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California Labor & Workforce
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Via Certified Mail

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Re: Amended Notice Pursuant to the Private Attorneys General Act, California Labor Code § 2699.3 (the "PAGA")

Dear Sir(s) and/or Madam:

Please be advised that representative plaintiff, Alexander Telles ("Plaintiff") has retained Whitehead Employment Law to represent him and other similarly-situated current and former employees (collectively, the "Aggrieved Employees") of BBT R&M, Inc., a California Corporation; and Does 1 through 20 (hereinafter "Defendants") regarding claims of violations of the California Labor Code, the Industrial Welfare Commission Wage Orders, and other applicable California employment laws.

Defendants currently or formerly employed Plaintiff and other Aggrieved Employees, who work or have worked as non-exempt, hourly, full time and part time employees, including but not limited to Trailer Technicians, Drivers and Mechanics (the "Covered Positions"). This notice formally serves to inform Defendants of Plaintiff's intent to file a PAGA complaint against Defendants and bring causes of action for violations of the PAGA and for injunctive relief including, but not limited to claims for Defendants' failure to provide compliant rest/meal breaks; failure to pay for every hour worked; failure to maintain accurate records of all hours worked; failure to reimburse work-related expenses; failure to furnish accurately itemized wage statements; and failure to timely pay all wages due to Plaintiff and the Aggrieved Employees who ceased

employment with Defendants during the statutory period upon their separation or termination of employment.

Plaintiff was formerly employed by Defendants from approximately June 11, 2020 until approximately October 30, 2020 as a full-time, hourly, non-exempt Mechanic. Plaintiff's job duties included servicing and repairing trailers and semi-trucks in addition to general maintenance such as changing tires.

During the relevant statutory period, Plaintiff and the Aggrieved Employees were consistently unable to take timely and compliant meal and rest breaks. Defendants imposed unreasonable quotas which made it difficult for Plaintiff and the Aggrieved Employees to take timely and compliant meal breaks. In fact, it was common for Plaintiff and the Aggrieved Employees to not receive at least one rest break per 8-hour shift and to not receive their meal breaks until the 6th or 7th hour of their shift. Often when Plaintiff would be on a break, he would be interrupted by supervisors instructing him to return to work. Defendants have never paid Plaintiff and the Aggrieved Employees for the time they worked during their breaks nor the premium pay to which they are/were entitled for the missed and non-compliant rest and meal breaks. Further, at no time have Plaintiff or the Aggrieved Employees validly waived their rest and meal break periods.

Plaintiff and the Aggrieved Employees daily utilize/utilized their personal cell phones for work-related duties and functions. Plaintiff and the Aggrieved Employees used their personal cell phones to communicate with management via text and phone calls. Plaintiff was required to use his personal cell phone to contact the main office every day in the execution of his job duties. At no time have Defendants ever reimbursed Plaintiff or the Aggrieved Employees for the expenses they incurred in the utilization of their personal cell phones.

In addition, Plaintiff and Aggrieved Employees were required to utilize their personal vehicle to pick up auto parts necessary for repairs. Plaintiff and the Aggrieved Employees were required to travel during work hours approximately 3 miles to a store to obtain materials. Plaintiff was requested by management to make these trips several times during his employment. Defendants never offered Plaintiff a company car and never provided him with a mileage reimbursement for the expenses that he incurred while using his personal vehicle.

Plaintiff is informed and believes that the said violations are ongoing, systematic and uniform. Plaintiff intends to bring an action against Defendants under the PAGA to recover wages and penalties and for injunctive relief as provided by California law.¹ Due to the foregoing-

¹ Without limitation, Plaintiff, if permitted, will seek any and all penalties otherwise capable of being collected by the Labor & Workforce Development Agency ("LWDA"). This includes each of the following, as is set forth in Labor Code § 2699.5, which states:

The provisions of subdivision (a) of § 2699.3 apply to any alleged violation of the following provisions: subdivision (k) of § 96, § s 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of § 213, § s 221, 222, 222.5, 223, and 224, paragraphs (1) to (5), inclusive, (7), and (9) of subdivision (a) of § 226, § s 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of § 232, subdivision (c) of § 232.5, § s 233, 234, 351, 353, and 403, subdivision (b) of § 404, § s 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of § 1174, § s 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of § 1198.3, § s 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301,

described actions, Defendants have unlawfully failed to timely pay all wages due pursuant to Labor Code § 204 and have unlawfully failed to pay all wages due upon termination to those Plaintiff and the Aggrieved Employees who ceased their employment relationship with Defendant during the statutory period.

