

Electronically FILED by Superior Court of California, County of Los Angeles on 04/12/2021 07:49 AM Sherri R. Carter, Executive Officer/Clerk of Court, by M. Barel, Deputy Clerk

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 9 JAMES TRUBY

10 **SUPERIOR COURT FOR THE STATE OF CALIFORNIA**

11 **COUNTY OF LOS ANGELES**

12 JAMES TRUBY, as a private attorney
 13 general on behalf of all aggrieved
 14 employees,

15 Plaintiffs,

16 vs.

17 GUCKENHEIMER ENTERPRISES,
 18 INC., a Delaware corporation; and
 19 DOES 1 through 10, inclusive,

20 Defendants.

Case No. 21STCV13656

REPRESENTATIVE ACTION COMPLAINT

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

DEMAND FOR JURY TRIAL

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 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 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 Sections 98.6, 1102.5 and 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 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 Sections 98.6, 1102.5, and 2802

GENERAL ALLEGATIONS

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

20. Plaintiff and all other current and former non-exempt and exempt employees who worked for Defendants at any of their locations in California are aggrieved employees (the “Aggrieved Employees”) within the meaning of Labor Code Section 2699, *et seq.* *See* Labor Code § 2699(c).

21. On information and belief, Defendants subjected Plaintiff and the other Aggrieved Employees to the same policies, practices and procedures governing the control and payment of wages and hours worked, and the reimbursement of business expenses and uniformly denied

Plaintiff and other Aggrieved Employees rights afforded to them under the Labor Code, IWC Wage Order No. 5–2001 and the California Business and Professions Code.

A. Defendants’ Failure To Reimburse Necessary Business Expenses

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

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

24. During the relevant time period, Defendants, on a company-wide basis, required that Plaintiff and other Aggrieved Employees utilize their own personal cell phones and cell phone data, and/or personal computers and Internet plans, to carry out their job duties, but Defendants failed to reimburse them for the costs of their cell phones, cell phone data plans, personal computers and Internet plans. Defendants also required Plaintiff and the Aggrieved Employees to incur other costs for home office expenses for work purposes.

25. Although Defendants required Plaintiff and other Aggrieved Employees to regularly utilize their personal cellular phones and/or cellular data plans, and/or personal computers and personal Internet plans to carry out work-related responsibilities, and to incur other expenses to work remotely including home office expenses, Defendants failed to reimburse them for those costs.

B. Defendants’ Unlawful Retaliation Against Plaintiff

26. Within the previous twelve months, including in January and February 2021, Plaintiff reported and complained to Defendants that Defendants were violating Labor Code Section 2802 by failing to reimburse Plaintiff and other Aggrieved Employees for the use of their personal cell phones and data plans.

27. In addition, on February 2, 2021, Plaintiff notified Defendants that he intended to

1 file a civil action for violation of the PAGA for violations of Labor Code Section 2802.

2 28. On February 3, 2021, Defendants unlawfully retaliated against Plaintiff by
3 subjecting him to baseless discipline.

4 29. On February 4 2021, Defendants unlawfully retaliated against Plaintiff by
5 terminating his employment.

6 **FIRST CAUSE OF ACTION**

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

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

9 **Against all Defendants)**

10 30. Plaintiff incorporates all preceding allegations as if fully set forth herein.

11 31. Labor Code Section 2698, *et seq.* permits Plaintiff to recover civil penalties for the
12 violation(s) of the Labor Code Sections enumerated in Labor Code Section 2699.5. Section 2699.5
13 enumerates Labor Code Sections 98.6, 1102.5 and 2802.

