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Filed Via LWDA's PAGA Claim Notice Online Form

Copies Sent Via Certified Mail to:

Human Resources
Cognizant Technology Solutions U.S. Corporation
211 Quality Circle
College Station, TX 77845

Re: *Travis Hoang v. Cognizant Technology Solutions U.S. Corporation*
California Labor Code §2699.3 – Notice of Intent to File Suit for PAGA Penalties

To Whom It May Concern:

We, Ackermann & Tilajef, P.C., represent Travis Hoang ("Plaintiff") in connection with his individual and PAGA representative civil penalty claims against Cognizant Technology Solutions U.S. Corporation ("Defendant" or "Cognizant"), based on Cognizant's non-reimbursement of any portion of his and other California employees' work-related personal cell phone usage related to the download and use of cell phone applications required by Cognizant and Cognizant's dual factor authentication requirement, all in violation of California Labor Code Section 2802.

We write to advise of our intent to file a PAGA representative action pursuant to Labor Code Section 2699 et seq. against Cognizant for its failure to reimburse employees for a reasonable percentage of their monthly personal cell phone expenses incurred for business related usage, in violation of Labor Code Section 2802. We plan to bring PAGA representative action claims for the period from one year prior to the date of this letter through the present and on-going (the "PAGA Period") in an action to be filed in the Superior Court of California (the "Action") seeking PAGA penalties based on unreimbursed monthly cell phone expenses during the PAGA Period until such violations are corrected.

For purposes of seeking PAGA civil penalties, Plaintiff seeks to represent the State of California and the following group of aggrieved employees: *Plaintiff and all other California residents who are or were employed by Defendant for at least one pay period during the time period from one year prior to the date of this letter and continuing into the present* (the "Aggrieved Employees"). All such Aggrieved Employees were and are subject to Defendant's unlawful reimbursement policy and practice, as described in further detail below.

From at least one year prior from the date of this letter and continuing into the present, Plaintiff, and the Aggrieved Employees, at the direction of Defendant, have incurred personal cell phone expenses to perform necessary work-related duties for Defendant. Plaintiff, like Defendant's other California employees, was instructed to, and did, download the Microsoft Authenticator application on his and their personal cell phones. Each day, Plaintiff and the other Aggrieved Employees were required to use their personal cell phones to access the Microsoft Authenticator application to log into Cognizant's systems and resources (or Cognizant's clients' systems and resources) through dual factor authentication. Plaintiff and the other Aggrieved Employees could not log into Cognizant's systems and resources (or Cognizant's client's systems and resources) and perform their work for Cognizant or Cognizant's clients without performing the dual factor authentication using the Microsoft Authenticator application on their personal cell phones. Plaintiff and the Aggrieved Employees had to authenticate security protocols via the application on their personal cell phones multiple times per day.

During the PAGA Period, Plaintiff and the Aggrieved Employees were thus expected by Defendant to pay for, and have personally paid for, cell phone service in the discharge of their job duties. These personal cell phone expenses were required and necessary for work to be performed for Cognizant. These monthly personal cell phone expenses ranged, but typically amounted to approximately $50 per month per Aggrieved Employee. Defendant was obligated to reimburse some reasonable fraction of these expenses but did not do so.

Despite requiring application downloads on all Aggrieved Employees' cell phones, Defendant had no policy to affirmatively reimburse 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 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.

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

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

In order to discharge their duties for Cognizant during the PAGA Period, Plaintiff and all of the other similarly situated Aggrieved Employees regularly incurred personal cell phone expenses in the discharge of their duties as employees by virtue of Defendant's instructions to Plaintiff and the Aggrieved Employees to download cell phone applications to their personal cell phones and to perform dual factor authentications to and from their cell phones regularly before being able to log into Cognizant's systems and resources (or Cognizant's client's systems and resources). Such work-related usage of personal cell phones was known to Cognizant. Nevertheless, Cognizant has, throughout the PAGA Period (from one year prior to this letter and on-going) failed to reimburse Plaintiff and the Aggrieved Employees for a reasonable fraction of such personal cell phone expenses incurred by them in connection with their work.

Cognizant's anticipated defense that non-reimbursement of employees' personal cell phone expenses does not constitute a violation of Section 2802 where employees already pay for cell phone service is not a meritorious defense under applicable law. See *Cochran v. Schwan's Home Service, Inc.*, 228 Cal.App.4th 1137 (August 12, 2014) ("We hold that when employees must use their personal cell phones for work-related calls, Labor Code Section 2802 requires the employer to reimburse them. ***Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills.***"); *See also, Aguilar v. Zep, Inc.,* 2014 US Dist. LEXIS 120315, *54 (N.D. Cal. Aug. 27, 2014) (Hon. Edward Chen) (where outside sales reps used home internet and computers for work, and even admitted that they would have incurred the same expenses without work duties, the court nevertheless held that the employer was obligated to reimburse some reasonable portion of these expenses); *See also Krauss v. Wal-Mart, Inc.,* 2020 U.S. Dist. LEXIS 66535, *18-19 (E.D. Cal. Apr. 14, 2020) ("The Court previously found this allegation also failed because Plaintiff did not provide a "single instance when such a cost was actually incurred and not reimbursed." Order at 11. In light of *Cochran*, ***the Court no longer finds Plaintiff needs to allege such an instance. The Court therefore now finds Plaintiff has properly plead the reimbursement claim as to her phone app allegation***.") (emphasis added). The Eastern District's decision in *Krauss* is on point. In that case, the Court denied Wal-Mart's motion to dismiss plaintiff's unreimbursed business expenses claim for some fraction of monthly cell phone expenses predicated on Wal-Mart's requirement that employees download a cell phone application utilized for work communication. *Id.*

In sum, under Labor Code Section 2802, employers must reimburse employees for necessary and/or reasonable work-related expenses, regardless of whether or not the employees incurred any additional out-of-pocket expense from that work-related usage. Defendant is or should have been aware that Plaintiff and the Aggrieved Employees regularly incurred and incur personal cell phone expenses in the discharge of their duties as employees by virtue of Defendant's instructions to Plaintiff and the Aggrieved Employees to download the Microsoft Authenticator application on their personal cell phones and to perform dual factor authentication on their personal cell phones to log into Cognizant's systems and resources (or Cognizant's client's systems and resources). Defendant nevertheless has, throughout the PAGA Period, failed to affirmatively reimburse Plaintiff and the Aggrieved Employees for a reasonable portion of such monthly personal cell phone expenses incurred by them in connection with their work. Pursuant to Labor Code § 2699.5, their failure to comply with § 2802 triggers PAGA penalties of $100 per employee, per pay period during the PAGA Period.

Therefore, pursuant to Labor Code § 2699.3, we write to inform you and the Labor and Workforce Development Agency of our intent to pursue a PAGA Representative Action against Defendant that will include a PAGA claim for penalties under Labor Code § 2699 to be brought by the Plaintiff, individually and on behalf of the Aggrieved Employees from one year prior to the date of this letter through to the present and on-going for PAGA penalties based on the underlying Section 2802 claims outlined above.

Nevertheless, it is the policy of this firm to attempt to negotiate an early resolution of all matters prior to the institution of litigation in Court. In light of the foregoing claims, if Cognizant is interested in discussing a PAGA settlement of this matter through informal discovery and mediation, please have your counsel contact me **on or before April 19, 2024** to discuss appropriate mediators, dates for mediation, and our proposed informal discovery requests.

If you have any questions, please do not hesitate to call.

Very truly yours,

Avi Kreitenberg