludes the
8 exhaustion defense as a matter of law, and he expressed doubts as to that argument. Id. at *48. The
9 Court then noted the possibility that although the statute indicates that employers “shall” reimburse
10 business expenses, which seems mandatory, it may not mean that they have to do so “when there
11 has been no request” (Defendants’ position here). Id. at *49. The Court opined that, practically
12 speaking, employers ordinarily need information about an expense incurred before they can
13 reimburse employees for such expenses. Id. at *50. On the other hand, the Court added that
14 employers should not be able to sit back and wait for a claim for reimbursement, at least where the
15 employer has deterred employees from seeking reimbursement. Id. In conclusion, at the initial
16 certification phase, the Court concluded: “While the Court need not decide precisely the parameters
17 of the employer’s obligation under Section 2802 to inform and perhaps encourage employees to
18 submit reimbursement claims (or whether an exhaustion defense applies at all), the relevant
19 question here is whether the exhaustion defense (if available) requires such individualized
20 determination such that common questions do not predominate. The Court concludes it does not.
21 The parameters of the employer’s obligation, and thus conversely the viability of the exhaustion
22 defense, are likely to be judged by a reasonable person standard. Most of the relevant facts (the
23 terms of the reimbursement policy, its general interpretation by management, whether it was
24 publicized companywide, etc.) are common. While there might be some individualized inquiries as
25 to whether actions of individual store or district managers might have taken steps to fulfill the
26 employer’s obligation under the California Labor Code (*e.g.*, by actively encouraging employees to
27 submit reimbursement claims), the common questions are likely to predominate. Moreover, as
28 noted above, even if the exhaustion defense were found to be viable, its impact on class member’s

entitlement to relief will be a simple matter to determine. That determination will not undermine the overarching common questions on the core question of liability -- did RadioShack violate Section 2802 by not reimbursing employees for ICSTs [inter-store transfers]?" (Id. at *52-53). In a nutshell, after this initial foray into the intellectual landscape of the possible ways of understanding Section 2802 and the employer's obligation to reimburse and when it is triggered, the Court simply certified the Class and punted on the exact parameters of when liability may be triggered and whether there could be an exhaustion defense.

20. Several months later, however, Judge Chen specifically addressed the contours of when liability is triggered by employers under Section 2802 and RadioShack's exhaustion and other waivers defenses. *See Stuart v. RadioShack Corp.*, 641 F.Supp.2d 901 (April 30, 2009). The Court at that time summarized its thinking as follows: "The Court is not persuaded that either party's construction is appropriate. Mr. Stuart's contention is that the duty to reimburse is triggered once the expense is incurred by the employee irrespective of any other circumstance. However, if the employer had no knowledge or reason to know that the expense was incurred and the employee withheld that information, it would hardly seem fair to hold the employer accountable, particularly when, under the California Labor Code Private Attorneys General Act, an employer may be held liable for civil penalties and attorney's fees for a failure to reimburse in accordance with Section 2802. *See* Cal. Lab. Code section 2699(a), (f), (g). In turn, RadioShack's contention is that the duty to reimburse is triggered *only* when an employee makes a request for reimbursement even if the employer knew or had reason to know the expense was incurred. While the employee, rather than the employer, is in the best position to know when he or she has incurred an expense and the details of that expense, *see* Docket No. 65 (Order at 24), such a narrow construction is at war with Section 2802's "strong public policy . . . favor[ing] the indemnification (and defense) of employees by their employers for claims and liabilities resulting from the employees' acts within the course and scope of their employment." *Edwards v. Arthur Anderson*, 44 Cal.4th 937, 952 (2008) (internal quotation marks omitted). . . . The Court concludes that a fair interpretation of Sections 2802 and 2804 which produces 'practical and workable results,' *Gattuso*, at 567, consistent with the public policy underlying those sections, focuses not on whether an employee makes a request for reimbursement

