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March 7, 2023

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VIA ONLINE SUBMISSION TO LWDA

California Labor & Workforce Development Agency
Attn: PAGA Administrator
455 Golden Gate Avenue, 10th floor
San Francisco, California 94102

Re: *Wendi Zambon v. Los Angeles Truck Centers, LLC*
LWDA Case No.: LWDA-CM-933308-23

Dear PAGA Administrator and Counselor:

Please be advised that Fisher & Phillips LLP represents Los Angeles Truck Centers, LLC ("LATC" or the "Company") with respect to the above-captioned matter. Please direct all further correspondence regarding this matter to our attention.

This responds to the February 2, 2023, correspondence Potter Handy LLP submitted to the LWDA regarding Wendi Zambon ("Claimant") and her intent to pursue penalties against LATC under California's Private Attorney General Act ("PAGA") codified in Labor Code sections 2699 et. seq., against the Company for its purported failure to comply with California's wage and hour laws. A copy of the February 2, 2023 Letter is attached hereto as Exhibit "A."

Claimant lacks standing to pursue PAGA penalties against LATC because Claimant was part of the aggrieved employee group in the approved PAGA settlement *Adam Davidson v. Los Angeles Truck Centers, LLC*, et al. Case No. 20STCV41572, approved on January 6, 2022 in the Los Angeles Superior Court ("Davidson Action"). There are also three pending matters involving the same entities and claims that were filed prior to this matter, Ronnie Farrell (LWDA-CM-852272-21), Devan Escobar, Alejandro Mendoza, and Thomas Valenzuela (LWDA-CM-882779-22), and Armando Rosas (LWDA-CM-922735-22).

Additionally, the ostensible purpose of the February 2, 2023 Letter was to satisfy administrative requirements of PAGA so that Claimant can pursue a claim against the Company and attempt to recover penalties authorized under PAGA. Claimant's February 2, 2023 Letter fails to satisfy the administrative requirements of PAGA, which are set forth in California Labor Code section 2699.3(a). Pursuant to section 2699.3(a), a plaintiff must provide both the employer and

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the LWDA “the specific provisions of this code alleged to have been violated, including the facts and theories to support the alleged violation.” (Emphasis added.) In interpreting this provision, courts have explained that “the Ninth Circuit requires an exceedingly detailed level of specificity for Section 2699.3(a)(1) to be satisfied.” *Soto v. Castlerock Farming and Transport, Inc.*, No. CIV-F-09-0701, 2012 WL 1292519 at *8 (E.D. Cal. Apr. 16, 2012) (citing *Archila v. KFC U.S. Props., Inc.*, 420 Fed. Appx. 667, 699 (9th Cir. 2011)). In both *Soto* and *Archila*, the courts noted that LWDA letters lacking specific factual allegations are insufficient to exhaust the administrative requirements of PAGA because such letters do not adequately describe the “facts and theories” that serve as the basis of the purported PAGA violation. See *Soto*, 2012 WL 1292519 at *8.

Here, Claimant’s February 2, 2023 Letter fails to identify sufficient facts to allow the Company to conduct an investigation into her claims and cure any alleged violations of wage and hour laws. Moreover, Claimant has not stated the number of potential violations, the dates and times of the violations, or any other information that would allow the Company to calculate an amount for which it could resolve any alleged deficiencies. There is no allegation as to how any alleged aggrieved employee’s experience is similar to that of Claimant. Furthermore, Claimant has not identified the number of days she or other allegedly aggrieved employees were purportedly not properly paid all amounts earned or how many days they had to wait after alleged discharge until they received their earned wages, which would enable the Company to calculate the amount of waiting time penalties Claimant is seeking. Even more, Claimant has not identified the alleged paystub or record-keeping deficiencies or the unreimbursed business expenses for which she or any aggrieved employee is seeking.

Based on the Davidson Action, the three prior filed LWDA claims, and Claimant’s failure to comply with the administrative requirements of PAGA, we submit this letter to request that the LWDA notify Claimant and her counsel that Claimant lacks standing to pursue a representative action against LATC. Alternatively, we submit this letter to request that the LWDA require Claimant to provide additional information to support her administrative complaint and to preserve LATC’s defenses in any subsequent civil complaint that may be filed.

Please do not hesitate to contact us with any questions you may have.

