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September 3, 2025

VIA ONLINE SUBMISSION
California Labor & Workforce Development Agency
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

VIA CERTIFIED MAIL
Blue & Gold Fleet Inc.
PO BOX 193730
SAN FRANCISCO, CA 94119

VIA CERTIFIED MAIL
Blue & Gold Fleet Inc.
Attn: Richard Zuromski
446 Old Country Road, Suite 100-115
Pacifica, CA 94044

Re: Notice Pursuant to California Labor Code § 2699.3
Employee: Marc Calloway

This office represents Marc Calloway (Hereafter "Plaintiff"). Plaintiff was an employee of The Blue and Gold Fleet. Pursuant to the California Labor Code Private Attorneys General Act of 2004 (Labor Code §§ 2698 – 2699.6, "PAGA"), this letter sets forth the specific provisions of the Labor Code and Industrial Welfare Commission's 9-2001("Wage Order"), which Employer has violated, including the facts and theories to support the violations.

Please be advised that this letter constitutes written notice required by Labor Code § 2699.3(a)(1)(A) and (c)(l)(A) and may lead to immediate action against Employer in a court of law and/or administrative proceedings, as well as the imposition of substantial penalties and other remedies against Employer. Under separate cover, our office has also sent a check in the amount of $75.00 to the Accounting Unit of the Department of Industrial Relations for the requisite filing fee, or has provided payment electronically for the required fee, pursuant to Labor Code § 2699.3, subdivisions (a)(l)(B) and (c)(l)(B).

This letter also serves as notice of Marc Calloway's demand for preservation and no spoliation of evidence, requesting that all relevant documents and data be saved and that all electronic files and hard-copy documents that are related to Marc Calloway's employment and potential claims must be preserved, even without a court order. Spoliation of evidence may result in legal claims for damages and monetary and evidentiary sanctions, including "adverse inference" jury instructions. Furthermore, intentional spoliation of evidence may carry criminal consequences pursuant to Penal Code § 135.

We are investigating a potential class and representative action on behalf of Employer's current and former non-exempt employees in the State of California regarding, among other things, the following violations: failure to provide meal and rest periods to employees as required by the Wage Order §§ 11 - 12 and Labor Code § 226.7; failure to pay employees overtime wages in violation of Labor Code §§ 510 and 1194 and Wage Order § 3; willful failure to pay all wages due to discharged employees in violation of Labor Code §§ 201-203; failure to furnish accurate itemized wage statements to employees in violation of Labor Code § 226 and Wage Order § 7; failure to maintain required records pursuant to Labor Code § 1174; violation of Labor Code § 2802 for failure to reimburse all expenses; and violation of Labor Code § 227.3 failure to pay accrued vacation time.

The allegations made by Marc Calloway on behalf of himself and all other similarly situated current and former non-exempt employees of Employer in the State of California during the four years preceding the date of this notice are based on the following facts and theories: employees were denied rest periods and meal periods, either not provided adequately or not provided at all, interrupted, and/or late; and employees were not paid proper minimum and overtime wages for all hours worked as required by California law[1]. Given the overtime, rest period violations, and meal period violations and Employer's failure to compensate their employees fully, as set forth above, employees' wage statements were inaccurate and failed to comply with California law. In short, Employer's unlawful employment practices and policies have deprived their employees of earned wages and other compensation.

Marc Calloway intends to seek penalties on behalf of himself and other current and former aggrieved employees for violations of the Labor Code which are recoverable under Labor Code § 2698 – 2699.6. Marc Calloway is seeking penalties on behalf of the State of California of which 65% will be kept by the State while 35% will be available to aggrieved employees. This letter is sent in compliance with the reporting requirements of Labor Code § 2699.3.

