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*Attorneys for Plaintiff, the Class, the LWDA, and the Aggrieved Employees***SUPERIOR COURT OF THE STATE OF CALIFORNIA****FOR THE COUNTY OF LOS ANGELES**JOHNNY VALDEZ, individually and on behalf
of all others similarly situated,

Plaintiff,

v.

SYSCO LOS ANGELES, INC., a Delaware
Corporation, and DOES 1 to 100, inclusive,

Defendant.

CASE NO: 23STCV00084**CLASS ACTION****PLAINTIFF'S CLASS ACTION AND PAGA
REPRESENTATIVE COMPLAINT FOR:****(1) FAILURE TO REIMBURSE BUSINESS
EXPENSES (LABOR CODE § 2802);****(2) UCL VIOLATIONS (CAL. BUS. & PROF.
CODE §§ 17200-17204);****(3) PAGA PENALTIES (LABOR CODE § 2698
et seq.); AND****DEMAND FOR JURY TRIAL**

1 Plaintiff Johnny Valdez, ("Plaintiff"), on behalf of himself, the Aggrieved Employees, the
2 State of California, and all others similarly situated (hereinafter "Class Members"), complains and
3 alleges as follows:

4 **OVERVIEW OF CLAIMS**

5 1. Plaintiff brings this action on behalf of himself and all others similarly situated, as a
6 Class Action, as a Representative Action, and on behalf of the California general public, against
7 Defendant Sysco Los Angeles, Inc. ("Defendant" or "Sysco LA") and Does 1 to 100
8 ("Defendant") for its (1) failure to reimburse its current and former truck drivers for their work-
9 related business cell phone expenses in California for which they have not been fully reimbursed;
10 (2) unfair business practices based on the foregoing; and (3) PAGA penalties based on the
11 foregoing. As a result of the foregoing, Defendant has violated California statutory laws as
12 described below.

13 2. The "Class Period" is designated as the period from four years prior to the filing of
14 this action through the date of class certification. Defendant's violations of California's wage and
15 hour laws and unfair competition laws, as described more fully below, have been ongoing
16 throughout the Class Period.

17 3. The "PAGA Period" is designated as the period from one year prior to Plaintiff's
18 mailing of the LWDA notice letter (*i.e.*, October 26, 2021) through the present.

19 **VENUE**

20 4. Venue is proper in this county under section 395.5 of the California Code of Civil
21 Procedure as the allegations herein took place within the County of Los Angeles. Further,
22 Defendant keeps and maintains a distribution center in Walnut, California. Many of the putative
23 Class Members were employed and/or performed work during the Class Period by Defendant in
24 Los Angeles County, where Defendant maintains its Walnut, California distribution center.
25 Finally, many of the acts alleged herein including Defendant's failure to reimburse Plaintiff and
26 Class Members for all their business expenses, occurred in Los Angeles County. Venue is
27 therefore proper in Los Angeles County.

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6. Plaintiff resides Los Angeles County, California. Throughout the Class Period and the PAGA period, Defendant employed Plaintiff as a truck driver. From at least four years ago through the present, Defendant's drivers, including Plaintiff during his employment, were not reimbursed incurred business expenses in the course of carrying out their job duties in California, specifically including cell phone business expenses.

8. Plaintiff further seeks to represent a class defined as: *Plaintiff and all other California residents who are or were employed by Defendant as a truck driver or in any similar capacity, and who worked at least one shift in California from four years ago through the date of class certification* (“the Class Members”). All such Class Members are and were subject to Defendant’s unlawful cell phone reimbursement policy, as described in further detail below.

9. Defendant is a Delaware Corporation with its principal place of business in Walnut, California. Defendant is a US Operating Site of Sysco Corporation operating in Southern California. Sysco Corporation is the global leader in selling, marketing, and distributing food and

1 non-food products to restaurants, healthcare and educational facilities, lodging establishments and
2 other customers around the world. Defendant was the employer of Plaintiff, Class Members, and
3 the Aggrieved Employees for all relevant time periods.

4 10. The true names and capacities, whether individual, corporate, associate, or
5 otherwise, of Defendants sued herein as DOES 1 to 100 inclusive, are currently unknown to
6 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure §
7 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
8 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to
9 herein. Plaintiff will seek leave of court to amend this Complaint to reflect the true names and
10 capacities of the Defendants designated hereinafter as DOES when such identities become known.