Sincerely,

A handwritten signature in blue ink, appearing to read 'Hannah Sweiss', with a stylized flourish at the end.

HANNAH SWEISS
ARIELLA M. KUPETZ
For FISHER & PHILLIPS LLP

cc: Jim Treglio

Via Email: jimt@potterhandy.com; waizaa@potterhandy.com; kevinw@potterhandy.com;
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EXHIBIT A



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February 2, 2023

Filed Via LWDA's PAGA Claim Notice Online Form

Copy Sent Via Certified Mail to:

Human Resources
Los Angeles Truck Centers, LLC
2429 Peck Rd
Whittier, CA 90601

Los Angeles Truck Centers, LLC
Registered Agent for Service of Process
Bryan Kobus
2429 Peck Rd
Whittier, CA 90601

Los Angeles Truck Centers, LLC
2429 Peck Rd
Whittier, CA 90601

Re: Wendi Zambon v. Los Angeles Truck Centers, LLC,
California Labor Code § 2699 Penalties; Notice of Intent to File Suit

Dear Counsel:

This office represents Plaintiff Wendi Zambon ("Plaintiff") and a proposed group of current and former employees working for Los Angeles Truck Centers, LLC ("LATC" or "Defendant/s") in the State of California for violations of California Labor Code §§ 201, 202, 203, 204, 210, 226, 226.7, 510, 512, 1194, 1194.2, 1197, 1197.1, 1198,¹ 1199, as well as IWC Wage Order No. 9-2001. Plaintiff wishes to bring a representative action on behalf of herself and the State of California as well as on behalf of the following groups of aggrieved employees:

- (1) *all individuals who are or were employed by Defendants or their predecessor or merged entities in California in an hourly, non-exempt position, who were not provided with duty-free meal periods, from one year prior to the mailing of this notice through the*

¹ All alleged violations of IWC Wage Order 9-2001 are also deemed to be alleged violations of Labor Code §§ 1197 and 1198.

present (“meal period aggrieved employees”);

- (2) all individuals who are or were employed by Defendants, or their predecessor or merged entities in California as hourly, non-exempt employees, who work or worked in excess of eight hours in a day or forty hours in a workweek from any time from one year prior the filing of this notification through the present (“overtime aggrieved employees”);*
- (3) all individuals who are or were employed by Defendants, or their predecessor or merged entities in California in an hourly, non-exempt position, who were not provided with accurate wage statements from one year prior to the mailing of this notice through the present (“wage statement aggrieved employees”);*
- (4) all individuals who are or where employed by Defendants or their predecessor or merged entities in California in an hourly, non-exempt position, and who were paid more than seven days after the close of payroll for that time between one year prior to the filing of this notification through the present, (“late payment aggrieved employees”); and*
- (5) all individuals who are or were employed by Defendants or their predecessor or merged entities in California as hourly, non-exempt employees, who were not paid their wages at the time of termination or within seventy-two (72) hours of their resignation and have not been paid those sums for thirty (30) days thereafter, from one year prior to the mailing of this notice through the present (“waiting time aggrieved employees”).*

Collectively, hereinafter referred to as the “Aggrieved Employees” or “aggrieved employees.”

This letter is to provide notice to you and to the California Labor Workforce Development Agency of some of the facts and legal theories in connection with the above referenced aggrieved employees in compliance with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698 *et seq.*²

² See *Cardenas v. McLane FoodServices, Inc.* (C.D. Cal. Jul. 8, 2011) 796 F. Supp. 2d 1246, 1261; *Moua v. Int'l Bus. Machines Corp.* (N.D. Cal. Jan. 31, 2012) 2012 WL 370570, at *5; *York v. Starbucks Corp.*, (C.D. Cal. Nov. 1, 2012) 2012 WL 10890355, at *4.

Factual Background

Plaintiff and the aggrieved employees are and were employed by Los Angeles Truck Centers, LLC, a California limited liability company based in Whittier, California. LATC is a company that sells and services freightliners. It offers new and used trucks, medium duty to heavy duty trucks, alternative fuel trucks, engines, CARB compliant trucks, and truck parts for sale.

In October 2021, Plaintiff was hired by Defendants as a warehouse lead assigned to work in Hesperia, California. Plaintiff was paid a salary of \$23 per hour until she was terminated on September 30, 2022.