Marc Calloway claims are as follows:

Failure to Authorize and Permit Rest Periods

Wage Order § 12 requires employers to provide employees with ten-minute rest periods for every four hours of work. Marc Calloway and other aggrieved employees were not allowed to take proper rest periods as Employer would either not allow them to take any or would interrupt them. Employer wanted Marc Calloway and other aggrieved employees to help customers during their breaks, thus Employer willfully requiredMarc Calloway and other aggrieved employees to work during rest periods or required them not to take them at all. On many occasions due to being overburdened with customers, Marc Calloway and other aggrieved employees were hard-pressed for staff members and was lacking the proper coverage to take adequate rest breaks. For exampleMarc Calloway's rest breaks would sometimes be interrupted because he was required to work. On other occasions, Marc Calloway's breaks would be interrupted because Calloway would

[1] "[T]he statement that defendant has not provided its employees with proper rest periods states both the facts and the theory." Gutierrez v. California Commerce Club, Inc., (2010) 187 Cal.App.4th 969, 973.

be asked to complete an "urgent" task. On many occasions, Marc Calloway and other aggrieved employees would have breaks interrupted due to these alleged urgent matters, regardless of the fact that they explicitly stated they were on a break. individuals were on their breaks. Thus, Marc Calloway was not able to properly take his rest breaks. This practice was not limited to Marc Calloway but has affected other current and former employees.

In Augustus v. ABM Security Services, Inc., (2016) 2 Cal.5th 257, the California Supreme Court held that "state law requires employers to provide their employees with rest periods that are free from duties or employer control." Since Marc Calloway and other aggrieved employees were required to be on duty during rest periods or did not receive them at all, they did not receive their required rest periods free from duties or employer control and Employer therefore violated Wage Order § 12.

In addition, Labor Code § 226.7(c) requires employers to pay employees one additional hour of pay at the employee's regular rate for each workday that a rest period is not provided. Employer did not provide such additional compensation to Marc Calloway and other aggrieved employees and thus violated Labor Code § 226.7(c).

Furthermore, Labor Code § 226.7(b) requires that an employer shall not require an employee to work during a meal or rest or recovery period Marc Calloway and other aggrieved employees were required to work during their rest periods, in violation of Labor Code § 226.7(b).

Furthermore, Labor Code § 226.2(a) employees compensated on a piece-rate basis during a pay period shall be compensated for rest and recovery periods and other nonproductive time separate from any piece-rate compensation. Here, Marc Calloway and other aggrieved employees were required to be on duty during rest periods or did not receive them at all, and failed to compensate their employees, including Marc Calloway for rest and recovery periods and other nonproductive time separate from any piece-rate compensation.

Failure to Pay Overtime; Failure to Pay All Wages Earned and All Hours Worked

Labor Code §§ 510 and 1194 and Wage Order No. 7 § 3 require that "any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh consecutive day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." Under Labor Code § 500 "workday" means any consecutive 24-hour period commencing at the same time each calendar day.

Employee and other aggrieved employees are current and former non-exempt employees and are entitled to the protections of Labor Code§§ 510 and 1194 and Wage Order No. 7-2001. Employer required Employee and other aggrieved employees to work for more than eight hours in a consecutive 24-hour period, but they were not paid for overtime. Thus, Employer is in violation of Labor Code §§ 510 and 1194 and Wage Order No. 7 § 3. Moreover, Employer failed to compensate Employee and other aggrieved employees for all overtime hours worked as required under the foregoing provisions of the Labor Code and IWC Wage Order by, among other things: failing to pay overtime at one and one half times or double the regular rate of pay as provided by Labor Code §§ 510 and 1194 and Wage Order No. 7-2001, § 3; requiring, suffering or permitting Employee and other aggrieved employees to work off-the-clock but not compensating them for this time; and other methods to be discovered. For example, and without limitation, Mr. Ayala would have to work overtime due to a bag check policy put into place by Employer which required Mr. Ayala to keep on the clock despite Employer demanding that he clock out prior to his eighth hour of work.

