



AEQUITAS LEGAL GROUP

A Professional Law Corporation
1156 E. Green Street, Suite 200
Pasadena, California 91106
Telephone: 213.674.6080
Facsimile: 213.674.6081
www.AequitasLegalGroup.com

Ronald H. Bae

rbae@AequitasLegalGroup.com
Direct: (213) 674-6380

May 10, 2024

Via Electronic Submission

Labor and Workforce Development Agency
Attn: PAGA Administrator
1515 Clay Street, Suite 801
Oakland, CA 94612

Re: **Trans International Trucking, Inc.**
Notice of Labor Code Violations pursuant to Labor Code § 2699.3(a)(1)

Dear Sir or Madam:

This letter shall constitute the required written notification under Labor Code § 2699.3(a)(1) that our client, Mr. Marcos Jimenez Rosel, alleges that his former employer, Trans International Trucking, Inc. (“Trans International”), has violated various provisions of the California Labor Code.

Specifically, Mr. Rosel contends that Trans International has engaged in the following unlawful employment practices:

1. Willfully misclassifying Mr. Rosel and other aggrieved employees as independent contractors instead of non-exempt employees in violation of California Labor Code § 226.8.

Trans International is a trucking company based in San Pedro, California that is in the business of transporting cargo. Mr. Rosel worked for Trans International from approximately March 2023 to approximately November 2023 as a long-haul truck driver. Trans International classified Mr. Rosel and its other truck drivers as independent contractors. Mr. Rosel and other truck drivers’ job duties were to pick up and deliver cargo to Trans International’s customers. Mr. Rosel and other drivers spent a significant amount of their work time in California, including driving and other duties such as pre- and post-trip inspections and completing paperwork.

Mr. Rosel and all other individuals who worked for Trans International as truck drivers in the State of California and were classified as independent contractors at any time between April 21, 2023 and the present are referred to herein as “aggrieved employees.”

At all relevant times set forth herein, Trans International systematically

misclassified Mr. Rosel and the other aggrieved employees as independent contractors, which Trans International referred to as “owner operators.”

The California Supreme Court in *Dynamex* held that a worker shall be considered an employee rather than an independent contractor unless the hiring entity can establish all three of the following elements: “(A) that the worker is free from the control and direction of the hiring entity in connection with the performance of the work, both under the contract for the performance of the work and in fact, (B) that the worker performs work that is outside the usual course of the hiring entity’s business, and (C) that the worker is customarily engaged in an independently established trade, occupation, or business.” (*Dynamex Operations West, Inc. v. Superior Court* (2018) 4 Cal.5th 903, 916-917.)

Mr. Rosel and the other aggrieved employees were not free from Trans International’s control and direction. Trans International exercised extensive control over the way the aggrieved employees performed their deliveries. Among other things, Trans International controlled their schedules, routes, assignments, customers, licensing, and other details of the job. When Trans International had a delivery job to be completed, they assigned the job to a driver and dispatched him or her via phone. The driver was required to pick up the cargo at an assigned location, then deliver it to another assigned location for Trans International’s customers. Further, Trans International managed the licensing and registration of drivers’ trucks, and the trucks’ license plates and registrations were under Trans International’s name. Trans International required drivers to put a sticker on the trucks with the company name, logo, USDOT number, and California motor carrier permit number.

Mr. Rosel and the other aggrieved employees performed work within the usual course of Trans International’s business. Trans International provides full-service trucking and distribution services. Mr. Rosel and the other aggrieved employees picked up cargo and made deliveries to the locations of Trans International’s customers, which is an integral part of the company’s trucking business. In fact, delivering cargo is Trans International’s entire business as a trucking company.

Mr. Rosel and the other aggrieved employees were not customarily engaged in an independently established business. They were individual laborers who did not truly have independent businesses. Rather, Trans International required the drivers to provide a business name under which they were paid to create the illusion of independence. The businesses did not actually exist and/or were only used so that the drivers could work for and receive their pay from Trans International. Further, the drivers could not work for another company because their trucks are leased to Trans International and operate under Trans International’s USDOT number and California motor carrier number for the duration of their employment with the company.

For these reasons, Trans International's "independent contractor" designation was merely a label designed to evade the obligations of an employer, not a reflection that the drivers were customarily engaged in an independently established trade. (*See Dynamex, supra*, at p. 962 ["A company that labels as independent contractors a class of workers who are not engaged in an independently established business in order to enable the company to obtain the economic advantages that flow from avoiding the financial obligations that a wage order imposes on employers unquestionably violates the fundamental purposes of the wage order. The fact that a company has not prohibited or prevented a worker from engaging in such a business is not sufficient to establish that the worker has independently made the decision to go into business for himself or herself."].)

2. Failure to pay Mr. Rosel and other aggrieved employees all minimum and regular wages owed to them in violation of California Labor Code §§ 226.2, 1194, 1194.2, 1197, 1197.1, and 1198.

Trans International's unlawful misclassification scheme resulted in systematic violations of California's wage and hour laws.