11 11. Plaintiff is informed and believes, and based thereon alleges, that each Defendant
12 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
13 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
14 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
15 employer and/or joint employer of Plaintiff, the Class Members, and the other Aggrieved
16 Employees.

17 12. Plaintiff, the Class Members, and the Aggrieved Employees were employed by
18 Defendant as truck drivers in California at various times during the Class Period. Due to turnover
19 during the Class Period, the total number of class members is estimated to be several hundred.

20 **FACTUAL ALLEGATIONS**

21 13. Defendant operates and, at all times during the Class Period and PAGA Period, has
22 done and does business in California as a food distributor. Defendant, in the course of operating its
23 business in California during the Class Period, employed Plaintiff, the Aggrieved Employees, and
24 the Class Members.

25 14. Since at least four years ago, Plaintiff, the Aggrieved Employees, and the Class
26 Members, at the direction of Defendant and/or with Defendant's knowledge and acquiescence,
27 have used their personal cell phones to make calls to their supervisors, managers, and dispatchers
28 at Defendant's delivery service center ("DSC") and to Defendant's clients, to perform necessary

1 work-related duties on their California routes and were required to download several work-related
2 cell phone applications on their personal cell phones.

3 15. Among other things, during the Class Period, Defendant requires and required its
4 truck drivers to use their personal cell phones for work-related reasons, specifically including
5 directing the Aggrieved Employees and Class Members to “call in” under various circumstances.
6 Attached hereto are several messages sent to Class Members’ and Aggrieved Employees’ scanners
7 from Defendant’s DSC advising Class Members and Aggrieved Employees to “call in”. Class
8 Members and Aggrieved Employees receive messages on the scanners which are used to check
9 and return product or send and receive typed messages to Defendant’s DSC but those devices have
10 no “push to talk” feature ultimately necessitating Class Members and Aggrieved Employees to use
11 their personal cell phones to remain in contact with Defendant’s DSC.

12 16. For example, one scanner message states, “...if you cannot make your start time
13 please continue to call in before 3pm”. See **Exhibits 1** and **2**. For at least the last two years,
14 Defendant provided no mechanism for drivers to make such calls. Thus, it was and is reasonably
15 inferable that Defendant was requesting Plaintiff, the Class, and Aggrieved Employees to use their
16 personal cell phones. Other examples are scanner messages attached as **Exhibits 3** and **4** which
17 respectively state, “Team any returning item must be in its compartment frozen cooler and last dry
18 any questions call the DSC thanks” and, “Please call the DSC if you have these cases asap”.
19 Again, since there was no mechanism for Plaintiff, the Class, and Aggrieved Employees to call
20 Defendant’s DSC, it was again reasonably inferable that Defendant expected Plaintiff, the Class,
21 and Aggrieved Employees to use their personal cell phones for work-related usage.

22 17. Additionally, managers, dispatchers, and supervisors at Defendant’s DSC regularly
23 sent text messages to Plaintiff, the Class’s, and Aggrieved Employees’ personal cell phones to give
24 directions and notifications, rather than using the scanner to communicate. Upon information and
25 belief, this was a daily occurrence for all of Defendant’s drivers. Attached hereto as **Exhibit 5** is an
26 example of a text message sent by Defendant’s DSC supervisor to Plaintiff’s personal cell phone.

27 18. Perhaps most tellingly, Defendant required Plaintiff, the Class, and Aggrieved
28 Employees to download cell phone applications on their personal cell phones which were needed

1 for work-related tasks. These cell phone applications included:

- 2 • Work plan, which was used to clock in and out for the day, and to add meal and rest
3 periods in the event scanners did not work. Plaintiff, the Class's, and Aggrieved
4 Employees' scanners would die frequently, the batteries did not hold a charge, and
5 were not maintained such that the wi-fi system would not allow a connection;
- 6 • Workday, which was used for Defendant's payroll system and received all
7 communications from Defendant related to compensation, sick pay, holidays and
8 anything human resources related; and
- 9 • SAP Concur, which Plaintiff, the Class and Aggrieved Employees used to get
10 reimbursement for mileage or any other expenses incurred by drivers during a
11 layover.

12 Screenshots of the cell phone applications are attached hereto as **Exhibits 6-8**. These cell phone
13 applications were used by Plaintiff, the Class, and Aggrieved Employees for work daily and/or
14 weekly. Defendant was asking drivers to "call in" as recently as October 30, 2022. See Exhibit 4.

