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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

APR 18 2024

BY *Priscilla Saldana*
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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 SAN BERNARDINO

QASIM KHADER, individually and on behalf of
all others similarly situated,

Plaintiff,

v.

ADVANCED MULTIMODAL DISTRIBUTION
INC., a California Corporation, and DOES 1 to
100, inclusive,

Defendant.

CASE NO: CIV SB 2409771

CLASS ACTION

**PLAINTIFF'S CLASS AND PAGA
REPRESENTATIVE ACTION COMPLAINT
FOR:**

**(1) FAILURE TO REIMBURSE BUSINESS
EXPENSES (LABOR CODE § 2802);**

**(2) FAILURE TO ISSUE ACCURATE AND
COMPLETE ITEMIZED WAGE
STATEMENTS (LABOR CODE §§ 226(A),
226(E), AND 226.3)**

**(3) UCL VIOLATIONS (CAL. BUS. & PROF.
CODE §§ 17200-17204);**

**(4) PAGA PENALTIES (LABOR CODE § 2698
ET SEQ.); AND**

DEMAND FOR JURY TRIAL

1 Plaintiff Qasim Khader, ("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 Advanced Multimodal Distribution Inc. DBA Preferred Carrier of California
8 ("Defendant") and Does 1 to 100 for its (1) failure to reimburse its current and former truck drivers
9 for their work-related business cell phone expenses in California for which they have not been
10 fully reimbursed; (2) failure to issue accurate and complete itemized wage statements; (3) unfair
11 business practices based on the foregoing; and (4) PAGA penalties based on the foregoing. As a
12 result of the foregoing, Defendant has violated California statutory laws as 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.*, February 12, 2023) 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 San Bernardino. Further,
22 Defendant keeps and maintains a terminal in Chino, California. Many of the putative Class
23 Members were employed and/or performed work during the Class Period by Defendant in San
24 Bernardino County, where Defendant maintains its Chino, California terminal. Finally, many of
25 the acts alleged herein including Defendant's failure to reimburse Plaintiff and Class Members for
26 all their business expenses and failure to issue accurate and complete itemized wage statements,
27 occurred in San Bernardino County. Venue is therefore proper in San Bernardino County.

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preceding the filing of this Complaint constitute the "Wage Statement Subclass".

10. Defendant is a California Corporation with its principal place of business in Chino, California. Defendant is a trucking company offering comprehensive logistics solutions across California and beyond. Defendant was the employer of Plaintiff, Class Members, and the Aggrieved Employees for all relevant time periods.

11. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 100 inclusive, are currently unknown to Plaintiff, who therefore sues Defendants by such fictitious names under Code of Civil Procedure § 474. Plaintiff is informed and believes, 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.

12. 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. Furthermore, Defendants in all respects acted as the employer and/or joint employer of Plaintiff, the Class Members, and the other Aggrieved Employees.

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

FACTUAL ALLEGATIONS

14. Defendant operates and, at all times during the Class Period and PAGA Period, has done and does business in California as a logistics provider. Defendant, in the course of operating its business in California during the Class Period, employed Plaintiff, the Aggrieved Employees, and the Class Members.

15. Since at least four years ago and continuing into the present, Plaintiff, the Class, 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 managers and dispatchers to perform necessary work-related duties on their California routes. Among other things, Defendant requires and required its truck drivers to use their personal cell phones for a number of reasons, including checking in and out of his shifts, taking pictures of the truck as part of necessary pre-trip inspections, receiving calls from Defendant's managers and dispatchers during shifts, and for sending and receiving text messages from Defendant's managers and supervisors during shifts. Additionally, Defendant requires and required (and/or encourages) its truck drivers to use their personal cell phones to download work-related cell phone applications, including RouteMe (used for sending and receiving text messages to and from Defendant's dispatchers), Alvys (used for getting work assignments and retrieving documentation from Defendant, including tax documents), and Relay (used for moving freight associated with Amazon).

