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SUPERIOR COURT-SAN JOAQUIN

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12
13 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
14 **FOR THE COUNTY OF SAN JOAQUIN**

15 ANDREW BARNES WALKER, as an
16 individual, and on behalf of all aggrieved
17 employees,

18 PLAINTIFF,

19 v.

20 BABA LOGISTICS, INC., DOES 1 to 50,
21 inclusive,

22 DEFENDANT.

CASE NO

STK-CV-40E-2022-1101

**PAGA REPRESENTATIVE ACTION
COMPLAINT FOR:**

**PENALTIES PURSUANT TO LABOR
CODE § 2699, ET SEQ. FOR
VIOLATIONS OF CALIFORNIA LABOR
CODE § 2802**

1 Plaintiff Andrew Barnes Walker (“Plaintiff”), on behalf of the State of California and other
2 “Aggrieved Employees” and acting as a private attorney general under the Labor Code Private
3 Attorneys General Act of 2004, § 2699, *et seq.* (“PAGA”) complains of Defendant Baba Logistics.
4 Inc., and DOES 1 to 50 (collectively, “Defendants”) and each of them, and alleges the following
5 upon information and belief:

6 **INTRODUCTION**

7 1. This is a representative action brought pursuant to Labor Code § 2699, *et seq.*, on
8 behalf of the State of California and a group of Aggrieved Employees defined as follows:

9 **The “Aggrieved Employees”:**

10 All non-exempt individuals who are or were employed by Baba Logistics Inc. in the State
11 of California and who worked one or more shifts of (5) hours or longer during the PAGA
12 Period.
13

14 2. The “PAGA Period” is defined as the period from one year prior to sending of
15 Plaintiff’s LWDA Letter, which was sent on November 7, 2021, through the present and ongoing.
16 (“PAGA Period”).
17

18 3. Plaintiff, on behalf of herself and all Aggrieved Employees presently or formerly
19 employed by Defendant during the PAGA Period, bring this representative action pursuant to Labor
20 Code § 2699, *et seq.* seeking penalties for Defendant’s violation of California Labor Code §§ 510,
21 512, 226, and 2802. Based upon the foregoing, Plaintiff and all Aggrieved Employees are
22 Aggrieved Employees within the meaning of Labor Code §2699, *et seq.*

23 **THE PARTIES**

24 4. Plaintiff Andrew Barnes Walker is a resident of California and at all times pertinent
25 hereto worked for Defendant, and he worked for Defendant as a delivery driver in 2021.

26 5. Plaintiff and all Aggrieved Employees are, and at all times pertinent hereto, have
27 been classified as non-exempt employees by Defendant, and have been hired to work for Defendant
28 in California, performing parcel and box delivery for Defendant.

6. Baba Logistics Inc. is a third-party delivery services, providing *inter alia* delivery of parcels for major online retail stores such as Amazon throughout California. Defendant employed Plaintiff and similarly situated persons as employees within California to work as their drivers. Defendant has done and do business throughout the State of California including in San Joaquin County, during the PAGA Period.

7. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believe, and based thereon alleges, that each of the Defendants designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and capacities of the Defendants designated hereinafter as DOES when such identities become known.

8. Plaintiff is informed and believes, and based thereon alleges, that each Defendant acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are legally attributable to the other Defendants. Accordingly, all Defendants engaged, suffered, and permitted Plaintiff and all other Aggrieved Employees to perform services from which they benefitted. Moreover, the aforementioned entities had the right to exercise control over the wages, hours and/or working conditions over Plaintiff and all Aggrieved Employees at all relevant times herein, so as to be considered the joint employers of all of the Aggrieved Employees. By reason of their status as joint employers, they are each liable for civil penalties for violation of the California Labor Code as to the Plaintiff and other Aggrieved Employees as set forth herein.

JURISDICTION AND VENUE

9. This Court has subject matter jurisdiction over any and all causes of action asserted herein pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive of interest, exceeds twenty-five thousand dollars (\$25,000.00), and because each cause of action asserted arises under the laws of the State of California or is subject to adjudication in the

1 courts of the State of California.