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

17 a. For violations of Labor Code Section 2802, one hundred dollars (\$100.00) for each
18 aggrieved employee per pay period for each initial violation and two hundred dollars
19 (\$200.00) for each aggrieved employee per pay period for each subsequent violation
20 (penalty amounts established by Labor Code Sections 2699(f)(2));

21 b. For violations of Labor Code Section 1102.5, one hundred dollars (\$100.00) for
22 each aggrieved employee for each violation, plus an additional civil penalty of up to
23 ten thousand dollars (\$10,000) for each aggrieved employee for each violation to be
24 paid to the employee (penalty amounts established by Labor Code Sections
25 2699(f)(2) and 1102.5(f)); and

26 c. For violations of Labor Code Section 98.6, \$10,000 for each aggrieved employee for
27 each violation (penalty amounts established by Labor Code Section 98.6(b)(3)).

28 33. As detailed below, Defendants violated Labor Code Sections 98.6, 1102.5 and 2802.

1 These violations were willful, knowing, and intentional.

2 **FAILURE TO REIMBURSE BUSINESS EXPENDITURES**

3 **(Labor Code § 2802)**

4 34. Labor Code Section 2802(a) provides that an employer “shall indemnify his or her
5 employee for all necessary expenditures or losses incurred by the employee in direct consequence
6 of the discharge of his or her duties, or of his or her obedience to the directions of the employer.”

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

10 36. Defendants had and, on information and belief, continue to have, a company-wide
11 policy and/or practice of not reimbursing non-exempt and exempt Aggrieved Employees for
12 expenses necessarily incurred.

13 37. As detailed above, Defendants as a matter of practice and/or policy violated Labor
14 Code Section 2802 by denying Plaintiff and non-exempt and exempt Aggrieved Employees
15 reimbursement for necessary expenditures that they incurred as a result of discharging their duties
16 and/or obeying the directions of Defendants.

17 38. Plaintiff and non-exempt and exempt Aggrieved Employees were required to incur
18 out-of-pocket expenses, including, expenses to obtain and maintain a personal cell phone and a
19 cellular data plan, personal computers and a personal Internet plan and other home office expenses
20 that were used at Defendants’ direction for work purposes.

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

27 40. Plaintiff and other non-exempt and exempt Aggrieved Employees are therefore
28 entitled to recover civil penalties pursuant to Labor Code Section 2699(a), (f)-(g).

RETALIATION IN VIOLATION OF LABOR CODE SECTIONS 1102.5

41. Labor Code Section 1102.5(b) provides that “An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance . . . , if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employees job duties.”

42. Labor Code Section 1102.5(f) provides that “In addition to other penalties, an employer that is a corporation or limited liability company is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation of this section.”

43. Within the twelve-month period preceding the date Plaintiff filed his PAGA notice with the LWDA, Plaintiff engaged in activities protected by Labor Code Section 1102.5: (a) by complaining and reporting to Defendants that their failure to reimburse Plaintiff for personal cell phone and data plan expenses he incurred at Defendants’ direction for work purposes violated Labor Code Section 2802; and (b) by expressing his intention to report Defendants’ unlawful conduct to the LWDA by filing a PAGA action.

44. Plaintiff’s complaints to Defendants disclosed violations of Labor Code Section 2802.

45. Plaintiff’s conduct constituted a disclosure of and/or opposition to conduct that Plaintiff had reasonable cause to believe constituted a violation of state, local and/or federal laws, rules, or regulations. Plaintiff made such disclosures to person(s) with authority over Plaintiff or other employee(s) who had the authority to investigate, discover, or correct the violation or non-compliance. Upon information and belief, Defendants also perceived, feared and/or believed that Plaintiff would make protected disclosures in the future to a government or law enforcement agency. Plaintiff’s conduct was thus protected under section Labor Code Section 1102.5(b).

46. As detailed above, in February 2021, Defendants retaliated against Plaintiff by

1 subjecting him to baseless discipline and by terminating his employment. Plaintiff's protected
2 activities, refusals and/or opposition was/were a contributing factor to Defendants' decision to take
3 the adverse actions against Plaintiff.

4 47. Upon information and belief, Defendants have likewise retaliated against other
5 Aggrieved Employees who complained about and/or reported unlawful conduct.