15 19. As a result, Plaintiff and the Aggrieved Employees and Class Members, regularly
16 during their workdays, used their personal cell phone to call clients, supervisors, managers,
17 dispatchers at Defendant's DSC and routinely used the cell phone applications required by
18 Defendant all with the knowledge and/or acquiescence of Defendant

19 20. Plaintiff, the Aggrieved Employees, and Class Members were thus expected by
20 Defendant to pay for, and have personally paid for, the purchase and maintenance of cell phones
21 used by Plaintiff, the Aggrieved Employees, and Class Members in the discharge of their job
22 duties (the "cell phone business expenses"). These expenses ranged, but typically amounted to
23 between \$50 per month to \$100 per month per Aggrieved Employee and/or Class Member.

24 21. In sum, Defendant's expense-related policies and/or practices require and expect,
25 and/or with Defendant's knowledge thereof permit, Plaintiff and the aggrieved employees and
26 Class Members to pay for cell phone business expenses incurred in direct consequence of
27 discharging their necessary and business-related job duties on behalf of Defendant, without
28 reimbursement in full by Defendant for such expenses, as required by California law.

29 22. Defendant does not maintain an expense reimbursement policy and/or practice
30 stating that Defendant will affirmatively reimburse Plaintiff and the aggrieved employees and
31 Class Members for a reasonable portion of their monthly personal cell phone bills and expenses

1 necessarily incurred in their discharge of their duties, as required by Labor Code sections 2802(a)
2 and (c) and the holding of *Cochran v. Schwan's Home Service, Inc.*, 228 Cal.App.4th 1137 (Cal.
3 Aug. 12, 2014) ("We hold that when employees must use their personal cell phones for work-
4 related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the
5 employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement
6 owed is a reasonable percentage of their cell phone bills.") (reversing denial of class certification
7 in cell phone reimbursement class action and setting forth the applicable law for these claims);
8 *Aguilar v. Zep, Inc.*, 2014 WL 4245988 *17 (N.D. Cal. Aug. 27, 2014) (granting plaintiffs' motion
9 for partial summary judgment on the plaintiffs' cell phone reimbursement claim); *Ritchie v. Blue*
10 *Shield of California*, 2014 WL 6982943, at *21 (N.D. Cal. Dec. 9, 2014) (Hon. Edward Chen)
11 (certifying class of cell phone reimbursement claim and adopting the logic of *Cochran*). To the
12 contrary, although Plaintiff and the Aggrieved Employees and Class Members used their personal
13 cell phones for necessary work-related purposes to perform their job duties with the knowledge of
14 and/or acquiescence of Defendant, Defendant did not reimburse Plaintiff, the Aggrieved
15 Employees, or the Class Members in any amount for any such expenses incurred throughout the
16 Class Period or the PAGA Period. Defendant's failure to reimburse Plaintiff, the Aggrieved
17 Employees, and the Class Members for their on-going cell phone business expenses incurred in
18 their discharge of their duties continues through the present day.

19 23. In short, Defendant's policies and/or practices require and expect, and/or with
20 Defendant's knowledge thereof permit, Plaintiff, the Class, and the aggrieved employees to pay for
21 cell phone business expenses incurred in direct consequence of discharging their duties on behalf
22 of Defendant, without reimbursement for a reasonable percentage of the monthly cell phone bills
23 by Defendant for such expenses. Defendant has maintained its policies and/or practices of denying
24 reimbursement in full of Plaintiff's, the Class' and the aggrieved employees' necessarily incurred
25 business expenses, or substantially similar policies, throughout California and throughout the Class
26 and PAGA Period.

27 24. Defendant is aware or should have been aware that Plaintiff, the Class, and the
28 aggrieved employees regularly incur cell phone business expenses in the discharge of their duties

1 as employees by virtue of Defendant's communications with Plaintiff, the via their scanners
2 (which had no mechanism for making calls) and cell phones, as well as Defendant's requirements
3 to download the above-referenced cell phone applications. Defendant nevertheless has, throughout
4 the PAGA Period and Class Period, failed and refused to reimburse Plaintiff, the Class, and the
5 aggrieved employees for such cell phone business expenses incurred by them in connection with
6 their work. Notably, Defendant was previously sued for and settled on a class basis for its drivers
7 for similar claims. *See Garcia, et al. v. Sysco Los Angeles, Inc.*, LASC Case No. BC560274, final
8 approval granted on November 12, 2015 with class and PAGA release through May 15, 2015. As a
9 result, Defendant was "on notice" of these claims and all violations here are arguably "subsequent"
10 violations under the statute. See Labor Code section 2699(f)(2).

