POTTER HANDY, LLP
A Law Firm

100 Pine St., Ste. 1250
San Francisco CA 94111
Phone: (415) 534-1911
Fax: (888) 422-5191

James M. Treglio
JimT@PotterHandy.com
Jason Kyle Masanque
jasonm@potterhandy.com

August 27, 2025

Filed Via LWDA's PAGA Claim Notice Online Form

Copy Sent Via Certified Mail to:

Human Resources
Gannett Co., Inc.
1675 Broadway 23rd Floor
New York, NY 10019

Gannett Co., Inc.
1675 Broadway 23rd Floor
New York, NY 10019

Gannett Co., Inc.
Registered Agent for Service
CSC - Lawyers Incorporating Service
2710 Gateway Oaks Drive, Suite 150N,
Sacramento, CA 95833

Re: *Nathan Truesdell v. Gannett Co., Inc.,*
California Labor Code § 2699 Penalties; Notice of Intent to File Suit

Dear Counsel:

This office represents Plaintiff Nathan Truesdell ("Plaintiff") and a proposed group of current and former employees working for Gannett Co., Inc. ("Gannett" or "Defendants") in the State of California for violations of California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 1194, 1194.2, 1197, 1197.1, 1198,[1] 1199, 2802, as well as IWC Wage Order No. 4-2001. Plaintiff wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of the following groups of aggrieved employees:

(1) all individuals who are or were employed by Defendant or its predecessor or merged entities in California as outside commissioned sales representatives misclassified as exempt employees, who were not provided with meal periods, from one year prior to the mailing of this notice through the present ("meal period aggrieved employees");

(2) all individuals who are or were employed by Defendant or its predecessor or merged

[1] All alleged violations of IWC Wage Order 4-2001 are also deemed to be alleged violations of Labor Code § § 1197 and 1198.

entities in California as outside commissioned sales representatives misclassified as exempt employees, who worked shifts in excess of three and a half hours, from one year prior to the mailing of this notice through the present ("rest period aggrieved employees");

(3) all individuals who are or were employed by Defendant, or its predecessor or merged entities in California as outside commissioned sales representatives misclassified as exempt employees, who work or worked in excess of eight hours in a day or forty hours in a workweek from any time from one year prior the filing of this notification through the present ("overtime aggrieved employees");

(4) All individuals who are or were employed by Defendant or its predecessor or merged entities in California as outside commissioned sales representatives misclassified as exempt employees, who are or were required to spend business expenses without sufficient reimbursement for their expenses from one year prior to the filing of this notice through the present ("reimbursement aggrieved employees"); and

(5) all individuals who are or were employed by Defendant, or its predecessor or merged entities in California as outside commissioned sales representatives misclassified as exempt employees from one year prior to the mailing of this notice through the present ("wage statement aggrieved employees").

Collectively, hereinafter referred to as the "Aggrieved Employees" or "aggrieved employees."

This letter is to provide notice to you and to the California Labor Workforce Development Agency of some of the facts and legal theories in connection with the above referenced aggrieved employees in compliance with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.*[2]

Factual Background

Plaintiff and the aggrieved employees are and were employed by Gannett Co., Inc., a Delaware corporation based in New York, New York. Gannett is a large media holding company and it is the largest U.S. newspaper publisher. Plaintiff was hired as an outside sales representative at the company's office in Palm Springs, California.

Despite the fact that Plaintiff and the Aggrieved Employees were hired as "outside sales" more than half of their working hours were spent in an office setting, whether in a home office, or in Defendant's offices. Thus, Defendant improperly classified Plaintiff and the Aggrieved

[2] See *Cardenas v. McLane FoodServices, Inc.* (C.D. Cal. Jul. 8, 2011) 796 F. Supp. 2d 1246, 1261; *Moua v. Int'l Bus. Machines Corp.* (N.D. Cal. Jan. 31, 2012) 2012 WL 370570, at *5; *York v. Starbucks Corp.*, (C.D. Cal. Nov. 1, 2012) 2012 WL 10890355, at *4.