Plaintiff and the aggrieved employees are scheduled to work for 40 hours per week. However, sometimes, Plaintiff and the aggrieved employees worked over 8 hours per day, receiving work-related calls and sending work-related emails even after they have clocked out for work. Unfortunately, Defendants refused to pay Plaintiff and the aggrieved employees for overtime for the additional hours of work they did beyond the 8-hour time period. In total, Plaintiff and the aggrieved employees work overtime for a minimum of four hours per week which are uncompensated.

Plaintiff and the aggrieved employees are also not given legally compliant meal periods. Defendants required Plaintiff and the aggrieved employees to remain on-call during their meal breaks. As a result, Plaintiff and the aggrieved employees' meal periods were constantly interrupted.

Claims Asserted by Plaintiff

- i. Plaintiff and the Aggrieved Employees Were Not Paid Proper Overtime Compensation for All Hours Worked in Excess of 8 Hours in Day or Forty Hours in a Workweek

Labor Code § 510 requires an employer to compensate an employee who works more than eight (8) hours in one workday, forty (40) hours in a workweek, and for the first eight (8) hours worked on the seventh consecutive day no less than one and one-half times the regular rate of pay for an employee. Further, Labor Code § 510 obligates employers to compensate employees at no less than twice the regular rate of pay when an employee works more than twelve (12) hours in a day or more than eight (8) hours on the seventh consecutive day of

work. In accordance with Labor Code § 1194, Plaintiff and the overtime aggrieved employees could not then agree and cannot now agree to work for a lesser wage than the amount proscribed by Labor Code §§ 510 and 1194.

Plaintiff and the aggrieved employees are scheduled to work for 40 hours per week. However, sometimes, Plaintiff and the aggrieved employees worked over 8 hours per day, receiving work-related calls and sending work-related emails even after they have clocked out for work. Unfortunately, Defendants refused to pay Plaintiff and the aggrieved employees for overtime for the additional hours of work they did beyond the 8-hour time period. In total, Plaintiff and the aggrieved employees work overtime for a minimum of four hours per week which are uncompensated.

Because Plaintiff and the aggrieved employees spent eight hours or more working on “compensated” time, this uncompensated time for receiving calls and sending emails beyond their 8-hour shifts should have been compensated at the overtime rate. Instead, no compensation was paid at all, in violation of Cal. Labor Code §§ 510, 1194, and Wage Order 9-2001. Plaintiff is an aggrieved employee for purposes of seeking penalties under PAGA.

ii. Plaintiff and the Meal Period Aggrieved Employees Are Not and Were Not Provided with Meal Periods of Thirty Minutes of Interrupted Off-Duty Time

Labor Code § 512 requires employers to provide employees with thirty (30) minute uninterrupted and duty-free meal period within the first five hours of work. “An on-duty meal period is permitted only when the nature of the work prevents an employee from being relieved of all duty and the parties agree in writing to an on-duty paid meal break.” (*Lubin v. The Wackenhut Corp.* (2016) 5 Cal. App. 5th 926, 932.) The written agreement must include a provision allowing the employee to revoke it at any time. *Id.*

Generally, the DLSE and courts have “found that the nature of the work exception applies: ‘(1) where the work has some particular external force that requires the employee to be on duty at all times, and (2) where the employee is the sole employee of a particular employer.’” (*Id.* at p. 945; *Abdullah v. U.S. Security Associates, Inc.* (9th Cir. 2013) 731 F.3d 952, 958–959.) “[I]t is the employer’s obligation to determine whether the nature of the work prevents an employee from being relieved *before* requiring an employee to take an on-duty meal period.” (*Lubin, supra*, 5 Cal. App. 5th at p. 946.) Nor may an employer “discharge its duty by arguing that its clients who requested on-duty meal periods determined that the

nature of the work prevented officers from being relieved of all duty.” (*Id.* at p. 947; *Benton, supra*, 220 Cal. App. 4th at p. 729.)

As with rest periods, under Labor Code § 512, if an employer maintains a uniform policy that does not authorize and permit the amount of meal time called for under the law (as specified in the applicable Wage Order), “it has violated the wage order and is liable.” The *Brinker* Court explained in the context of rest breaks that employer liability attaches from adopting an unlawful policy:

An employer is required to authorize and permit the amount of rest break time called for under the wage order for its industry. If it does not—if, for example, it adopts a uniform policy authorizing and permitting only one rest break for employees working a seven-hour shift when two are required—***it has violated the wage order and is liable.***

Brinker Rest. Corp. v. Sup. Ct. (2012) 53 Cal.4th 1004, 1033. (Emphasis added.)

