



February 3, 2021

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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.

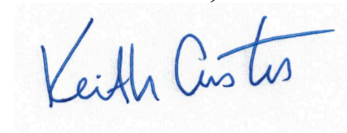
Mr. Truby and other Aggrieved Employees are entitled to recover civil penalties and reasonable attorneys' fees and costs pursuant to Labor Code Sections 98.6 and/or 2699(a), (f)-(g).

* * *

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