

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Monica Bachner

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Attorneys for Plaintiff JOHN COLES as a representative on behalf of the State of California and other aggrieved employees,

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES-CENTRAL DISTRICT

JOHN COLES, as a representative on behalf of
the State of California and other aggrieved
employees,

Plaintiff,

v.

SALLY BEAUTY HOLDINGS, INC.; SALLY
BEAUTY SUPPLY LLC; and DOES 1 through
50, inclusive,

Defendants.

Case No.: **21STCV01648**

**PRIVATE ATTORNEYS GENERAL
ACT COMPLAINT**

1. Violation of PAGA for Failure to Reimburse Business Expenses (Lab. Code, § 2802).

1 Plaintiff JOHN COLES ("Plaintiff"), individually and on behalf of other aggrieved
2 employees, hereby complains and alleges as follows:

3 **PRELIMINARY STATEMENT**

4 1. Plaintiff brings this representative action pursuant to the Private Attorneys General
5 Act of 2004 ("PAGA") against Defendants SALLY BEAUTY HOLDINGS, INC.; SALLY
6 BEAUTY SUPPLY LLC; and DOES 1 through 50 (collectively "Defendants"), on behalf of
7 himself individually and all other current and former non-exempt aggrieved employees employed
8 by Defendants throughout California during the PAGA period. The PAGA period is defined as
9 one (1) year prior to Plaintiff's notice of labor code violations, to the Labor and Workforce
10 Development Agency ("LWDA") and certified mailing of said notice to Defendants until
11 resolution.

12 2. Defendants are distributor and specialty retailers offering professional beauty
13 products to both retail consumers and salon professionals, throughout the state of California.
14 Defendants employed and/or continue to employ Plaintiff and other aggrieved employees
15 throughout California.

16 3. Defendants have engaged in a systematic pattern of wage and hour violations
17 under the Labor Code, including, but not limited to, failure to pay all wages (including minimum,
18 regular, and overtime compensation); failure to provide meal periods or compensation in lieu
19 thereof; failure to provide accurate itemized wage statements; failure to pay all wages due upon
20 separation of employment; and failure to reimburse business expenses. These violations concern
21 current and past non-exempt employees of Defendants.

22 4. At all relevant times herein, Defendants have consistently maintained and enforced
23 against Plaintiff and aggrieved employees the unlawful practices and policies set forth herein.

24 **JURISDICTION AND VENUE**

25 5. Venue is proper in Los Angeles County, because Defendants maintain various
26 locations and transact business in this county, the obligations and liability primarily arise in this
27 county, and work was primarily performed by Plaintiff and other aggrieved employees in this
28

1 county.

2 6. The California Superior Court has jurisdiction over this matter. The individual
3 claims are under the seventy-five thousand dollar (\$75,000.00) jurisdictional threshold for federal
4 court and PAGA penalties cannot be aggregated to meet the minimum jurisdictional amount
5 required for diversity removal. Further, there is no federal question at issue as the issues herein
6 are based solely on California statutes and law, including, but not limited to, the California Labor
7 Code, Industrial Welfare Commission Wage Orders, California Code of Civil Procedure, and
8 California Rules of Court.

9 **THE PARTIES**

10 **Plaintiff**

11 7. Plaintiff is, and at all times herein mentioned was, a resident of the County of Los
12 Angeles. Throughout the PAGA period, Defendants employed Plaintiff as a distributor sales
13 consultant.

14 **Defendant**

15 8. Plaintiff is informed and believes, and based thereon alleges, that SALLY
16 BEAUTY HOLDINGS, INC. is a Delaware corporation headquarter in Denton, Texas, and is a
17 distributor and specialty retailer offering professional beauty products to both retail consumers
18 and salon professionals throughout California and is and/or was the employer of the Plaintiff
19 during the Liability Period.

