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June 27, 2024

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.govfa.net/308>)

Subject: *Robert Jones v. Utility Trailer Sales of Central California, Inc., et al.*

Dear PAGA Administrator:

This office represents Robert Jones in connection with his claims under the California Labor Code. Mr. Jones was an employee of UTILITY TRAILER SALES OF CENTRAL CALIFORNIA, INC.; UTILITY TRAILER OF CALIFORNIA, LLC; and/or UTILITY TRAILER MANUFACTURING COMPANY, LLC. For the purpose of this letter, Mr. Jones collectively refers to these entities as "UTSCC."

The employers may be contacted directly at the addresses below:

UTILITY TRAILER SALES OF CENTRAL CALIFORNIA, INC. 12608 S. HARLAN ROAD LATHROP, CA 95330	UTILITY TRAILER OF CALIFORNIA, LLC 15567 VALLEY BLVD FONTANA, CA 92335
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UTILITY TRAILER OF CALIFORNIA, LLC
PO BOX 1510
FONTANA, CA 92334

UTILITY TRAILER MANUFACTURING COMPANY, LLC
17295 E. RAILROAD STREET
CITY OF INDUSTRY, CA 91748

Mr. Jones intends to seek civil penalties, attorney's fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 ("PAGA"). Mr. Jones seeks relief on behalf of himself, the State of California, and other persons who are or were employed by UTSCC as a non-exempt, hourly paid employee in California and who received at least one wage statement ("aggrieved employees"). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

UTSCC employed Mr. Jones as an hourly paid, non-exempt Service Clerk and Aftermarket Counter Sales Representative from approximately October 2023 to March 2024. Mr. Jones worked for UTSCC at its dealership location in Fresno, California. During his employment, Mr. Jones typically worked eight (8) or more hours per day and five (5) days per week. At the time his employment

ended, Mr. Jones was compensated approximately \$28.00 per hour. His primary job duties included, without limitation, checking in customers, recording customers' information, scheduling customers' appointments, calling and billing customers, ringing up customers, and cold-calling customers to facilitate sales.

UTSCC committed one or more of the following Labor Code violations against Mr. Jones, the facts and theories of which follow, making him an "aggrieved employee" pursuant to California Labor Code section 2699(c):¹

UTSCC's Company-Wide and Uniform Payroll and HR Practices

UTILITY TRAILER SALES OF CENTRAL CALIFORNIA, INC. is a California corporation while UTILITY TRAILER OF CALIFORNIA, LLC and UTILITY TRAILER MANUFACTURING COMPANY, LLC are California and Delaware limited liability companies, respectively. Together, they are a trailer dealer group specializing in local and national fleet designs and aftermarket distribution, with three (3) locations in California. Upon information and belief, UTSCC maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Lathrop, California, for all non-exempt, hourly paid employees working for UTSCC in California, including Mr. Jones and other aggrieved employees. At all relevant times, UTSCC issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Jones and other aggrieved employees, regardless of their location or position.

Upon information and belief, UTSCC maintains a centralized Payroll department at its corporate headquarters in Lathrop, California, which processes payroll for all non-exempt, hourly paid employees working for UTSCC in California, including Mr. Jones and other aggrieved employees. Further, UTSCC issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Jones and other aggrieved employees, irrespective of their location, position, or manner in which each employee's employment ended. In other words, UTSCC utilized the same methods and formulas when calculating wages due to Mr. Jones and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission ("IWC") Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1 ½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee's regular rate of pay includes all remuneration

¹ These facts, theories, and claims are based on Mr. Jones's experience and counsel's review of those records currently available relating to Mr. Jones's employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law's requirements, the employer misinformed its employee of the law's requirements, or because the employer effectively hid the violations). Thus, Mr. Jones reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

UTSCC willfully failed to pay all overtime wages owed to Mr. Jones and other aggrieved employees. During the relevant time period, Mr. Jones and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, UTSCC had, and continues to have, a company-wide policy and/or practice of requiring Mr. Jones and other aggrieved employees to perform work off-the-clock before and after their scheduled shifts. For example, occasionally throughout his employment, Mr. Jones was required to perform tasks before clocking in for his shifts, such as assisting customers in-store or over the phone to make sales. As a further example, Mr. Jones was sometimes required to drive to UTSCC's location in Lathrop, California, to train new employees, but Mr. Jones was not paid for all of the time it took him to drive back to his dealership location in Fresno, California, due to UTSCC's management clocking Mr. Jones out from his shifts based on the estimated time of return as opposed to an actual time. As a result, on information and belief, UTSCC did not pay Mr. Jones for approximately 30 minutes of travel time on those days because UTSCC's management clocked him out early.

