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October 31, 2024

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.govfa.net/308>)

Subject: *Natalie Gutierrez v. PBS Foods, LLC*

Dear PAGA Administrator:

This office represents Natalie Gutierrez in connection with her claims under the California Labor Code. Ms. Gutierrez was an employee of PBS FOODS, LLC ("PBS FOODS").

The employer may be contacted directly at the address below:

PBS FOODS, LLC
4917 GENESTA AVE
ENCINO, CA 91316

Ms. Gutierrez intends to seek civil penalties, attorneys' fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Ms. Gutierrez seeks relief on behalf of himself, the State of California, and other persons who are or were employed by PBS FOODS as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

PBS FOODS employed Ms. Gutierrez as an hourly paid, non-exempt employee from approximately July 2021 to June 2024. Ms. Gutierrez worked for PBS FOODS as a Catering Coordinator, Shift Supervisor, and Assistant Manager at their Panera Bread restaurant location in Camarillo, California. During her employment, Ms. Gutierrez typically worked seven (7) or more hours per day and five (5) days per week. At the time Ms. Gutierrez's employment with PBS FOODS ended, she earned approximately \$22.00 per hour. Her job duties included, without limitation, handling catering orders, marketing catering services, handling customer service issues, and running the restaurant.

PBS FOODS committed each of the following Labor Code violations against Ms. Gutierrez, the facts and theories of which follow, making her an “aggrieved employee” pursuant to California Labor Code section 2699(c)(1):¹

PBS FOODS’s Company-Wide and Uniform Payroll and HR Practices

PBS FOODS, LLC is a California limited liability company that owns and operates a chain of Panera Bread franchise restaurants, with around seven (7) locations in California. Upon information and belief, PBS FOODS maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Encino, California, for all non-exempt, hourly paid employees working for PBS FOODS in California, including Ms. Gutierrez and other aggrieved employees. At all relevant times, PBS FOODS issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Ms. Gutierrez and other aggrieved employees, regardless of their location or position.

Upon information and belief, PBS FOODS maintains a centralized Payroll department at its corporate headquarters in Encino, California, which processes payroll for all non-exempt, hourly paid employees working for PBS FOODS in California, including Ms. Gutierrez and other aggrieved employees. Further, PBS FOODS issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees in California, including Ms. Gutierrez and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, PBS FOODS utilized the same methods and formulas when calculating wages due to Ms. Gutierrez and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

PBS FOODS willfully failed to pay all overtime wages owed to Ms. Gutierrez and other aggrieved employees. During the relevant time period, Ms. Gutierrez and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in

¹ These facts, theories, and claims are based on Ms. Gutierrez’s experience and counsel’s review of those records currently available relating to Ms. Gutierrez’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Ms. Gutierrez reserves the right to supplement this letter with additional facts, theories, and claims if she becomes aware of them subsequent to the submission of this letter.

excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, PBS FOODS had, and continues to have, a company-wide policy and/or practice of requiring Ms. Gutierrez and other aggrieved employees to perform work off-the-clock before and after their scheduled shifts. For example, Ms. Gutierrez was required to find coverage whenever another employee called out and update employees' schedules accordingly, spending approximately five (5) hours per month on these duties. As a further example, Ms. Gutierrez was required to answer PBS FOODS's phone calls and text messages outside of her scheduled shifts to discuss work-related matter spending up to five (5) hours per week on these communications. Additionally, Ms. Gutierrez was required to check her email for any potential catering orders and report to work earlier if there were any large orders that would take a long time to prepare. Finally, during the relevant time period, PBS FOODS implemented, on a company-wide basis, an employer-imposed requirement that Ms. Gutierrez and other aggrieved employees undergo mandatory COVID-19 temperature checks before clocking in for their scheduled shifts. Prior to her shift, Ms. Gutierrez was required to spend time self-administering a temperature check and logging her temperature, before Defendants permitted her to clock in for her shift. As a result, Ms. Gutierrez and other aggrieved employees were subject to PBS FOODS's control outside of their shifts but were not compensated for this time.