1 but rather on whether the employer either knows or has reason to know that the employee has
 2 incurred a reimbursable expense. If it does, it must exercise due diligence to ensure that each
 3 employee is reimbursed.” *Id.* at 902-903. Accordingly, based on this standard and applying this test,
 4 RadioShack’s defenses premised on the failure of employees to submit for reimbursement,
 5 including estoppel, waiver, laches, equitable estoppel, were all subsequently rejected by the
 6 Court. *See Stuart v. RadioShack Corp.*, 259 F.R.D. 200, 202-203 (N.D. Cal. August 28, 2009)
 7 (quoting its earlier rulings). The Court’s rationale for rejecting RadioShack’s estoppel defenses is
 8 particularly pertinent here: “With respect to estoppel, RadioShack claims that, because Mr. Stuart
 9 (and presumably other class members) did not submit reimbursement requests, it had no reason to
 10 believe that he had any expenses to reimburse. *See* Docket No. 131 (Def.’s Br. at 6). However, this
 11 ignores the undisputed evidence that information about intercompany store transfers (“ICSTs”) was
 12 maintained in RadioShack’s database. The parties do not disagree that RadioShack knew about the
 13 ICST information on the database and that RadioShack was able, for the most part, to identify
 14 which employees had performed the ICSTs. Hence, given the records in RadioShack’s
 15 position, RadioShack could not reasonably rely on employee failure to request reimbursement.” *Id.*
 16 at 204-205.

17 21. In other words, where, as here (where Defendants closed its offices and sent all
 18 employees home to work from home, and use their home internet, in California), a company knows
 19 that business related expenses are being incurred by employees, it cannot simply hide behind its
 20 reimbursement policy and fail to affirmatively reimburse employees.

21 **CLASS ACTION ALLEGATIONS**

22 20. Plaintiff brings this action on behalf of himself and all others similarly situated as a
 23 class action pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class
 24 composed of and defined as *Plaintiff and all other California residents who are or were employed*
 25 *by Defendants, who were subject to stay at home orders and/or whose offices were closed due to*
 26 *COVID-19 for at least one pay period during the time period from March 15, 2020 to the present*
 27 *and ongoing* (“Class Members”). All such Class Members were subject to Defendants’ policy and
 28 practice of not fully reimbursing home office expenses.

20. This action has been brought and may properly be maintained as a class action under Code of Civil Procedure § 382 because there is a well-defined community of interest in the litigation, the proposed class is easily ascertainable, and Plaintiff is a proper representative of the Class:

a. Numerosity: The potential members of the Class as defined are so numerous that joinder of all the members of the Class is impracticable. On information and belief, Defendants employed several thousand employees that were subject to Defendants' unlawful reimbursement policy during the Class Period. The Class Members are dispersed throughout California. Joinder of all members of the proposed classes is therefore not practicable.

b. Commonality: There are questions of law and fact common to Plaintiff and the Class that predominate over any questions affecting only individual members of the Class. These common questions of law and fact include, without limitation:

i. Whether Plaintiff and Class Members incurred unreimbursed business expenses in the discharge of their duties, including but not limited to home office expenses, in violation of Labor Code § 2802;

ii. Whether Defendants intended, suffered and/or permitted, and/or knew and/or should have known that Plaintiff and Class Members incurred unreimbursed home office expenses, in the discharge of their duties;

iii. Whether Plaintiff is entitled to restitution under Business and Professions Code § 17200;

iv. The proper formula(s) for calculating damages, interest, and restitution owed to Plaintiff and the Class Members;

v. The nature and extent of class-wide damages.

c. Typicality: Plaintiff's claims are typical of the claims of the Class. Both Plaintiff and Class Members sustained injuries and damages, and were deprived of property rightly belonging to them, arising out of and caused by Defendants' common course of conduct in violation of law as alleged herein, in similar ways and for the same types of expenses.

d. Adequacy of Representation: Plaintiff is a member of the Class and will fairly and adequately represent and protect the interests of the Class and Class Members. Plaintiff's

interests do not conflict with those of Class and Class Members. Counsel who represents Plaintiff are competent and experienced in litigating large wage and hour class actions, and will devote sufficient time and resources to the case and otherwise adequately represent the Class and Class Members.

e. Superiority of Class Action: A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Class Members is not practicable, and questions of law and fact common to the Class predominate over any questions affecting only individual members of the Class. Each Class Member has been damaged or may be damaged in the future by reason of Defendants' unlawful policies and/or practices of not fully reimbursing home office expenses. Certification of this case as a class action 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. Certifying this case as a class action is superior because it allows for efficient and full disgorgement of the ill-gotten gains Defendants have enjoyed by maintaining its unlawful home office expense reimbursement policies and/or practices, and will thereby effectuate California's strong public policy of protecting employees from deprivation or offsetting of compensation earned in their employment. If this action is not certified as a Class Action, it will be impossible as a practical matter for many or most Class Members to bring individual actions to recover monies unlawfully withheld from their lawful compensation due from Defendants, due to the relatively small amounts of such individual recoveries relative to the costs and burdens of litigation.