Employees as outside salespersons.

Although classified as exempt, the duties of Plaintiffs and the Aggrieved Employees do not meet the requirements set forth in IWC Wage Order No. 4. For instance, Plaintiff would usually more than half of his time within the home office, and more than 50% of his work hours were often spent in office meetings, not performing sales related activities. The rest of Plaintiff's work day would then be spent doing research, creating presentations, and meeting with clients. And because less than half of Plaintiff's compensation was commissions, neither Plaintiff, nor the Aggrieved Employees, were properly classified as commissioned salespersons as defined by the Wage Order.

Throughout their employment, Plaintiff and the Aggrieved Employees were systematically misclassified by Defendant as "exempt" when in fact they were not. Thus, even if Plaintiff and the Aggrieved Employees regularly worked for in excess of 8 hours a day and 40 hours per week, they did not receive overtime compensation. In addition, Plaintiff and the Aggrieved Employees did not also receive meal and rest periods although they were entitled to them.

Plaintiff and the Aggrieved Employees also had to use their personal mobile phones to make business calls. However, Defendant did not reimburse these business expenses.

<u>Claims Asserted by Plaintiff</u>

i. <u>Plaintiff and the Overtime Aggrieved Employees Were Not Paid Proper Overtime Compensation for All Hours Worked in Excess of 8 Hours in Day or Forty Hours in a Workweek</u>

Labor Code § 510 requires an employer to compensate an employee who works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours worked on the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee. Further, Labor Code § 510 obligates employers to compensate employees at no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of work. In accordance with Labor Code § 1194, Plaintiff and the overtime aggrieved employees could not then agree and cannot now agree to work for a lesser wage than the amount proscribed by Labor Code §§ 510 and 1194.

Defendant has intentionally and improperly designated certain employees like Plaintiff and the aggrieved employees as "exempt" to avoid payment of overtime wages and benefits under the Labor Code and the Wage Order.

Plaintiff would usually spend more than 50% of his work hours on office meetings. The rest of Plaintiff's work day would then be spent doing research, creating presentations, and meeting with clients. Plaintiff does not supervise any staff nor was he responsible for any employee's schedule, discipline, hiring, training, and firing. Plaintiff had no power to make his own decisions without a manager since all of his decisions needed his manager's approval. Less than half of his salary also came from commissions.

Under the Wage Order 4-2001 and Labor Code §510, an employee can only be classified as exempt from overtime if they meet the tests of the exemptions stated in the Wage Order. Here, Plaintiff does not meet the test of any exemption. Plaintiff was not an executive as defined by Wage Order 4, section 1(A)(1)(b), as he did not supervise the work of any employee, while the exemption requires supervision of at least two employees. Neither was Plaintiff a commissioned sales person, as defined by Wage Order 4, section 3(D), as less than half of his income while employed by Defendants came from commission payments. Nor was Plaintiff an administrator, as defined by Wage Order 4, section 1(A)(2), as his job duties were based on providing services to Defendants' customers, rather than the general business operations of Defendants or their customers. Moreover, less than half of Plaintiff's job duties were spent on project management. Nor was Plaintiff an outside salesperson, as over 50% of his day was spent within the office.

Similarly, Labor Code §1194.2 authorizes employees to recover wages to recover liquidated damages for violations of Labor Code §1194. Where an employee, as Plaintiff, is not paid for all hours worked under Labor Code § 1194, the employee may recover minimum wages for the time associated with the overtime for which they received no compensation. (See *Sillah v. Command Int'1 Sec. Servs.* (N.D. Cal. 2015) 154 F. Supp. 3d 891 [holding that employees suing for failure to pay overtime could recover liquidated damages under §1194.2 if they also showed they were paid less than minimum wage]; accord *Andrade v. Arby's Rest. Grp., Inc. (*N.D. Cal. Dec. 12, 2016) 2016 U.S. Dist. LEXIS 172319, at *20-2 I.) Since Defendants failed to provide Plaintiff with compensation for all hours worked, including overtime hours, he is entitled to recover liquidated damages under Labor Code ¬§1194.2.

