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6 JAMES TRUBY

FILED
Superior Court of California
County of Los Angeles

06/09/2021

Sherri R. Carter, Executive Officer / Clerk of Court

By: T. De La Paz Deputy

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8 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**
9 **COUNTY OF LOS ANGELES**

10 JAMES TRUBY, as a private attorney general
on behalf of all aggrieved employees,

11 Plaintiff,

12 vs.

13 GUCKENHEIMER ENTERPRISES, INC., a
Delaware limited liability company; and
14 DOES 1 through 10, inclusive,

15 Defendants.

Case No. 21STCV13656

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT**

(1) Claim for Civil Penalties for Violation of
California's Private Attorneys General Act
of 2004 (Labor Code § 2698, *et seq.*)

Complaint Filed: April 24, 2021

Trial Date: T.B.D

Dept.: 31, Stanley Mosk Courthouse

Judge: The Hon. Yolanda Orozco

[Assigned for all Purposes]

1 Plaintiff James Truby, as a private attorney general and proxy for the State of California,
2 alleges on information and belief as follows:

3 **INTRODUCTION**

4 1. This is a representative action under the Labor Code Private Attorneys General Act
5 of 2004, Labor Code Section 2698, *et seq.* (“PAGA”) that challenges systemic employment
6 practices resulting in violations of the California Labor Code against all non-exempt and exempt
7 employees who worked for Defendants in California.

8 2. The Labor Code is broadly remedial in nature. Its laws serve an important public
9 interest in establishing minimum working conditions and requirements in California. These labor
10 standards protect employees from onerous terms and conditions of employment or exploitation by
11 employers who have superior economic and bargaining power.

12 3. PAGA was enacted to improve the enforcement of California’s Labor Code by
13 empowering an aggrieved employee to bring an enforcement action as a private attorney general
14 and proxy for the State of California for an employer’s violations of California labor law.

15 4. By this action, Plaintiff seeks civil penalties and any other available relief under the
16 PAGA on behalf of himself, the State of California and all other current and former employees who
17 worked for Defendants as non-exempt, hourly-paid and exempt employees in California.

18 5. This Complaint seeks civil penalties and other relief pursuant to the PAGA for
19 Defendants’ violations of Labor Code Section 2802.

20 **THE PARTIES**

21 6. Plaintiff James Truby (“Plaintiff”) is and at all times relevant to this Complaint was
22 an individual residing in Los Angeles County, California.

23 7. Defendant Guckenheimer Enterprises, Inc. (“Guckenheimer”) is and at all times
24 relevant to this Complaint was a Delaware limited liability company that does business in Los
25 Angeles County, California.

26 8. Plaintiff is unaware of the true names and capacities, whether individual, corporate,
27 associate, or otherwise of the defendants sued herein as Doe 1 through 10. Plaintiff therefore sues
28 those defendants by fictitious names. Plaintiff will amend this Complaint to show the true names

1 and capacities of each Doe defendant when such information has been ascertained.

2 9. Except as otherwise noted, a reference to “Defendants” in this Complaint shall
3 include the named Defendant and the Doe defendants.

4 10. Upon information and belief, Defendants acted as the employers and/or joint
5 employers of Plaintiff, and directly or indirectly, or through actual agents, ostensible agents and/or
6 other persons, employed Plaintiff, and exercised control over her wages, hours, and working
7 conditions. Defendants’ control included, but was not limited to, the authority to hire and fire,
8 assign work tasks and engage in day-to-day supervision.

9 11. Upon information and belief, at all relevant times, each of the Defendants is and was
10 the agent, partner, joint venturer, principal, alter ego, employee, co-conspirator, and/or aider or
11 abettor of each of the other Defendants, and in doing the things alleged was acting within the
12 course and scope of their agency or employment and with the knowledge and consent of each of
13 the other Defendants. Upon information and belief, the acts and conduct of each of the Defendants
14 was known to, and authorized and ratified by, the remaining Defendants, and each of the
15 Defendants is jointly and severally responsible and liable for the damages alleged herein.

