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December 8, 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: *Jasmine Sutton and Kevin Kankel v. Crossroads Equipment Lease and Finance, LLC, et al.*
LWDA Case No.: LWDA-CM- 966353-23

Dear PAGA Administrator and Counselor:

Please be advised that Fisher & Phillips LLP represents Crossroads Equipment Lease and Finance, LLC, Los Angeles Truck Services, LLC, Los Angeles Truck Centers, LLC, Transwest Truck Center, LLC, Velocity Vehicle Group Carolinas I, LLC, Velocity Vehicle Group Carolinas II, LLC, Velocity Vehicle Group Carolinas III, LLC, Fleet Logic, LLC, Buswest, LLC, and VelocitySBA, LLC (together, the "Company") with respect to the above-captioned matter. Please direct all further correspondence regarding this matter to our attention.

This responds to the November 6, 2023, correspondence Centurial Trial Attorneys, APC submitted to the LWDA regarding Jasmine Sutton and Kevin Kankle ("Claimants") and their intent to pursue penalties against the Company 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 November 6, 2023 Amended PAGA Notice Letter is attached hereto as Exhibit "A."

Claimants lack standing to pursue PAGA penalties against the Company because Claimants were 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). (See *Meza v. Pac. Bell Tel. Co.*, 79 Cal.App.5th 1118 (Cal Ct. App. 2022), plaintiff's PAGA claim was barred by claim

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preclusion in light of the settlement of a prior PAGA lawsuit based on the same causes of action; see *Acevedo v. CashCall, Inc.*, No. G059671, at *15 (Cal. Ct. App. Sep. 12, 2022), claim preclusion extended to PAGA claims that could have been brought which involve the same primary rights as a prior PAGA settlement; see also *Robinson v. S. Counties Oil Co.*, 53 Cal.App.5th 476, 484 (Cal. Ct. App. 2020).)

Additionally, the ostensible purpose of the November 6, 2023 Amended PAGA 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. Claimants' November 6, 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 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, Claimants' November 6, 2023 Amended Letter fails to identify sufficient facts to allow the Company to conduct an investigation into their claims and cure any alleged violations of wage and hour laws. Moreover, Claimants have 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 Claimants. Furthermore, Claimants have not identified the number of days they or other allegedly aggrieved employees were purportedly not provided reimbursement for internet usage, which would enable the Company to calculate the amount of damages Claimants are seeking.

Based on the *Davidson* Action, the three prior-filed LWDA claims, and Claimants' failure to comply with the administrative requirements of PAGA, we submit this letter to request that the LWDA notify Claimants and their counsel that Claimants lack standing to pursue a representative action against the Company. Alternatively, we submit this letter to request that the LWDA require Claimants to provide additional information to support her administrative complaint and to preserve the Company'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 be 'Hannah Sweiss', with a stylized, cursive-like structure.

HANNAH SWEISS
ARIELLA M. KUPETZ
For FISHER & PHILLIPS LLP

EXHIBIT A



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AMENDED PAGA NOTICE OF LABOR CODE VIOLATIONS

[Cal. Labor Code §2699.3]

November 6, 2023

California Labor & Workforce Development Agency
Crossroads: PAGA Administrator
PAGA@dir.ca.gov

Employers (Sent Via Certified U.S. Mail with Return Receipt)

Crossroads Equipment Lease and Finance, LLC
9385 Haven Avenue
Rancho Cucamonga, CA 91730
Certified, Return Receipt Item Number:
9589 0710 5270 1041 7568 47

Los Angeles Truck Service, LLC dba Velocity
Truck Center, Velocity Vehicle Group, and Los
Angeles Freightliner
2429 South Peck Road
Whittier, CA 90601
Certified, Return Receipt Item Number:
9589 0710 5270 1041 7568 61

Transwest Truck Center, LLC
2429 South Peck Rd.
Whittier, CA 90601
Certified, Return Receipt Item Number:
9589 0710 5270 1041 7569 22

Los Angeles Truck Centers, LLC
2429 South Peck Road
Whittier, CA 90601
Certified, Return Receipt Item Number:
9589 0710 5270 1041 7568 85

Buswest, LLC
2429 South Peck Road
Whittier, CA 90601
Certified, Return Receipt Item Number:
9589 0710 5270 1041 7569 08

Velocity Vehicle Group Carolinas I, LLC
2429 South Peck Rd.
Whittier, CA 90601
Certified, Return Receipt Item Number:
9589 0710 5270 1041 7568 54

Velocity Vehicle Group Carolinas II, LLC
2429 South Peck Rd.
Whittier, CA 90601
Certified, Return Receipt Item Number:
9589 0710 5270 1041 7568 78

Velocity Vehicle Group Carolinas III, LLC
2429 South Peck Rd.
Whittier, CA 90601
Certified, Return Receipt Item Number:
9589 0710 5270 1041 7569 39

Fleet Logic, LLC
2429 South Peck Road,
Whittier, CA 90601
Certified, Return Receipt Item Number:
9589 0710 5270 1041 7568 92

VelocitySBA, LLC
9385 Haven Avenue
Rancho Cucamonga, CA 91730
Certified, Return Receipt Item Number:
9589 0710 5270 1041 7569 15

Re: Employees/Claimants: Jasmine Sutton
Kevin Kankel
Employers/Respondents: Crossroads Equipment Lease and Finance, LLC, et al.