Additionally, according to Labor Code §§510 and 1194, and the Wage Order 4-2001, Plaintiff was entitled to receive time and a half for his hours worked in excess of forty hours in a workweek, or eight hours in a day. As a result, Plaintiff should never have been classified as an exempt employee, and should have been paid for all hours worked, and paid at time and a half his regular rate of pay for all hours worked in excess of 8 hours in a day, and in excess of 40 hours in a workweek. Yet, despite the fact that Plaintiff worked more than 40 hours per workweek, he never received overtime compensation in violation of the Labor code and the Wage Order. Labor Code §§510, 1194, 1194.2, and Wage Order 4-2001. Plaintiff is thus entitled to receive all of his past due overtime wages, as well as liquidated damage, attorneys' fees, and costs.

ii. <u>Plaintiff and the Aggrieved Employees Were Not Compensated for All Hours Worked</u>

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. 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 4-2001 § 4 also obligates employers to pay each employee minimum wages for all hours worked.

As noted above, Plaintiff and the aggrieved employees were misclassified as "exempt" and were not compensated for overtime even if they had to work beyond 8 hours per day or 40 hours per week. They were also erroneously deemed not entitled to meal and rest periods. As a result, Plaintiff and the aggrieved employees are not compensated for all hours worked.

In 2018, the California Supreme Court held in *Troester v. Starbucks, Inc.* (2018) 5 Cal.5th 829, that an employee must be compensated for any time in which they are under the control of their employer, and performing work. In this case, Plaintiff and the Aggrieved Employees would often have 10 hours of overtime per week. Thus, by not compensating Plaintiff and the aggrieved employees for the work done beyond 8 hours per day or 40 hours per week, and their meal and rest periods, Defendant has violated the Labor Code and the Wage Order.

Similarly, Labor Code § 1194.2 authorizes employees to recover wages to recover liquidated damages for violations of Labor Code § 1194. Where an employee, as Plaintiff and the meal period aggrieved employees are not paid for all hours worked under Labor Code § 1194, the employee may recover minimum wages for the time associated with the overtime for which they received no compensation. (See *Sillah v. Command Int'1 Sec. Servs.* (N.D. Cal. 2015) 154 F. Supp. 3d 891 [holding that employees suing for failure to pay overtime could recover liquidated damages under § 1194.2 if they also showed they were paid less than minimum wage]; *accord Andrade v. Arby's Rest. Grp., Inc*. (N.D. Cal. Dec. 12, 2016) No. 15-cv-03175 NC, 2016 U.S. Dist. LEXIS 172319, at *20-21.) Since Defendant failed to provide Plaintiff and all aggrieved employees with compensation for all hours worked, including overtime hours, each are entitled to recover liquidated damages under Labor Code § 1194.2 through PAGA. Based upon these same factual allegations, Plaintiff also seeks, on behalf of all aggrieved employees, penalties under Labor Code § 1199.

iii. Plaintiff and the Meal Period Aggrieved Employees Are Not and Were Not Provided with Meal Periods of Thirty Minutes of Interrupted Off-Duty Time

Labor Code § 512 requires employers to provide employees with thirty (30) minute uninterrupted and duty-free meal period within the first five hours of work. "An on-duty meal period is permitted only when the nature of the work prevents an employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal break." (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal. App. 5th 926, 932.) The written agreement must include a provision allowing the employee to revoke it at any time. *Id.*

Generally, the DLSE and courts have "found that the nature of the work exception applies: '(1) where the work has some particular external force that requires the employee to be on duty at all times, and (2) where the employee is the sole employee of a particular employer." (*Id*. at p. 945; *Abdullah v. U.S. Security Associates, Inc.* (9th Cir. 2013) 731 F.3d 952, 958–959.) "[I]t is the employer's obligation to determine whether the nature of the work prevents an employee from being relieved *before* requiring an employee to take an on-duty meal period." (*Lubin*, *supra*, 5 Cal. App. 5th at p. 946.) Nor may an employer "discharge its duty by arguing that its clients who requested on-duty meal periods determined that the nature of the work prevented officers from being relieved of all duty." (*Id*. at p. 947; *Benton*, *supra*, 220 Cal. App. 4th at p. 729.)