16 **JURISDICTION AND VENUE**

17 12. This Court has subject matter jurisdiction over all causes of action alleged in this
18 Complaint pursuant to the California Constitution, Article VI, Section 10, which grants the
19 Superior Court “original jurisdiction in all causes except those given by statute to other courts.”
20 Plaintiff’s claims arise under the laws of the State of California and are not statutorily assigned to
21 any other trial court.

22 13. The amount in controversy under this Complaint exceeds the minimal jurisdictional
23 limit of the Superior Court and will be established according to proof at trial.

24 14. The Court has personal jurisdiction over the Defendants because they are residents
25 of and/or are doing business in the State of California.

26 15. Venue is proper in this Court pursuant to Code of Civil Procedure Sections 395 and
27 395.5 because, Plaintiff resides in Los Angeles County, Defendant Guckenheimer conducts
28 business in Los Angeles County, and the liability for the alleged wrongs described herein arose in

Los Angeles County. Venue is also proper in this Court because “venue is proper in any county in which an aggrieved employee worked and Labor Code violations allegedly occurred.” *Crestwood Behavioral Health, Inc. v. Superior Court of Alameda County* (Cal. Ct. App., Feb. 17, 2021) No. A160523, 2021 WL 613700, at *2. Venue is also proper because a foreign corporation that has failed to designate a principal place of business in California, like Defendant Guckenheimer, may be sued in any county in the state. *See, e.g., Easton v. Superior Court* (1970) 12 Cal. App. 3d 243, 246-247.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

16. On February 3, 2021, Plaintiff provided written notice by online filing to the Labor and Workforce Development Agency (“LWDA”) and by certified mail to Defendant Guckenheimer of the specific provisions of the Labor Code alleged to have been violated, including facts and theories to support the alleged violations, in accordance with Labor Code Section 2699.3. A true and correct copy of Plaintiff’s PAGA Notice is attached hereto as Exhibit 1.

17. As of the filing date of this Complaint, over 65 days have passed since Plaintiff sent the February 3, 2021 LWDA Notice, and the LWDA has not responded that it intends to investigate Plaintiff’s claims, and Defendants have not cured the violations.

18. Plaintiff has thus satisfied the administrative prerequisites under Labor Code Sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants, in addition to other remedies, for violations of Labor Code Section 2802.

GENERAL ALLEGATIONS

19. Defendants employed Plaintiff as an hourly-paid, non-exempt employee in California from October 2019 until February 4, 2021. Plaintiff worked as a dishwasher.

20. This is a representative action brought on behalf of the State of California and the following individuals:

All current and former non-exempt and exempt employees who worked one or more pay periods for Guckenheimer Enterprises, Inc. in the State of California at any time during the PAGA Period (“Aggrieved Employees”).

21. The PAGA Period is defined as the period of time beginning on February 4, 2020,

1 the date that is one year prior to the date of Plaintiff's notice letter to the LWDA, and continuing to
2 the present.

3 22. Plaintiff and all other current and former non-exempt and exempt employees who
4 worked one or more pay periods for Guckenheimer Enterprises, Inc. in the State of California at
5 any time during the PAGA Period are "aggrieved employees" within the meaning of Labor Code
6 Section 2699, *et seq.* See Labor Code § 2699(c).

7 23. On information and belief, Defendants subjected Plaintiff and all other Aggrieved
8 Employees to the same policies, practices and procedures governing the reimbursement of
9 necessary business expenses incurred by Plaintiff and the other Aggrieved Employees at the
10 direction of Defendants, and uniformly denied Plaintiff and the other Aggrieved Employees rights
11 afforded to them under the Labor Code, IWC Wage Order No. 5-2001 and the California Business
12 and Professions Code.

13 24. Defendants knew or should have known that Plaintiff and all other Aggrieved
14 Employees were entitled to receive full reimbursement for all business-related expenses and costs
15 they incurred during the course and scope of their employment, and that they did not receive full
16 reimbursement of applicable business-related expenses and costs incurred.

