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individually and as a proxy for the State of California

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Superior Court of California
County of Riverside
6/26/2020
C. Ortiz
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF RIVERSIDE
[UNLIMITED CIVIL]

MAYRA RIOS, an individual, and as a proxy for
the State of California,

Plaintiff,

vs.

GREAT AMERICAN CHICKEN CORP.,
INC., a corporation; and DOES 1 through 5,
inclusive,

Defendants.

Case No.: **RIC2002341**

FIRST AMENDED COMPLAINT FOR:

1. Labor Code § 1198.5(k) Penalty
2. Labor Code § 226(f) Penalty
3. Failure to Reimburse and Indemnify
for Expenditures
4. Private Attorneys General Act

DEMAND FOR JURY TRIAL

Plaintiff, MAYRA RIOS, alleges as follows:

JURISDICTION AND VENUE

1. This Court has jurisdiction to hear the subject matter of this complaint. This Court also has jurisdiction over each defendant, as the unlawful business acts alleged herein occurred in California. Plaintiff's claims arise out of and are related to all Defendants' contacts with California.

2. This Court also has jurisdiction over each named corporate defendant because they purposely availed themselves of this Court's jurisdiction by employing Plaintiff as her joint-employer in the County of Riverside, by employing Plaintiff as an employer operating as a joint-enterprise in the County of Riverside, by conducting business within the County of Riverside as agents, instrumentalities

1 and alter egos of each other, and by retaliating against Plaintiff, within the County of Riverside,
2 California, for all relevant times herein alleged. Plaintiff's claims arise out of and are related to all
3 Defendants' contacts with California.

4 3. Venue is proper in this Court because all or some of the violations of law and unlawful
5 practices alleged herein occurred and are occurring in the County of Riverside.

6 **PARTIES**

7 4. Plaintiff is an individual who, at all relevant times, has resided in the State of California.

8 5. Defendant GREAT AMERICAN CHICKEN CORP, INC. ("GACC") , is a corporation
9 that conducted, and is conducting, business in the State of California .

10 6. Plaintiff is ignorant of the true names and capacities of the defendants sued herein as
11 DOES 1-5, inclusive, and therefore sues these defendants by such fictitious names and capacities.
12 Plaintiff will seek leave to amend this Complaint to allege their true names and capacities when
13 ascertained. Plaintiff is informed and believes and on that basis alleges that each fictitiously named
14 Defendants are responsible in some manner for the occurrences herein alleged, and that Plaintiff's
15 injuries were proximately caused by the conduct of such defendant.

16 7. All of the Defendants, including DOES 1-5, are alleged to be co-conspirators with each
17 other, in that each agreed to participate, and participated in, the furtherance of the objective of civil
18 wrongs as alleged in this Complaint.

19 8. Plaintiff is informed and believes and thereupon alleges that each Defendant entered into
20 a conspiracy and agreement with the other Defendants and/or subsequently joined said conspiracy and
21 ratified the prior acts and conduct of the Defendants who had previously entered into said conspiracy.
22 Plaintiff is currently unaware of when each Defendant joined said conspiracy and, upon information and
23 belief, alleges that all Defendants have knowingly, maliciously, and willfully entered into said
24 conspiracy, which continues until this day. The purposes of this ongoing conspiracy include, but are not
25 limited to, the wrongs alleged herein. All Defendants' acts and failures to act as alleged herein were
26 perpetrated in furtherance of the ongoing conspiracy.

27 9. Plaintiff is informed and believes and thereupon alleges that at all times material herein,
28 each defendant was completely dominated and controlled by its, his or her co-Defendants, each was the

agent, representative, and alter ego of the others, and all aided and abetted the wrongful acts of the others.

10. Plaintiff is informed and believes and thereupon alleges that at all times material herein, each of the Defendants was the agent, employee and/or joint venturer of, or working in concert with, co-Defendants and was acting within the course and scope of such agency, employment, and/or joint venture or concerted activity. To the extent that said conduct and omissions were perpetrated by certain Defendants, Plaintiff is informed and believes and thereupon alleges that the remaining Defendant and/or Defendants confirmed and ratified said conduct and omissions.

11. Whenever and wherever reference is made to individuals who are not named as defendants in this Complaint but are or were employees and/or agents of Defendants, such references shall be deemed to mean that such individuals at all relevant times acted on behalf of the Defendant within the scope of their employment.

12. Plaintiff is informed and believes and on that basis alleges that at all times relevant herein, the Defendants, and each of them, had the right to control, and controlled, Plaintiff's wages, hours and working conditions, and they had the right to control the manner in which Plaintiff performed her work duties, including but not limited supervision of her work, and they were joint employers or co-employers of Plaintiff at all times during her employment.