As with rest periods, under Labor Code § 512, if an employer maintains a uniform policy that does not authorize and permit the amount of meal time called for under the law (as specified in 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.)

Defendant has intentionally and improperly denied meal periods to Plaintiff and the aggrieved employees, in violation of Labor Code § 226.7, 512, and IWC Wage Order No. 4. During their employment, Plaintiff and the aggrieved employees have worked more than five hours in a work day and Defendant has failed to provide them with meal periods as required under the Labor Code and the Wage Order.

Thus, Defendant unlawfully retained control of Plaintiff and the aggrieved employees during their meal periods, even though the nature of the work did not necessitate an on-duty meal period (and by failing to enter into proper on-duty meal period agreements). *See Augustus v. ABM Security Services, Inc*. (2016) 2 Cal. 5^{th} 257, 275 (holding that on-premises breaks violate California law). As a result of Defendant's failure to authorize or permit lawful meal periods, Plaintiff and the aggrieved employees frequently did not receive duty-free thirty-minute duty-free meal periods within the first five (5) hours of their work. Defendant also failed to pay Plaintiff and the meal period aggrieved employees meal period premiums for each workday that the employees did not receive a compliant meal period.

Labor Code § 226.7 provides "an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ("IWC"). Similarly, IWC Wage Order 4-2001 prohibits an employer from "employ[ing] any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes. IWC Wage Order 4-2001 further obligates employers to provide an employee to "pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided." Accordingly, for each day that Plaintiff and the aggrieved employees did not receive compliant meal periods, they are entitled to receive meal period premiums pursuant to Labor Code § 226.7 and Wage Order 4-2001.

iv. Plaintiff and the Aggrieved Employees were not Provided Duty Free Compliant Rest Periods

Pursuant to Labor Code § 226.7, and Wage Order 4-2001, Defendant failed to provide Plaintiff and the other rest period aggrieved employees with duty-free rest periods of not less than ten (10) minutes for every major fraction of four hours worked.

Labor Code § 226. 7 provides "an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ("IWC")." Under IWC Wage Order 4-2001 an employer must authorize and permit all employees to take ten (10) minute duty free rest periods for every major fraction of four hours worked.

Defendant has intentionally and improperly denied rest periods to Plaintiff and the aggrieved employees in violation of the Labor Code and the Wage Order. During their employment, Plaintiff and the aggrieved employees worked more than four hours in a work day. However, Defendant failed to provide Plaintiff and the aggrieved employees with rest periods as required under the Labor Code and the Wage Order.

Defendant failed to implement a lawful rest period policy that informed Plaintiff and the aggrieved employees of their right to receive lawful rest periods for shifts greater than 3.5 hours. To the extent that Plaintiff and the rest period aggrieved employees could stop work during their shifts, they were nonetheless on-call, and were not provided with duty-free rest periods. *See Augustus v. ABM Security Services, Inc*., 2 Cal.5th 257 (2016) (holding that on-duty rest breaks violate California law).

Pursuant to Labor Code § 226.7 and Wage Order 4-2001, Defendant failed to provide Plaintiff and the rest period aggrieved employees with duty-free rest periods of not less than ten (10) minutes for every major fraction of four (4) hours worked. 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., supra, 53 Cal.4th at 1033. (Emphasis added.)

Since Defendant did not offer employees the opportunity to receive a compliant off-duty ten-minute rest periods, "the court may not conclude employees voluntarily chose to skip ... breaks." *Alberts v. Aurora Behavioral Health Care,* (2015) 241 Cal. App. 4th 388, 410 ("[i]f an employer fails to provide legally compliant meal or rest breaks, the court may not conclude employees voluntarily chose to skip those breaks."); accord *Brinker Rest. Corp. v. Sup. Ct., supra,* 53 Cal.4th at 1033 ("No issue of waiver ever arises for a rest break that was required by law but never authorized; if a break is not authorized, an employee has no opportunity to decline to take it.").