16. Plaintiff, the Class, and the Aggrieved Employees were thus expected by Defendant to pay for, and have personally paid for, the purchase and maintenance of cell phones used by Plaintiff, the Class, and the Aggrieved Employees in the discharge of their job duties. These personal cell phone expenses were required and necessary for work to be performed for Defendant. These expenses ranged, but typically amounted up to approximately \$50 per month per Class Member. Defendant was obligated to reimburse some reasonable fraction of these expenses but failed to do so throughout the Class Period.

17. Despite the foregoing, Defendant had no policy to affirmatively reimburse all of their employees for a reasonable portion of their personal cell phone expenses. To be clear, Defendant's expense-related policies and/or practices require and expect Plaintiff, the Class, and the Aggrieved Employees to pay for personal cell phone service expenses incurred in direct consequence of discharging his and their necessary, reasonable and business-related job duties on behalf of Defendant, without reimbursement of a reasonable portion of such expenses by Defendant, as required by California law.

18. Defendant's policy and practice violates California Labor Code section 2802 which requires an employer to "indemnify his or her employee for all necessary expenditures or losses

1 incurred by that employee in direct consequence of the discharge of his or her duties.” See Cal.
2 Labor Code section 2802(a); *see also* 2802(c) where necessary is defined to include all
3 “reasonable” costs. “The elements of a claim under Section 2802 are: (i) the employee made
4 expenditures or incurred losses; (ii) the expenditures or losses were incurred in direct consequence
5 of the employee's discharge of his or her duties, or obedience to the directions of the employer; and
6 (iii) the expenditures or losses were reasonable and necessary.” Additionally, Section 2802 is
7 subject to an anti-waiver provision. *See*, Labor Code § 2804.

8 19. In evaluating claims for reimbursements under Section 2802, courts in California
9 have adopted a “knew or should have known” standard for employer liability—that is, when an
10 “employer either knows or has reason to know that the employee has incurred a reimbursable
11 expense ... it must exercise due diligence to ensure that each employee is reimbursed.” *Stuart v.*
12 *RadioShack Corp.*, 641 F. Supp. 2d 901, 903 (N.D. Cal. 2009) (Hon. Edward Chen); *Abdullah et*
13 *al. v. U.S. Security Associates*, 09-CV-9554-GHK (C.D. Cal. 2011) (Hon. George King) (adopting
14 the standard set forth in *RadioShack*: “the law requires that once an employer knows or has reason
15 to know that the employee has incurred an expense, then it has the duty to exercise due diligence
16 and take any and all reasonable steps to ensure that the employee is reimbursed for the
17 expense”); *Marr v. Bank of America*, 2011 WL 845914 (N.D. Cal. 2011) (Hon. William Alsup)
18 (adopting “knew or should have known standard”). Knowledge of expenses being incurred by
19 employees triggering reimbursement obligations can be inferred. *See e.g.*, *Tan v. Grubhub, Inc.*,
20 171 F. Supp.3d 998, 1005 (N.D. 2016) (rejecting Grubhub’s motion to dismiss argument that
21 plaintiffs failed to allege it knew or had reason to know of business expenditures, and finding that
22 the plaintiffs’ allegations that they were required to bear expenses related to “their vehicles, gas,
23 parking, phone data, and other expenses” suffice because “[i]t is plausible to infer that Defendants
24 were aware that class members incurred these expenses from the nature of their business—an app
25 based food delivery service that requires drivers to use their cars and cell phones.”); *see*
26 *also Taylor v. W. Marine Prod., Inc.*, 2014 WL 1778279, * 6 (N.D. Cal. May 3, 2014) (the
27 court *inferred* notice of expenses for 2802 purposes where employees had to drive long distances
28 for work that was not walkable, and were not reimbursed for gas mileage, which was sufficient to

1 trigger a reimbursement obligation).

2 20. In order to discharge their duties for Defendant during the Class Period, Plaintiff,
3 the Class, and all of the other similarly situated Aggrieved Employees regularly incurred personal
4 cell phone expenses in the discharge of his and their duties as employees by virtue of Defendant's
5 instructions to Plaintiff, the Class, and the Aggrieved Employees to take pictures as part of pre-trip
6 inspections, remain in contact with Defendants managers and dispatchers via calls and text
7 messages, and to download cell phone applications to their personal cell phones. Such work-
8 related usage of personal cell phones was known and required or encouraged by Defendant.
9 Nevertheless, Defendant has, throughout the Class Period failed and refused to reimburse Plaintiff,
10 the Class, and the Aggrieved Employees for a reasonable fraction of such personal cell phone
11 expenses incurred by them in connection with their work.

