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September 11, 2023

Via Electronic Filing Only

Labor and Workforce Development Agency (LWDA)

Via Certified U.S. Mail

WT All Access Transportation Inc.
801 West Grand Avenue
Oakland, CA 94607

Registered Agent; Delivered Via Certified U.S. Mail

Tracy Harvey
c/o WT All Access Transportation Inc.
365 Fletcher Lane
Brentwood, CA 94513

PAGA Claim Notice

RE: *Diontay Shackelford v. WT All Access Transportation Inc.*

To Whom It May Concern:

Please be advised that this office has been retained to represent Diontay Shackelford ("Mr. Schakelford") with respect to his employment claims for violations of:

- A. Cal. Lab. Code §§ 558, 1182.12, 1194, 1194.2, 1197, 1197.1, 1198 and Industrial Welfare Commission ("IWC") Wage Order 9-2001, for failure to pay minimum wages;
- B. Cal. Lab. Code §§ 510, 1194, 1198 and IWC Wage Order No. 9-2001, for failure to pay overtime wages;
- C. Cal. Lab. Code § 558 and IWC Wage Order No. 9-2001, for failure to pay split-shift premiums;
- D. Cal. Lab. Code § 226, for failure to provide accurate itemized wage statements;
- E. Cal. Lab. Code §§ 226.7, 512 and IWC Wage Order 9-2001, for failure to provide rest and meal periods;
- F. Cal. Lab. Code §§ 204, 210, for failure to timely pay wages;
- G. Cal. Lab. Code §§ 201-203, for failure to timely pay final wages;
- H. Cal. Lab. Code §§ 2802 & 2804, for failure to reimburse employees for all necessary expenditures and losses incurred in the performance of job-related duties; and
- I. Cal. Lab. Code § 558 and IWC Wage Order No. 9-2001 for failing to pay reporting time wages.

I am writing on behalf of Mr. Shackelford, individually, and on behalf of all other aggrieved employees (collectively referred to as “Plaintiffs”), who are either former or current non-exempt employees, employed by WT All Access Transportation, Inc. (“Company” or “WT”) as “Drivers”.

Pursuant to Labor Code § 2699.3, this letter constitutes written notice of the Company’s various Labor Code violations and of our intent to recover civil penalties under the Private Attorneys General Act of 2004, Cal. Labor Code §§ 2698–2699.5 (“PAGA”). A copy of this letter is concurrently being sent to the Company and its registered agent via certified first-class mail. Payment of the required fee was made at the time of electronic submission.

The Company engaged in the aforementioned Labor Code violations, based on the following facts and theories to support each violation:

A. Cal. Lab. Code §§ 1182.12, 1194, 1194.2, 1197, 1197.1, 1198 and IWC Wage Order 9-2001 for Failure to Pay Minimum Wages

Pursuant to California Labor Code §§ 1194, 1197, 1197.1 and IWC Wage Order No. 9-2001, payment to an employee of less than the applicable minimum wage for all hours worked in a payroll period is unlawful. WT failed to pay Plaintiffs minimum wages for all hours worked by, among other things: requiring, permitting or suffering Plaintiffs to work off the clock; requiring, permitting or suffering Plaintiffs to work through meal and rest breaks; and other methods to be discovered. Therefore, pursuant to California Labor Code §§ 1194, 1197.1, and other applicable provisions under the Labor Code and IWC Wage Orders, Plaintiffs are entitled to recover the unpaid balance of wages owed to them by WT, plus interest, penalties, attorneys’ fees, expenses, and costs.

B. Cal. Lab. Code §§ 510, 1194 and IWC Wage Order No. 9-2001 for Failure to Pay Overtime Wages

Pursuant to California Labor Code §§ 510, 1194, and IWC Wage Order No. 9-2001, WT is required to compensate Plaintiffs for all overtime, which is calculated at one and one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours per day and/or forty (40) hours per week, and for the first eight (8) hours on the seventh consecutive workday, with double time for all hours worked in excess of twelve (12) hours in any workday and for all hours worked in excess of eight (8) hours on the seventh consecutive day of work in any workweek.

Plaintiffs are current and former non-exempt employees entitled to the protections of California Labor Code §§ 510, 1194, and IWC Wage Order No. 9-2001. WT failed to compensate Plaintiffs for all overtime hours worked as required under the foregoing provisions of the California Labor Code and IWC Wage Order by, among other things: failing to pay overtime at one and one-half (1 ½) or double the regular rate of pay as provided by California Labor Code §§ 510, 1194, and IWC Wage Order No. 9-2001; requiring, permitting or suffering Plaintiffs to work off the clock; requiring, permitting or suffering Plaintiffs to work through meal and rest breaks but not

compensating them for this time and failing to include this time in their hours worked; and other methods to be discovered.