2 10. This Court has personal jurisdiction over Defendant because Defendant has caused
3 injuries in the County of San Joaquin and State of California through their acts, and by their
4 violation of the California Labor Code and California state common law.

5 11. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
6 Civil Procedure § 395. Defendant operates within California and do business within San Joaquin
7 County, California. The unlawful acts alleged herein have a direct effect on Plaintiff and all
8 “employees” within the State of California and San Joaquin County.

9 12. Further, to the extent that Defendant may claim that Plaintiff has signed an
10 arbitration agreements or severance agreements, venue is still appropriate in the Superior Court of
11 San Joaquin County as PAGA claims are not arbitrable as a matter of law and not subject to general
12 releases. *See Iskanian v. CLS Transp. Los Angeles, LLC*, 59 Cal. 4th 348, 383 (2014) (holding “a
13 PAGA claim lies outside the FAA’s coverage because it is not a dispute between an employer and
14 an employee arising out of their contractual relationship. It is a dispute between an employer and
15 the state”); *See also, Kim v. Reins Int’l*, 9 Cal.5th 73 (2020). (Settlement of individual claims does
16 not strip a plaintiff of PAGA standing).

17 **PAGA ADMINISTRATIVE PREREQUISITE**

18 13. Plaintiff brings this case as a representative action seeking penalties for the State of
19 California in a representative capacity, as provided by the Private Attorney General Act, Labor
20 Code section 2698 et seq. ("PAGA"), as an aggrieved employee, formerly employed by Defendants
21 and did not receive all wages due, was not paid regular wages, was not paid overtime, was not
22 provided with accurate wage statements, and was not reimbursed for necessary business
23 expenditures.

24 14. Prior to filing this complaint, on November 7, 2021, Plaintiff gave written notice by
25 certified electronic mail to the Labor and Workforce Development Agency ("LWDA") and to
26 Defendant of the specified provisions alleged to have been violated, including the facts and theories
27 to support the alleged violation as required by Labor Code section 2699.3. A true and correct copy
28 of Plaintiff's original letter sent to the LWDA on November 7, 2021, is attached hereto as "Exhibit

1 A".

2 15. More than sixty-five (65) days have passed since Plaintiff submitted his November
3 7, 2021, notice to the LWDA and Defendant of the specific alleged Labor Code violations and the
4 LWDA have not provided notice to Plaintiff of its intent to investigate such alleged violations.
5 Plaintiff further has received no notice of Defendant's intent to cure any of the alleged violations.
6 Therefore, Plaintiff has satisfied the administrative prerequisites for filing this action with regard to
7 his November 7, 2021, PAGA notice.

8 **COMMON ALLEGATIONS**

9 16. Plaintiff, who was employed by Defendant, was not able to take their meal break
10 since they could not leave their vehicle during each delivery. Often, Plaintiff and the Aggrieved
11 employees were required to finish each delivery prior to being able to take their meal break within
12 the first five hours.

13 17. Plaintiff and the Aggrieved employees, were not able to take their ten-minute duty-
14 free rest break during their shifts. Because of the workload, Plaintiff and other aggrieved employees
15 were precluded from receiving their rest breaks, or make any stops. Often, they had to continue
16 their routes and could not stop to take any breaks. they always remain on a tight schedule to finish
17 their deliveries. Often their assignments were in excess of 4 hours of drive time without the
18 possibility of having a ten-minute duty-free rest break.

19 18. Despite the fact that Defendants failed to provide Aggrieved Employees with timely
20 meal periods of at least thirty (30) minutes in length, Defendant had a policy and practice of
21 automatically deducting thirty (30) minutes from each shift worked in excess of six (6) hours,
22 regardless of whether or not the employee received a meal period and/or the amount of time spent
23 on the meal period, if any. Therefore, during those regular instances where Aggrieved Employees
24 did not receive a full thirty-minute meal period (or did not receive a meal period at all), they were
25 deprived of minimum wages for all hours worked during that shift.