12 21. Defendant's anticipated defense that non-reimbursement of employees' personal
13 cell phone expenses does not constitute a violation of section 2802 where employees already pay
14 for cell phone service is not a meritorious defense under applicable law. See *Cochran v. Schwan's*
15 *Home Service, Inc.*, 228 Cal.App.4th 1137 (August 12, 2014) ("We hold that when employees
16 must use their personal cell phones for work-related calls, Labor Code section 2802 requires the
17 employer to reimburse them. ***Whether the employees have cell phone plans with unlimited***
18 ***minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell***
19 ***phone bills.***"); See also, *Aguilar v. Zep, Inc.*, 2014 US Dist. LEXIS 120315, *54 (N.D. Cal. Aug.
20 27, 2014) (Hon. Edward Chen) (where outside sales reps used home internet and computers for
21 work, and even admitted that they would have incurred the same expenses without work duties, the
22 court nevertheless held that the employer was obligated to reimburse some reasonable portion of
23 these expenses).

24 22. In addition, Courts have held that requiring or encouraging employees to download
25 cell phone applications without reimbursing cell phone expenses associated therewith is a violation
26 of Labor Code section 2802. See *Krauss v. Wal-Mart, Inc.*, 2020 U.S. Dist. LEXIS 66535, *18-19
27 (E.D. Cal. Apr. 14, 2020) ("The Court previously found this allegation also failed because Plaintiff
28 did not provide a "single instance when such a cost was actually incurred and not reimbursed."

1 Order at 11. In light of *Cochran*, ***the Court no longer finds Plaintiff needs to allege such an***
2 ***instance. The Court therefore now finds Plaintiff has properly plead the reimbursement claim as***
3 ***to her phone app allegation.***”) (emphasis added). The Eastern District’s decision in *Krauss* is on
4 point as to Plaintiff’s claim that Defendant required cell phone application downloads in violation
5 of Labor Code section 2802. In that case, the Court denied Wal-Mart’s motion to dismiss
6 plaintiff’s unreimbursed business expenses claim predicated on Wal-Mart’s requirement that
7 employees download a cell phone application utilized for work communication coupled with no
8 affirmative reimbursement of a portion of monthly cell phone expenses. *Id.*

9 23. Notably, Plaintiff’s challenge to Defendant’s uniform reimbursement policy as
10 violating Labor Code Section 2802 is also certifiable as a class action. *See Richie v. Blue Shield of*
11 *California*, 2014 WL 6982943, at *21 (N.D. Cal. Dec. 9, 2014) (Hon. Edward Chen)
12 (certifying class of home office claims processors with 2802 phone reimbursement claims for
13 landline reimbursements where company required claims processors working from home to have a
14 landline, but rejecting certification of claims for home office supplies as individualized); *see also*,
15 *Stuart v. RadioShack Corp.*, 2009 U.S. Dist. LEXIS 12337, *45-54 (N.D. Cal. Feb. 5, 2009);
16 *Swamy v. Title Source, Inc.*, 2018 U.S. Dist. LEXIS 57048 (N.D. Cal. April 2, 2018); *Cochran v.*
17 *Schwan’s Home Services, Inc.*, 228 Cal. App. 4th 1140, 1144-5 (2014).

18 24. In sum, under Labor Code section 2802, employers must reimburse employees for
19 all necessary and/or reasonable work-related expenses, regardless of whether or not the employees
20 incurred any additional out-of-pocket expense from that work-related usage. Defendant is or
21 should have been aware that Plaintiff, the Class, and the Aggrieved Employees regularly incurred
22 and incur personal cell phone expenses in the discharge of their duties as employees by virtue of
23 Defendant’s instructions to Plaintiff, the Class, and the Aggrieved Employees to use their personal
24 cell phones for work-related tasks. Defendant nevertheless has, throughout the Class Period, failed
25 to affirmatively reimburse Plaintiff, the Class, and the Aggrieved Employees for a reasonable
26 portion of such monthly personal cell phone expenses incurred by them in connection with their
27 work.