Additionally, UTSCC required Mr. Jones and other aggrieved employees to communicate with management, on their personal cellular phones, outside of scheduled shifts to discuss work-related issues, such as location of parts/inventory and status of orders, time for which they were not paid. These phone calls occurred approximately 3-4 times per week and would take 15 minutes each time. Finally, UTSCC had, and continues to have, a company-wide security policy of allowing only certain employees to carry keys to UTSCC's dealership. Specifically, only managerial employees were issued keys to access the dealership at any given time. In adherence with this policy, Mr. Jones and other aggrieved employees had to wait up to 15 minutes for a managerial employee to arrive at UTSCC's premises and unlock the door in the mornings before they could clock in for their shifts. Thus, Mr. Jones and other aggrieved employees were subject to UTSCC's control before and after their shifts, time for which they were not paid.

Second, during the relevant time period, UTSCC had, and continues to have, a company-wide policy and/or practice of failing to staff and employ sufficiently trained workers, such that there were too few employees on duty capable of handling the heavy workload and attending to customers. Because UTSCC did not employ sufficiently trained employees to meet customer demand, there was no one available to relieve employees like Mr. Jones who needed meal period coverage. This practice resulted in a lack of meal period coverage and prevented Mr. Jones and other aggrieved employees from taking all uninterrupted meal periods to which they were entitled. Moreover, UTSCC also failed to adhere to a schedule for meal periods, which further caused Mr. Jones and other aggrieved employees to not be relieved of their duties for compliant meal periods. For example, UTSCC's management would interrupt Mr. Jones during his meal periods to ask him work-related questions regarding parts, inventory, and customer orders, or other employees' work assignments for five (5) minutes at a time, as there was not anyone else sufficiently trained to handle these questions. As a result, Mr. Jones and other aggrieved employees had to work through all or part of their meal periods and/or had their meal periods interrupted, time for which they were not paid.

Furthermore, on information and belief, because UTSCC frowned upon employees accruing meal period penalties, UTSCC's management adjusted Mr. Jones's and other aggrieved employees' time

records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit the meal penalties that would need to be paid by UTSCC. Additionally, UTSCC's company-wide timekeeping system prevented Mr. Jones and other aggrieved employees from recording all hours worked when their meal periods were shortened or interrupted, because the system locked out Mr. Jones and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. Thus, UTSCC did not record all hours worked during meal periods, and Mr. Jones and other aggrieved employees performed work during meal periods for which they were not paid.

UTSCC knew or should have known that as a result of these company-wide practices and/or policies, Mr. Jones and other aggrieved employees were performing their assigned duties off-the-clock outside of their shifts and during meal periods, and were suffered or permitted to perform work for which they were not paid. Because Mr. Jones and other aggrieved employees sometimes worked shifts of eight (8) hours a day or more or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Jones and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked.

Moreover, UTSCC did not pay Mr. Jones and other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, UTSCC paid Mr. Jones and other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, UTSCC failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rates. Therefore, during times when Mr. Jones and other aggrieved employees worked overtime and received these other forms of pay, UTSCC failed to pay all overtime wages by paying a lower overtime rate than required.

For example, UTSCC paid Mr. Jones and other aggrieved employees incentive pay and/or bonuses which were listed on Mr. Jones's and other aggrieved employees' wage statements as "Bonus." During pay periods that Mr. Jones and other aggrieved employees were paid overtime wages, UTSCC did not incorporate the incentive pay and/or bonuses into Mr. Jones's and other aggrieved employees' regular rate of pay and, as a result, paid them at incorrect and lower rates of pay for overtime hours worked. Specifically, UTSCC paid Mr. Jones and other aggrieved employees 1.5 times their hourly rate of pay instead of 1.5 times their regular rate of pay. UTSCC's failure to properly calculate the overtime rates of pay based on all remuneration paid has resulted in an underpayment of overtime wages to Mr. Jones and other aggrieved employees on a company-wide basis.

UTSCC's failure to pay Mr. Jones and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198. Mr. Jones and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum

so fixed is unlawful. Compensable work time is defined in IWC Wage Order No. 7-2001 as “the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.” Cal. Code Regs. tit. 8, § 11070(2)(G) (defining “Hours Worked”).

First, as set forth above, UTSCC had a company-wide policy and/or practice requiring Mr. Jones and other aggrieved employees to perform work-related tasks while off-the-clock before and after their shifts, including assisting customers, traveling to/from other locations, communicating with UTSCC’s management regarding work-related issues, and waiting for a managerial employee to arrive and unlock the premises in the morning. UTSCC failed to track this time Mr. Jones and other aggrieved employees spent working off-the-clock, and Mr. Jones and other aggrieved employees received no compensation for this time.