26 19. Plaintiff and the Aggrieved Employees were required to download AmazonFlex
27 application on their smart phone, and then use their personal smartphone when the company
28 provided cell phone did not work. Often, Plaintiff and the Aggrieved employees used their cell

1 phones during their employment with Defendant and did not receive the proper reimbursement.

2 20. Labor Code § 512 requires employers to provide employees with a thirty (30)
3 minute uninterrupted and duty-free meal period within the first five (5) hours of an employee's
4 shift. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a
5 second thirty (30) minute uninterrupted and duty-free meal period.

6 21. Under Labor Code § 512, if an employer maintains a uniform policy that does not
7 authorize and permit the amount of duty-free mealtime called for under the law (as specified in the
8 applicable Wage Order), "it has violated the wage order and is liable." As described above, the
9 *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting
10 an unlawful policy.

11 22. Under Labor Code § 226.7, if an employer maintains a uniform policy that does not
12 authorize and permit the amount of rest time on the schedule called for under the law (as specified
13 in Section 12 of the applicable Wage Order), "it has violated the wage order and is liable." The
14 *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting
15 an unlawful policy: An employer is required to authorize and permit the amount of rest break time
16 called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform
17 policy authorizing and permitting only one rest break for employees working a seven-hour shift
18 when two are required—***it has violated the wage order and is liable.*** (*Brinker Rest. Corp. v. Sup.*
19 *Ct.* (2012) 53 Cal.4th 1004, 1033.) [emphasis added].

20 23. California Labor Code section 2802 requires an employer to "indemnify his or her
21 employee for all necessary expenditures or losses incurred by that employee in direct consequence
22 of the discharge of his or her duties." See Cal. Labor Code section 2802(a); *see also* 2802(c) where
23 necessary is defined to include all "reasonable" costs. "The elements of a claim under Section
24 2802 are: (i) the employee made expenditures or incurred losses; (ii) the expenditures or losses
25 were incurred in direct consequence of the employee's discharge of his or her duties, or obedience
26 to the directions of the employer; and (iii) the expenditures or losses were reasonable and
27 necessary." *Marr v. Bank of America*, 2011 U.S. Dist. LEXIS 24868 (N.D. March 8,
28 2011) (*citing Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 568 (2007)). "In addition, the

1 employer ‘must either know or have reason to know that the employee has incurred [the] expense.’”
2 *Id.* (citing *Stuart v. RadioShack Corp.*, 641 F.Supp. 2d 901 (N.D.Cal. 2009). Where an employer
3 has knowledge that employees are incurring a reimbursable expense, the employer must “exercise
4 due diligence to ensure each employee is reimbursed.” *Marr*, at *1. The right of an employee to
5 expense reimbursements is not waivable. *See* Cal. Labor Code sections 2804 and 219(a). Any
6 contract to waive them is null and void. *Edwards v. Arthur Anderson*, 44 Cal. 4th 937, 951 (2008)

7
8 **FIRST CAUSE OF ACTION**

9 **PENALTIES PURSUANT PAGA. LABOR CODE § 2699, ET SEQ.**

10 **FOR VIOLATIONS OF LABOR CODE § 2802**

11 **PLAINTIFF ON BEHALF OF LWDA AND ALL AGGRIEVED EMPLOYEES AGAINST DEFENDANT**

12 24. Plaintiff, on behalf of herself and all Aggrieved Employees, realleges and
13 incorporates by reference all previous paragraphs.

14 25. Based on the above allegations incorporated by reference, Defendant has violated
15 Labor Code § 226, 512, 510, and 2802, throughout the PAGA period.

16 26. Under Labor Code §§ 2699(f)(2) and 2699.5, for each such violation, Plaintiff and
17 all other Aggrieved Employees are entitled to penalties in an amount to be shown subject to the
18 following formula:

19 \$100 for the initial violation per employee per pay period; and

20 \$200 for each subsequent violation per employee per pay period.

21 27. These penalties shall be allocated seventy-five percent (75%) to the Labor and
22 Workforce Development Agency (LWDA) and twenty-five percent (25%) to the affected
23 employees.

