

COPY

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO

MAR 09 2023

BY: Kylie Meneses
Kylie Meneses, Deputy

ACKERMANN & TILAJEF, P.C.

Craig J. Ackermann (SBN 229832)

cja@ackermanntilajef.com

Avi Kreitenberg (SBN 266571)

ak@ackermanntilajef.com

315 South Beverly Drive, Suite 504

Beverly Hills, California 90212

Telephone: (310) 277-0614

Facsimile: (310) 277-0635

Attorneys for Plaintiff, the LWDA, and all other Aggrieved Employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN BERNARDINO

CURTIS EDWARD ROBINZINE, an
individual, on behalf of the State of California,
as a private attorney general, and on behalf of
all Aggrieved Employees,

PLAINTIFF,

v.

LOTTE GLOBAL LOGISTICS (NORTH
AMERICA) INC., a California Corporation;
DOES 1 to 50, inclusive,

DEFENDANTS.

CASE NO. **CIV SB 2305968**

**PAGA REPRESENTATIVE ACTION
COMPLAINT FOR:**

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

1 Plaintiff CURTIS EDWARD ROBINZINE (“Plaintiff”), on behalf of the people of the State
2 of California and as an “Aggrieved Employee” acting as a private attorney general under the Labor
3 Code Private Attorneys General Act of 2004, § 2699, *et seq.* (“PAGA”) complains of Defendant
4 LOTTE GLOBAL LOGISTICS (NORTH AMERICA) INC. and DOES 1 to 50 (collectively,
5 “Defendant” or “Lotte”) and each of them, and alleges the following 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 the group of Aggrieved Employees defined as follows:

9 **The “Aggrieved Employees”:**

10 Plaintiff and all other California residents who are or were employed by Defendant, as a
11 truck driver or in any similar capacity, who worked at least one pay period in California
12 from December 15, 2021 through December 15, 2022 (the “PAGA Period”).

13 2. Plaintiff, on behalf of himself and all Aggrieved Employees presently or formerly
14 employed by Defendant during the PAGA Period, brings this representative action pursuant to
15 Labor Code § 2699, *et seq.* seeking penalties for Defendant’s violation of California Labor Code §
16 2802. Based upon the foregoing, Plaintiff and all Aggrieved Employees are Aggrieved Employees
17 within the meaning of Labor Code §2699, *et seq.*

18 3. The total number of Aggrieved Employees who are or were employed by Defendant
19 in California during the PAGA period is estimated to be 48.

20 **THE PARTIES**

21 4. Plaintiff Curtis Edward Robinzine is a resident of California and at all times
22 pertinent hereto worked for Defendant.

23 5. Defendant is a logistics and shipping company headquartered in Irving, Texas.
24 Defendant employed Plaintiff and similarly situated aggrieved employees in California as truck
25 drivers. Defendant has done and does business throughout the State of California, including in San
26 Bernardino County.

27 6. The true names and capacities, whether individual, corporate, associate, or
28 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to

1 Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure §
2 474. Plaintiff is informed and believes, and based thereon alleges, that each of the Defendants
3 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred to
4 herein. Plaintiff may seek leave of court to amend this Complaint to reflect the true names and
5 capacities of the Defendants designated hereinafter as DOES when such identities become known.

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

16 **JURISDICTION AND VENUE**

17 8. This Court has subject matter jurisdiction over any and all causes of action asserted
18 herein pursuant to Article VI, § 10 of the California Constitution and California Code of Civil
19 Procedure § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy,
20 exclusive of interest, exceeds \$25,000, and because each cause of action asserted arises under the
21 laws of the State of California or is subject to adjudication in the courts of the State of California.

22 9. This Court has personal jurisdiction over Defendant because Defendant has caused
23 injuries in the County of San Bernardino and State of California through its acts, and by its
24 violation of the California Labor Code and California state common law.

25 10. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
26 Civil Procedure § 395. Defendant operates within California and does business within San
27 Bernardino County, California. The unlawful acts alleged herein have a direct effect on Plaintiff
28 and all “employees” within the State of California and San Bernardino County.