28 25. As to Plaintiff, the Wage Statement Subclass Members, and all Aggrieved

1 Employees, Defendant also failed to provide accurate itemized wage statements in accordance with
2 Labor Code § 226(a). Labor Code § 226 obligates employers, semi-monthly or at the time of each
3 payment to furnish an itemized wage statement in writing showing: (4) all deductions, provided
4 that all deductions made on written orders of the employee may be aggregated and shown as one
5 item; (5) net wages earned; (6) the inclusive dates of the period for which the employee is paid; (7)
6 the name of the employee and only the last four digits of their social security number or an
7 employee identification number other than a social security number.

8 26. Here, none of the wage statements that Defendant issued to Plaintiff, the Wage
9 Statement Subclass Members, and the Aggrieved Employees, an example of which is attached
10 hereto as **Exhibit A**, included deductions or the net wages earned, in violation of Labor Code §
11 226(a)(4) and (5); instead, the wage statements contain the same amount for “Total Gross” and
12 “Total Net” with the amount actually paid to Plaintiff being less than the “Total Net” figure on the
13 wage statement. Further, the wage statements issued to Plaintiff, the Wage Statement Subclass
14 Members, and the Aggrieved Employees do not include the inclusive dates of the pay period, i.e.,
15 the start date of the pay period and the end date of the pay period. The wage statement only
16 contains the specific dates of Plaintiff’s “Trips” without setting forth the inclusive dates of the pay
17 period in violation of Labor Code § 226(a)(6). Lastly, the wage statements issued to Plaintiff, the
18 Wage Statement Subclass Members, and the Aggrieved Employees fail to include the last four
19 digits of the employee’s social security number or an employee identification number in violation
20 of Labor Code § 226(a)(7). These constitute violations of Labor Code section 226. *See e.g.*
21 *McKenzie v. Federal Express Corp.*, 765 F. Supp. 2d 1222 (C.D. Cal. 2011).

22 27. Notably, to prevail on his claim for PAGA penalties under Labor Code § 2699
23 based on underlying violations of Labor Code section 226(a), Plaintiff and the Aggrieved
24 Employees do not need to show “injury”, “willfulness” or a “knowing and intentional violation”.
25 *See Lopez v. Friant & Assocs., LLC* (2017) 15 Cal. Cal. App. 4th 773, 788 (“hold[ing] a plaintiff
26 seeking civil penalties under PAGA for a violation of Labor Code section 226(a) does not have to
27 satisfy the ‘injury’ and ‘knowing and intentional’ requirements of section 226(e)(1).”); *Willner v.*
28 *Manpower Inc.*, 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To obtain judgment on a PAGA

1 claim, “all [plaintiff] needs to establish is a violation of section 226(a), which she has done, as
2 discussed above.”); *McKenzie v. Fed. Exp. Corp.*, 765 F.Supp.2d 1222, 1232 (C.D. Cal. 2011)
3 (holding that “for the purposes of recovering PAGA penalties, one need only prove a violation of
4 Section 226(a), and need not establish a Section 226(e) injury.”). It is sufficient to show that
5 Section 226(a) was violated. *Id.*

6 28. Plaintiff, the Aggrieved Employees, and Class Members have been harmed by
7 Defendant’s unlawful business expense policies and/or practices in that they have not been paid for
8 any cell phone business expenses incurred while employed by Defendant in California, thereby
9 diminishing their agreed-upon compensation, and not reimbursing according to law, in substantial
10 amounts to be proved at trial. Further, Plaintiff, the Aggrieved Employees, and Class Members
11 have been harmed by Defendant’s unlawful wage statement policies and/or practices in that they
12 are unable to determine, among other things, their total net wages earned from their wage
13 statements, as well as the inclusive dates of the pay periods at issue.