Rest/M meal Break Violations

Under Labor Code § 226.7 “(a) No employer shall require any employee to work during any meal or rest period mandated by an applicable order of the Industrial Welfare Commission.

(b) If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest period is not provided.”

Further, under Labor Code § 512 (a) *“An employer shall not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 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.”*

Per the IWC Wage Orders, “Employers of California employees covered by the rest period provisions of the Industrial Welfare Commission Wage Orders must authorize and permit a net 10-minute paid rest period for every four hours worked or major fraction thereof.” (State of California Department of Industrial Relations Website)

As stated, during the relevant statutory period, Plaintiff and the Aggrieved Employees were often unable to take compliant meal and rest breaks due to the heavy workload and unreasonable quotas imposed by Defendants. Defendants have not ever paid premium pay penalties for the missed and non-compliant rest and meal breaks.

This is a clear violation of the provisions of the Labor Code and the IWC Wage Orders which set forth California employers’ affirmative obligation to provide timely, duty-free rest and meal break periods. Pursuant to § 226.7 of the Labor Code, Plaintiff and the Aggrieved Employees are owed premium pay penalties for each missed rest and meal break for which they were not paid during the statutory period.

As a further and direct consequence of Defendants’ failure to pay the premium pay penalties as mandated under Labor Code § 226.7, all Aggrieved Employees who separated from their employment with Defendants prior to today and were not and have not been properly paid these penalties, are owed such penalties, per Labor Code § 201(a).

1308 , 1308.1 , 1308.7 , 1309 , 1309.5 , 1391 , 1391.1 , 1391.2 , 1392 , 1683 , and 1695, subdivision (a) of § 1695.5 , § s 1695.55 , 1695.6 , 1695.7 , 1695.8 , 1695.9 , 1696 , 1696.5 , 1696.6 , 1697.1 , 1700.25 , 1700.26 , 1700.31 , 1700.32 , 1700.40 , and 1700.47 , § s 1735 , 1771 , 1774 , 1776 , 1777.5 , 1811 , 1815 , 2651 , and 2673, subdivision (a) of § 2673.1 , § s 2695.2 , 2800 , 2801 , 2802 , 2806 , and 2810, subdivision (b) of § 2929 , and § s 3073.4, 6310, 6311, and 6399.7.

Failure to Compensate Employees For Every Hour Worked

Labor Code § 204 (a) states *“All wages, other than those mentioned in §§ 201, 201.3, 202, 204.1, or 204.2, earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays.”*

As previously stated, Defendants often failed to provide timely and compliant meal and rest breaks. Defendants have never paid the premium pay penalties required under Labor Code § 226.7. Labor Code §§ 204 has been violated and Plaintiff and the Aggrieved Employees are entitled to recover payment for all hours worked, including time worked off the clock, and for late payment of wages with penalties and interest thereon, as well as their attorney’s fees and costs.

Failure To Maintain Records of Hours Worked

Labor Code § 1174(d) provides, *“Every person employing labor in this state shall:... (d) Keep, 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...shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.”*

As indicated above, Plaintiff and the Aggrieved Employees were often required to work during their rest or meal breaks due to Defendants’ policies. The time Plaintiff and the Aggrieved Employees spent working while off the clock is/was not ever tracked or recorded by the Defendants in violation of Lab. Cod. § 1174(d).