COMMON ALLEGATIONS

11. During the PAGA Period, Plaintiff and the Aggrieved Employees, at the direction of Defendant and/or with Defendant's knowledge and acquiescence, have used their personal cell phones to remain in contact with their supervisors, managers, and dispatchers as well as Defendant's clients and customers to perform necessary work-related duties on their California routes and were required to download several work-related cell phone applications on their personal cell phones.

12. Among other things, during the PAGA Period, Defendant requires and required its truck drivers to use their personal cell phones for work-related reasons, specifically including directing the Aggrieved Employees where to pick up and drop off loads. Managers, dispatchers, and supervisors regularly sent text messages or called Plaintiff and Aggrieved Employees' personal cell phones to give directions and notifications.

13. Perhaps most importantly, Defendant required Plaintiff and Aggrieved Employees to download cell phone applications on their personal cell phones which were needed for work-related tasks. These cell phone applications included: (1) Trinium MC3 and Carrier 360 by J.B. Hunt, which was used to advise Plaintiff and Aggrieved Employees where to pick up and drop off loads; and (2) Telegram, which was used for sending and receiving messages with dispatch. These cell phone applications were used by Plaintiff and Aggrieved Employees for work daily and/or weekly.

14. As a result, Plaintiff and the Aggrieved Employees, during all their workdays, used their personal cell phone (and downloaded apps) to remain in contact with their supervisors, managers, dispatchers as well as Defendant's customers and clients, all with the knowledge and/or acquiescence of Defendant.

15. Plaintiff and the Aggrieved Employees were expected by Defendant to pay for, and have personally paid for, the purchase and maintenance of cell phones and call and data plans used by Plaintiff and the Aggrieved Employees in the discharge of their job duties (the "cell phone business expenses"). These expenses ranged, but typically amounted up to \$50 to \$75 per month per Aggrieved Employee.

16. In sum, Defendant's expense-related policies and/or practices require and expect,

1 and/or with Defendant's knowledge thereof permit, Plaintiff and the Aggrieved Employees to pay
2 for cell phone business expenses incurred in direct consequence of discharging their necessary and
3 business-related job duties on behalf of Defendant, without reimbursement by Defendant for such
4 expenses, as required by California law.

5 17. Defendant does not maintain an expense reimbursement policy and/or practice
6 stating that Defendant will affirmatively reimburse Plaintiff and the Aggrieved Employees for a
7 reasonable portion of their monthly personal cell phone bills and expenses necessarily incurred in
8 their discharge of their duties, as required by Labor Code sections 2802(a) and (c) and the holding
9 of *Cochran v. Schwan's Home Service, Inc.*, 228 Cal.App.4th 1137 (Cal. Aug. 12, 2014) ("We hold
10 that when employees must use their personal cell phones for work-related calls, Labor Code section
11 2802 requires the employer to reimburse them. Whether the employees have cell phone plans with
12 unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their
13 cell phone bills.") (reversing denial of class certification in cell phone reimbursement class action
14 and setting forth the applicable law for these claims); *Aguilar v. Zep, Inc.*, 2014 WL 4245988 *17
15 (N.D. Cal. Aug. 27, 2014) (granting plaintiffs' motion for partial summary judgment on the
16 plaintiffs' cell phone reimbursement claim); *Ritchie v. Blue Shield of California*, 2014 WL
17 6982943, at *21 (N.D. Cal. Dec. 9, 2014) (Hon. Edward Chen) (certifying class of cell phone
18 reimbursement claim and adopting the logic of *Cochran*). To the contrary, although Plaintiff and
19 the Aggrieved Employees used their personal cell phones for necessary work-related purposes to
20 perform their job duties with the knowledge of and/or acquiescence of Defendant, Defendant did
21 not reimburse Plaintiff and the Aggrieved Employees in any amount for any such expenses incurred
22 throughout the PAGA Period. Defendant's failed to reimburse Plaintiff and the Aggrieved
23 Employees for their on-going cell phone business expenses incurred in their discharge of their
24 duties through the PAGA period, and violated Labor Code section 2802. See e.g., *Krauss v. Wal-*
25 *Mart, Inc.*, 2020 U.S. Dist. LEXIS 66535, at *18-19 (E.D. Cal. April 14, 2020) (requirement to
26 download apps triggers reimbursement obligation).