14 29. Plaintiff has fully and completely exhausted and/or will have fully and completed
15 and exhausted his administrative remedies under PAGA prior to proceeding with the PAGA claim.
16 On February 12, 2024, Plaintiff filed his PAGA Notice online with the Labor Workforce
17 Development Agency (“LWDA”) and sent a letter by certified mail to Defendant setting forth the
18 facts and theories of the violations alleged against Defendant, as prescribed by Labor Code § 2698
19 *et seq.* As required by PAGA, Plaintiff submitted the \$75.00 filing fee with the LWDA by regular
20 mail. Pursuant to Labor Code § 2699.3(a)(2)(A), Plaintiff has satisfied his administrative pre-
21 requisites since more than sixty-five (65) calendar days since the postmark date of the PAGA
22 notice have elapsed.

23 **CLASS ACTION ALLEGATIONS**

24 30. Plaintiff brings this action on behalf of himself and all others similarly situated as a
25 class action pursuant to Code of Civil Procedure § 382. Plaintiff seeks to represent a Class
26 composed of and defined as *Plaintiff and all other California residents who are or were employed*
27 *by Defendant as truck drivers or in any other similar capacity, and who worked at least one shift*
28 *in California from four years prior to the filing of this Complaint through the date of class*

1 certification ("Class Members"). Plaintiff also seeks to represent a Subclass composed of and
2 defined as *Plaintiff and all other California residents who are or were employed by Defendant as*
3 *truck drivers or in any other similar capacity, and who worked at least one shift in California from*
4 *one year prior to the filing of this Complaint through the date of class certification* ("Wage
5 Statement Subclass Members"). All such Class Members and Subclass Members were subject to
6 Defendant's policy and practice of not fully reimbursing drivers' cell phone expenses and not
7 issuing accurate and complete itemized wage statements, respectively.

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

12 a. Numerosity: The potential members of the Class and Subclass as defined are
13 so numerous that joinder of all the members of the Class is impracticable. While the precise
14 number of Class Members and Subclass Members has not been determined at this time, Plaintiff is
15 informed and believes that Defendant has employed at least one hundred drivers during the Class
16 Period, and more than 50 over the past year. The Class and Subclass Members are dispersed
17 throughout California. Joinder of all members of the proposed classes is therefore not practicable.

18 b. Commonality: There are questions of law and fact common to Plaintiff and
19 the Class and Subclass that predominate over any questions affecting only individual members of
20 the Class. These common questions of law and fact include, without limitation:

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

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

27 iii. Whether Defendant's failure to reimburse the cell phone business expenses
28 incurred by Plaintiff and Class Members was the result of, and/or pursuant to, a business policy or

1 regular practice of Defendant;

2 iv. Whether Defendant failed to provide Plaintiff and Wage Statement Subclass
3 Members compliant wage statements in violation of Labor Code section 226(a) and (e);

4 v. Whether Plaintiff is entitled to restitution under Business and Professions
5 Code § 17200;

6 vi. Whether Defendant owes penalties pursuant to PAGA for failing to
7 reimburse its drivers for the necessarily incurred business expenses;

8 vii. Whether Defendant owes penalties pursuant to PAGA for failing to issue
9 accurate and complete itemized wage statements;

10 viii. The proper formula(s) for calculating damages, interest, and restitution
11 owed to Plaintiff and the Class Members;

12 ix. The nature and extent of class-wide damages.

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

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

24 e. Superiority of Class Action: A class action is superior to other available
25 means for the fair and efficient adjudication of this controversy. Individual joinder of all Class
26 Members is not practicable, and questions of law and fact common to the Class predominate over
27 any questions affecting only individual members of the Class and Subclass. Each Class and
28 Subclass Member has been damaged or may be damaged in the future by reason of Defendant's

1 unlawful policies and/or practices of not fully reimbursing business expenses. Certification of this
2 case as a class action will allow those similarly situated persons to litigate their claims in the
3 manner that is most efficient and economical for the parties and the judicial system. Certifying this
4 case as a class action is superior because it allows for efficient and full disgorgement of the ill-
5 gotten gains Defendant has enjoyed by maintaining its unlawful business expense reimbursement
6 policies and/or practices, and will thereby effectuate California's strong public policy of protecting
7 employees from deprivation or offsetting of compensation earned in their employment. If this
8 action is not certified as a Class Action, it will be impossible as a practical matter for many or most
9 Class and Subclass Members to bring individual actions to recover monies unlawfully withheld
10 from their lawful compensation due from Defendant's, due to the relatively small amounts of such
11 individual recoveries relative to the costs and burdens of litigation.