In violation of California law, Employer has refused to perform their obligations to compensate Employee and other aggrieved employees for all wages earned and all hours worked. Employer' conduct violates Labor Code§§ 510 and 1194 and Wage Order No. 7-2001, § 3.

<u>Failure to follow Industrial Wage Order</u>

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful. [Cal. Lab. Code § 1198]

<u>Failure to Keep Records</u>

An Employer is required to keep records, (d)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. These records shall be kept in accordance with rules established for this purpose by the commission, but in any case 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. [Cal. Lab. Code § 1174] In violation of California law, Employer has failed to maintain records, and keep them on file for three years.
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<u>Willful Failure to Immediately Pay all Wages Due on Discharge</u>

Under Labor Code §§ 201 and 203 Employer is required to immediately pay employees all wages earned and unpaid at the time they are discharged. However, Employer routinely fails to immediately pay its employees immediately upon discharging them, therefore violating Labor Code §§ 201 and 203. More specifically, rather than terminating certain employees, Employer regularly and unlawfully removes employees that complain of payment of wages, discriminatory practices, and other unlawful treatment employees are subjected to during their course of employment with Employer; instead of addressing its employees' concerns, Employer invokes the unlawful practice of suspending employees upon receipt of their complaints alleging unlawful treatment or practices by Employer. Mr. Ayala was not given their final check upon termination and was required to complete a “termination packet” before receiving his final check. Mr. Ayala refused to sign the packet causing a delay.

Failure to provide Accurate, Itemized Wage Statements

Labor Code § 226 and Wage Order § 7 require employers to make, keep, and provide true, accurate, and complete employment records, including itemized wage statements. These statements are to include, among other things, total hours worked, all applicable hourly rates during the pay period, and the corresponding numbers of hours worked at each rate by the employee. However, the itemized wage statements Employee and other aggrieved employees received failed to record the number of regular and overtime hours actually worked because Employer, or one or more of Employer’s agents, would often unlawfully discount hours from Employee’s time records so that those hours are not reflected therein; this practice was not limited to Employee but has affected other current and former employees. Thus, Employers are in violation of Labor Code § 226 and Wage Order § 7 because the itemized statements received by Employee and other aggrieved employees were inaccurate.

Failure to Provide Meal Periods

Pursuant to Labor Code § 512 and Wage Order § 11, an employer is required to provide meal periods to its employees. An employer must provide a meal period to any employee who works a shift of more than five (5) hours and a second meal period to any employee who works a shift of more than ten (10) hours. Furthermore, an employer must pay one extra hour of compensation for each workday a meal period is not provided under Labor Code § 226.7(c) and Wage Order § 11.

If an employee is not relieved of all duty during a meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal period is permitted only when 1) the nature of the work prevents an employee from being relieved of all duty and 2) the parties have agreed in writing to on duty meal periods.

Marc Calloway and other aggrieved employees are entitled to the protections of California Labor Code §§ 226.7 and 512 and the Wage Order § 11. Employer failed to provide their employees timely and uninterrupted half-hour meal breaks. In fact Marc Calloway and other aggrieved employees' meal periods were interrupted and/or missed Employer consistently failed to provide Marc Calloway and other aggrieved employees meal breaks because Marc Calloway and other aggrieved employees were given so much work they could not take a full uninterrupted meal break. Moreover, on the rare occasionmeal breaks were taken, Marc Calloway and other aggrieved employees were constantly required to still be on duty during those meal periods. Therefore, they did not receive their required meal breaks free from duties or employer control which violates Wage Order § 11. For example, on several occasions Marc Calloway would attempt to take his meal break, his breaks would be interrupted due to his Employer stating Mr. Calloway needed to attend to a perceived urgent matter, Employer did not care if he stated he was on break. Often Marc Calloway would only have around five to eight minutes to eat his lunch because he was expected to keep working during his meal break. This practice was not limited to Marc Calloway but has affected other current and former employees as well.