20 9. Plaintiff is informed and believes, and based thereon alleges, that SALLY
21 BEAUTY SUPPLY, LLC. is a Virginia corporation headquarter in Denton, Texas, and is a
22 distributor and specialty retailer offering professional beauty products to both retail consumers
23 and salon professionals throughout California and is and/or was the employer of the Plaintiff
24 during the Liability Period.

25 10. During the Liability Period Defendants employed Plaintiff and all other aggrieved
26 employees, and failed to reimburse Plaintiff all other aggrieved employees for necessary business
27 expenditures incurred during their employment in direct consequence of the discharge of their
28 duties, or of their obedience to their directions of Defendants within the state of California. On

1 information and belief, and based thereon alleges that Defendants are conducting business in good
2 standing in California.

3 11. Plaintiff is ignorant of the true names, capacities, relationships, and extent of
4 participation in the conduct herein alleged of the Defendants sued herein as DOES 1 through 50,
5 inclusive, but on information and belief allege that said Defendants are legally responsible for the
6 occurrences alleged herein, and that the damages of Plaintiff and the aggrieved employees were
7 proximately caused by such Defendants. Plaintiff will amend this complaint to allege the true
8 names and capacities of the DOE Defendants when ascertained.

9 12. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
10 herein was, at all times relevant to this action, the agent, employee, representing partner, and/or
11 joint venture of the remaining Defendants and was acting within the course and scope of the
12 relationship. Plaintiff is further informed and believes, based thereon alleges, that each of the
13 Defendants herein gave consent to, ratified and authorized the acts alleged herein to the remaining
14 Defendants.

15 13. Plaintiff is further informed and believes, and based thereon alleges, that
16 Defendants herein acted as a joint employer at all relevant times. Defendants acted in all respects
17 pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business
18 plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally
19 attributable to the other Defendants.

20 **ADMINISTRATIVE PREREQUISITES**

21 14. By this complaint, Plaintiff brings this case as a representative action seeking
22 penalties for himself, the aggrieved employees, and the State of California in a representative
23 capacity, as provided by the PAGA, Labor Code sections 2698 et seq. Plaintiff is an aggrieved
24 employee who was employed by Defendants and subject to at least one of the Labor Code
25 violations set forth in Labor Code section 2699.5. Plaintiff specifically alleged the following in
26 his notice to the LWDA and Defendants: violation of Labor Code section 2802.

27 15. Under Labor Code section 2699.3, subdivision (a), a plaintiff may bring a cause
28 of action under PAGA only after giving the LWDA and the employer notice of the Labor Code

1 sections alleged to have been violated, and after receiving notice from the LWDA of its intention
2 not to investigate, or after sixty-five (65) days have passed without notice from the LWDA.

3 16. Prior to filing this complaint, on October 8, 2020, Plaintiff gave written notice of
4 the specific provisions alleged to have been violated, including the facts and theories to support
5 the alleged violations, as required by Labor Code section 2699.3. The written notice was given
6 via certified mail to Defendants, and the LWDA by electronically filing the notice via the
7 Department of Industrial Relations website. Plaintiff was given an LWDA case number of
8 LWDA-CM-809144-20. A true and correct copy of Plaintiff's notice to the LWDA and
9 Defendants, dated October 8, 2020, is attached hereto as Exhibit A.

10 17. The LWDA has not provided Plaintiff with any notice that it intends to investigate
11 the violations as alleged in Plaintiff's October 8, 2020, notice, and more than sixty-five (65)
12 calendar days have elapsed since the postmark date on the notice.

13 **GENERAL ALLEGATIONS**

14 18. Pursuant to Labor Code section 2699, subdivision (a), any provision of the Labor
15 Code that provides for a civil penalty to be assessed and collected by the LWDA or any of its
16 departments, divisions, commissions, boards, agencies or employees for violation of the code
17 may, as an alternative, be recovered through a civil action brought by an aggrieved employee on
18 behalf of himself or herself and other current or former employees pursuant to the procedures
19 specified in Labor Code section 2699.3.

