



DIRECT DIAL: (213) 542-8501
DIRECT FACSIMILE: (213) 542-5556
JBECERRA@JRBECERRALAW.COM

February 11, 2020

SENT VIA CERTIFIED MAIL

TARGET CORPORATION
c/o C T Corporation System
Agent for Service of process
818 W. 7th St., Ste. 930
Los Angeles, CA 90017

**SENT VIA ELECTRONIC
SUBMISSION**

DEPARTMENT OF INDUSTRIAL
RELATIONS
Accounting Unit
455 Golden Gate Avenue, 10th Floor
San Francisco, CA 94102

Re: CALIFORNIA LABOR CODE § 2699.3 PAGA NOTICE
Joseph D. Ornelas and Rodney Alan Robinson, Jr. v. Target Corporation

To Whom It May Concern:

I am writing on behalf of the aggrieved employees Joseph D. Ornelas and Rodney Alan Robinson, Jr. This notice is being made to the California Labor & Workforce Development Agency ("LWDA") pursuant to the requirement of Labor Code section 2699.3, to notify the LWDA that Mr. Ornelas and Mr. Robinson (hereinafter collectively referred to as the "PAGA Representatives"), as well as other aggrieved current and former non-exempt employees that worked for Target Corporation (hereinafter the "Employer" or "Target") in one of its Distribution Centers in California (the "Aggrieved Employees") from approximately March 21, 2019 to the present and continuing were: (1) not reimbursed for all necessary business expenses incurred in violation of Labor Code § 2802 and the IWC Wage Orders; (2) not paid for all hours worked in violation of Labor Code §§ 201, 202, 204, 223, 1194, 1197, 1198 and the IWC Wage Orders; and (3) not paid for all wages due at the time of termination in violation of Labor Code § 203 while employed by Target.

The PAGA Representatives and aggrieved employees are employed in Target's distribution centers located throughout the State of California.

The PAGA Representatives' and aggrieved employees' claim for unpaid wages and unreimbursed business expenses in violation of Labor Code § 2802 is based on Target's

requirement that all aggrieved employees download and utilize an application on their personal cell phones in order to check their work schedules that fluctuate depending on Target's business needs, request vacation time, and other work related obligations that Target imposes on them. The aggrieved employees are required to check the required app during their off-work hours to determine if they are required to work an additional shift and/or whether their scheduled shift has been cancelled. Aggrieved employees are not paid for this time and are not compensated these wages at the time of termination.

I. FAILURE TO REIMBURSE FOR BUSINESS EXPENSES

Labor Code § 2802 requires that an employer indemnify its employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge or his or her duties, or of his or her obedience to the directions of the employer. Lab. Code § 2802. With respect to requiring employees to utilize their personal cell phones for the company's business, the court in *Cochran v. Schwan's Home Service*, 228 Cal. App. 4th 1137 (2014) held that, **"when employees must use their personal cell phones for work-related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills."** *Id.* at 1140. **"To show liability under section 2802, an employee need only show that he or she was required to use a personal cell phone to make work-related calls, and he or she was not reimbursed."** *Id.* at 1145. Thus, even if an employee does not incur an *extra* expense that he or she would not have otherwise incurred absent the job, reimbursement is still required. **"Otherwise, the employer would receive a windfall because it would be passing its operating expenses on the employee."** *Id.* at 1144.

Cochran further explained that while a driver with an unlimited data plan is not incurring an *extra* expense for use of their smart phone, he or she is still *actually* incurring a work expense because the driver is using their personal phone for work purposes. *Id.* at 1143–45. If an employer is not required to pay a percentage of the bill to reflect that usage, the employer is able to shift their operating costs to the employee, relying on the data plans of their employees rather than having to pay for the data plans on their own. *Id.* at 1144.

Here, Target's company-wide policy for its distribution center employees in California is that they are required to use their personal cell phone (*i.e.* smart phones) to check their work schedules (*i.e.* whether they have been scheduled to work a particular work day or work shift by Target), request time off of work, and other timekeeping/payroll functions. First, aggrieved employees are required to download a Target application to their phones called "MyTime" and referred to by Target and the aggrieved employees as the "Target MyTime App." Once the employees have downloaded the Target MyTime App, they are required to check the App weekly, and during the "busy season" (the October through December holiday season) daily to determine whether Target has either "scheduled up" (added a day/shift to the employee's set schedule) or "scheduled down" (removed a day/shift from the employee's set schedule) the employee for a given work week. A failure to check the App and to miss a shift that has been added to an employee's schedule results in a "no call/no show" which is grounds for termination of employment from Target. Prior to adding the MyTime App, Target utilized a call-in number and updated the call-in line once a week to inform employees if a shift had been added/removed

from their schedule. Prior to introducing the MyTime App, Target distribution center employees could call in to the "call-in line" on Wednesday of each week, punch in their employee identification number and the line would inform them if their schedule for the week had been changed in any fashion. To update schedules in "real time" and give the company more flexibility in the scheduling of employee work shifts, Target discontinued the call-in line and now updates employees' schedules in "real time" and continuously which requires employees to consistently check the MyTime App on their personal cell phones. However, Target does not reimburse employees for the data usage of downloading and using the MyTime App on their personal cell phones in violation of Labor Code § 2802.

II. Failure to Pay all Wages and Wages Due at Termination

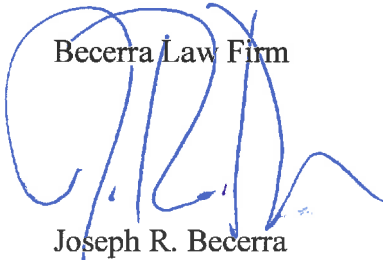
As set forth above, the aggrieved employees were required to check the MyTime App while off duty to determine whether Target had either "scheduled up" or "scheduled down" their work shift. In violation of Labor Code §§ 201, 202, 203 204, 223, 1194, 1197, and 1198 aggrieved employees were not compensated for any of this time. Additionally, this time also is compensable reporting time pay and a failure by Target to compensate employees for such reporting time pay violates 8 Cal. C. Regs. § 11010 *et seq.* ("If an employee is required to report to work a second time in any one workday and is furnished less than two (2) hours of work on the second reporting, said employee shall be paid for two (2) hours at the employee's regular rate of pay, which shall not be less than the minimum wage.") This is another policy violation that is suffered by all aggrieved employees.

As a result of the foregoing, at the time of separation of employment, aggrieved employees are not compensated for all hours worked in violation of Labor Code § 203.

This letter sets forth the specific provisions of the California Labor Code and the IWC Wage Orders that have been violated by Target and the facts and theories supporting those violations pursuant to California Labor Code § 2699.3.

Very truly yours,

Becerra Law Firm



Joseph R. Becerra