Second, PBS FOODS had, and continues to have, a company-wide policy and/or practice of strictly staffing its restaurant locations based on the labor hours allocated by each location's labor or payroll budget set by the corporate office. PBS FOODS's uniform use of labor budgeting resulted in understaffing, such that there were too few employees on duty to handle customer demand and provide meal period coverage. Because PBS FOODS did not employ or staff a sufficient number of employees to meet customer demand, which included the preparation of large catering orders within a short amount of time, there was no one available to relieve employees needing meal period coverage. As a result, Ms. Gutierrez and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods during shifts when they were entitled to receive a meal period. PBS FOODS also had a practice of failing to schedule meal periods, which further caused Ms. Gutierrez and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, Ms. Gutierrez regularly worked through her meal periods or had her meal periods interrupted due to lack of coverage and to keep up with the demands of work. However, PBS FOODS did not compensate Ms. Gutierrez and other aggrieved employees for the time they spent working off the clock during unpaid meal periods.

PBS FOODS knew or should have known that, as a result of these company-wide practices and/or policies, Ms. Gutierrez and other aggrieved employees were performing their assigned duties off-the-clock before and after their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Ms. Gutierrez and other aggrieved employees sometimes worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Ms. Gutierrez and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

PBS FOODS's failure to pay Ms. Gutierrez and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Ms. Gutierrez and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring PBS FOODS

into compliance with the applicable IWC Wage Order and Labor Code sections 510 and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 5-2001 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code Regs. tit. 8, § 11050(2)(L) (defining “Hours Worked”).

First, as set forth above, PBS FOODS had a company-wide policy and/or practice requiring Ms. Gutierrez and other aggrieved employees to perform work-related tasks while off-the-clock before and after their shifts, including finding employee coverage for the restaurant, updating schedules, communicating with PBS FOODS’s management regarding work-related issues, checking email for catering orders, and undergoing health screenings. PBS FOODS failed to track this time Ms. Gutierrez and other aggrieved employees spent working off-the-clock, and Ms. Gutierrez and other aggrieved employees received no compensation for this time.

Second, as set forth above, due to PBS FOODS’s policies and/or practices of utilizing labor budgets and/or limited payroll allocation, understaffing its restaurant locations, assigning heavy workloads, and failing to schedule meal periods, Ms. Gutierrez and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods. PBS FOODS did not pay Ms. Gutierrez and other aggrieved employees for the time they continued to perform tasks during meal periods.

PBS FOODS did not pay at least minimum wages for all hours worked by Ms. Gutierrez and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, PBS FOODS did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, PBS FOODS regularly failed to pay at least minimum wages to Ms. Gutierrez and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Ms. Gutierrez and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring PBS FOODS into compliance with the applicable IWC Wage Order and Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee’s regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not

require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

During the relevant time period, as stated above, PBS FOODS had, and continues to have, a company-wide policy and/or practice of understaffing its locations due to labor budgeting and/or limited payroll allocation, which, combined with the assignment of heavy workloads and a failure to schedule meal periods, has resulted in a lack of meal period coverage and prevented Ms. Gutierrez and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. As a result, Ms. Gutierrez and other aggrieved employees had to work through all or part of their meal periods and/or had to wait extended periods of time before taking meal periods. For example, Ms. Gutierrez missed her meal periods, had her meal periods interrupted, or could not take her meal periods until after five (5) hours into her shifts, due to the heavy workload resulting from customer demand and incoming catering orders. Thus, PBS FOODS failed to provide Ms. Gutierrez and other aggrieved employees with compliant, 30-minute meal periods. Ms. Gutierrez and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

At all times mentioned herein, PBS FOODS knew or should have known that as a result of its policies, Ms. Gutierrez and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. PBS FOODS further knew or should have known that it did not pay Ms. Gutierrez and other aggrieved employees meal period premiums when meal periods were late, missed, shortened, and/or interrupted.