24 28. Pursuant to Labor Code § 2699.3 (a), on November 7, 2021, Plaintiff gave written
25 notice by certified mail to Defendant and to the LWDA of their claims for violations of Labor Code
26 § 2802, including theories supporting these claims as alleged herein. As of the date of this
27 Complaint, the LWDA has not responded to Plaintiff’s PAGA letter. Plaintiff has also paid the
28 required \$75 filing fees. Accordingly, Plaintiff has fulfilled all administrative prerequisites to the

1 filing and pursuit of their PAGA claims on behalf of themselves and all other current and former
2 Aggrieved Employees of Defendant.

3 29. As a result of the acts alleged above, Plaintiff seek penalties under Labor Code
4 § 2699, et seq. because of Defendant's violation of Labor Code § 2802.

5 **RELIEF REQUESTED**

6 **WHEREFORE**, Plaintiff prays for the following relief:

7 1. For penalties and other relief allowable under Labor Code § 2699, *et seq.* for
8 Plaintiff, the LWDA, and all Aggrieved Employees because of Defendant's violation of Labor
9 Code § 2802;

10 2. A civil penalty against Defendant in the amount of \$100 for the initial violation and
11 \$200 for each subsequent violation as specified in section 2699(f)(2) of the California Labor Code
12 for Plaintiff and all Aggrieved Employees for each and every pay period during that occurred
13 during the PAGA Period;

14 3. An award of reasonable attorney's fees against Defendant as allowed by law,
15 including without limitation, in Labor Code § 2699(g)(1), for all the work performed by the
16 undersigned counsel in connection with the PAGA claims;

17 4. An award of all costs incurred by the undersigned counsel for Plaintiff in connection
18 with Plaintiff's, the LWDA's and the Aggrieved Employees' claims against Defendant as allowed
19 by law, including without limitation, Labor Code § 2699(g)(1);

20 5. Such other and further relief as this Court may deem proper and just.

21
22 **MAHONEY LAW GROUP, APC**
23 **EMPLOYMENT RIGHTS LAW GROUP, APC**

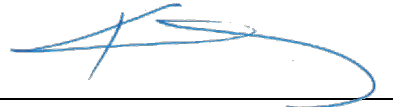
24 
25 Kevin Mahoney, Esq.
26 Amir Seyedfarshi, Esq.
27 Attorneys for Plaintiff, the LWDA, and the Aggrieved
28 Employees

EXHIBIT A



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November 7, 2021

Via Online Filing with the LWDA & Certified Mail to Defendant

Baba Logistics, Inc.
C/O Dileep Surapaneni
Agent for Service of Process
4670 La Vina Street
Dublin CA 94568

Baba Logistics, Inc.
4670 La Vina Street
Dublin CA 94568

Re: NOTICE OF INTENT TO FILE SUIT (Labor Code § 2699.3)
Andrew Barnes Walker v. Baba Logistics, Inc.

Dear Gentlepersons:

This letter is the written notice required by the California Labor Code Private Attorneys General Act of 2004 (“PAGA”), California Labor Code Section 2698 *et seq.*, including without limitation California Labor Code Sections 2699.33 (a)(1), 2699.3(b)(1), and/or 2699.3(c)(1) of the California Labor Code, and any other applicable provision of statute, rule, or law. This letter is being sent simultaneously via online filing to the California Labor and Workforce Development Agency. This letter is an important formal legal notice which may lead to action against you and your company in a court of law and in administrative proceedings, or both and the imposition of substantial penalties and other order and remedies against you and your company.