20 19. For all provisions of the Labor Code except those for which a civil penalty is
21 specifically provided, Labor Code section 2699, subdivision (f) imposes upon Defendants a
22 penalty of one hundred dollars (\$100.00) for each aggrieved employee per pay period for the
23 initial violation and two hundred dollars (\$200.00) for each aggrieved employee per pay period
24 for each subsequent pay period in which Defendants violated these provisions of the Labor Code.

25 20. Defendant's conduct during the PAGA period with respect to Plaintiff and the
26 aggrieved employees violates numerous Labor Code sections as detailed herein.

27 21. Plaintiff alleges that Defendants have engaged in a systematic pattern of wage and
28 hour violations under the California Labor Code and IWC Wage Orders.

1 22. At all relevant times herein, Defendants were the employers of Plaintiff and other
2 aggrieved employees.

3 23. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
4 or should have known that Plaintiff and aggrieved employees were entitled to receive business
5 reimbursements for necessary expenditures incurred in connection with the performance and
6 execution of their job duties. Defendants required Plaintiff and aggrieved employees to use their
7 personal cellphones to carry out their work-related duties, including without limitation
8 communicating with supervisors regarding status of orders, the signing up of various potential
9 client accounts, communicating with clients to place, cancel, or change orders, as well as use their
10 cellular data for GPS purposes. However, Plaintiff and other aggrieved employees were not
11 reimbursed for the reasonable percentage of their cellphone bills.

12 24. Moreover, Plaintiff is informed and believes, and based thereon alleges that
13 Defendants failed to reimburse Plaintiff and other aggrieved employees for requiring them to
14 regularly use their personal vehicles to drive to and from various beauty salons, school, and
15 location where they would regularly meet with licensed stylists, nail technicians and aestheticians
16 to provide customer service, specifically explaining various features and benefits of Defendants'
17 product. Communicate inventory issues, complete transactions, pick up merchandise incorrectly
18 delivered or delivered damages from various current clients, deliver correct merchandise, and
19 drop off the incorrect/ and /or damaged items to they could be shipped back to head office.
20 Defendants failed to maintain adequate insurance coverage, reimburse Plaintiff and other
21 aggrieved employees for additional insurance premiums for the use of their personal vehicles to
22 perform job related task, and pay for any deductible or costs associated with automobile accidents
23 that arose while Plaintiff and other aggrieved employees used their personal vehicles to carry out
24 their job duties. Additionally, Plaintiff and other aggrieved employees never received a mileage
25 reimbursement that is compliant with the IRS standard mileage rates when they used their
26 personal vehicles in the course and scope of their employment.

27 25. Further, Plaintiff is informed and believes, and based thereon alleges that, Plaintiff
28 and other aggrieved employees predominately worked from home. As a result, they were required

1 to generally dedicate a section of their homes as their "office space" to person work related tasks.
2 For example, prepare for meetings with potential salons, hair stylists, aestheticians, nail
3 technicians research new products sent by head office that they were required to showcase and
4 sell and even plan their sales routes to various locations throughout California. However,
5 Defendants failed to provide reimbursement to Plaintiff and other aggrieved employees, their
6 homebound employees, for using their homes as their "office."

7 26. Furthermore, Plaintiff is informed and believes, and based thereon alleges that
8 Defendants failed to reimburse Plaintiff and other aggrieved employees for using their home's
9 internet to carry out their employment duties.

10 27. In violation of the Labor Code, Defendants failed to reimburse Plaintiff and
11 aggrieved employees for these business-related expenditures.

12 28. Plaintiff is informed and believes, and based thereon alleges, that Defendants knew
13 or should have known that Plaintiff and certain aggrieved employees were entitled to timely
14 payment of wages due upon separation of employment. In violation of the Labor Code, Plaintiff
15 and certain aggrieved employees did not receive payment of all wages due, within permissible
16 time periods, upon separation of employment.