11 25. As background, under California Labor Code § 2699(f)(2), Defendant is subject to a
12 civil penalty of \$100 per pay period penalty for each employee for each initial violation of the
13 aforementioned labor code violations, and \$200 for each subsequent pay period where the
14 violation occurred. Pursuant to *Amaral v. Cintas Corp. No. 2*, 163 Cal. App. 4th 1157, 1209
15 (2008), "[u]ntil the employer has been notified that it is violating a Labor Code provision (whether
16 or not the Commissioner or court chooses to impose penalties), the employer cannot be presumed
17 to be aware that its continuing underpayment of employees is a "violation" subject to penalties.
18 However, after the employer has learned its conduct violates the Labor Code, the employer is on
19 notice that any future violations will be punished just the same as violations that are willful or
20 intentional - *i.e.*, they will be punished at twice the rate of penalties that could have been imposed
21 or that were imposed for the initial violation." *Id.*

22 26. An employer is deemed to have notice of the illegality of its conduct triggering the
23 heightened penalties under *Amaral* once it receives either a lawsuit or written notice from the
24 Plaintiff of the alleged violation.

25 27. Plaintiff, the Aggrieved Employees, and Class Members have been harmed by
26 Defendant's unlawful business expense policies and/or practices in that they have not been paid for
27 any cell phone business expenses incurred while employed by Defendant in California, thereby
28 diminishing their agreed-upon compensation, and not reimbursing according to law, in substantial

1 amounts to be proved at trial.

2 28. Plaintiff has fully and completely exhausted and/or will have fully and completed
3 and exhausted his administrative remedies under PAGA prior to proceeding with the PAGA claim.
4 On October 26, 2022, Plaintiff filed his PAGA Notice online with the Labor Workforce
5 Development Agency (“LWDA”) and sent a letter by certified mail to Defendant setting forth the
6 facts and theories of the violations alleged against Defendant, as prescribed by Labor Code § 2698
7 *et seq.* As required by PAGA, Plaintiff submitted the \$75.00 filing fee with the LWDA by regular
8 mail. Pursuant to Labor Code § 2699.3(a)(2)(A), Plaintiff will have satisfied his administrative
9 pre-requisites after sixty-five (65) calendar days of the postmark date of the PAGA notice have
10 elapsed.

11 **CLASS ACTION ALLEGATIONS**

12 29. Plaintiff brings this action on behalf of himself and all others similarly situated as a
13 class action pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class
14 composed of and defined as *Plaintiff and all other California residents who are or were employed*
15 *by Defendant as truck drivers or in any other similar capacity, and who worked at least one shift*
16 *in California from four years ago through the date of class certification* (“Class Members”). All
17 such Class Members were subject to Defendant’s policy and practice of not fully reimbursing
18 drivers’ cell phone expenses.

19 30. This action has been brought and may properly be maintained as a class action
20 under Code of Civil Procedure § 382 because there is a well-defined community of interest in the
21 litigation, the proposed class is easily ascertainable, and Plaintiff is a proper representative of the
22 Class:

23 a. **Numerosity:** The potential members of the Class as defined are so numerous
24 that joinder of all the members of the Class is impracticable. While the precise number of Class
25 Members has not been determined at this time, Plaintiff is informed and believes that Defendant
26 has employed several hundred drivers during the Class Period. The Class Members are dispersed
27 throughout California. Joinder of all members of the proposed classes is therefore not practicable.

28 b. **Commonality:** There are questions of law and fact common to Plaintiff and

1 the Class that predominate over any questions affecting only individual members of the Class.
2 These common questions of law and fact include, without limitation:

3 i. Whether Plaintiff and Class Members incurred unreimbursed business
4 expenses in the discharge of their duties as employees, including but not limited to expenses for
5 cellular phones and monthly cellular phone bills, in violation of Labor Code § 2802;

6 ii. Whether Defendant intended, suffered and/or permitted, and/or knew and/or
7 should have known that Plaintiff and Class Members incurred unreimbursed cell phone business
8 expenses, in the discharge of their duties as employees;

9 iii. Whether Defendant's failure to reimburse the cell phone business expenses
10 incurred by Plaintiff and Class Members was the result of, and/or pursuant to, a business policy or
11 regular practice of Defendant;

12 iv. Whether Plaintiff is entitled to restitution under Business and Professions
13 Code § 17200;

14 v. Whether Defendant owes penalties pursuant to PAGA for failing to
15 reimburse its drivers for the necessarily incurred business expenses.