6 48. Plaintiff and other Aggrieved Employees are therefore entitled to recover civil
7 penalties pursuant to Labor Code Sections 1102.5(f) and 2699(a), (f)-(g).

8 **RETALIATION IN VIOLATION OF LABOR CODE SECTION 98.6**

9 49. Labor Code Section 98.6 prohibits an employer from discriminating against,
10 retaliating against, or taking any adverse action against an employee because the employee has
11 filed a bona fide complaint or claim or instituted or caused to be instituted any proceeding under or
12 relating to his or his rights that are under the jurisdiction of the Labor Commissioner, or because
13 the employee has initiated any action or notice pursuant to Section 2699, or because of the exercise
14 by the employee for employment on behalf of himself, herself, or others of any rights afforded him
15 or her.

16 50. Labor Code Section 98.6(b)(3) provides that "[i]n addition to other remedies
17 available, an employer who violates this section is liable for a civil penalty not exceeding ten
18 thousand dollars (\$10,000) per employee for each violation of this section, to be awarded to the
19 employee or employees who suffered the violation."

20 51. Within the twelve-month period preceding the date Plaintiff filed his PAGA notice
21 with the LWDA, Plaintiff engaged in activities protected by Labor Code Section 98.6: (a) by
22 complaining and reporting to Defendants that their failure to reimburse Plaintiff for personal cell
23 phone and data plan expenses he incurred at Defendants' direction for work purposes violated
24 Labor Code Section 2802; and (b) by expressing his intention to report Defendants' unlawful
25 conduct to the LWDA by filing a PAGA action.

26 52. In February 2021, Defendants retaliated against Plaintiff by subjecting him to
27 baseless discipline and by terminating his employment. Plaintiff's protected activities, refusals
28 and/or opposition was/were a contributing factor to Defendants' decision to take the adverse

1 actions against Plaintiff.

2 53. Plaintiff and other Aggrieved Employees are therefore entitled to recover civil
3 penalties pursuant to Labor Code Sections 98.6(b)(3) and 2699(a), (f)-(g).

4 **PRAYER FOR RELIEF**

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

7 1. For civil penalties pursuant to Labor Code Sections 98.6(b)(3), 1102.5(f), and
8 2699(a), (f) and (g), and all other relevant statutes, for Plaintiff, the State of California and all
9 Aggrieved Employees for Defendants' violations of Labor Code Sections 98.6, 1102.5 and 2802;

10 2. For attorneys' fees and costs pursuant to Labor Code Section 2699(g)(1), and all
11 other relevant statutes, for Defendants' violations of Labor Code Sections 98.6, 1102.5 and 2802;

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

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

14 **DEMAND FOR JURY TRIAL**

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

16 Dated: April 12, 2021

CUSTIS LAW, P.C.

17
18
19 By: _____



Keith Custis

20
21 Attorneys for Plaintiff
22 JAMES TRUBY
23
24
25
26
27
28

Exhibit 1



February 3, 2021

Keith A. Custis
kcustis@custislawpc.com

SUBMITTED VIA ONLINE CLAIM NOTICE

(<https://dir.tfaforms.net/198>)

California Labor and Workforce
Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste 801
Oakland, CA 94612

SENT VIA CERTIFIED MAIL RETURN RECEIPT REQUESTED

President
Guckenheimer Enterprises, Inc.
1017 Central Parkway North, Suite 100
San Antonio, TX 78232

Cogency Global, Inc.
Agent for Service of Process of
Guckenheimer Enterprises, Inc.
1325 J Street, Suite 1550
Sacramento, CA 95814

Travis Fahey
People and Culture Manager
Guckenheimer Enterprises, Inc.
1017 Central Parkway North, Suite 100
San Antonio, TX 78232

Re: *James Truby v. Guckenheimer Enterprises, Inc., et al.*: Written Notice of Intent to File
Civil Action Pursuant to Labor Code § 2699.3

Dear PAGA Administrator and Guckenheimer Enterprises, Inc.:

This office represents James Truby with respect to claims arising from his employment by Guckenheimer Enterprises, Inc. (“Guckenheimer”). Mr. Truby began working at Guckenheimer as a non-exempt employee in October 2019 and continues to work at Guckenheimer.