C. Cal. Lab. Code § 558, IWC Wage Order No. 9-2001 for Failure to Pay Split Shift Premiums

A split shift is a work schedule that is interrupted by non-paid and non-working time periods established by the employer. WT imposes an unpaid non-working period between the morning and afternoon schedules. These interruptions were not associated with bona fide rest or meal periods. Plaintiffs did not reside at their place of employment.

The split shift provision provides that one (1) hour at the minimum wage shall be paid in addition to the minimum wage for that workday. The Wage Order also applies to employees paid more than the minimum wage. However, such employees are only entitled to the difference between what they earned and what they would have earned had they been paid the minimum wage for their entire shift plus an extra hour. WT requires its employees to work a split shift, without compensating the legally required split shift premiums.

D. Cal. Lab. Code § 226 for Failure to Provide Accurate Itemized Wage Statement

Labor Code section 226, subdivision (a) states:

Every employer shall, semimonthly or at the time of each payment of wages, furnish each of his or her 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 accurate itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (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 his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security may be shown on the itemized statement, (8) the name and address of the legal entity that is the employer, 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. The deductions made from payments of wages shall be recorded in ink or other indelible form, properly dated, showing the month, day, and year, and a copy of the statement or a record of the deductions shall be kept on file by the employer for at least three years at the place of employment or at a central location within the State of California.

At all relevant times, WT has violated the rights of Plaintiffs under Labor Code section 226(a) by failing to provide them with accurate itemized statements that accurately reflect the correct regular rate for purposes of meal, rest, overtime, and split shift premium payments. WT failed to provide Plaintiffs with accurate wage records of pay indicating the hours worked and/or the wages paid for the hours worked. WT's conduct in failing to provide itemized wage statements, as required by California state law, violates California Labor Code § 226(a). Pursuant to California Labor Code § 226.3, Plaintiffs are entitled to recover the greater of all actual damages or Two Hundred fifty dollars (\$250.00) for the initial pay period in which a violation occurs and one Thousand dollars (\$1000.00) for each violation in a subsequent pay period.

E. Cal. Lab. Code §§ 226.7, 512 and IWC Wage Order 9-2001 for Failure to Provide Rest and Meal Periods

Plaintiffs were not properly provided with off duty compliant meal or rest periods as required by California Labor Code §§ 226.7 and 512. WT required, permitted, or otherwise suffered Plaintiffs to take less than the 30-minute meal period, or to work through them, and have failed to otherwise provide the required meal periods to Plaintiffs pursuant to California Labor Code § 226.7, 512 and IWC Order No. 9-2001. WT further violated California Labor Code §§ 226.7 and IWC Wage Order No. 9-2001, by failing to compensate Plaintiffs who were not provided with a meal period, in accordance with the applicable wage order, one (1) additional hour of compensation at each employee's regular rate of pay for each workday that a meal period was not provided. WT further violated California Labor Code §§ 226.7, 510, 1194, 1197, and IWC Wage Order No. 9-2001 by failing to compensate Plaintiffs for all hours worked during their meal periods.

WT also failed to provide rest periods to Plaintiffs as required under California Labor Code §§ 226.7 and 512, and IWC Wage Order No. 9-2001. WT further violated California Labor Code § 226.7 and IWC Wage Order No. 9-2001, by failing to pay Plaintiffs who were not provided with a rest period, in accordance with the applicable wage order, one additional hour of compensation at each employee's regular rate of pay for each workday that a rest period was not provided.

As a result of WT's conduct, Plaintiffs are entitled to an additional hour of pay for every day that Plaintiffs were not provided meal or rest breaks pursuant to California Labor Code § 226.7.