This office, along with our co-counsel, Kevin Mahoney from Mahoney Law Group, represents Plaintiff Andrew Barnes-Walker (“Plaintiff”) and a proposed group (and subgroups) of current and former Aggrieved Employees of Baba Logistics Inc., a California corporation, and its co-employers, successors in interest, and/or merged entities (“Defendants,”) in connection with his individual and PAGA representative claims for civil penalties, based on, without limitation, Defendant’s:

- (1) failure to provide timely meal periods within the first five (5) hours and to provide lawful second meal periods for shifts worked in excess of ten (10) hours and/or pay meal period premiums for late meal breaks in violation of Labor Code §§ 226.7 and 512;
- (2) failure to reimburse employees for their expenses incurred in connection with work-related usage of their personal cell phones (since all drivers were required to be in touch with dispatchers using their own cell phone) in violation of Labor Code section 2802;
- (3) failure to provide timely, duty free rest periods for every four hours of work or major fraction thereof in violation of Labor Code § 226.7 and Section 12 of the applicable IWC Wage Order;
- (4) failure to pay minimum wages in violation of Labor Code section 1197;
- (5) failure to provide accurate itemized wage statements in violation of Labor Code § 226 based upon the absence of all hours worked and the accurate rate of pay;
- (6) unfair competition in violation of Bus. & Prof. Code § 17200 based upon the foregoing unpaid wage and premium claims; and
- (7) statutory penalties under California's Private Attorney General Act ("PAGA") based upon the foregoing under Labor Code sections 2698 et seq.

In connection with his PAGA claims, Plaintiff seeks PAGA penalties from at least one year prior to the date of this Notice and ongoing (the "PAGA Period"). Plaintiff seeks to represent the following groups of aggrieved employees:

a. The "Aggrieved Employees":

All non-exempt individuals who are or were employed by Baba Logistics Inc. in the State of California and who worked one or more shifts of (5) hours or longer during the PAGA Period.

DEFENDANTS' MEAL PERIOD VIOLATIONS

Labor Code § 512 requires employers to provide employees with a thirty (30) minute uninterrupted and duty-free meal period within the first five (5) hours of an employee's shift. Moreover, an employee who works more than ten (10) hours per day is entitled to receive a second thirty (30) minute uninterrupted and duty-free meal period.

Under Labor Code § 512, if an employer maintains a uniform policy that does not authorize and permit the amount of duty-free mealtime called for under the law (as specified in the applicable Wage Order), "it has violated the wage order and is liable." As described above, the *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy.

Here, Defendants violated and continue to violate Labor Code § 512 and IWC Wage Order 9-2002 § 11 by, among other things, failing to provide duty-free meal breaks to Aggrieved Employees who could not leave their vehicle and by failing to advise all other Aggrieved Employees of their meal break rights, failing to provide Aggrieved Employees with thirty-minute, uninterrupted meal periods within the first five (5) hours of their shifts, and failing to pay meal break premiums for on-premises and/or late meal breaks. Instead, Defendants often required employees to take their breaks either on-duty or after five (5) hours from the start time of their shifts.

Plaintiffs and the Aggrieved Employees were under pressure to take their meal breaks and were required to finish their daily deliveries. As a result of Defendants' failure to authorize or permit lawful meal periods, Plaintiff and the other Class members and Meal Period Aggrieved Employees frequently did not receive compliant duty-free meal periods within the first five (5) hours of their work.

DEFENDANTS' REST PERIOD VIOLATIONS

Under Labor Code § 226.7, if an employer maintains a uniform policy that does not authorize and permit the amount of rest time on the schedule called for under the law (as specified in Section 12 of the applicable Wage Order), "it has violated the wage order and is liable." The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—***it has violated the wage order and is liable.***

(*Brinker Rest. Corp. v. Sup. Ct.* (2012) 53 Cal.4th 1004, 1033.) [emphasis added].

Here, Defendant did not authorize Plaintiff and the Rest Break Aggrieved Employees to take their ten-minute rest breaks during each 4 hours of work or major fraction thereof during their shifts. Because of the workload, Plaintiff and other aggrieved employees were precluded from receiving their rest breaks, or make any stops. Plaintiff and the Aggrieved Employees are working for Amazon as delivery drivers and they always remain on a tight schedule to finish their deliveries. Often their assignments were in excess of 4 hours of drive time without the possibility of having a ten-minute duty-free rest break.