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

15 32. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
16 in the preceding paragraphs.

17 33. The actionable period for this cause of action is from three years ago through the
18 present.

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

23 35. In order to discharge their duties for Defendant, Plaintiff and similarly situated
24 Class Members were and are required and expected by Defendant to use their own personal cell
25 phones to take pictures as part of necessary pre-trip inspections, remain in contact with their
26 managers and dispatchers via calls and text messages to perform necessary work-related duties on
27 their California routes and were required to download several work-related cell phone applications
28 on their personal cell phones. However, although having knowledge of such usage, Defendant did

1 not reimburse Plaintiff and similarly situated Class Members for a reasonable percentage of their
2 monthly cellular phone bills, as required by California law as stated in *Cochran v. Schwan's Home*
3 *Service, Inc.*, 228 Cal.App.4th 1137 (August 12, 2014) ("We hold that when employees must use
4 their personal cell phones for work-related calls, Labor Code section 2802 requires the employer to
5 reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited
6 minutes, the reimbursement owed is a reasonable percentage of their cell phone bills.").

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

12 **SECOND CAUSE OF ACTION**
13 **FAILURE TO ISSUE ACCURATE AND COMPLETE ITEMIZED WAGE STATEMENTS**
14 **[Cal. Labor Code § 226]**
15 **On Behalf of Plaintiff and the Wage Statement Subclass Against Defendant**

16 37. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
17 in the preceding paragraphs.

18 38. The actionable period for this cause of action is from one year prior to the filing of
19 this lawsuit through the present.

20 39. Section 226(a) of the California Labor Code provides, in relevant part:

21 Every employer shall...furnish each of his or her employees...an accurate
22 itemized statement in writing showing (4) all deductions, provided that all
23 deductions made on written orders of the employee may be aggregated and
24 shown as one item, (5) net wages earned, (6) the inclusive dates of the period
25 for which the employee is paid, (7) the name of the employee and only the last
26 four digits of his or her social security number or an employee identification
27 number other than a social security number.

28 40. During the Wage Statement Subclass Period, Defendant knowingly and
intentionally failed to provide wage statements to Plaintiff and all Wage Statement Subclass
Members that include all deductions, net wages earned, the inclusive dates of the period for which
the employee is paid, and the name of the employee and only the last four digits of their social

1 security number or an employee identification number other than a social security number in
2 violation of Labor Code section 226(a)(4), (5), (6), and (7).

3 41. Plaintiff and all Wage Statement Subclass Members also suffered legal “injury” for
4 purposes of Labor Code Section 226(e) insofar as they were unable to readily and easily determine
5 the information required to be set forth by Section 226(a). Specifically, Plaintiff and the Wage
6 Statement Subclass Members were unable to determine, among other things, their net wages
7 earned because the wage statements failed to include deductions.

8 42. Defendant’s violation of Labor Code § 226 was knowing and intentional. *See*
9 *Garnett v. ADT LLC*, 139 F.Supp. 3d 1121, 1134 (E.D. Cal. 2015) (finding that the defendant
10 knowingly and intentionally violated Labor Code § 226 because the “[d]efendant knew that it was
11 not providing total hours worked to plaintiff or other employees paid on commission” even though
12 it believed that employees paid solely on commission or commission and salary “are exempt and
13 therefore we do not record hours on a wage statement”).

14 43. As a result of Defendant’s failure to issue compliant wage statements to Plaintiff
15 and the Wage Statement Subclass Members (i.e., those members of the class who were employed
16 by Defendant during the actionable period for this cause of action) in violation of Section 226(a) of
17 the California Labor Code, Plaintiff and the Wage Statement Subclass Members are each entitled
18 to recover an initial penalty of \$50, and subsequent penalties of \$100, up to an amount not
19 exceeding an aggregate penalty of \$4,000 per Plaintiff and per every member of the Wage
20 Statement Subclass from Defendant pursuant to Section 226(e) of the Labor Code, costs and
21 reasonable attorneys’ fees

22 **THIRD CAUSE OF ACTION**
23 **UNFAIR COMPETITION LAW VIOLATIONS**
24 **[Bus. & Prof. Code § 17200]**
25 **On Behalf of Plaintiff and the Class Against Defendant**

26 44. Plaintiff re-alleges and incorporates by reference each and every allegation set forth
27 in the preceding paragraphs.