Dear PAGA Administrator:

This office represents Jasmine Sutton and Kevin Kankel, former employees of Crossroads Equipment Lease and Finance, LLC; Los Angeles Truck Service, LLC; Los Angeles Truck Centers, LLC; Transwest Truck Center, LLC; Velocity Vehicle Group Carolinas I, LLC; Velocity Vehicle Group Carolinas II, LLC; Velocity Vehicle Group Carolinas III, LLC; Fleet Logic, LLC; Buswest, LLC; and VelocitySBA, LLC each of whom are employers and/or joint employers of all aggrieved employees and/or are the agents, affiliated entities, joint venturers of each other who have common ownership and maintain a common practice, policy and procedure causing the violations as herein alleged (collectively “Employers”). Ms. Sutton and Mr. Kankel submit this second notice of Labor Code violations by Employers. Ms. Sutton and Mr. Kankel seek to represent themselves and other aggrieved employees in a Private Attorneys General Act (“PAGA”) action against Employers pursuant to Labor Code §§2698, *et seq.* For purposes of this notice, “aggrieved employees” includes all Employers’ employees in California and all other positions subject to the same or similar policies described below.

Factual Statement

Employers were and are California companies with their principal place of business in California. At all times hereinafter mentioned, Employers have employees engaged throughout the State of California. Employers have and currently do avail themselves to the benefits and privileges of doing business in California. Employers employed Ms. Sutton as a full-time Senior Business Intelligence Developer in Rancho Cucamonga, California. Employers employed Mr. Kankel as a full-time SQL Developer/Business Systems Analyst/Senior BI Developer in Rialto, California. Ms. Sutton, Mr. Kankel, and other aggrieved employees have worked remotely from their homes beginning in January 2021.

As a Senior Intelligence Developer and SQL Developer/Business Systems Analyst/Senior BI Developer working entirely from their homes, Ms. Sutton and Mr. Kankel worked at least 8 hours per day, 5 days per week. Employers use a payroll program called Bayforce to track days worked. Per company policy, employees report on Bayforce when they are taking a day off. If no report is made, the employee is working at home. Because Ms. Sutton, Mr. Kankel, and all similarly aggrieved employees are required to work from home and input days off into Employers’ internet-based CRM they are all required to have, and use, they are using their own internet service provider and/or internet connection in order to perform work for Employers. Ms. Sutton, Mr. Kankel, and all other aggrieved employees received no reimbursement for the internet usage from Employers.

Cal. Labor Code §2802 (Unreimbursed Business-Related Expenses)

Ms. Sutton and Mr. Kankel, for themselves and all other aggrieved employees, claim Employers have, are, and continue to violate California Labor Code §2802 by failing and/or refusing to reimburse employees for business-related expenses including internet service.

California Labor Code § 2802 requires employers to reimburse California employees for “*all necessary business expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.*” The purpose of section 2802 is to prevent employers from passing their business-related operating expenses onto their employees.

Employers have impermissibly passed their operating expenses onto Ms. Sutton, Mr. Kankel, and similarly aggrieved employees by failing to reimburse them for the proportionate cost associated with having required internet service in order to fulfill their work-related duties and responsibilities. See, e.g., *Cochran v. Schwan’s Home Service, Inc.* (2014) 228 Cal.App.4th 1137, 1140 (“We hold that when employees must use their personal cell phones for work-related calls, *Labor Code section 2802* requires the employer to reimburse them. Whether the employees have cell phone plans with unlimited minutes or limited minutes, the reimbursement owed is a reasonable percentage of their cell phone bills.” (fn. 1 omitted.)

Conclusion

Crossroads Equipment Lease and Finance, LLC; Los Angeles Truck Service, LLC; Los Angeles Truck Centers, LLC; Transwest Truck Center, LLC; Velocity Vehicle Group Carolinas I, LLC; Velocity Vehicle Group Carolinas II, LLC; Velocity Vehicle Group Carolinas III, LLC; Fleet Logic, LLC; Buswest, LLC; and VelocitySBA, LLC’s employment practices, as described in detail above, violate the California Labor Code, including §§ 2699, and 2802. Therefore, Ms. Sutton, for herself and all other aggrieved employees, claims damages, penalties, together with interest and attorney fees, as permitted by the California Labor Code. Ms. Sutton and Mr. Kankel have filed a complaint in Los Angeles Superior Court (case number 23STCV21046) on August 31, 2023, and filed a First Amended Complaint on October 19, 2023, in accordance with California Labor Code §2699.3, to bring a representative action pursuant to California Labor Code §2698, *et seq.*, against Crossroads Equipment Lease and Finance, LLC, as identified herein, and, if permitted, will seek any and all amounts capable of being collected by the Commission pursuant to the California Private Attorney General Act (California Labor Code §2699.3, *et seq.*). Ms. Sutton and Mr. Kankel now seek to add Los Angeles Truck Service, LLC; Los Angeles Truck Centers, LLC; Transwest Truck Center, LLC; Velocity Vehicle Group Carolinas I, LLC; Velocity Vehicle Group Carolinas II, LLC; Velocity Vehicle Group Carolinas III, LLC; Fleet Logic, LLC; Buswest, LLC; and VelocitySBA, LLC, each of whom are employers and/or joint employers of all aggrieved employees and/or are the agents, affiliated entities, joint venturers of each other who have common ownership and maintain a common practice, policy and procedure causing the violations as herein alleged, as Defendants to the action.

Should you have any questions or otherwise wish to discuss this matter, please do not hesitate to call.

Sincerely,
/s/ *Ryan Stygar*
Ryan A. Stygar, Esq.