Even an employer who maintains an otherwise compliant rest period policy, "reminded their employees of their availability-and the importance-of taking breaks on a daily basis, and even went so far as to conduct regular audits to ensure that employees were being offered rest breaks" will still be liable for rest period violations if the employees were not separately or properly compensated for the non-productive time associated with rest periods under a piece-rate compensation system. *Amaro v. Gerawan Farming, Inc.,* 2016 U.S. Dist. LEXIS 66842 * (E.D. Cal. May 19, 2016) *aff'd Amaro v. Gerawan*, 2016 U.S. Dist. LEXIS 112540, 2016 WL 4440966, at * 11 (E.D. Cal. Aug. 22, 2016); rev. denied by 9th Cir. (9th Cir. Nov. 16, 2016).

In addition, Plaintiff and the rest period aggrieved employees were not compensated with one (1) hours' worth of pay at their regular rate of compensation when they were not provided with a compliant rest period.

v. Defendant Violated and Continues to Violate Labor Code § 204

Labor Code § 204 expressly requires that "[a]ll wages…earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays." Pursuant to Labor Code § 204(d), these requirements are "deemed satisfied by the payment of wages for weekly, biweekly or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period."

Due to Defendant's failure to pay Plaintiff and the aggrieved employees for all rest and meal period premiums[3] and overtime, Defendant failed to timely pay the aggrieved employees

[3] Courts routinely find that employees who do not receive meal/rest periods premiums are entitled to waiting time penalties under Labor Code § 203. *See e.g. In re Autozone, Inc.*, 2016 U.S. Dist. LEXIS 105746 *23 (N.D. Cal. Aug. 10, 2016) (denying the defendant's motion for summary judgment on the plaintiff's claim for waiting time penalties based upon the failure to provide rest period premiums and finding that the California Court of Appeals decision in *Ling vs. P.F. Chang's China Bistro, Inc.* (2016) 245 Cal. App. 4th 1242 "concerned only whether 'a section 203 waiting time claim based on section 226.7 premium pay is an action brought for the non-payment of wages under section 218.5'"); *Parson v. Golden State FC, LLC,* 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204); *Brewer v. Gen. Nutrition Corp.* (N.D. Cal. Aug. 27, 2015) 2015 WL 5072039, at *19 [denying defendant's motion for summary judgment because "the premium payments due under section 226.7 are to be considered "wages" for purposes of sections 203 and 226."]; *Abad v. Gen. Nutrition Centers, Inc*. (C.D. Cal. Mar.

within seven (7) days of the close of the payroll period in accordance with Labor Code § 204 on a regular and consistent basis. *See Parson v. Golden State FC, LLC,* 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204).

vi. Defendant's Violation of Labor Code §§ 201-203

As a result of Defendant's failure to pay wages to Plaintiff and the aggrieved employees for overtime, meal period minimum wages, and meal/rest period premiums, Defendant violated Labor Code § 203. 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, all aggrieved employees whose employment with Defendant concluded were not compensated at the appropriate rate. Additionally, Defendant has failed to pay all aggrieved employees for all overtime, meal period premiums, and rest period premiums, whose sums were certain, at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter.

vii. Defendant's Violation of Labor Code §§ 226(a) and 226.3

Further, Defendant failed to provide Plaintiff and the aggrieved employees accurate itemized wage statements in accordance with Labor Code § 226(a) (1, 2, 5, and 9). 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…;
(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…

7, 2013) 2013 WL 4038617, at *3–4 [distinguishing *Kirby,* and finding "Plaintiffs' section 203 claim for failure to pay wages…can be based on amounts owed under section 226.7.".)

Due to Defendant's failure to provide Plaintiff and the Aggrieved Employees lawful meal and rest periods (and pay missed rest period premiums), the wage statements issued by Defendant do not indicate the correct amount of gross wages earned, the correct total hours worked, the correct net wages earned, or the applicable and/or correct 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).

Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code § 226(a)(1), (2), (5), and (9) with respect to Plaintiff and the aggrieved employees.

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, Defendant failed to provide Plaintiff and the other aggrieved employees with accurate itemized wage statements. Accordingly, Plaintiff and the other aggrieved employees may also recover Labor Code § 226.3 penalties for Defendant's 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 ["the weight of authority counsels that violations of Section 226.3 may be the basis of a PAGA claim."]; *Pedroza v. PetSmart, Inc.*, No. ED CV 11-298 GHK DTB, 2012 WL 9506073, at *6 (C.D. Cal. June 14, 2012) ("Lab. Code § 226.3 merely provides that failure to perform actions mandated by § 226(a) may trigger civil penalties.").[4]

viii. <u>Defendant Violated, and Continues to Violate Labor Code § 2802</u>

Plaintiff and the Aggrieved Employees had to use their personal mobile phones to make business calls. However, Defendant did not reimburse these business expenses.

Cal. Labor Code §2802 (a) provides that:

> An 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, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.

[4] *Accord Singer v. Becton, Dickinson & Co., Med–Safe Sys.* (S.D.Cal. July 23, 2008) 2008 U.S. Dist. LEXIS 56326, *18; *Yadira v. Fernandez* (N.D. Cal. June 14, 2011) 2011 U.S. Dist. LEXIS 62894, *7–9, 2011 WL 2434043; *Willis v. Xerox Bus. Servs., LLC* (E.D. Cal. Nov. 15, 2013) No. 1:13-CV-01353-LJO, 2013 WL 6053831, at *7.

Thus, employees such as Plaintiff and the Reimbursement Aggrieved Employees, are entitled to reimbursement for the expenses they incur during the course of their duties. The duty to reimburse even extends to the use of equipment the employee may already own, and would be required to pay for anyway. *Cochran v. Schwan's Home Serv., Inc.* (2014) 228 Cal. App. 4th 1137, 1144 ("The threshold question in this case is this: Does an employer always have to reimburse an employee for the reasonable expense of the mandatory use of a personal cell phone, or is the reimbursement obligation limited to the situation in which the employee incurred an extra expense that he or she would not have otherwise incurred absent the job? The answer is that reimbursement is always required. Otherwise, the employer would receive a windfall because it would be passing its operating expenses on to the employee.") After all, the purpose of 2802 is to "prevent employers from passing along their operating expenses onto their employees." *Gattuso v. Harte-Hanks Shoppers, Inc.,* (2007) 42 Cal. 4th 554, 562.

Here, Defendants did not have a reimbursement policy for Plaintiff and the Reimbursement Aggrieved Employees for their reasonable and necessary business expenses. Thus, it is clear that not only did Plaintiff and the Aggrieved Employees incur expenses as a result of their employment, but that Defendants had a constructive knowledge of those expenses, and anticipating them, informed Plaintiff and the Aggrieved Employees that it would not provide any reimbursement. Therefore, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendants have violated § 2802 with respect to Plaintiff and the Aggrieved Employees.

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 Defendants seeking PAGA penalties under Labor Code § 2699 to be brought by 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 and all putative class members. If Defendants are interested in attempting to resolve this matter on a class-wide basis, including the PAGA claims, please contact me or have your lawyer contact me so that we can discuss an informal discovery plan and the possibility of early mediation on or before **September 17, 2025**. If we do not hear from you on or before **September 17, 2025**, we will proceed with this matter with the understanding that Defendants do not wish to negotiate an early resolution of this matter.

Kindly include the following addresses in all correspondence that you will send me:

jimt@potterhandy.com
jasonm@potterhandy.com

waizaa@potterhandy.com
kevinw@potterhandy.com
patriciac@potterhandy.com
trinam@potterhandy.com
TruesdellvGannettZ12819691@cms.filevineapp.com

Respectfully submitted,

/s/ James M. Treglio

James M. Treglio