Employer further violated Labor Code § 226.7(c) and Wage Order § 11 by failing to compensate Marc Calloway and other aggrieved employees who were not provided with meal periods in accordance with California law one additional hour of pay at each employee's regular rate of compensation for each workday a meal period was not provided.

Furthermore, Labor Code § 226.7(b) says that "[a]n employer shall not require an employee to work during a meal or rest or recovery period." However, Marc Calloway and other aggrieved employees were required to work during their meal periods in violation of Labor Code § 226.7(b).

Employee will also seek reimbursement of reasonable attorney's fees from Employer pursuant to California Labor Code § 2699(g). Therefore, on behalf of all affected current and former employees, Employee seeks all applicable penalties related to these violations of the California Labor Code pursuant to California's Labor Code Private Attorneys General Act of 2004.

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This notice is hereby given to Employer and any and all related and/or alter ego companies, corporations, partnerships, and/or business entities, as well as against any and all officers, owners, directors, managers, managing agents, or entities who are or may be liable under California law for any of the violations alleged herein as to any locations or employees who worked at any time in the State of California.

This notice is made on behalf of all persons who are, were, or will be non-exempt employees of Employer, or any related or alter-ego company, corporation, partnership, and/or business entity at any time on or after a date four years prior to the date of this letter in the State of California.

This notice shall be construed as extending without limitation to any past, present, future, or continuing violation of the Labor Code, the applicable Wage Order, or any applicable regulation which might be discovered as a result of a reasonable and diligent investigation made pursuant to this notice.

This notice shall further represent Marc Calloway's reasonable attempt to settle his dispute with Employer prior to litigation. Pursuant to <u>Graham v. Daimler Chrysler Corp.</u>, 34 Cal. 4th 553 (2004), this notice serves to apprise Employer of Marc Calloway aforementioned grievances and the proposed remedies as detailed below, while affording Employer reasonable opportunity to meet Marc Calloway's demands.

Demand is hereby made that Employer shall agree, in writing received at this office no later than 30 calendar days from the postmark date of this notice, as follows:

1. Employer shall pay Marc Calloway and all other similarly situated employees at any time during the past 48 months back pay and compensation for the above-referenced violations.

2. Employer shall comply with all California labor laws and ensure that non-exempt employees are paid proper overtime compensation and given required meal and rest periods.

3. Employer shall survey or interview all current and former non-exempt employees in California during the past 48 months to obtain information from them regarding the number of rest breaks that were not authorized and permitted, and the expenditures which such employees made in the discharge of their duties, with the investigation to be completed within 60 days.

4. Employer shall pay each employee one hour of pay for each workday he or she was not authorized and permitted one or more rest periods, as required by Labor Code § 226.7. Employer also shall pay each employee one hour of pay for each workday he or she was not provided one or more meal periods, as required by Labor Code § 226.7.

5. Employer shall pay waiting time penalties, equal to thirty days of pay, to each former employee who was not paid all wages due as described herein.

6. Employer shall pay accrued interest to all employees at the rate of ten percent per annum for said unpaid wages.

7. Employer shall pay all penalties arising from the Labor Code and Wage Order violations referred to above and pursuant to PAGA, including but not limited to penalties under Labor Code §§ 210, 225.5, 226.3, 558, 1174.5, 1197.1, 1199 and 2699 and the Wage Order.

If the Labor and Workforce Development Agency intends to investigate the allegations set forth herein, please notify this office of that decision by certified mail addressed to Jafari Law Group, 2020 Main St.., Suite 350, Irvine, California 92614. Additionally, please advise us if the Agency or Employer require additional information regarding Marc Calloway's complaints.

Thank you for your prompt attention to this matter.

Dated: September 3, 2025

JAFARI LAW GROUP, INC.

Eli Hamblet
Saul Acherman
Attorneys for the *Plaintiff*
Marc Calloway