16 vi. The proper formula(s) for calculating damages, interest, and restitution
17 owed to Plaintiff and the Class Members;

18 vii. The nature and extent of class-wide damages.

19 c. Typicality: Plaintiff's claims are typical of the claims of the Class. Both
20 Plaintiff and Class Members sustained injuries and damages, and were deprived of property rightly
21 belonging to them, arising out of and caused by Defendant's common course of conduct in
22 violation of law as alleged herein, in similar ways and for the same types of expenses.

23 d. Adequacy of Representation: Plaintiff is a member of the Class and will
24 fairly and adequately represent and protect the interests of the Class and Class Members. Plaintiff's
25 interests do not conflict with those of Class and Class Members. Counsel who represent Plaintiff
26 are competent and experienced in litigating large wage and hour class actions, and will devote
27 sufficient time and resources to the case and otherwise adequately represent the Class and Class
28 Members.

1 e. Superiority of Class Action: A class action is superior to other available
2 means for the fair and efficient adjudication of this controversy. Individual joinder of all Class
3 Members is not practicable, and questions of law and fact common to the Class predominate over
4 any questions affecting only individual members of the Class. Each Class Member has been
5 damaged or may be damaged in the future by reason of Defendant's unlawful policies and/or
6 practices of not fully reimbursing business expenses. Certification of this case as a class action will
7 allow those similarly situated persons to litigate their claims in the manner that is most efficient
8 and economical for the parties and the judicial system. Certifying this case as a class action is
9 superior because it allows for efficient and full disgorgement of the ill-gotten gains Defendant has
10 enjoyed by maintaining its unlawful business expense reimbursement policies and/or practices, and
11 will thereby effectuate California's strong public policy of protecting employees from deprivation
12 or offsetting of compensation earned in their employment. If this action is not certified as a Class
13 Action, it will be impossible as a practical matter for many or most Class Members to bring
14 individual actions to recover monies unlawfully withheld from their lawful compensation due from
15 Defendant's, due to the relatively small amounts of such individual recoveries relative to the costs
16 and burdens of litigation.

17 **FIRST CAUSE OF ACTION**
18 **FAILURE TO REIMBURSE FOR BUSINESS EXPENSES**
19 **[Cal. Labor Code § 2802]**
20 **On Behalf of Plaintiff and the Class Against Defendant**

21 31. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
22 in the preceding paragraphs.

23 32. The actionable period for this cause of action is from three years ago through the
24 present.

25 33. Labor Code § 2802(n) provides that "[a]n employer shall indemnify his or her
26 employee for all necessary expenditures or losses incurred by the employee in direct consequence
27 of the discharge of his or her duties." Section 2802(c) defines "necessary" to include all
28 "reasonable costs."

34. In order to discharge their duties for Defendant, Plaintiff and similarly situated

1 Class Members were and are required and expected by Defendant to use their own personal cell
2 phones to remain in contact with their supervisors, managers, and dispatchers at Defendant's DSC
3 to perform necessary work-related duties on their California routes and were required to download
4 several work-related cell phone applications on their personal cell phones. However, although
5 having knowledge of such usage, Defendant did not reimburse Plaintiff and similarly situated
6 Class Members for a reasonable percentage of their monthly cellular phone bills, as required by
7 California law as stated in *Cochran v. Schwan's Home Service, Inc.*, 228 Cal.App.4th 1137
8 (August 12, 2014) ("We hold that when employees must use their personal cell phones for work-
9 related calls, Labor Code section 2802 requires the employer to reimburse them. Whether the
10 employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement
11 owed is a reasonable percentage of their cell phone bills.").

12 35. Defendant's failure to pay for or reimburse the work-related business expenses of
13 Plaintiff and Class Members violated non-waivable rights secured to Plaintiff and Class Members
14 by Labor Code §2802. See Labor Code §2804. Plaintiff and similarly situated Class Members are
15 entitled to reimbursement for these necessary expenditures, plus interest and attorneys' fees and
16 costs, under Labor Code § 2802(c).