17 **FIRST CAUSE OF ACTION**

18 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT FOR FAILURE TO**
19 **REIMBURSE BUSINESS EXPENSES**

20 **(Labor Code § 2802)**

21 **(Against all Defendants)**

22 29. Plaintiff realleges and incorporates by reference the allegations in paragraphs 1
23 through 68.

24 30. Labor Code section 2802 provides that an employer shall indemnify his or her
25 employee for all necessary expenditures or losses incurred by the employee in direct consequence
26 of the discharge of his or her duties, or of his or her obedience to the directions of the employer.

27 31. Defendants failed to indemnify Plaintiff and aggrieved employees for all necessary
28 expenditures or losses incurred by Plaintiff and aggrieved employees in direct consequence of the

1 discharge of their duties. Specifically, as hereinabove mentioned, Defendants failed to indemnify
2 Plaintiff and aggrieved employees for expenditures they incurred on their behalf, including, but
3 not limited to, using their personal cellphones, using their personal vehicles, and their homes as
4 their "office" as well as their home's internet service.

5 32. In violation of the Labor Code, Defendants failed to reimburse Plaintiff and
6 aggrieved employees for the above referenced business-related expenditures.

7 33. By virtue of Defendant's unlawful actions, Plaintiff and the aggrieved employees
8 have suffered, and will continue to suffer, damages in amounts which are presently unknown, but
9 will be ascertained according to proof at trial.

10 34. Plaintiff seeks recovery of civil penalties individually, on behalf of the aggrieved
11 employees and the State of California for violations of Labor Code section 2802 during the PAGA
12 period, in a sum as provided by the Labor Code and/or other statutes.

13 35. Plaintiff, individually and on behalf of the aggrieved employees and the State of
14 California also seeks attorneys' fees and costs pursuant to Labor Code section 2699, subdivision
15 (g) and Code of Civil Procedure section 1021.5.

16
17 **PRAYER FOR RELIEF**

18 **WHEREFORE**, Plaintiff prays for judgment as follows:

- 19 1. For civil penalties pursuant to the PAGA in an amount according to proof;
20 2. For reasonable attorney's fees and costs, pursuant to the PAGA and California
21 Code of Civil Procedure section 1021.5; and
22 3. For such other and further relief as this Court may deem just and proper.

23
24 Dated: January 14, 2021

MAHONEY LAW GROUP, APC

25
26 By: 

27 Kevin Mahoney, Esq.
28 Berkeh Alemzadeh, Esq.
Attorney for Plaintiff JOHN COLES

EXHIBIT A



Berkeh Alemzadeh
Phone : 562.590.5550
Facsimile : 562.590.8400
balem@mahoney-law.net

October 8, 2020

VIA ONLINE SUBMISSION

LABOR AND WORKFORCE DEVELOPMENT AGENCY

Attn: PAGA Administrator

<https://dir.tfaforms.net/207>

VIA CERTIFIED MAIL # 7019 0700 0001 7488 8275

Return Receipt Requested

Beauty Systems Group, Inc.

3001 Colorado Blvd.

Denton, TX 76210-6802

VIA CERTIFIED MAIL # 7019 0700 0001 7488 8282

Return Receipt Requested

Sally Beauty Holdings, Inc.

3001 Colorado Blvd.

Denton, TX 76210

VIA CERTIFIED MAIL # 7019 0700 0001 7488 8299

Return Receipt Requested

Sally Beauty Supply, LLC

3001 Colorado Blvd.

Denton, TX 76210

Re: John Coles v. Beauty Systems Group, Inc.; Sally Beauty Holdings, Inc.; Sally Beauty Supply LLC

**NOTICE OF LABOR CODE VIOLATIONS
PURSUANT TO LABOR CODE
SECTION SECTIONS 2698 et seq.**

To: California Labor and Workforce Development Agency and Beauty Systems Group, Inc. and Sally Beauty Holdings, Inc.; Sally Beauty Supply, LLC

From: John Coles on behalf of himself and aggrieved employees who were subject to Beauty Systems Group, Inc. and Sally Beauty Holdings, Inc., and Sally Beauty Supply, LLC's unlawful wage and hour policies as set forth below.