In addition, PBS FOODS engaged in a company-wide practice and/or policy of not paying meal period premiums owed when compliant meal periods were not provided. Because of this practice and/or policy, Ms. Gutierrez and other aggrieved employees have not received premium pay for all missed, interrupted, or late meal periods.

Accordingly, PBS FOODS failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Ms. Gutierrez and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring PBS FOODS into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 512(a), 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California

Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

During the relevant time period, PBS FOODS regularly failed to authorize and permit Ms. Gutierrez and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, PBS FOODS’s company-wide use of labor budgeting and/or limited payroll allocation, understaffing, and assigning heavy workloads resulted in a lack of rest period coverage and prevented Ms. Gutierrez and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. PBS FOODS also failed to schedule rest periods, which, coupled with PBS FOODS’s failure to provide adequate rest period coverage, further led to Ms. Gutierrez and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, upon information and belief, during the relevant time period, PBS FOODS maintained and implemented a company-wide on-premises rest period policy, which effectively required that Ms. Gutierrez and/or other aggrieved employees remain on the work premises during their rest periods. Because Ms. Gutierrez and/or other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, PBS FOODS effectively maintained control over Ms. Gutierrez and/or other aggrieved employees during rest periods.

As a result of PBS FOODS’s practices and policies, Ms. Gutierrez and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, throughout her employment, Ms. Gutierrez had to regularly forgo her rest periods because the restaurant was busy and PBS FOODS did not provide adequate rest period coverage.

PBS FOODS also has engaged in a company-wide practice and/or policy of not paying rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Ms. Gutierrez and other aggrieved employees have not received all premium pay for missed rest periods.

Accordingly, PBS FOODS failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Ms. Gutierrez and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring PBS FOODS into compliance with the applicable IWC Wage Order and Labor Code sections 226.7, 516, and 1198, pursuant to Labor Code sections 558 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, PBS FOODS has knowingly and intentionally provided Ms. Gutierrez and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, PBS FOODS issued uniform wage statements to Ms. Gutierrez and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages, and the corresponding number of hours worked at each hourly rate. Specifically, PBS FOODS violated sections 226(a)(1), 226(a)(2), 226(a)(5), and 226(a)(9).

Because PBS FOODS did not record the time Ms. Gutierrez and other aggrieved employees spent working off-the-clock, PBS FOODS did not list the correct amount of gross wages and net wages earned by Ms. Gutierrez and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, PBS FOODS failed to accurately list the total number of hours worked by Ms. Gutierrez and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list 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; failing to list the name and address of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating hours worked off-the-clock.

California Labor Code section 1174(d) provides that “[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors” and “[k]eep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments” Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), PBS FOODS willfully failed to maintain accurate payroll records for Ms. Gutierrez and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that “[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, PBS FOODS engaged in company-wide practices and/or policies of failing to record actual hours worked and thereby failed to keep accurate records of work period and meal period start and end times for Ms. Gutierrez and other aggrieved employees in violation of section 1198.

Because PBS FOODS failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Ms. Gutierrez and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Ms. Gutierrez and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Ms. Gutierrez and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring PBS FOODS into compliance with the applicable IWC Wage Order and Labor Code sections 226(a), 1174(d), and 1198, pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f), and (k).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, PBS FOODS failed to pay Ms. Gutierrez and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, within any time period specified by California Labor Code section 204.

Ms. Gutierrez and other aggrieved employees are entitled to recover civil penalties, attorneys’ fees, costs, and interest thereon, and seek injunctive relief to bring PBS FOODS into compliance with Labor Code section 204, pursuant to Labor Code sections 210 and/or 2699(a), (f), and (k).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

PBS FOODS willfully failed to pay Ms. Gutierrez and other aggrieved employees who are no longer employed by PBS FOODS all their earned wages, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either at the time of discharge, or within seventy-two (72) hours of their leaving PBS FOODS's employ.