28 45. Section 17200 of the California Business & Professions Code prohibits any
unlawful, unfair, or fraudulent business practices. Business & Professions Code § 17204 allows

1 “any person who has suffered injury in fact and has lost money or property” to prosecute a civil
2 action for violation of the UCL. Such a person may bring such an action on behalf of himself and
3 others similarly situated who are affected by the unlawful, unfair, or fraudulent business practice.

4 46. Under section 17208 of the California Business and Professions Code, the statute of
5 limitations for a claim under Section 17200 is four years. Accordingly, the actionable period for
6 this cause of action is from four years ago through the present.

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

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

17 49. As a direct and proximate result of Defendant’s unlawful, unfair, and/or fraudulent
18 acts and practices described herein, Plaintiff and the Class Members have suffered economic
19 injuries. Defendant has profited. Defendant has profited from its unlawful, unfair, and/or
20 fraudulent acts and practices.

21 50. 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, the right to receive accurate itemized wage statements, and interest thereon, from at least
24 four years ago through to the date of such restitution, at rates specified by law. Defendant should
25 be required to disgorge all the profits and gains it has reaped and restore such profits and gains to
26 Plaintiff and Class Members from whom they were unlawfully taken.

27 51. 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 52. Defendant engaged in unfair competition in violation of sections 17200 *et seq.* of
5 the California Business & Professions Code by violating Sections 2802 and 226 of the Labor
6 Code.

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

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

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

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

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

25 57. 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 58. 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

1 and necessary business expenses, including cell phone expenses and Labor Code section 226 by
2 failing to issue accurate and complete itemized wage statements.

3 59. As a result of the acts alleged above, Plaintiff seeks penalties under Labor Code §
4 2699, et. seq., because of Defendant's violations of Labor Code §§ 2802 and 226.

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

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

12 \$100 for the initial violation per employee per pay period; and

13 \$200 for each subsequent violation per employee per pay period.¹

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

16 62. Further, Plaintiff, and the Aggrieved Employees, need not demonstrate or prove that
17 Defendant's conduct in refusing to provide itemized wage statements was knowing, intentional, or
18 willful. *See Lopez v. Friant & Assocs., LLC*, 15 Cal.App.5th 773, 788 (2017); *see also Willner v.*
19 *Manpower Inc.* 35 F. Supp. 3d 1116, 1136 (N.D. Cal. 2014) (To obtain judgment on a PAGA
20 claim, "all [plaintiff] needs to establish is a violation of section 226(a), which she has done, as
21 discussed above."); *McKenzie v. Fed. Express Corp.*, 765 F.Supp.2d 1222, 1231-1232 (C.D. Cal.
22 2011) (holding that "for the purposes of recovering PAGA penalties, one need only prove a
23 violation of Section 226(a), and need not establish a Section 226(e) injury."); *Aguirre v. Genesis*

24
25
26 ¹ Defendant is aware or should have been aware that Plaintiff and the Aggrieved Employees regularly incur cell phone
27 business expenses in the discharge of their duties as employees by virtue of Defendant's communications with
28 Plaintiff and the Aggrieved employees and Class Members via their 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.

1 *Logistics*, 2013 U.S. Dist. LEXIS 189815, at *28 (C.D. Cal. July 3, 2013) (“Plaintiffs do not need
2 to establish a Cal. Lab. Code § 226(e) injury to recover penalties under § 2699(f) of PAGA.”).

3 **JURY DEMAND**

4 63. Plaintiff hereby demands trial by jury of his and the Class Members’ claims against
5 Defendant, except for the PAGA and UCL claims which will be tried to the Court.