Factual Statement

Please note that this firm, Mahoney Law Group, APC, represents the interests of Mr. John Coles ("Mr. Coles") as a representative for all other aggrieved employees, who intends to file a complaint alleging various Labor Code violations and seeking civil penalties under the Private Attorneys General Act of 2004, Labor Code section 2698 et seq. ("PAGA").

Please be advised that this letter constitutes written notice required by Labor Code sections 2699.3, subdivision (a)(1), and 2699.3, subdivision (c)(1), and may lead to action against Beauty Systems Group, Inc., Sally Beauty Holdings, Inc. and Sally Beauty Supply, LLC (collectively "Employers" unless otherwise specifically distinguished) in a court of law and/or administrative proceedings, as well as the imposition of substantial penalties and other remedies against Employers, and any and all related, parent, and/or alter ego companies, corporations, partnerships, subsidiaries, and/or business entities, as well as against any and all officers, owners, directors, managers, managing agents, or entities who are or may be liable under law for any of the violations alleged herein.

Theories of Labor Code Violations and Remedies

Employers are distributor and specialty retailers offering professional beauty products to both retail consumers and salon professionals. Sally Beauty Holdings, Inc. operates primarily through two business segments, Sally Beauty Supply, LLC, and Beauty Systems Group, Inc. Mr. Coles worked for Employers as a distributor sales consultant during the relevant time period.

Mr. Coles alleges that Employer violated various sections of the Labor Code, including sections 2802, by failing to reimburse business expenses. Mr. Coles and similarly aggrieved employees consist of identifiable, current, and/or former similarly situated persons who worked for Employers as Distributor Sales Consultants and similar job positions during the Liability Period defined as one (1) year prior to the submission of this letter to the Labor Workforce and Development Agency and certified mailing to Employer until resolution of these claims.

Pursuant to Labor Code section 2802(a) "[a]n employer shall indemnify his or her employee for all necessary business 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..." The purpose of this statute is to "prevent employers from passing their operating expenses on to their employee," *Gattuso v. Harte-Hanks Shoopers, Inc.*, 42 Cal 4th 554, 562 (2007) (quoting legislative history from the 2000 amendment to the statute). Under Labor Code section 2802, "necessary" is defined to include all "reasonable" expenses.

The employer's obligation to reimburse business related expense arises when the employer "knew or should have known: that its employees have incurred business related expenses. *Stuart v. RadioShack Corp.*, 641 F. Supp. 2d 901, 903 (N.D. Cal. 2009) (Hon. Edward Chen); *Wilson v. Kiewit Pacific Co.*, 2010 WL 5059522 (N.D. Cal. Dec. 6, 2010) (Hon. Susan Illston) (adopting the "knew or should have known standard" standard from RadioShack.)

A. Employers Failed to Reimburse Mr. Coles and the Other Aggrieved Employees for Using their Personal Cellphones

Under Labor Code section 2802, employers must reimburse employees for required work-related use of personal cellphones – regardless of whether they incur any additional out of pocket expense from that work-related use. *See, Cochran v. Schwan's Home Service, Inc.* 228 Cal App. 4th 1137 (August 12, 2014) (reversing denial of class certification in cell phone reimbursement class action). *Cochran* held that “[i]f an employee is required to use personal cellphone to carry out work related duties, then he or she is incurring an expense for the purpose of section 2802. It does not matter whether the phone bill is paid for by a third person, or at all...it is irrelevant whether the employee changed plans to accommodate work related cellphone usage...To show liability under section 2802, an employee need only show that he or she was required to use a personal cellphone to carry out work related duties, and he or she was no reimbursed.” *Id.* At 1144-45 (emphasis added.)