17 **SECOND CAUSE OF ACTION**
18 **UNFAIR COMPETITION LAW VIOLATIONS**
19 **[Bus. & Prof. Code § 17200]**
20 **On Behalf of Plaintiff and the Class Against Defendant**

21 36. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
22 in the preceding paragraphs.

23 37. Section 17200 of the California Business & Professions Code prohibits any
24 unlawful, unfair, or fraudulent business practices. Business & Professions Code § 17204 allows
25 "any person who has suffered injury in fact and has lost money or property" to prosecute a civil
26 action for violation of the UCL. Such a person may bring such an action on behalf of himself and
27 others similarly situated who are affected by the unlawful, unfair, or fraudulent business practice.

28 38. Under section 17208 of the California Business and Professions Code, the statute of
limitations for a claim under Section 17200 is four years. Accordingly, the actionable period for

1 this cause of action is from four years ago through the present.

2 39. Section 90.5(a) of the Labor Code states that it is the public policy of California to
3 enforce vigorously minimum labor standards in order to ensure employees are not required to work
4 under substandard and unlawful conditions, and to protect employers who comply with the law
5 from those who attempt to gain competitive advantage at the expense of their workers by failing to
6 comply with minimum labor standards.

7 40. Beginning on a date at least four years prior to the filing of this Complaint, and
8 continuing to the present, Defendant has committed unlawful, unfair, and/or fraudulent business
9 acts and practices as defined by the UCL, by failing to reimburse and indemnify Plaintiff and
10 similarly situated Class Members for employment-related cell phone business expenses, in
11 violation of Labor Code § 2802.

12 41. As a direct and proximate result of Defendant's unlawful, unfair, and/or fraudulent
13 acts and practices described herein, Defendant has received and continues to hold unlawfully
14 obtained property and money belonging to Plaintiff and the Class in the form of unreimbursed
15 employee cell phone business expenses that reduced or offset compensation earned by Plaintiff and
16 Class Members.

17 42. As a direct and proximate result of Defendant's unlawful business practices,
18 Plaintiffs and the Class Members have suffered economic injuries including, but not limited to out-
19 of-pocket business expenses. Defendant has profited from its unlawful, unfair, and/or fraudulent
20 acts and practices in the amount of those business expenses and interest accrued thereon.

21 43. Plaintiff and similarly situated Class Members are entitled to monetary relief
22 pursuant to Business & Professions Code §§ 17203 and 17208 for all unreimbursed business
23 expenses, and interest thereon, from at least four years ago through to the date of such restitution,
24 at rates specified by law. Defendant should be required to disgorge all the profits and gains it has
25 reaped and restore such profits and gains to Plaintiff and Class Members from whom they were
26 unlawfully taken.

27 44. Beginning four years prior to the filing of this Complaint, Defendant committed,
28 and continues to commit, acts of unfair competition, as defined in sections 17200 *et seq.* of the

1 California Business and Professions Code by, among other things, failing to reimburse Plaintiff
2 and the Class members for a reasonable portion of their monthly cell phone bills as required by
3 California law, and therefore was substantially injurious to Plaintiff and the Class members.

4 45. Defendant engaged in unfair competition in violation of sections 17200 *et seq.* of
5 the California Business & Professions Code by violating Section 2802 of the Labor Code.

6 46. Defendant's course of conduct, act, and practice in violation of the California laws
7 mentioned above constitute independent violations of sections 17200 *et seq.* of the California
8 Business and Professions Code.

9 47. The unlawful, unfair and fraudulent business practices and acts of Defendant, as
10 described above, have injured Plaintiff and the Class in that they were denied reimbursement for a
11 reasonable percentage of their monthly business-related cell phone expenses, and therefore was
12 substantially injurious to Plaintiff and the Class Members.

13 48. Plaintiff and similarly situated Class Members are entitled to enforce all applicable
14 penalty provisions of the Labor Code pursuant to Business & Professions Code § 17202.