Failure To Reimburse Work-Related Expenses

Labor Code § 2802(a) provides, *“An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful.”*

As described above, the Plaintiff and Aggrieved Employees daily utilize or utilized their personal cell phones in the course of work-related duties with no reimbursement from Defendants. Defendants have also required Plaintiff and the Aggrieved Employees to use personal vehicles for work-related purposes without reimbursement for mileage. At no point have Defendants offered reimbursement of these work-related expenses. Defendants violated Labor Code § 2802 and Plaintiff and the Aggrieved Employees seek reimbursement of these work-related expenses incurred, as well as their attorney’s fees, penalties and interest thereon as permitted by § 2802.

Failure to Furnish Accurate Wage Statements

As a direct consequence of Defendants’ unlawful business and compensation practices under the Labor Code and IWC Orders, Plaintiff and the Aggrieved Employees were/are not provided with accurately itemized wage statements.

At all times relevant, Labor Code § 226 requires Defendants to *“furnish each of [its] employees, either as a detachable part of the check, draft, or voucher paying the employee’s wages, or separately when wages are paid by personal check or cash, an itemized statement in writing showing: (1) gross wages earned, (2) total hours worked by the employee, ... (5) net wages*

earned, (6) the inclusive dates of the period for which the employee is paid, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.”

As indicated above, Plaintiff and the Aggrieved Employees often work/worked during their meal breaks, due to Defendants imposing unreasonable quotas and supervisors interrupting employees on their meal breaks to perform work related tasks. Hours worked off the clock are/were not recorded, were not recorded at the proper pay rate, and no premium pay is reflected on Plaintiff and the Aggrieved Employees’ pay stubs during the statutory period.

In failing to account and compensate with accuracy, all of the hours worked by the Plaintiff and the Aggrieved Employees, and by failing to accurately set forth the net and gross wages earned, Defendants violated the wage statement requirements of Labor Code § 226 by failing to accurately record the Plaintiff and the Aggrieved Employees’ respective (1) gross wages earned, (2) net wages earned, and (3) all applicable hourly rates and the corresponding number of hour worked at each applicable hourly rate.

Failure to Timely Pay all Wages Due Upon Separation or Termination of Employment

At all times relevant, Labor Code § 201 provides that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.

At all times relevant, Labor Code § 202 provides that if employees not having a written contract for a definite period quits their employment, their wages shall become due and payable no later than 72 hours thereafter, unless the employee has given 72 hours advance notice of their intention to quit, in which case the employee is entitled to their wages at the time of quitting.

At all times relevant, Labor Code § 203 provides that an employer who willfully fails to pay, without abatement or reduction, in accordance with §§ 201 and 202, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefore is commenced, but the wages shall not continue for more than 30 days.

During the statutory period, when Plaintiff and certain of the Aggrieved Employees’ employment relationships with Defendants terminated, Defendants failed to pay them all of their earned wages (as set forth above), immediately upon their discharge or within 72 hours thereafter. In addition, Defendants have failed to pay the waiting time penalties to which such Aggrieved Employees are lawfully entitled under Labor Code § 203.

To date, Defendants have failed to pay the Plaintiff and the Aggrieved Employees all of their earned wages, overtime, accrued interest thereon, and failed to remit the Labor Code penalties to be imposed as a consequence of said violations of the Labor Code.

Conclusion

In sum, as has been factually alleged, Defendants violated Labor Code § 2802. Plaintiff on his own behalf and on behalf of all similarly situated Aggrieved Employees, seeks to recover any and all applicable statutory penalties, interest as provided by California law and attorneys’ fees and civil penalties as provided for under Labor Code § 2699.

Plaintiff requests the LWDA to investigate the above claims and to provide notice of the investigation under the PAGA's provisions. Alternatively, Plaintiff requests the agency inform him if it does not intend to investigate these violations so that he may bring a civil action under the PAGA for the violations alleged herein.

Should you have any questions or comments regarding the foregoing, or any aspect of this matter, please do not hesitate to contact our offices.

Sincerely,

WHITEHEAD EMPLOYMENT LAW

Maria Burciaga

Maria Burciaga, Esq.