Mr. Truby intends to file a civil action against Guckenheimer, seeking, *inter alia*, civil penalties, attorneys’ fees, costs and other available relief that is recoverable under the Private Attorneys General Act of 2004 (“PAGA”), Labor Code Section 2698, *et al.*, for violations of the

Labor Code. Mr. Truby shall seek relief on behalf of himself, the State of California, and other persons who are or were employed by Guckenheimer as non-exempt and exempt employees in California (“Aggrieved Employees”).

NOTICE TO GUCKENHEIMER

California law strictly prohibits an employer from terminating, retaliating and/or discriminating against a current employee because that employee has made a complaint about unpaid wages and/or filed a PAGA notice letter like this one. Specifically, Labor Code Section 98.6 provides in pertinent part that:

[An employer] shall not discharge an employee or in any manner discriminate, retaliate, or take any adverse action against any employee . . . because the employee . . . made a written or oral complaint that he or she is owed unpaid wages, or because the employee has initiated any action or notice pursuant to Section 2699.

Labor Code § 98.6. This section also provides that “In addition to other penalties, an employer who violates this section is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each violation of this section, to be awarded to the employee or employees who suffered the violation.”

Labor Code Section 1102.5 likewise prohibits an employer from “retaliat[ing] against an employee for disclosing information . . . to a government or law enforcement agency . . . if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule. This section likewise provides that: “In addition to other penalties, an employer that is a corporation or limited liability company is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation of this section.”

These laws exist to protect currently-employed workers who report violations of California’s wage and hour laws. We will enforce them on Mr. Truby’s behalf if necessary.

Pursuant to Labor Code Section 2699.3, this letter serves as Mr. Truby’s written notice to the Labor and Workforce Development Agency (“LWDA”) and Guckenheimer regarding the following alleged violations of the Labor Code, and the facts and legal theories that support those

violations.¹ This letter is being submitted to the LWDA online pursuant to the process described on the California Department of Industrial Relations' website.² The \$75.00 filing fee required by Labor Code Section 2699.3 shall be paid to the LWDA during the online submission process.

As detailed below, Guckenheimer has violated the Labor Code within the last year and beyond as to Mr. Truby and other Aggrieved Employees in the following respects:

A. Failure to Reimburse Necessary Business Expenses in Violation of Labor Code Section 2802

Labor Code Section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code Section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer . . ."

Within the previous twelve months, Guckenheimer, on a company-wide basis, required that Mr. Truby and other Aggrieved Employees utilize their own personal cell phones and cell phone data, and/or personal computers and Internet plans, to carry out their job duties, but Guckenheimer failed to reimburse them for the costs of their cell phones, cell phone data plans and/or personal computers and Internet plans. For example, Guckenheimer required Mr. Truby and other Aggrieved Employees to work from home and use their personal cell phones and/or personal computers and Internet plans to attend mandatory remote/virtual training meetings on a daily basis. Although Guckenheimer required Mr. Truby and other Aggrieved Employees to regularly utilize their personal cellular phones and/or data, and/or personal computers and Internet plans to carry out work-related responsibilities, Guckenheimer failed to reimburse them for this cost between April 2020 and December 2020. In January 2021, Guckenheimer began to pay only \$5.00 per month to Aggrieved Employees for the use of their personal cell phones, data plans, personal computers and Internet plans, an amount that is deficient as the average cost of cell phone plans is approximately \$100 per month. Guckenheimer also required Mr. Truby and the Aggrieved Employees to incur other costs for home office expenses, but failed to reimburse them for those costs.