DEFENDANTS' MINIMUM WAGE VIOLATIONS

Labor Code § 1197 states the California requirement that employees must be paid at least the minimum wage fixed by the Commission, and any payment of less than the minimum wage is unlawful. Similarly, Labor Code § 1194 entitles "any employee receiving less than the legal minimum wage...to recover in a civil action the unpaid balance of the full amount of this minimum wage." IWC Wage Order 9-2001 also obligates employers to pay each

employee minimum wages *for all hours worked*. These minimum wage standards apply to each hour employees worked for which they were not paid. Therefore, an employer's failure to pay for any particular hour of time worked by an employee is unlawful, even if averaging an employee's total pay over all hours worked, paid or not, results in an average hourly wage above minimum wage. *Armenta v. Osmose, Inc.* (2005) 135 Cal.App.4th 314, 324.

Furthermore, pursuant to Labor Code § 1198, "[t]he maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful."

During the relevant time period, Plaintiff and the Aggrieved Employees were paid on an hourly basis by the Defendants in the state of California.

Despite the fact that Defendants failed to provide Aggrieved Employees with timely meal periods of at least thirty (30) minutes in length, Defendant had a policy and practice of automatically deducting thirty (30) minutes from each shift worked in excess of six (6) hours, regardless of whether or not the employee received a meal period and/or the amount of time spent on the meal period, if any. Therefore, during those regular instances where Aggrieved Employees did not receive a full thirty-minute meal period (or did not receive a meal period at all), they were deprived of minimum wages for all hours worked during that shift.

Labor Code § 1194 provides, in part, that any employee receiving less than the legal minimum wage is entitled to recover in a civil action the unpaid balance of the minimum wage, including interest thereon, reasonable attorney's fees, and costs of suit.

Plaintiff and the Aggrieved Employees suffered and continue to suffer losses related to the use and enjoyment of compensation due and owing to them as a direct result of Defendants' unlawful acts and Labor Code violations.

DEFENDANT'S FAILURE TO PAY ALL WAGES DUE UPON TERMINATION

Labor Code § 203 provides "if an employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty. . . ." for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

Due to Defendant's faulty policies described above, including its failure to pay wages for all hours worked and for meal period premiums, Defendant violated Labor Code § 203, for those employees whose employment ended within the last one year and ongoing (i.e., the Waiting Time Aggrieved Employees) by willfully failing to pay them all wages due upon the termination of their employment.

DEFENDANTS' FAILURE TO REIMBURSE BUSINESS EXPENSES

Pursuant to Labor Code § 2802(a) “[a]n employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer....” The purpose of this statute is “to prevent employers from passing their operating expenses on to their employees.” *Gattuso v. Harte-Hanks Shoppers, Inc.*, 42 Cal.4th 554, 562 (2007) (quoting legislative history from the 2000 amendment to the statute). Labor Code Section 2802(c) also clarifies that “the term ‘necessary expenditures or losses’ shall include all reasonable costs, including, but not limited to, attorney’s fees incurred by the employee enforcing the rights granted by this section.”

Specifically, under Labor Code § 2802, employers must reimburse employees for required work-related use of personal cell phones, regardless of whether they incur any additional out-of-pocket expense from that work-related use. *See Cochran v. Schwan’s Home Service*, 228 Cal. App. 4th 1137 (2014) (reversing denial of class certification in cell phone reimbursement class action). *Cochran* held that “[i]f an employee is required to make work-related calls on a personal cell phone, then he or she is incurring an expense for the purposes 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 cell phone usage. . . . To show liability under section 2802, an employee need only show that he or she was required to use a personal cell phone to make work-related calls, and he or she was not reimbursed.” *Id.* at 1144-45 (emphasis added); *see also Aguilar v. Zep, Inc.*, 2014 WL 4245988 *17 (N.D. Cal. Aug. 27, 2014) (granting plaintiffs’ motion for partial summary judgment on the plaintiffs’ cell phone reimbursement claim); *Ritchie v. Blue Shield of California*, 2014 WL 6982943, at *21 (N.D. Cal. Dec. 9, 2014) (Hon. Edward Chen) (certifying class of cell phone reimbursement claim and adopting the logic of *Cochran*).