Employers failed to reimburse Mr. Coles and other aggrieved employees for necessary business expenses incurred in the course of performing their job duties. Specifically, Employers required Mr. Coles and other aggrieved employees to use their personal cellphones to carry out their work-related duties, including without limitation communicating with supervisors, regarding status of orders, the signing up of various potential client accounts, communicating with clients to place, cancel, or change orders, as well as their cellular data for GPS purposes. However, Mr. Coles and other aggrieved employees were not reimbursed for the reasonable percentage of their cellphone bills. Employer's failure to reimbursement said expenditure constitutes a violation of Labor Code section 2802 and is actionable under PAGA.

B. Employers Failed to Reimburse Mr. Coles and the Other Aggrieved Employees for Using their Personal Vehicles

Further, Employers required Mr. Coles and other aggrieved employees to regularly use their personal vehicles to drive to and from various beauty salons, schools, and locations where they would meet with licensed stylists, nail technicians and aestheticians to provide customer service, specifically by explaining various features and benefits of Employers' products, communicate inventory issues, complete transactions, pick up merchandise incorrectly delivered or delivered damaged from various customers, deliver correct merchandise, and drop off the incorrect, and/or damaged items so they could be shipped back to head office. Employers failed to maintain adequate insurance coverage, reimburse Mr. Coles and other aggrieved employees for additional insurance premiums for the use of their personal vehicles to perform job-related tasks, and pay for any deductible or costs associated with automobile accidents that arose while Mr. Coles and other aggrieved employees used their personal vehicles to carry out their job duties. Moreover, Mr. Coles and other aggrieved employees never received a mileage reimbursement, compliant with the IRS standard mileage rates when they used their personal vehicles in the course and scope of their employment. Employers' failure to reimburse Mr. Coles and other aggrieved employees for these business-related expenditures is in violation of Labor Code sections 2800 and 2802 and actionable under PAGA.

C. Employers Failed to Reimburse Mr. Coles and the Other Aggrieved Employees for Using Their Homes as their "Office" and their Personal Home Internet

Mr. Coles and other aggrieved employees predominantly worked from home. Mr. Coles and other aggrieved employees used their home and generally dedicated a section of their homes as their "office space" to perform work related tasks. For example, prepare for meetings with potential salons, hair stylists, aestheticians, nail technicians, research new products sent by head office that they were required to showcase and sell, and plan their sales routes to various locations throughout California. However, Employers failed to provide reimbursement to Mr. Coles and other aggrieved employees, their homebound employees, of using their homes as their "office". Employers further failed to reimburse Mr. Coles and other aggrieved employees for using their home's internet to carry out their employment duties. An employer is required to reimburse its employees for internet expenses if they are a foreseeable and clearly anticipated cost of doing business." *Aguilar v. Zep Inc.*, 2014 WL 4245988, at 17 (N.D. Cal. Aug. 27, 2014). Employers' failure to reimburse Mr. Coles and other aggrieved employees for these business-related expenditures is in violation of Labor Code sections 2800 and 2802 and actionable under PAGA.

Employers' failure to provide complete compensation for all aforementioned necessary business expenditures incurred by Mr. Coles and other aggrieved employees in direct consequence of their duties to Employers is actionable under PAGA as a violation of Labor Code section 2802, and applicable Wage Orders.

Reservation of Rights

The facts and claims contained herein are based on the information available at the time of this writing, therefore if through discovery and/or expert review, Mr. Coles becomes aware of additional compensation owed or losses incurred by Mr. Coles or by any other aggrieved employee of the Employers, Mr. Coles expressly reserves the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable cases of action to the complaint which will relate back to the date of this letter.

LABOR AND WORKFORCE DEVELOPMENT AGENCY

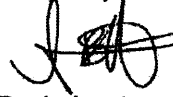
October 8, 2020

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If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein please provide notice via certified mail to:

Mahoney Law Group, APC
Kevin Mahoney
249 E. Ocean Blvd., Suite 814
Long Beach, CA 90802
Tel: (562) 590-550
Email: kmahoney@mahoney-law.net

Sincerely,



Berkeh Alemzadeh, Esq.

MAHONEY LAW GROUP, APC