15 49. Plaintiff has assumed the responsibility of enforcement of the laws and public
16 policies specified herein by suing on behalf of himself and other similarly situated Class Members
17 previously or presently employed by Defendant in California. Plaintiff's success in this action will
18 enforce important rights affecting the public interest. Plaintiff will incur a financial burden in
19 pursuing this action in the public interest. Therefore, an award of reasonable attorneys' fees to
20 Plaintiff is appropriate pursuant to Code of Civil Procedure § 1021.5

21 **THIRD CAUSE OF ACTION**
22 **LABOR CODE PRIVATE ATTORNEY GENERAL ACT**
23 **[Cal. Labor Code §§ 2698-2699.5]**
24 **On Behalf of Plaintiff and the Aggrieved Employees Against Defendant**

25 50. Plaintiff, on behalf of himself and all Aggrieved Employees, re-alleges and
26 incorporates by reference each and every allegation set forth in the preceding paragraphs.

27 51. Based on the above allegations incorporated by reference, Defendant has violated
28 Labor Code § 2802 by failing to reimburse Plaintiff and the Aggrieved Employees their reasonable
and necessary business expenses, including cell phone expenses.

52. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code § 2699, et. seq., because of Defendant's violations of Labor Code § 2802.

53. Plaintiff seeks to recover the PAGA civil penalties through a representative action as permitted by PAGA and the California Supreme Court in *Arias v. Superior Court* (2009), 46 Cal.4th 969. Therefore, class certification hereby of the PAGA claims is not required, but Plaintiff may choose to seek certification of the PAGA claims.

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

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

\$200 for each subsequent violation per employee per pay period.¹

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

JURY DEMAND

55. Plaintiff hereby demands trial by jury of his and the Class's Section 2802 claims against Defendant, but recognizes that his PAGA and UCL claims shall be tried to the Court.

PRAYER FOR RELIEF

Wherefore, Plaintiff, on behalf of himself and the members of the Class, prays for judgment against Defendant as follows:

1. An Order that this action may proceed and be maintained as a class action;

2. On the First Cause of Action:

a. That the Court find and declare that Defendant's business expense policies

¹ Defendant is aware or should have been aware that Plaintiff and the Aggrieved Employees regularly incur cell phone business expenses in the discharge of their duties as employees by virtue of Defendant's communications with Plaintiff and the Aggrieved employees and Class Members via their scanners (which had no mechanism for making calls) and cell phones, as well as Defendant's requirements to download the above-referenced cell phone applications. Defendant nevertheless has, throughout the PAGA Period, failed and refused to reimburse Plaintiff and the Aggrieved Employees for such cell phone business expenses incurred by them in connection with their work. Notably, Defendant was previously sued for and settled on a class basis for its drivers for similar claims. *See Garcia, et al. v. Sysco Los Angeles, Inc.*, LASC Case No. BC560274, final approval granted on November 12, 2015 with class and PAGA release through May 15, 2015. As a result, Defendant was "on notice" of these claims and all violations here are arguably "subsequent" violations under the statute. See Labor Code section 2699(f)(2).

1 and/or practices violate California law, including Labor Code § 2802, by refusing and/or failing to
2 reimburse all business expenses reasonably incurred by Plaintiff and other and Class Members in
3 the discharge of their duties in California as employees of Defendant;

4 b. That the Court award to Plaintiff and Class Members all unreimbursed
5 business expenses, and interest thereon, that they are owed, pursuant to Labor Code § 2802, and
6 attorneys fees, pursuant to Labor Code § 2802(c), in an amount to be proved at trial;

7 3. On the Second Cause of Action:

8 a. That the Court find and declare that Defendant has violated the UCL and
9 committed unfair and unlawful business practices by failing to reimburse Plaintiff and similarly
10 situated Class Members for their reasonable cell phone business expenses incurred by them in the
11 course of their duties for the benefit of Defendant, their employers;

12 b. Restitution, including, but not limited to, the relief permitted by section
13 2802 of the California Labor Code;

14 c. That Defendant be ordered to pay restitution to Plaintiff and the Class
15 Members due to Defendant's UCL violations under the First Cause of Action pursuant to Business
16 and Professions Code §§ 17200-17205, in the amount of their unreimbursed business expenses and
17 interest thereon;

18 4. On the Third Cause of Action:

19 a. A civil penalty against Defendant, in the amount of \$100 and/or \$200 for
20 each violation and subsequent as specified as set forth in in section 2699(f)(2) of the California
21 Labor Code for Plaintiff and the Aggrieved Employees during all of the pay periods during the
22 PAGA Period;

23 b. An award of reasonable attorney's fees against Defendant as specified in
24 Labor Code § 2699(g)(1), for all the work performed by the undersigned counsel in connection
25 with the PAGA claims;

26 c. An award of all costs incurred by the undersigned counsel for Plaintiff in
27 connection with Plaintiff's and Aggrieved Employees' PAGA claim against Defendant as provided
28 for in Labor Code § 2699(g)(1) and/or in Labor Code § 2802(c);

1 5. All other relief as this Court deems proper.