¹ The Labor Code violations, facts and legal theories detailed herein are based on the Plaintiff's experience and his counsel's review of the records currently available relating to the Plaintiff's employment. Discovery conducted in litigation of wage and hour claims such as these often reveals that the employer violated additional Labor Code Sections and additional facts and legal theories supporting all Labor Code violations. Thus, Plaintiff reserves the right to supplement this letter with additional facts, theories, and claims if they become aware of them subsequent to the submission of this letter.

² See <http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>.

Guckenheimer could have provided Mr. Truby and other Aggrieved Employees with the actual tools required for use on the job, including company phones, or reimbursed employees a reasonable percentage of their cell phone usage and/or personal computer/home Internet costs, but instead, Guckenheimer passed off these operating costs on to Mr. Truby and other Aggrieved Employees. Thus, Guckenheimer violated Section 2802 by uniformly failing to reimburse any portion of Mr. Truby's and other Aggrieved Employees' cell phone and data plan expenses and personal computer and home Internet costs, and other home office expenses. *See, e.g., Cochran*, 228 Cal. App. 4th at 1144 ("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."); *Ritchie v. Blue Shield of California*, 2014 WL 6982943, at *21 (N.D. Cal. Dec. 9, 2014) (certifying class of cell phone reimbursement claim and adopting the logic of *Cochran*).

Guckenheimer's policy and/or practice of passing off its operating costs on to Mr. Truby and other Aggrieved Employees by requiring that they use their personal cell phones and/or personal computers and home Internet plans without reimbursement violates Labor Code Section 2802.

As a result, Mr. Truby and other Aggrieved Employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, pursuant to Labor Code Section 2699(f)-(g).

B. Violations of Labor Code Section 1102.5

Labor Code Section 1102.5(b) provides that "An employer, or any person acting on behalf of the employer, shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a government or law enforcement agency, to a person with authority over the employee or another employee who has the authority to investigate, discover, or correct the violation or noncompliance . . . , if the employee has reasonable cause to believe that the information discloses a violation of state or federal statute, or a violation of or noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing the information is part of the employees job duties."

Within the previous twelve months, including in January and February 2021, Mr. Truby engaged in protected activity under Labor Code Section 1102.5(b) by complaining to Guckenheimer that Guckenheimer was violating Labor Code Section 2802 by failing to reimburse Mr. Truby and other Aggrieved Employees for the use of their personal cell phones and data plans. In addition, on February 2, 2021, Mr. Truby notified Guckenheimer that he intended to file a civil action for violation of the Private Attorneys General Act of 2004 ("PAGA"), Labor Code Section 2698, *et al.*, for violations of Labor Code Section 2802.

Mr. Truby's conduct constituted a disclosure of and/or opposition to conduct that Mr. Truby had reasonable cause to believe disclosed a violation of state, local and/or federal laws, rules, or regulations. Mr. Truby made such disclosures to person(s) with authority over Mr. Truby who had the authority to investigate, discover, or correct the violation or non-compliance. Guckenheimer also perceived, feared and/or believed that Mr. Truby may make protected disclosures in the future. Mr. Truby's conduct was thus protected under Labor Code Section 1102.5.

On February 3, 2021, Guckenheimer retaliated against Mr. Truby in violation of Labor Code Section 1102.5(b) by providing Mr. Truby with a purported Final Written "Employee Corrective Action Notice," which alleged that Mr. Truby had been absent on January 20 and 27, 2021. Mr. Truby was not absent on those days—when all employees were working from home. Instead, Mr. Truby was unable to participate in mandatory video training calls because he could not afford the approximate \$10 in data use charges that it would cost him to attend. Mr. Truby had repeatedly advised Guckenheimer that he could not afford to attend these mandatory meetings. Prior to February 3, 2021, Guckenheimer had not provided Mr. Truby with any other written corrective actions regarding these issues. The first written corrective action was a "final" corrective written action. Moreover, on February 3, 2021, Guckenheimer told Mr. Truby that he was required to attend a mandatory training meeting that day, but failed to provide Mr. Truby with the necessary link to access the meeting, thereby ensuring that he could not attend—which would be recorded as a no-call, no show. Guckenheimer thus engaged in a calculated effort to fabricate a basis to terminate Mr. Truby for three supposed no-call, no-shows.