17 25. Within the one-year period prior to the date Plaintiff provided notice of these PAGA
18 claims to the LWDA and continuing through the present, Defendants systematically failed to
19 reimburse Plaintiff and all other Aggrieved Employees for necessary business expenses incurred at
20 the direction of Defendants.

21 26. Within the one-year period prior to the date Plaintiff provided notice of these PAGA
22 claims to the LWDA and continuing through the present, Defendants, on a company-wide basis,
23 required that Plaintiff and all other Aggrieved Employees utilize their own personal cell phones and
24 cell phone data, and/or personal computers and Internet plans, to carry out their job duties.
25 Defendants also required Plaintiff and the Aggrieved Employees to incur other costs for home
26 office expenses for work purposes.

27 27. Although Defendants required Plaintiff and all other Aggrieved Employees to
28 regularly utilize, and to incur expenses for the use of, their personal cellular phones and/or cellular

1 data plans, and/or personal computers and personal Internet plans to carry out work-related
2 responsibilities, and to incur other expenses to work remotely including home office expenses to
3 carry out work-related responsibilities, Defendants failed to reimburse them for those costs.

4 28. Further, on information and belief, Defendants failed to reimburse Plaintiff and
5 other Aggrieved Employees for necessary business expenses incurred regardless of the job position
6 and/or job classification held by an Aggrieved Employee, and regardless of the location in
7 California where the Aggrieved Employee worked for Defendants. As a result of Defendants'
8 failure to comply with Labor Code Section 2802, all Aggrieved Employees were harmed.

9 **FIRST CAUSE OF ACTION**

10 **For Civil Penalties, Pursuant to Labor Code § 2698, *et seq.***

11 **(By Plaintiff on Behalf of the State of California and Aggrieved Employees**

12 **Against all Defendants)**

13 29. Plaintiff incorporates all preceding allegations as if fully set forth herein.

14 30. Labor Code Section 2698, *et seq.* permits Plaintiff to recover civil penalties for the
15 violation(s) of the Labor Code Sections enumerated in Labor Code Section 2699.5. Section 2699.5
16 enumerates Labor Code Section 2802.

17 31. Pursuant to Labor Code Sections 2699(a) and (f), Plaintiff may recover civil
18 penalties on behalf of himself, the State of California and other aggrieved current and former
19 employees in the following amounts:

20 a. For violations of Labor Code Section 2802, one hundred dollars (\$100.00) for each
21 aggrieved employee per pay period for each initial violation and two hundred dollars
22 (\$200.00) for each aggrieved employee per pay period for each subsequent violation
23 (penalty amounts established by Labor Code Sections 2699(f)(2));

24 32. As detailed below, Defendants violated Labor Code Section 2802. These violations
25 were willful, knowing, and intentional.

26 **FAILURE TO REIMBURSE BUSINESS EXPENDITURES**

27 **(Labor Code § 2802)**

28 33. Labor Code Section 2802(a) provides that an 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, or of his or her obedience to the directions of the employer.”

3 34. Section 9(B) of IWC Wage Order No. 5 provides in pertinent part that, “When tools
4 or equipment are required by the employer or are necessary to the performance of a job, such tools
5 and equipment shall be provided and maintained by the employer.”

6 35. Defendants had and, on information and belief, continue to have, a company-wide
7 policy and/or practice of not reimbursing Plaintiff and other Aggrieved Employees for expenses
8 necessarily incurred.

9 36. As detailed above, Defendants as a matter of practice and/or policy violated Labor
10 Code Section 2802 by denying Plaintiff and other Aggrieved Employees reimbursement for
11 necessary expenditures that they incurred as a result of discharging their duties and/or obeying the
12 directions of Defendants.