As a result of their meal period policies requiring Plaintiff and the aggrieved employees to remain on-call during meal periods, Defendants violated Labor Code § 512 and IWC Wage Order No. 9 by failing to provide duty-free meal periods to Plaintiff and the aggrieved employees of 30 minutes or more. Most of the time, the Plaintiff and the aggrieved employees’ meal periods were interrupted.

Thus, Defendants unlawfully retained control of Plaintiff and the aggrieved employees during their meal periods, even though the nature of the work did not necessitate an on-duty meal period (and by failing to enter into proper on-duty meal period agreements). *See Augustus v. ABM Security Services, Inc.* (2016) 2 Cal. 5th 257, 275 (holding that on-premises breaks violate California law). As a result of Defendants’ failure to authorize or permit lawful meal periods, Plaintiff and the aggrieved employees frequently did not receive duty-free thirty-minute duty-free meal periods within the first five (5) hours of their work. Defendant also failed to pay Plaintiff and the meal period aggrieved employees meal period premiums for each workday that the employees did not receive a compliant meal period.

Labor Code § 226.7 provides “an employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission (“IWC”). Similarly, IWC Wage Order 9-2001 prohibits an employer from “employ[ing] any person for

a work period of more than five (5) hours without a meal period of not less than 30 minutes. IWC Wage Order 9-2001 further obligates employers to provide an employee to “pay the employee one (1) hour of pay at the employee’s regular rate of compensation for each workday that the meal period is not provided.” Accordingly, for each day that Plaintiff and the aggrieved employees did not receive compliant meal periods, they are entitled to receive meal period premiums pursuant to Labor Code § 226.7 and Wage Order 9-2001.

iii. Defendants Violated and Continues to Violate Labor Code § 204

Labor Code § 204 expressly requires that “[a]ll wages...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.” Pursuant to Labor Code § 204(d), these requirements are “deemed satisfied by the payment of wages for weekly, biweekly or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

Due to Defendants’ failure to pay Plaintiff and the aggrieved employees for all overtime and meal period premiums,³ Defendants failed to timely pay the aggrieved employees within seven (7) days of the close of the payroll period in accordance with Labor Code § 204 on a regular and consistent basis. *See Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204).

iv. Defendants’ Violation of Labor Code §§ 201-203

As a result of Defendants’ failure to pay wages to Plaintiff and the aggrieved

³ Courts routinely find that employees who do not receive meal/rest periods premiums are entitled to waiting time penalties under Labor Code § 203. *See e.g. In re Autozone, Inc.*, 2016 U.S. Dist. LEXIS 105746 *23 (N.D. Cal. Aug. 10, 2016) (denying the defendant’s motion for summary judgment on the plaintiff’s claim for waiting time penalties based upon the failure to provide rest period premiums and finding that the California Court of Appeals decision in *Ling vs. P.F. Chang’s China Bistro, Inc.* (2016) 245 Cal. App. 4th 1242 “concerned only whether ‘a section 203 waiting time claim based on section 226.7 premium pay is an action brought for the non-payment of wages under section 218.5’”); *Parson v. Golden State FC, LLC*, 2016 U.S. Dist. LEXIS 58299, 2016 WL 1734010, at *3-5 (N.D. Cal. May 2, 2016) (finding after *Ling* that a failure to pay rest period premiums can support claims under Labor Code §§ 203 and 204); *Brewer v. Gen. Nutrition Corp.* (N.D. Cal. Aug. 27, 2015) 2015 WL 5072039, at *19 [denying defendant’s motion for summary judgment because “the premium payments due under section 226.7 are to be considered “wages” for purposes of sections 203 and 226.”]; *Abad v. Gen. Nutrition Centers, Inc.* (C.D. Cal. Mar. 7, 2013) 2013 WL 4038617, at *3–4 [distinguishing *Kirby*, and finding “Plaintiffs’ section 203 claim for failure to pay wages...can be based on amounts owed under section 226.7.”)

employees for overtime and meal period minimum wages and meal period premiums, Defendant violated Labor Code § 203. Labor Code § 203 provides “if an employer willfully fails to pay . . . any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty. . .” for up to 30 days. Lab. Code § 203; *Mamika v. Barca*, (1998) 68 Cal.App.4th 487, 492.