FIRST CAUSE OF ACTION
FAILURE TO REIMBURSE FOR BUSINESS EXPENSES
[Cal. Labor Code section 2802)
On Behalf of Plaintiff and the Class Against Defendants

21. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.

22. The actional period for this cause of action is March 15, 2020, to the present and ongoing.

23. Labor Code § 2802(a) provides that "[a]n employer shall indemnify his or her

1 employee for all necessary expenditures or losses incurred by the employee in direct consequence
2 of the discharge of his or her duties.” Section 2802(c) defines “necessary” to include all “reasonable
3 costs.”

4 24. In order to discharge their duties for Defendants during stay-at-home orders and/or
5 when Defendants’ offices were closed, Plaintiff and similarly situated Class Members regularly
6 incurred home office expenses in the discharge of their duties as employees by virtue of
7 Defendants’ instructions to Plaintiff and the Class. Defendants nevertheless have, throughout the
8 Class Period, failed and refused to affirmatively reimburse Plaintiff, the Class, and the aggrieved
9 employees for such home office expenses incurred by them in connection with their work

10 25. Although having knowledge of such usage, Defendants did not reimburse Plaintiff
11 and similarly situated Class Members for a reasonable percentage of their work-related expenses, as
12 required by California law as stated in *Cochran v. Schwan’s Home Service, Inc.*, 228 Cal.App.4th
13 1137 (August 12, 2014) (“We hold that when employees must use their personal cell phones for
14 work-related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the
15 employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement
16 owed is a reasonable percentage of their cell phone bills.”). *See also, Aguilar v. Zep, Inc.*, 2014 US
17 Dist LEXIS 120315, *54 (N.D.Cal. Aug. 27, 2014) (Hon. Edward Chen) (where outside sales reps
18 used home internet and computers for work, and even admitted that they would have incurred the
19 same expenses without work duties, the court nevertheless held that the employer was obligated to
20 reimburse some reasonable portion of these expenses); *Ritchie v. Blue Shield of California*, 2014
21 WL 6982943, at *21 (N.D.Cal. Dec. 9, 2014) (Hon. Edward Chen) (certifying class of home office
22 claims processors with 2802 phone reimbursement claims for landline reimbursements where
23 company required claims processors working from home to have a landline, but rejecting
24 certification of claims for home office supplies as individualized).

25 26. Defendants’ failure to pay for or reimburse the work-related business expenses of
26 Plaintiff and Class Members violated non-waivable rights secured to Plaintiff and Class Members
27 by Labor Code §2802. See Labor Code §2804. Plaintiff and similarly situated Class Members are
28 entitled to reimbursement for these necessary expenditures, plus interest and attorneys’ fees and

costs, under Labor Code § 2802(c).

SECOND CAUSE OF ACTION
UNFAIR COMPETITION LAW VIOLATIONS
[Bus. & Prof. Code § 17200]
On Behalf of Plaintiff and the Class Against Defendants

27. Plaintiff re-alleges and incorporates by reference each and every allegation set forth in the preceding paragraphs.²⁸ Section 17200 of the California Business & Professions Code prohibits any unlawful, unfair, or fraudulent business practices. Business & Professions Code § 17204 allows “any person who has suffered injury in fact and has lost money or property” to prosecute a civil action for violation of the UCL. Such a person may bring such an action on behalf of himself and others similarly situated who are affected by the unlawful, unfair, or fraudulent business practice.²⁸ The actionable period for this cause of action is from March 15, 2020 through the present.

29. Section 90.5(a) of the Labor Code states that it is the public policy of California to enforce vigorously minimum labor standards in order to ensure employees are not required to work under substandard and unlawful conditions, and to protect employers who comply with the law from those who attempt to gain competitive advantage at the expense of their workers by failing to comply with minimum labor standards.