6 **PRAYER FOR RELIEF**

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

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

10 2. On the First Cause of Action:

11 a. That the Court find and declare that Defendant’s business expense policies
12 and/or practices violate California law, including Labor Code § 2802, by refusing and/or failing to
13 reimburse all business expenses reasonably incurred by Plaintiff and other and Class Members in
14 the discharge of their duties in California as employees of Defendant;

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

18 3. On the Second Cause of Action:

19 a. A declaratory judgment that Defendant violated California Labor Code §
20 226 by failing to issue compliant wage statements to Plaintiff and the Wage Statement Subclass
21 members;

22 b. An award to Plaintiff and Wage Statement Subclass Members of \$50 for
23 each initial pay period in which a violation of Section 226 occurred and \$100 for each subsequent
24 pay period in which a violation of Section 226 occurred, not to exceed \$4,000 for each member of
25 the Class, as well as an award of costs and reasonable attorney’s fees, pursuant to Labor Code §
26 226(e).

27 4. On the Third Cause of Action:

28 a. That the Court find and declare that Defendant has violated the UCL and

1 committed unfair and unlawful business practices by failing to reimburse Plaintiff and similarly
2 situated Class Members for their reasonable cell phone business expenses incurred by them in the
3 course of their duties for the benefit of Defendant, their employers;

4 b. Restitution, including, but not limited to, the relief permitted by section
5 2802 of the California Labor Code for Plaintiff and the Class consisting of restitution of the
6 reasonable percentage of cell phone expenses incurred;

7 5. On the Fourth Cause of Action:

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

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

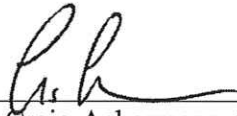
15 c. An award of all costs incurred by the undersigned counsel for Plaintiff in
16 connection with Plaintiff's and Aggrieved Employees' PAGA claim against Defendant as provided
17 for in Labor Code § 2699(g)(1) and/or in Labor Code §§ 2802(c) and 226(e)(1);

18 6. All other relief as this Court deems proper.

19
20 Dated: April 18, 2024

Respectfully submitted,

21 **ACKERMANN & TILAJEF, P.C.**

22
23 By: 

Craig Ackermann, Esq.

24 *Attorneys for Plaintiff, the Class, the LWDA, and*
25 *the Aggrieved Employees*

EXHIBIT A



Paystub



1 of 1



14822 Central Ave. Chino, CA, 91710 | (800) 839-3058 | ssproufske@pcofca.com

Qasim Khader

Statement #: 1003364

Date

1/5/2024

Trips

Trip #	Date	From
1011774	12/26/23 - 12/27/23	Ontario, CA, 91710 → Ontario, CA, 91710
Rates		
Rate Type	Hours Worked	Rate
Per Hour	11.65	\$25.00
Trip Total: \$291.25 Accessorial Total: \$0 Subtotal: \$291.25		
Trip #	Date	From
1011831	12/27/23 - 12/28/23	Ontario, CA, 91710 → Ontario, CA, 91710
Rates		
Rate Type	Hours Worked	Rate
Per Hour	11.65	\$25.00
Trip Total: \$290.75 Accessorial Total: \$0 Subtotal: \$290.75		
Trip #	Date	From
1011873	12/28/23 - 12/29/23	Ontario, CA, 91762 → Ontario, CA, 91710
Rates		
Rate Type	Hours Worked	Rate
Per Hour	11.75	\$25.00
Trip Total: \$293.25 Accessorial Total: \$0 Subtotal: \$293.25		
Trip #	Date	From
1011920	12/29/23 - 12/30/23	Ontario, CA, 91710 → Ontario, CA, 91710
Rates		
Rate Type	Hours Worked	Rate
Per Hour	12.03	\$25.00
Trip Total: \$300.75 Accessorial Total: \$0 Subtotal: \$300.75		

Summary

Driver Payment	Miles	Trips	Hours Worked	Accessorials	Credits	Deds/Reimbs
\$0	0 mi	\$1176.00	47.04 hr(s)	\$0	\$0	\$0

Gross Income: \$1176.00 Net Income: \$1176.00

Year To Date

Total Gross	Total Net
\$1176.00	\$1176.00



Trips



Profile



Settings