13 37. Plaintiff and other Aggrieved Employees were required to incur out-of-pocket
14 expenses, including expenses to obtain and maintain a personal cell phone and a cellular data plan,
15 personal computers and a personal Internet plan and other home office expenses that were used at
16 Defendants’ direction for work purposes.

17 38. Defendants could have provided Plaintiff and other Aggrieved Employees with the
18 actual tools required for use on the job. Defendants also could have reimbursed Plaintiff and other
19 Aggrieved Employees for the costs they incurred in obtaining and maintaining a personal cell
20 phone and a cellular data plan, a personal computer and a personal Internet plan and other home
21 office expenses. Instead, Defendants passed those operating costs off onto Plaintiff and other
22 Aggrieved Employees in violation Labor Code Section 2802.

23 39. Plaintiff and all other Aggrieved Employees are therefore entitled to recover civil
24 penalties pursuant to Labor Code Section 2699(a), (f)-(g).

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff prays for judgment for himself and all others on whose behalf this
27 suit is brought against Defendants, jointly and severally, as follows:

28 1. For civil penalties pursuant to Labor Code Section 2699(a), (f) and (g), and all other

1 relevant statutes, for Plaintiff, the State of California and all Aggrieved Employees for Defendants'
2 violations of Labor Code Section 2802;

3 2. For attorneys' fees and costs pursuant to Labor Code Section 2699(g)(1), and all
4 other relevant statutes, for Defendants' violations of Labor Code Section 2802;

5 3. For pre-judgment and post-judgment interest as provided by law; and

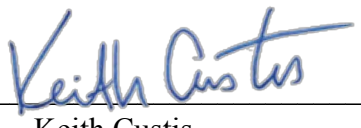
6 4. For such other and further relief as the Court may deem equitable and appropriate.

7 **DEMAND FOR JURY TRIAL**

8 Plaintiff hereby demands a jury trial with respect to all issues triable by jury.

9 Dated: June 9, 2021

CUSTIS LAW, P.C.

10
11
12 By:  _____

Keith Custis

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14 Attorneys for Plaintiff
15 JAMES TRUBY
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PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California; I am over the age of 18 years and not a party to the within action; my business address is 1999 Avenue of the Stars, Suite 1100, Los Angeles, California 90067.

On June 9, 2021, I served the foregoing document(s) described as:

FIRST AMENDED REPRESENTATIVE ACTION COMPLAINT

on the interested parties in this action,

John L. Barber, Esq.

Email:

Julie O'Dell, Esq.

John.Barber@lewisbrisbois.com

Rochelle Rotea, Esq.

Julie.ODell@lewisbrisbois.com

Lewis Brisbois Bisgaard & Smith LLP

Rochelle.Rotea@lewisbrisbois.com

650 Town Center Drive, Suite 1400

Costa Mesa, CA 92626

by sending a true copy thereof to the interested parties as follows:

☐

(BY PERSONAL SERVICE) By causing to be delivered the document(s) listed above to the person(s) at the address(es) set forth above.

☒

(BY EMAIL) By electronically mailing a true and correct copy through Custis Law, P.C.'s electronic mail system from keustis@custislawpc.com to the email addresses set forth above pursuant to Rule 2.251 of the California Rules of Court, an agreement between the parties to accept electronic service pursuant to Code of Civil Procedure Section 1010.6 and Rule 12 of the Judicial Council Emergency Rules.

☐

(BY U.S. MAIL) In accordance with the regular mailing collection and processing practices of this office, with which I am readily familiar, by means of which mail is deposited with the United States Postal Service at Los Angeles, California, that same day in the ordinary course of business, I deposited such sealed envelope, with postage thereon fully prepaid, for collection and mailing on this same date following ordinary business practices, addressed as set forth below.

☐

BY OVERNIGHT DELIVERY: I am readily familiar with the practice of Custis Law, P.C. for collection and processing of correspondence for overnight delivery and know that the document described herein will be deposited in a box or other facility regularly maintained by Federal Express for overnight delivery.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on June 9, 2021 in Los Angeles, California.



Keith Custis