30. Beginning March 15, 2020, and continuing to the present, Defendants have committed unlawful, unfair, and/or fraudulent business acts and practices as defined by the UCL, by failing to reimburse and indemnify Plaintiff and similarly situated Class Members for employment-related home office expenses from March 15, 2020 to the present, in violation of Labor Code § 2802.

32. As a direct and proximate result of Defendants’ unlawful, unfair, and/or fraudulent acts and practices described herein, Defendants have received and continue to hold unlawfully obtained property and money belonging to Plaintiff and the Class in the form of unreimbursed employee home office business expenses that reduced or offset compensation earned by Plaintiff and Class Members.

33. As a direct and proximate result of Defendants’ unlawful business practices, Plaintiff

1 and the Class Members have suffered economic injuries including, but not limited to out-of-pocket
2 business expenses. Defendants have profited from its unlawful, unfair, and/or fraudulent acts and
3 practices in the amount of those business expenses and interest accrued thereon.

4 34. Plaintiff and similarly situated Class Members are entitled to monetary relief
5 pursuant to Business & Professions Code §§ 17203 and 17208 for all unreimbursed business
6 expenses, and interest thereon, from at least March 15, 2020 through to the date of such restitution,
7 at rates specified by law. Defendants should be required to disgorge all the profits and gains it has
8 reaped and restore such profits and gains to Plaintiff and Class Members from whom they were
9 unlawfully taken.

10 35. ginning March 15, 2020, Defendants committed, and continue to commit, acts of unfair
11 competition, as defined in sections 17200 *et seq.* of the California Business and Professions Code
12 by, among other things, failing to reimburse Plaintiff and the Class members for a reasonable
13 portion of their monthly home office expenses as required by California law, and therefore was
14 substantially injurious to Plaintiff and the Class members.

15 36. Defendants engaged in unfair competition in violation of sections 17200 *et seq.* of
16 the California Business & Professions Code by violating Section 2802 of the Labor Code.
17 Defendants' course of conduct, act, and practice in violation of the California laws mentioned
18 above constitute independent violations of sections 17200 *et seq.* of the California Business and
19 Professions Code.

20 37. he unlawful, unfair and fraudulent business practices and acts of Defendants, as
21 described above, have injured Plaintiff and the Class in that they were denied reimbursement for a
22 reasonable percentage of their monthly business-related home office expenses, and therefore was
23 substantially injurious to Plaintiff and the Class Members.

24 38. Plaintiff and similarly situated Class Members are entitled to enforce all applicable
25 penalty provisions of the Labor Code pursuant to Business & Professions Code § 17202.

26 39. Plaintiff has assumed the responsibility of enforcement of the laws and public
27 policies specified herein by suing on behalf of himself and other similarly situated Class Members
28 previously or presently employed by Defendants in California. Plaintiff's success in this action will

enforce important rights affecting the public interest. Plaintiff will incur a financial burden in pursuing this action in the public interest. Therefore, an award of reasonable attorneys' fees to Plaintiff is appropriate pursuant to Code of Civil Procedure § 1021.5

THIRD 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

40. Plaintiff, on behalf of himself, and all Aggrieved Employees, realleges and incorporates by reference all previous paragraphs. Based on the above allegations incorporated by reference, Defendants have violated Labor Code § 2802.

42. 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.

43. 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.

44. Pursuant to Labor Code § 2699.3 (a), on January 11, 2021, Plaintiff gave written notice by certified mail to Defendants, and to the LWDA of his 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 his PAGA claims on behalf of himself and all other current and former Aggrieved Employees of Defendants.