At all relevant times set forth herein, Trans International systematically failed to pay minimum and regular wages to Mr. Rosel and the other aggrieved employees. They were paid on a piece-rate basis (i.e., per mile and/or per trip) at a rate insufficient to meet minimum wage requirements. They were paid per mile (e.g., \$1.59 per mile before deductions) and/or at a flat rate per trip (e.g., \$2,300 before deductions) and did not receive any other compensation.

Mr. Rosel and the other aggrieved employees regularly worked more than 8 hours per day and/or more than 40 hours per week and were not paid for these hours worked at all, and/or were paid at a rate less than the applicable minimum wage.

Further, Mr. Rosel and the other aggrieved employees were not separately compensated for rest break time (to the extent rest breaks were taken) or other non-productive time such as pre- and post-trip inspections, waiting to pick up and drop off loads, completing paperwork, fueling their trucks, cleaning their trucks, undergoing inspections of their trucks, or breakdown time when the trucks needed repairs.

In addition, Mr. Rosel and the other aggrieved employees were sometimes not paid for all miles driven, or were not paid at all for a given trip.

3. Failure to reimburse Mr. Rosel and other aggrieved employees for necessary business-related expenses, in violation of California Labor Code §§ 2800 and 2802.

Mr. Rosel and other aggrieved employees were were required to pay out of pocket

for business-related expenses such as using their personal phones to communicate with their supervisors and dispatchers, and for costs associated with using their personally owned trucks to complete deliveries. These costs included fuel, maintenance, repairs, liability insurance, costs associated with occupational accidents, and service fees for the electronic logging devices that were required by federal law and provided by Trans International.

With regard to fuel costs, the aggrieved employees were given a company fuel card, but the full amount of the fuel costs was deducted from their pay.

Further, the aggrieved employees were charged a deposit of approximately \$1,500 that they had to pay in order to work for Trans International. This deposit was not returned to them, and interest on the deposit was deducted from their final pay.

4. Making unlawful deductions from Mr. Rosel and the other aggrieved employees' pay, in violation of California Labor Code §§ 221, 223, and 224.

These deductions included fuel costs, liability insurance, costs associated with occupational accidents, service fees for the electronic logging devices that were required by federal law and provided by Trans International, and the \$1,500 initial deposit plus interest. These deductions could eat up 50 to 60% of drivers' weekly pay.

5. Failure to provide Mr. Rosel and other aggrieved employees with accurate itemized wage statements, in violation of California Labor Code §§ 226 and 226.3.

Because Trans International misclassified the aggrieved employees as independent contractors, Trans International did not provide them with wage statements. Instead, the aggrieved employees were given weekly "settlement statements" that showed the dates of their trips, the trip miles, the gross pay, the deductions for fuel and others costs described above in paragraphs 5-6, and the net pay or "settled amount." The settlement statements do not show the total hours worked, the total hours of compensable rest breaks, the total hours of other non-productive time, or the applicable hourly rates in effect during the pay period. Also, the settlement statements do not show the last four digits of the aggrieved employees' Social Security numbers or employee ID numbers.

6. Failure to timely pay all wages owed to Mr. Rosel and other aggrieved employees at the time of termination or resignation, in violation of California Labor Code §§ 201 – 203. Trans International failed to pay employees the unpaid minimum and regular wages and wages for rest breaks and other non-productive time described herein upon the separation of their employment.
7. Failure to provide Mr. Rosel and other aggrieved employees with all wages owed

during their employment, in violation of California Labor Code § 204. Trans International failed to pay employees the unpaid minimum and regular wages and wages for rest breaks and other non-productive time described herein in a timely manner during their employment.

8. Violation of California Labor Code §§ 558 and 558.1, as a consequence of the violations described herein.

Labor Code § 558 provides that an employer or person acting on behalf of an employer who violates (or causes to be violated) a provision of Labor Code §§ 500 through 558, or a provision of the IWC Wage Orders regarding hours and days of work, is liable for civil penalties of \$50 to \$100 per pay period to each underpaid employee, in addition to other civil penalties provided for by law.

Labor Code § 558.1 provides that an employer or person acting on behalf of an employer who violates (or causes to be violated) a provision of Labor Code §§ 203, 226, 226.7, 1193.6, 1194, or 2802 may be held liable as the employer for such violation.

As set forth herein, Trans International has violated California Labor Code §§ 203, 226, and 1194 and IWC Wage Order 9-2001, and is thus liable for penalties under Labor Code §§ 558 and 558.1.

Please advise within the required time period whether or not the Labor and Workforce Development Agency intends to investigate these alleged violations. If no such notice is received within 65 calendar days of the date of this letter, Mr. Rosel will proceed with a civil action for penalties pursuant to Labor Code § 2699.

Thank you for your prompt attention to this request.

Sincerely Yours,



Ronald H. Bae

cc: Trans International Trucking, Inc.
Attn: General Counsel
1920 S. Acacia Avenue
Compton, CA 90220

Via Certified Mail