13. Plaintiff is informed and believes and on that basis alleges that at all times relevant herein, the Defendant, and each of them, were an integrated enterprise in that they had an interrelation of operations, centralized control of labor relations, common management, and common ownership or financial control.

GENERAL ALLEGATIONS

14. Plaintiff worked as a shift supervisor for Defendant until summer of 2019. On November 15, 2019, Plaintiff requested her payroll records, personnel records, and all documents she had signed relating to her employment. Defendant did not provide Plaintiff with her payroll within 21 days of her request. Defendant also did not provide Plaintiff with her personnel records within 30 days of her request. More than 30 days from Plaintiff's request, Defendant provided payroll and personnel records.

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15. During her employment, Plaintiff and the other shift supervisors were required or directed to use their personal cell phones to do work related activities. Defendant failed to reimburse them any portion of their cell phone expenses.

FIRST CAUSE OF ACTION

**LABOR CODE § 1198.5(k) PENALTY
(AGAINST ALL DEFENDANTS AND DOES 1-5)**

16. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

17. The employer shall make personnel records available for inspection to the former employee, or his or her representative, at reasonable intervals and at reasonable times, but “not later than 30 calendar days from the date the employer receives a written request.” Lab. Code § 1198.5(b).

18. Defendants did not timely provide Plaintiff’s personnel records.

19. “If an employer fails to permit a current or former employee, or his or her representative, to inspect or copy personnel records within the times specified in this section, or times agreed to by mutual agreement as provided in this section, the current or former employee or the Labor Commissioner may recover a penalty of seven hundred fifty dollars (\$750) from the employer.” Lab. Code § 1198.5(k).

20. Because Defendant failed to timely provide the personnel records, Plaintiff is entitled to injunctive relief, for an order that Defendants turn over the records, and for an award of attorneys’ fees pursuant to Lab. Code § 1198.5(l).

SECOND CAUSE OF ACTION

**LABOR CODE § 226(f) PENALTY
(AGAINST ALL DEFENDANTS AND DOES 1-5)**

21. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

22. An employer that is required to keep the information required by Labor Code § 226(a) shall afford current and former employees the right to inspect or copy records pertaining to their employment. Lab. Code § 226(b). An employer who receives a written or oral request to inspect or copy

records pursuant to Labor Code § 226(b) shall comply with the request as soon as practicable, but no later than 21 calendar days from the date of the request. Lab. Code § 226(c). Defendant violated Labor Code § 226(b)(c) by failing to timely provide Plaintiff with the complete Lab Code § 226(a) records pertaining to her employment.

23. A failure by an employer to permit a current or former employee to inspect or copy records within the time set forth in Labor Code § 226(c) entitles the current or former employee to recover a seven-hundred-fifty-dollar (\$750) penalty from the employer. Lab. Code § 226(f).

THIRD CAUSE OF ACTION

FAILURE TO REIMBURSE AND INDEMNIFY FOR EXPENDITURES

(AGAINST ALL DEFENDANTS AND DOES 1-5)

24. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

25. California Labor Code § 2802(a) provides that “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties”

26. Labor Code “Section 2802 is designed to prevent employers from passing their operating expenses on to their employees.” *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal. 4th 554, 562 (2007).

27. Defendants violated Labor Code Section 2802 by passing on their operating expenses to Plaintiff, in violation of Labor Code § 2802(a). Defendants required Plaintiff to use her cell phone for work related calls.

28. Plaintiff has been damaged by Defendants’ failure to reimburse in an amount according to proof at trial.

29. Pursuant to California Labor Code § 2802, and other applicable statutes, Plaintiff is entitled to reimbursement of expenditures, in an amount according to proof at trial, interest thereon, and an award of attorneys’ fees, and costs.

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FOURTH CAUSE OF ACTION
PRIVATE ATTORNEYS GENERAL ACT
(AGAINST ALL DEFENDANTS AND DOES 1-5)

30. Plaintiff incorporates each allegation set forth in all of the preceding paragraphs as though set forth herein in full again.

31. Pursuant to the California Labor Code Private Attorneys General Act (“PAGA”), “Notwithstanding any other provision of law, any provision of [the California Labor Code] that provides for a civil penalty to be assessed and collected by the Labor and Workforce Development Agency or any of its departments, divisions, commissions, boards, agencies, or employees, for a violation of this code, may, as an alternative, be recovered through a civil action brought by an aggrieved employee on behalf of himself or herself and other current or former employees pursuant to the procedures specified in Section 2699.3.” Lab. Code § 2699(a). “For all provisions of [the California Labor Code] except those for which a civil penalty is specifically provided, there is established a civil penalty for a violation of these provisions.” Lab. Code § 2699(f).

