

KINGSLEY & KINGSLEY

| L A W Y E R S |

October 26, 2022

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

B & B Transport, Inc.
4263 E North Ave
Fresno, CA 93725

Re: Bruce William Ballinger v. B & B Transport, Inc.
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents Bruce William Ballinger (“Plaintiff”) and a proposed group of current and former employees working for B & B Transport, Inc. (“Defendant”) in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendant engaged in with respect to Plaintiff and all of Defendant’s aggrieved employees.

Plaintiff wishes to bring a representative action on behalf of himself and the State of California as well as on behalf of a group of aggrieved employees defined as: All truck drivers who are employed or have been employed by B & B Transport, Inc., in the State of California who worked one or more pay periods since one (1) year prior to the date of this letter and continuing to the present. (“aggrieved employees”).

Labor Code § 2802 provides that an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful. Defendant has failed to reimburse Plaintiff and aggrieved employees the cost of using their personal cell phones and protective gear for business related purposes. Defendant required that Plaintiff and the aggrieved employees be available by cell phone, use their cell phones to navigate while driving, and answer their cell phones while working, and this was necessary to perform their job duties. Plaintiff and aggrieved employees were also required to purchase equipment such as protective gear, and this was necessary to perform their job duties. These cell phones and protective equipment were not provided by Defendant, and Defendant failed to reimburse Plaintiff and the aggrieved employees for the costs associated with using these personal cell phones and protective gear.

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As a result, Defendant engaged in a practice of failing to provide accurate itemized wage statements in violation of Labor Code § 226(a) which requires that every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing all applicable hourly rates in effect during the pay period, the piece rate units paid, and the corresponding number of hours worked at each hourly rate by the employee.

Labor Code §226(a)(2) requires that every employer shall semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing the total hours worked by the employee. Plaintiff and the aggrieved employees are issued wage statements that do not include the total hours worked by the employee. As such, Plaintiff is an aggrieved employee within the meaning PAGA and Defendants has violated Labor Code §226(a) with respect to Plaintiff and all aggrieved employees. Also, Defendant issued to Plaintiff and the aggrieved employees itemized wage statements that did not include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee, in violation of Labor Code § 226(a)(9). The itemized wage statements provided to Plaintiff and the aggrieved employees did not include the hours worked at each hourly rate.

Additionally, Labor Code §226(a)(3) requires that every employer shall semimonthly or at the time of each payment of wages, furnish each of his or her employees, an accurate itemized statement in writing showing the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis. Defendant issues Plaintiff and the aggrieved employees wage statements that do not properly include number of piece-rate units earned and any applicable piece rate. Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendant has violated Labor Code §226(a) with respect to Plaintiff and all aggrieved employees.

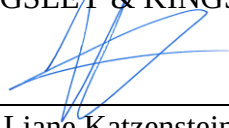
Pursuant to Labor Code §§ 551 and 552 Defendant failed to provide Plaintiff and the aggrieved employees with one (1) day of rest in seven (7). Labor Code § 551 states: “Every person employed in any occupation of labor is entitled to one day's rest therefrom in seven. Moreover, Labor Code § 552 states: “No employer of labor shall cause his employees to work more than six days in seven.” Defendant failed to provide this day of rest. Here, Plaintiff and the aggrieved employees worked seven days a week on a regular and consistent basis with no day off. As such, Plaintiff is an aggrieved employee and Defendant failed to provide Plaintiff and all aggrieved employees with one day’s rest therefrom in seven in violation of Labor Code §§ 551 and 552.

Labor Code § 221 provides, “It shall be unlawful for any employer to collect or receive from an employee any part of wages theretofore paid by said employer to said employee.” Plaintiff and the aggrieved employees were subject to deductions from their wages by Defendant. By making these deductions from Plaintiff and the aggrieved employees’ earned wages, Defendant failed to pay Plaintiff and the aggrieved employees all wages, in violation of Labor Code § 221.

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 221, 226(a), 551, 552, 2802, with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

KINGSLEY & KINGSLEY, APC

By: 

Liane Katzenstein Ly

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- Cc:
1. LWDA Letter filed via Electronic Submission: <https://dir.tfaforms.net/308>
 2. B & B Transport, Inc. via USPS Certified Mail # 7018 1130 0001 5815 1710
 3. Davtyan Law Firm, Inc., 880 E Broadway, Glendale, CA 91205