Due to Defendants’ faulty policies described above, all aggrieved employees whose employment with Defendant concluded were not compensated at the appropriate rate. Additionally, Defendants have failed to pay all aggrieved employees for all overtime and meal period premiums, whose sums were certain, at the time of termination or within seventy-two (72) hours of their resignation and have failed to pay those sums for thirty (30) days thereafter.

v. Defendants’ Violation of Labor Code §§ 226(a) and 226.3

Further, Defendants failed to provide Plaintiff and the aggrieved employees accurate itemized wage statements in accordance with Labor Code § 226(a) (1, 2, 5, and 9). Labor Code § 226 obligates employers, semi-monthly or at the time of each payment to furnish an itemized wage statement in writing showing:

- (1) gross wages earned;
- (2) total hours worked by the employee;
- (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece rate;
- (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item;
- (5) net wages earned;
- (6) the inclusive dates of the period for which the employee is paid;
- (7) 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;
- (8) the name and address of the legal entity that is the employer...;
- (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...

Due to Defendants’ failure to provide Plaintiff and the Aggrieved Employees lawful meal periods (and pay missed meal period premiums and overtime), the wage statements issued by Defendants do not indicate the correct amount of gross wages earned, the correct

total hours worked, the correct net wages earned, or the applicable and/or correct hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate in violation of Labor Code § 226(a)(1), (2), (5) and (9).

Thus, Plaintiff is an aggrieved employee within the meaning of PAGA and Defendants have violated Labor Code § 226(a)(1), (2), (5), and (9) with respect to Plaintiff and the aggrieved employees.

Labor Code § 226.3 provides that “[a]ny employer who violates subdivision (a) of Section 226 shall be subject to a civil penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial violation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage deduction statement or fails to keep the required in subdivision (a) of Section 226.” As explained in detail above, Defendants failed to provide Plaintiff and the other aggrieved employees with accurate itemized wage statements. Accordingly, Plaintiff and the other aggrieved employees may also recover Labor Code § 226.3 penalties for Defendants’ violations of Labor Code § 226(a). *See Finder v. Leprino Foods Co.* (E.D. Cal. Mar. 12, 2015) No. 1:13-CV-2059 AWI-BAM, 2015 WL 1137151, at *7 [“the weight of authority counsels that violations of Section 226.3 may be the basis of a PAGA claim.”]; *Pedroza v. PetSmart, Inc.*, No. ED CV 11-298 GHK DTB, 2012 WL 9506073, at *6 (C.D. Cal. June 14, 2012) (“Lab. Code § 226.3 merely provides that failure to perform actions mandated by § 226(a) may trigger civil penalties.”).⁴

CONCLUSION

Therefore, pursuant to Labor Code § 2699.3, we write to inform you and the Labor and Workforce Development Agency, with whom this PAGA Notice has been filed, of our intent to pursue a PAGA representative action and a Class Action against Defendants seeking PAGA penalties under Labor Code § 2699 to be brought by Plaintiff, individually and on behalf of the aggrieved employees, as defined above.

Nevertheless, it is the policy of this firm to attempt to negotiate an early resolution of all matters where possible and beneficial to the aggrieved employees and all putative class members. If Defendants are interested in attempting to resolve this matter on a class-wide

⁴ *Accord Singer v. Becton, Dickinson & Co., Med-Safe Sys.* (S.D. Cal. July 23, 2008) 2008 U.S. Dist. LEXIS 56326, *18; *Yadira v. Fernandez* (N.D. Cal. June 14, 2011) 2011 U.S. Dist. LEXIS 62894, *7–9, 2011 WL 2434043; *Willis v. Xerox Bus. Servs., LLC* (E.D. Cal. Nov. 15, 2013) No. 1:13-CV-01353-LJO, 2013 WL 6053831, at *7.

basis, including the PAGA claims, please contact me or have your lawyer contact me so that we can discuss an informal discovery plan and the possibility of early mediation on or before **February 22, 2023**. If we do not hear from you on or before **February 22, 2023**, we will proceed with this matter with the understanding that Defendants do not wish to negotiate an early resolution of this matter.

Kindly include the following addresses in all correspondence that you will send me:

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Respectfully submitted,

/s/ James M. Treglio

James M. Treglio