45. 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. An Order that this action may proceed and be maintained as a class action:
2. That the Court find and declare that Defendants' business expense policies and/or

1 practices violate California law, including Labor Code § 2802, by refusing and/or failing to
2 reimburse all business expenses reasonably incurred by Plaintiff and other and Class Members in
3 the discharge of their duties in California as employees of Defendants;

4 3. That the Court award to Plaintiff and Class Members all unreimbursed business
5 expenses, and interest thereon, that they are owed, pursuant to Labor Code § 2802, and attorneys'
6 fees, pursuant to Labor Code § 2802(c), in an amount to be proved at trial;

7 4. That the Court find and declare that Defendant has violated the UCL and committed
8 unfair and unlawful business practices by failing to reimburse Plaintiff and similarly situated Class
9 Members for their reasonable home office business expenses incurred by them in the course of their
10 duties for the benefit of Defendants, their employers;

11 5. That the Defendant be ordered to pay restitution to Plaintiff and the Class Members
12 due to Defendant's UCL violations under the First Cause of Action pursuant to Business and
13 Professions Code §§ 17200-17205, in the amount of their unreimbursed business expenses and
14 interest thereon;

15 6. For penalties and other relief allowable under Labor Code § 2699, *et seq.* for
16 Plaintiff and all Aggrieved Employees because of Defendants' violation of, without limitation,
17 Labor Code § 2802;

18 7. A civil penalty against Defendants in the amount of \$100 for the initial violation and
19 \$200 for each subsequent violation as specified in section 2699(f)(2) of the California Labor Code
20 for Plaintiff and all Aggrieved Employees for each and every pay period during the PAGA Period;

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

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

27 10. Such other and further relief as this Court may deem proper and just.
28

Respectfully submitted,

ACKERMANN & TILAJEF, P.C.
JOSHUA KLUGMAN, ESQ.

Dated: February 22, 2022



Craig J. Ackermann, Esq.

Joshua Klugman, Esq.

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

PROOF OF SERVICE
STATE OF CALIFORNIA

I am over the age of 18 years and am employed in the county of Los Angeles, State of California. I am not a party to this action. My business address is 1180 S. Beverly Drive, Ste. 610, Los Angeles, California 90035.

On the date below, I served the foregoing document(s) described as:

- **JOINT STIPULATION AND [PROPOSED] ORDER FOR LEAVE TO FILE SECOND AMENDED COMPLAINT**

to the following parties, in the following manner:

GIBSON, DUNN & CRUTCHER LLP

TIMOTHY W. LOOSE - tloose@gibsondunn.com

LAUREN M. BLAS - lblas@gibsondunn.com

ARIANA SANUDO - asanudo@gibsondunn.com

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333 South Grand Avenue

Los Angeles, CA 90071-3197

Attorneys for Defendant

AMAZON.COM SERVICES LLC



(By Electronic Service)

Based on a court order, local rule, or agreement of the parties to accept service by email or electronic transmission, I caused the documents to be sent to the person(s) at the email address(es) listed herein. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury pursuant to the laws of the State of California that the foregoing is true and correct.

Executed at Los Angeles, California on February 22, 2022.


Jaclyn Blackwell

CIVIL COVER SHEET

The JS-CAND 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved in its original form by the Judicial Conference of the United States in September 1974, is required for the Clerk of Court to initiate the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

(b) County of Residence of First Listed Plaintiff
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*