27 18. In short, Defendant's policies and/or practices require and expect, and/or with
28 Defendant's knowledge thereof permitted, Plaintiff and the Aggrieved Employees to use their

1 personal cell phones in the discharge of their duties on behalf of Defendant, without reimbursement
2 in full by Defendant for such expenses during the PAGA period. Defendant has maintained its
3 policies and/or practices of not reimbursing in full Plaintiff's and the Aggrieved Employees'
4 necessarily incurred business expenses, or substantially similar policies, throughout California and
5 throughout the PAGA Period, despite requiring drivers to download apps for work-usage.

6 19. Defendant is aware or should have been aware that Plaintiff and the Aggrieved
7 Employees regularly incurred cell phone business expenses in the discharge of their duties as
8 employees by virtue of Defendant's communications with Plaintiff and the Aggrieved Employees
9 via their cell phones, as well as Defendant's requirements to download the above-referenced cell
10 phone applications. Defendant nevertheless has, throughout the PAGA Period, failed and refused
11 to reimburse Plaintiff and the Aggrieved Employees for such cell phone business expenses incurred
12 by them in connection with their work.

13 **FIRST CAUSE OF ACTION**
14 **PENALTIES PURSUANT PAGA. LABOR CODE § 2699, *et seq.* and § 210**
15 **FOR VIOLATIONS OF LABOR CODE § 2802**
16 **PLAINTIFF AND ALL AGGRIEVED EMPLOYEES AGAINST DEFENDANT**

17 20. Plaintiff, on behalf of himself and all Aggrieved Employees, realleges and
18 incorporates by reference all previous paragraphs.

19 21. Based on the above allegations incorporated by reference, Defendant has violated
20 Labor Code § 2802.

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

24 \$100 for the initial violation per employee per pay period; and

25 \$200 for each subsequent violation per employee per pay period.

26 23. These PAGA penalties shall be allocated seventy-five percent (75%) to the Labor
27 and Workforce Development Agency (LWDA) and twenty-five percent (25%) to the affected
28 employees, as set forth in Labor Code section 2699(i).

24. Pursuant to Labor Code § 2699.3 (a), on December 15, 2022, Plaintiff gave written

1 notice by certified mail to Defendant, and to the LWDA of his claims for violations of Labor Code
2 § 2802, and theories supporting these claims as alleged herein. As of the date of this Complaint, the
3 LWDA has not responded to Plaintiff's PAGA letter. Plaintiff has already paid the required \$75 fee
4 and has otherwise satisfied all prerequisites to filing suit. Accordingly, Plaintiff has fulfilled all
5 administrative prerequisites to the filing and pursuit of his PAGA claims on behalf of himself and
6 all other current and former Aggrieved Employees of Defendant.

7 25. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code
8 § 2699, *et seq.* because of Defendant's violation of Labor Code § 2802.

9 **RELIEF REQUESTED**

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

11 1. For penalties and other relief allowable under Labor Code § 2699, *et seq.* for
12 Plaintiff and all Aggrieved Employees because of Defendant's violation of, without limitation,
13 Labor Code § 2802;

14 2. A civil penalty against Defendant in the amount of \$100 for the initial violation and
15 \$200 for each subsequent violation as specified in section 2699(f)(2) of the California Labor Code
16 for Plaintiff and all Aggrieved Employees for each and every pay period during that occurred
17 during the PAGA Period;

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

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

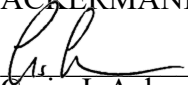
24 5. Such other and further relief as this Court may deem proper and just.

25 Respectfully submitted,

26 ACKERMANN & TILAJEF, P.C.

27 Dated: March 8, 2023

By:


Craig J. Ackermann, Esq.

Attorneys for Plaintiff, the LWDA, the Aggrieved Employees