32. This PAGA suit “is fundamentally a law enforcement action.” *Arias v. Super. Ct.*, 46 Cal. 4th 969, 986 (2009); *Iskanian v. CLS Transportation Los Angeles, LLC*, 59 Cal.4th 348, 386-387 (2014) (“[E]very PAGA action, whether seeking penalties for Labor Code violations as to only one aggrieved employee—the plaintiff bringing the action—or as to other employees as well, is a representative action on behalf of the state.”); *Williams v. Super. Ct.*, 3 Cal. 5th 531, 538 (2017) (“a PAGA suit, essentially a qui tam action filed on behalf of the state to assist it with labor law enforcement”).

33. A PAGA “violation” includes, and is used in these allegations to mean, a failure to comply with any requirement of the Labor Code. Lab. Code § 22. Under the PAGA, an “aggrieved employee” means any person who was employed by the alleged violator and against whom only one of the alleged violations was committed. Lab. Code § 2699(c). Plaintiff is an “aggrieved employee.”

Labor Code Violations § 2802

34. “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or

her obedience to the directions of the employer.” Lab. Code § 2802(a). In *Cochran v. Schwan’s*, the court held:

If an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for purposes of section 2802. It does not matter whether the phone bill is paid for by a third person, or at all. In other words, it is no concern to the employer that the employee may pass on the expense to a family member or friend, or to a carrier that has to then write off a loss. It is irrelevant whether the employee changed plans to accommodate work-related cell phone usage. Also, the details of the employee’s cell phone plan do not factor into the liability analysis. Not only does our interpretation prevent employers from passing on operating expenses, it also prevents them from digging into the private lives of their employees to unearth how they handle their finances vis-à-vis family, friends and creditors. 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.

Cochran v. Schwan’s Home Serv., Inc., 228 Cal. App. 4th 1137, 1144–45 (2014), review denied (Nov. 25, 2014).

35. Here, like in *Cochran*, if an employee is required to do work-related activities on a personal cell phone, then she is incurring an expense for purposes of section 2802. Here, as in *Cochran*, to show liability under section 2802, an employee need only show that she was required or directed to use a personal cell phone to do work-related activities and was not reimbursed.

36. Plaintiff and aggrieved employees were required or directed to use personal cell phones to do work-related activities and were not reimbursed for any portion of their cell phone expenses, in violation of Labor Code § 2802(a).

37. “Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation.” Lab. Code § 558.1(a). It is currently unknown who caused Defendant to violate Labor Code § 2802.

38. Labor Code § 2802 does not have a civil penalty specifically provided. Thus, Labor Code § 2699(f) is applicable to impose civil penalties of one hundred dollars (\$100) for each aggrieved employee per pay period for the initial violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each subsequent violation.

Exhaustion of Administrative Remedies

39. On April 16, 2020, Plaintiff provided notice to the California Labor and Workforce Development Agency (“LWDA”), pursuant to Labor Code § 2699.3, detailing the specific provisions of the foregoing Labor Code sections that have been violated, including the facts and theories to support the violations. The LWDA file number is LWDA-CM-783422-20. The notice was sent by certified mail on or about April 16, 2020, to GACC, Aryeh Aslan, CEO (7019 0140 0000 7526 8729). Plaintiff submitted a fee waiver to the LWDA.

40. The LWDA has not, within 65 days of Plaintiff’s Notice of violations of the Labor Code, sent Plaintiff notice that it intends to investigate the violations. Thus, Plaintiff has exhausted Plaintiff’s administrative remedies, pursuant to Labor Code section 2699.3(a), as a prerequisite to assert a civil action, for civil penalties pursuant to Labor Code section 2699.

PRAYER

WHEREFORE, Plaintiff prays:

1. For civil penalties pursuant to Labor Code 2698 *et seq.*
2. For a \$750 statutory penalty pursuant to Labor Code section 1198.5.
3. For a \$750 statutory penalty pursuant to Labor Code section 226.
4. For reimbursement and indemnification, in an amount according to proof at the time of trial.
5. For reasonable attorneys’ fees pursuant to the Labor Code and Code of Civil Procedure.
6. For costs of suit including expert witness fees.
7. For prejudgment interest.
8. For such other and further relief as the Court may deem proper.

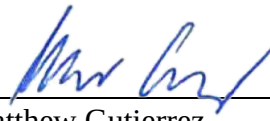
DEMAND FOR JURY TRIAL

Plaintiff MAYRA RIOS hereby demands a trial by jury.

1 Dated: June 26, 2020

GUTIERREZ DERHAM LAW FIRM LLP

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3 By:



4 Matthew Gutierrez
5 Attorneys for Plaintiff, MAYRA RIOS,
6 individually and as a proxy for the State of
7 California
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