Mr. Truby's protected activities, refusals and/or opposition on and before February 2, 2021 was/were a contributing factor to Guckenheimer's decision to take these adverse actions against Mr. Truby on February 3, 2021. The one-day period between Mr. Truby's protected activity and Guckenheimer's decisions to subject Mr. Truby to adverse employment actions—e.g., a meritless Final Warning and a requirement to attend a remote/virtual meeting that Guckenheimer ensured that he could not access—supports an inference that Guckenheimer's decision to terminate Mr. Truby was retaliatory. *See Passantino v. Johnson & Johnson Consumer Prods., Inc.*, 212 F.3d 493, 507 (9th Cir. 2000) (noting that causation can be inferred from timing alone); *see also Miller v. Fairchild Indus.*, 885 F.2d 498, 505 (9th Cir. 1989) (prima facie case of causation was established when discharges occurred forty-two and fifty-nine days after EEOC hearings).

Labor Code Section 1102.5(f) provides that "In addition to other penalties, an employer that is a corporation or limited liability company is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) for each violation of this section."

Upon information and belief, Guckenheimer has also violated Labor Code Section 1102.5 with respect to other Aggrieved Employees.

Mr. Truby and other Aggrieved Employees are entitled to recover civil penalties and

reasonable attorneys' fees and costs pursuant to Labor Code Sections 1102.5(f) and/or 2699(a), (f)-(g).

C. Violations of Labor Code Section 98.6

Labor Code Section 98.6 prohibits an employer from discriminating against, retaliating against, or taking any adverse action against an employee because the employee has filed a bona fide complaint or claim or instituted or caused to be instituted any proceeding under or relating to his or her rights that are under the jurisdiction of the Labor Commissioner, or because the employee has initiated any action or notice pursuant to Section 2699, or because of the exercise by the employee for employment on behalf of himself, herself, or others of any rights afforded him or her under the Labor Code. Labor Code Section 98.6(b)(3) provides that, "[i]n addition to other remedies available, an employer who violates this section is liable for a civil penalty not exceeding ten thousand dollars (\$10,000) per employee for each violation of this section, to be awarded to the employee or employees who suffered the violation."

Guckenheimer violated Labor Code Section 98.6 with respect to Mr. Truby for the same reasons it violated Labor Code Section 1102.5, detailed above. Upon information and belief, The Local also violated Labor Code Section 98.6 with respect to other Aggrieved Employees.

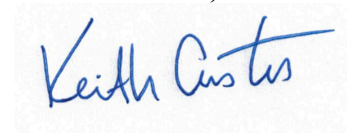
Mr. Truby and other Aggrieved Employees are entitled to recover civil penalties and reasonable attorneys' fees and costs pursuant to Labor Code Sections 98.6 and/or 2699(a), (f)-(g).

* * *

If the LWDA does not provide notice that it will investigate these violations within 65 days of the date of this notice, Mr. Truby, acting in the public interest as a private attorney general, shall file a civil action—and seek assessment and collection of civil penalties and all other available relief for himself, all other Aggrieved Employees, and the State of California—against Guckenheimer for violations of Labor Code Sections 98.6, 1102.5, and 2802, as detailed herein. Mr. Truby shall seek all applicable and available penalties and remedies related to these violations of the Labor Code pursuant to PAGA, including an award of reasonable attorneys' fees and costs pursuant to Labor Code § 2699(g).

Sincerely,

CUSTIS LAW, P.C.



Keith A. Custis