Under Labor Code § 2802, if an employer requires Aggrieved Employees to use their cell phone for work, as is the case here for making phone calls with dispatchers regarding the routes and delivery options, then Defendants must reimburse employees for a reasonable portion of their monthly cell phone bills. Here, Plaintiff and the Aggrieved Employees were required to download AmazonFlex application on their smart phone, and then use their personal smartphone when the company provided cell phone did not work. Often, Plaintiff and the Aggrieved employees used their cell phones during their employment with Defendant and did not receive the proper reimbursement.

Accordingly, Defendants violated Labor Code § 2802 and continue to do so by failing to reimburse Aggrieved Employees for all work-related cell phone charges they incurred in connection with their job duties.

DEFENDANTS' WAGE STATEMENT VIOLATIONS

Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

- (1) gross wages earned;
- (2) total hours worked by the employee;
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- (5) net wages earned;
- (6) the inclusive dates of the period for which the employee is paid;
- (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number;
- (8) the name and address of the legal entity that is the employer...; and,
- (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee...

Due to, *inter alia*, Defendants' failure to pay Plaintiff and the other Aggrieved Employees for all hours worked (as a result of Defendant's automatic lunch deductions), and to provide them with lawful and timely meal periods (and/or pay late meal break premiums), the wage statements issued by Defendants to Plaintiff and the other Wage Statement Aggrieved Employees do not indicate the correct amount of gross wages earned, total hours worked, net wages earned, or the applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor Code § 226(a)(1), (2), (5) and (9). Defendants' violation of Labor Code § 226 was knowing and intentional. *See Garnett v. ADT LLC* 139 F. Supp. 3d 1121, 1131 (E.D. Cal. Oct. 6, 2015) (finding that the defendant knowingly and intentionally violated Labor Code § 226 because the "[d]efendant knew that it was not providing total hours worked to plaintiff or other employees paid on commission" even though it believed that employees paid solely on commission or commission and salary "are exempt and therefore we do not record hours on a wage statement").

Labor Code § 226(e) provides that an employee is entitled to recover \$50 for initial pay period in which a violation of Section 226 occurs and \$100 for each subsequent pay period, not to exceed \$4,000, as well as an award of costs and reasonable attorney's fees, for all pay periods in which the employer fails to provide accurate itemized statements to the employee causing the employee to suffer injury.

Further and in addition to the penalties outlined above, Labor Code § 226.3 provides that "[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction

statement or fails to keep the required in subdivision (a) of Section 226.” As explained in detail above, Defendants failed to provide Plaintiff and the other Wage Statement Aggrieved Employees with accurate itemized wage statements. Accordingly, Defendants are additionally liable for Labor Code § 226.3 penalties for their violations of Labor Code § 226(a). *See Finder v. Leprino Foods Co.* (E.D. Cal. Mar. 12, 2015) No. 1:13-CV-2059 AWI-BAM, 2015 WL 1137151, at *7.

This notice is hereby given to and is made against Defendant, and all related and/or alter ego companies, corporations, partnerships, 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 those alleges violations as to any locations or employees who worked at any time in the state of California.

CONCLUSION

Therefore, pursuant to Labor Code § 2699.3, we write to inform you and the Labor and Workforce Development Agency, with whom this PAGA Notice has been filed, of our intent to pursue a PAGA representative action (and a class action) against Defendant seeking, *inter alia*, PAGA penalties under Labor Code § 2699, to be brought by the Plaintiff individually and on behalf of the Aggrieved Employees, as defined above.

Nevertheless, it is the policy of this firm to attempt to negotiate an early resolution of all matters where possible and beneficial to the aggrieved employees. If Defendant is interested in attempting to resolve this matter, including the PAGA claims, please have counsel contact us by December 5, 2021 so that we may discuss an informal discovery plan and the possibility of early mediation.


Amir Seyedfarshi

Cc: Kevin Mahoney