DEFENDANTS

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

1 U.S. Government Plaintiff 3 Federal Question
(U.S. Government Not a Party)

2 U.S. Government Defendant 4 Diversity
(Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)*

	PTF	DEF		PTF	DEF
Citizen of This State	1	1	Incorporated or Principal Place of Business In This State	4	4
Citizen of Another State	2	2	Incorporated and Principal Place of Business In Another State	5	5
Citizen or Subject of a Foreign Country	3	3	Foreign Nation	6	6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES	
110 Insurance 120 Marine 130 Miller Act 140 Negotiable Instrument 150 Recovery of Overpayment Of Veteran's Benefits 151 Medicare Act 152 Recovery of Defaulted Student Loans (Excludes Veterans) 153 Recovery of Overpayment of Veteran's Benefits 160 Stockholders' Suits 190 Other Contract 195 Contract Product Liability 196 Franchise	PERSONAL INJURY 310 Airplane 315 Airplane Product Liability 320 Assault, Libel & Slander 330 Federal Employers' Liability 340 Marine 345 Marine Product Liability 350 Motor Vehicle 355 Motor Vehicle Product Liability 360 Other Personal Injury 362 Personal Injury -Medical Malpractice CIVIL RIGHTS 440 Other Civil Rights 441 Voting 442 Employment 443 Housing/ Accommodations 445 Amer. w/Disabilities-- Employment 446 Amer. w/Disabilities--Other 448 Education	PERSONAL INJURY 365 Personal Injury -- Product Liability 367 Health Care/ Pharmaceutical Personal Injury Product Liability 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY 370 Other Fraud 371 Truth in Lending 380 Other Personal Property Damage 385 Property Damage Product Liability PRISONER PETITIONS HABEAS CORPUS 463 Alien Detainee 510 Motions to Vacate Sentence 530 General 535 Death Penalty OTHER 540 Mandamus & Other 550 Civil Rights 555 Prison Condition 560 Civil Detainee-- Conditions of Confinement	625 Drug Related Seizure of Property 21 USC § 881 690 Other LABOR 710 Fair Labor Standards Act 720 Labor/Management Relations 740 Railway Labor Act 751 Family and Medical Leave Act 790 Other Labor Litigation 791 Employee Retirement Income Security Act IMMIGRATION 462 Naturalization Application 465 Other Immigration Actions	422 Appeal 28 USC § 158 423 Withdrawal 28 USC § 157 PROPERTY RIGHTS 820 Copyrights 830 Patent 835 Patent--Abbreviated New Drug Application 840 Trademark 880 Defend Trade Secrets Act of 2016 SOCIAL SECURITY 861 HIA (1395ff) 862 Black Lung (923) 863 DIWC/DIWW (405(g)) 864 SSID Title XVI 865 RSI (405(g)) FEDERAL TAX SUITS 870 Taxes (U.S. Plaintiff or Defendant) 871 IRS--Third Party 26 USC § 7609	375 False Claims Act 376 Qui Tam (31 USC § 3729(a)) 400 State Reapportionment 410 Antitrust 430 Banks and Banking 450 Commerce 460 Deportation 470 Racketeer Influenced & Corrupt Organizations 480 Consumer Credit 485 Telephone Consumer Protection Act 490 Cable/Sat TV 850 Securities/Commodities/ Exchange 890 Other Statutory Actions 891 Agricultural Acts 893 Environmental Matters 895 Freedom of Information Act 896 Arbitration 899 Administrative Procedure Act/Review or Appeal of Agency Decision 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*
1 Original Proceeding 2 Removed from State Court 3 Remanded from Appellate Court 4 Reinstated or Reopened 5 Transferred from Another District *(specify)* 6 Multidistrict Litigation--Transfer 8 Multidistrict Litigation--Direct File

VI. CAUSE OF ACTION Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity):*

Brief description of cause:

VII. REQUESTED IN COMPLAINT: CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, Fed. R. Civ. P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S), IF ANY *(See instructions):* JUDGE DOCKET NUMBER

IX. DIVISIONAL ASSIGNMENT (Civil Local Rule 3-2)
(Place an "X" in One Box Only) SAN FRANCISCO/OAKLAND SAN JOSE EUREKA-MCKINLEYVILLE

DATE SIGNATURE OF ATTORNEY OF RECORD

CERTIFICATE OF SERVICE

I, Kory Hines, declare as follows:

I am employed in the County of New York, State of New York, I am over the age of eighteen years and am not a party to this action; my business address is 200 Park Avenue, New York, NY 10166, in said County and State. On March 24, 2022, I served the following document(s):

- **NOTICE OF REMOVAL OF ACTION**
- **DECLARATION OF DENICIA “JP” PRATHER**
- **DECLARATION OF TIMOTHY W. LOOSE AND EXHIBITS A – U THERETO**
- **CIVIL COVER SHEET**

on the parties stated below, by the following means of service:

Craig J. Ackermann
ACKERMANN & TILAJEF, P.C.
1180 South Beverly Drive, Suite 610
Los Angeles, CA 90035

Attorneys for Plaintiff
Tel 310.277.0614
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Joshua Klugman, Esq.
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Los Angeles, CA 90035

Attorneys for Plaintiff
Tel 424.248.5148
Fax 310.277.0635
esquirejosh@yahoo.com

- ☒ **BY EMAIL:** On the above-mentioned date, based on an agreement of the parties to accept service by electronic transmission, I caused the documents to be sent to the persons at the electronic notification addresses as shown above.
- ☒ **(STATE)** I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
- ☒ **(FEDERAL)** I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on March 24, 2022.

/s/ Kory Hines
Kory Hines