2
3 Dated: January 3, 2023

Respectfully submitted,

4 **ACKERMANN & TILAJEF, P.C.**
5 **LAW OFFICE OF TATIANA HERNANDEZ,**
6 **P.C.**

7 By: _____

8 Craig Ackermann, Esq.

9 *Attorneys for Plaintiff, the Class, the LWDA, and*
10 *the Aggrieved Employees*

EXHIBIT 1



12:49 PM

< Back

Gama,Ernie(e...

Gama,Ernie(egam1815)

High

4:50 AM

Good morning team, reminder of the day, if you cannot make your start time please continue to call in before 3pm. DSC and routing! Also make sure you are logged into the correct tractor any issues contact the DSC. and remember not all superheroes wear capes. some of us driver trucks. #elgallo #elunico.

Enter message...

High

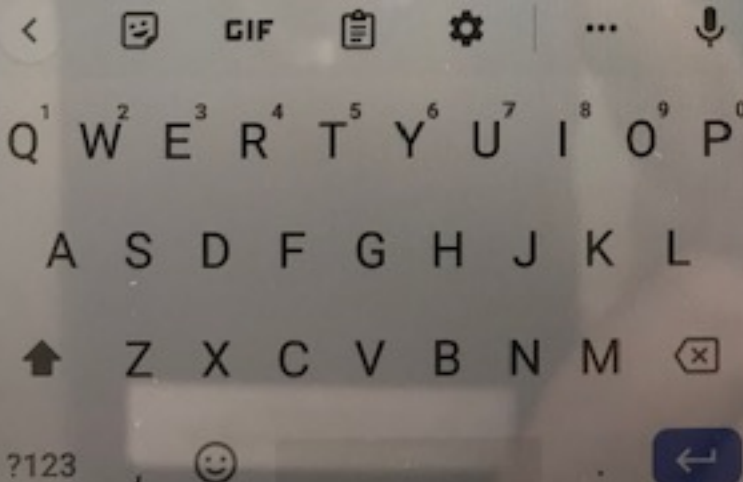
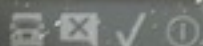


EXHIBIT 2



12:49 PM

< Back

Gama,Ernie(e...

Gama,Ernie(egam1815)

High

4:50 AM

Good morning team, reminder of the day, if you cannot make your start time please continue to call in before 3pm. DSC and routing! Also make sure you are logged into the correct tractor any issues **contact** the DSC. and remember not all superheroes wear capes. some of us driver trucks. #elgallo #elunico.

Enter message...

High



GIF



Q¹ W² E³ R⁴ T⁵ Y⁶ U⁷ I⁸ O⁹ P⁰

A S D F G H J K L



Z

X

C

V

B

N

M



?123



EXHIBIT 3

< Back

Eduardo Gom...

Giovanni Reyes**High**

WED

Team any returning item must be in its
compartment frozen cooler and last dry any
questions call the DSC thanks

Enter message...

High

GIF

Q¹ W² E³ R⁴ T⁵ Y⁶ U⁷ I⁸ O⁹ P⁰

A S D F G H J K L



Z

X

C

V

B

N

M



?123

,



EXHIBIT 4

< Back

Samuel Ward, ...

Ervin, Carluis (Cerv4781)

High

WED

Team, We are looking for 9 cases of frozen for a reship from yesterday route 2040. Please call the DSC if you have these cases asap. Thanks

Enter message...

High



GIF

Q¹ W² E³ R⁴ T⁵ Y⁶ U⁷ I⁸ O⁹ P⁰

A S D F G H J K L



Z

X

C

V

B

N

M



?123

,



EXHIBIT 5



Lulu >



iMessage
Today 3:59 PM

Hi Johnny I have a driver waiting for you at Sweetfin you scanned you arrived he or customer can't find you?

Subject



iMessage



EXHIBIT 6



WorkPlan

EXHIBIT 7

Business



Workday



EXHIBIT 8



SAP Concur