F. Cal. Lab. Code §§ 201-203 for Failure to Timely Pay Final Wages

WT failed to pay Plaintiffs all wages earned and owed at the time of termination, or within the required time following a notice of resignation. In addition to minimum, split-shift premium payments, and overtime wages, the California Supreme Court has held that premium pay for denying an employee a meal or rest period constitutes "wages." (*Naranjo v. Spectrum Security Services, Inc.* (2022) 13 Cal.5th 93). WT has willfully failed to pay accrued wages and other compensation to Plaintiffs in accordance with California Labor Code §§ 201 and 202. Based on the foregoing conduct, Plaintiffs who have been terminated or resigned are entitled to recover waiting time penalties pursuant to California Labor Code § 203. The waiting time penalty is

equal to the amount of the employee's daily rate of pay for each day the wages remain unpaid, up to a maximum of thirty (30) days. *Id.*

G. Cal. Lab. Code §§ 204, 210 for Failure to Timely Pay Wages

Under California law, all employers have a legal obligation to pay employees the entire amount of wages they have earned and to pay these wages on time. See Cal. Lab. Code § 204. Specifically, pursuant to California Labor Code § 204, WT was and is required to pay employees at least twice a month for all wages earned during the preceding pay period. California Labor Code § 204 mandates that labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month.

WT willfully failed to timely pay accrued wages and other compensation to Plaintiffs in accordance with California Labor Code § 204.

Every person who fails to pay the wages of each employee, shall be subject to a penalty as follows: (1) for any initial violation, one hundred dollars (\$100) for each failure to pay each employee and (2) for each subsequent violation, or any willful or intentional violation, two hundred dollars (\$200) for each failure to pay each employee, plus 25 percent of the amount unlawfully withheld. Cal. Lab. Code § 210.

H. Cal. Lab. Code §§ 2802 & 2804 for Failure to Reimburse for All Necessary Expenditures and Losses Incurred in the Performance of Job-Related Duties

California Labor Code § 2802(a) requires an employer to indemnify an employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of her his or her duties, or of his or her obedience to the directions of the employer.

WT knowingly and willfully failed to indemnify Plaintiffs for all business expenses and/or losses incurred in direct consequence of the discharge of their duties while working under the direction of WT, including but not limited to expenses for wash cloths, sanitizers, cell phone use, and other employment-related expenses, in violation of California Labor Code § 2802.

As a proximate result of WT, unlawful actions and omissions, Plaintiffs have been damaged and seek reimbursement of all necessary expenditures, plus interest thereon pursuant to California Labor Code § 2802(b). Additionally, Plaintiffs are entitled to all available statutory penalties and an award of costs, expenses, and reasonable attorneys' fees, including those provided in California Labor Code § 2802(c), as well as other available remedies.

I. Cal. Lab. Code § 558, IWC Wage Order No. 9-2001 for Failure to Pay Reporting Time Pay

Plaintiffs were regularly scheduled for, and reported to work for shifts, but were not put to work or were furnished less than half their usual or scheduled day's work. "Reporting time pay" is a form of wages that compensate employees who are scheduled to report to work but who are not

put to work or furnished with less than half of their usual or scheduled day's work because of inadequate scheduling or lack of proper notice by the employer. The provisions of the law regarding reporting time pay are as follows:

1. Each workday an employee is required to report to work but is not put to work or is furnished with less than half of his or her usual or scheduled day's work, he or she must be paid for half the usual or scheduled day's work, but in no event for less than two hours nor more than four hours, at his or her regular rate of pay.
2. If an employee is required to report to work a second time in any one workday and is furnished less than two hours of work on the second reporting, he or she must be paid for two hours at his or her regular rate of pay.

Reporting time pay constitutes wages. (*Murphy v. Kenneth Cole Productions, Inc.* (2007) 40 Cal. 4th 1094). Thus, failure to pay all reporting time pay due at the time of employment termination can be the basis for waiting time penalties pursuant to Labor Code § 203.

Plaintiffs were not paid any reporting time wages by WT in instances where they reported to work and were not put to work or were sent home after less than half their usual or scheduled day's work. Accordingly, Plaintiff and Class Members are entitled to recover the unpaid wages.

Reservation of Rights

The facts and claims contained herein are based on the information available at the time of this writing. Therefore, if through discovery and/or expert review, Plaintiffs become aware of additional compensation owed or losses incurred by Mr. Shackelford or by any other aggrieved employee of WT, Plaintiffs expressly reserve the right to revise these facts and/or add any new claims by amending the claim letter or by adding applicable causes of action to the complaint which will relate back to the date of this letter.

Please advise the undersigned if the agency intends to investigate the alleged violations. If not, Mr. Shackelford intends to pursue his claims and those of the aggrieved employees under PAGA in a civil lawsuit. Please also consider this letter as providing notice on behalf of other aggrieved employees working for WT that were subject to the same Labor Code violations described above.

Thank you for your time and attention to this matter. Please do not hesitate to contact my office should you have any additional questions or concerns.

Regards,

Veronica Cruz

Veronica Cruz, Esq.