Ms. Gutierrez and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring PBS FOODS into compliance with Labor Code sections 201 and 202, pursuant to Labor Code sections 256 and/or 2699(a), (f), and (k).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 5-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

During the relevant time period, PBS FOODS, on a company-wide basis, required that Ms. Gutierrez and other aggrieved employees use their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties but failed to reimburse them for the costs of their work-related mobile device expenses. For example, Ms. Gutierrez and other aggrieved employees would be contacted on their personal mobile devices by their managers and/or supervisors to discuss work-related matters, such as the status of catering orders. Further, Ms. Gutierrez was required to download the Outlook mobile application and use her data to check her work email account for any catering order emails. Although PBS FOODS required Ms. Gutierrez and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, PBS FOODS failed to reimburse them for this cost. PBS FOODS could have provided Ms. Gutierrez and other aggrieved employees company mobile devices, or PBS FOODS could have reimbursed employees for the costs of their mobile device usage. Instead, PBS FOODS passed these operating costs onto Ms. Gutierrez and other aggrieved employees. At all relevant times, Ms. Gutierrez did not earn at least two (2) times the minimum wage.

Thus, PBS FOODS had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Ms. Gutierrez and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring PBS FOODS into compliance with the applicable IWC Wage Order and Labor Code section 2802, pursuant to Labor Code sections 2699(a), (f), and (k).

Violation of California Labor Code § 2810.5(a)(1)(A)-(C) – Failure to Provide Notice of Material Terms of Employment

California's Wage Theft Prevention Act was enacted to ensure that employers provide employees with basic information material to their employment relationship at the time of hiring, and to ensure that employees are given written and timely notice of any changes to basic information material to their employment. Codified at California Labor Code section 2810.5, the Wage Theft Prevention Act provides that at the time of hiring, an employer must provide written notice to employees of the rate(s) of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or otherwise, including any rates for overtime, the regular payday designated by the employer, and any allowances claims as part of the minimum wage, including meal or lodging allowances. Effective January 1, 2015, an employer's written notice pursuant to section 2810.5 must also include a statement that the employee may accrue and use sick leave; has a right to request and use accrued paid sick leave; may not be terminated or retaliated against for using or requesting the use of accrued paid sick leave; and has the right to file a complaint against an employer who retaliates.

PBS FOODS failed to provide Ms. Gutierrez and other aggrieved employees written notice that lists the requisite information set forth in Labor Code section 2810.5(a)(1)(A)-(C). PBS FOODS's failure to provide Ms. Gutierrez and other aggrieved employees with written notice of basic information regarding their employment with PBS FOODS is in violation of Labor Code section 2810.5.

Ms. Gutierrez and other aggrieved employees are entitled to recover civil penalties, attorneys' fees, costs, and interest thereon, and seek injunctive relief to bring PBS FOODS into compliance with Labor Code section 2810.5, pursuant to Labor Code sections 2699(a), (f), and (k).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid" Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." PBS FOODS, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Ms. Gutierrez's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Ms. Gutierrez seeks the remedies set forth in Labor Code section 558 for herself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in

particular California Labor Code sections 1194.5, 2699(a), 2699(k), 2699.3(a) and 2699.3(c), 2699.5, and 558, Ms. Gutierrez acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties and injunctive relief for herself, all other aggrieved employees, and the State of California against PBS FOODS for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, and 2810.5.

Therefore, on behalf of all aggrieved employees, Ms. Gutierrez seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Anthony Castillo
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,


Anthony Castillo

Copy: PBS FOODS, LLC (via U.S. Certified Mail); Gregory L. Blueford, Esq., Fisher & Phillips LLP, 621 Capitol Mall, Suite 2400, Sacramento, CA 95814 (via U.S. Certified Mail)

Capstone Law, APC
1875 Century Park, East, 1000
Los Angeles, CA 90067

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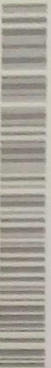


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Gutierrez
v. (65)

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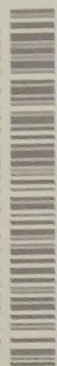
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