Second, as also stated, due to UTSCC’s policies and/or practices of assigning heavy workloads and failing to adhere to a schedule for meal periods, Mr. Jones and other aggrieved employees were impeded from taking all uninterrupted meal periods to which they were entitled and were required to work off-the-clock during meal periods, have their meal periods interrupted, and/or were otherwise not relieved of all duties during unpaid meal periods. Moreover, as stated, in order to prevent employees from accruing meal period penalties, upon information and belief, UTSCC’s management adjusted Mr. Jones’s and other aggrieved employees’ time records to reflect compliant meal periods, even when meal periods were missed, short, and/or interrupted. Additionally, as stated, UTSCC’s company-wide timekeeping system prevented Mr. Jones and other aggrieved employees from entering time worked during meal periods because the system locked out Mr. Jones and other aggrieved employees for a full 30 minutes. Thus, UTSCC systematically failed to pay Mr. Jones and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded.

Thus, UTSCC did not pay minimum wages for all hours worked by Mr. Jones and other aggrieved employees. To the extent that these off-the-clock hours did not qualify for overtime premium payment, UTSCC did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198.

Accordingly, UTSCC regularly failed to pay at least minimum wages to Mr. Jones and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198. Mr. Jones and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, and 1198, and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee’s regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law,

first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

First, as stated, UTSCC had, and continues to have, a company-wide policy and/or practice of assigning heavy workloads, which has resulted in a lack of meal period coverage and prevented Mr. Jones and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Further, as stated, UTSCC had a company-wide practice and/or policy of failing to adhere to a schedule for meal periods, which further caused Mr. Jones and other aggrieved employees to not be relieved of their duties for compliant meal periods. As a result, Mr. Jones and other aggrieved employees had to work through all or part of their meal periods, had their meal periods interrupted, and/or had to wait extended periods of time before taking meal periods. For example, as stated, UTSCC's management often interrupted Mr. Jones's meal periods by asking him questions about parts, trailers, and work assignments. Additionally, Mr. Jones frequently took his meal periods late, after the fifth hour of work, due to the heavy workload.

Second, as stated, on information and belief, because UTSCC frowned upon employees accruing meal period penalties, UTSCC's management adjusted Mr. Jones's and other aggrieved employees' time records to reflect compliant meal periods, even when they did not receive a compliant meal period, in order to strictly limit the meal penalties that UTSCC would otherwise owe. As also stated, UTSCC's company-wide timekeeping system prevented Mr. Jones and other aggrieved employees from recording when their meal periods were shortened or interrupted, because the system locked out Mr. Jones and other aggrieved employees once they clocked out for a meal period, and would not permit them to clock back in from a meal period before 30 minutes had elapsed. As a result of these policies, UTSCC falsified and deducted meal periods from Mr. Jones's and other aggrieved employees' time records even when meal periods were missed, short, interrupted, and/or late and thus systematically failed to correctly record meal periods.

Third, UTSCC did not provide Mr. Jones and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. During his employment, Mr. Jones worked shifts in excess of ten (10) or more hours per day but was not provided a second 30-minute meal period. Mr. Jones and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties.

Moreover, UTSCC had a company-wide policy of requiring all newly hired employees to sign blanket meal period waivers at or near their time of hire. UTSCC took the position that non-exempt, hourly paid employees had waived their rights to first and/or second meal periods for the entirety of their employment and, on that basis, did not provide them with all meal periods to which they were entitled. Furthermore, UTSCC requires employees to provide one day's advance written notice should they wish to revoke the waiver. UTSCC's presumption that meal periods would not be provided for shifts in excess of five (5) hours but less than six (6) hours and/or for shifts in excess of ten (10) hours but less than twelve (12) hours, due to blanket meal period waivers signed at or near the time of hire, discouraged and impeded Mr. Jones and other aggrieved employees from taking all meal periods to which they were entitled.

Furthermore, an employer's obligation to provide a meal period is only "triggered" when the employer "employs an employee for a work period of more than five hours per day." *Brinker*, 53 Cal. 4th at 1039 ("If an employer engages, suffers, or permits anyone to work for a full five hours, its meal break obligation is triggered.").

[A]fter the meal break obligation is triggered . . . an employer is put to a choice: it must (1) afford an off-duty meal period; (2) consent to a mutually agreed-upon waiver if one hour or less will end the shift; or (3) obtain written agreement to an on-duty meal period if circumstances permit. Failure to do one of these will render the employer liable for premium pay.

Id. (citing Cal. Labor Code § 226.7; Wage Order No. 7, subd. 11(A), (B)). That UTSCC required Mr. Jones and other aggrieved employees to sign meal period waivers simultaneously at or near their time of hire (as opposed to on a specific work day) renders them invalid and unenforceable, because UTSCC's obligation to provide Mr. Jones and other aggrieved employees with meal periods did not arise until they had employed them for a full five (5) hours.

Additionally, the meal period waiver forms state that "Under the following circumstances, an employee is allowed to waive the first or second meal periods: . . . **employer and employee mutually consent to the waiver.**" (Emphasis added.) However, the blanket meal period waiver forms are only signed by Mr. Jones, the employee.

At all times herein mentioned, UTSCC knew or should have known that, as a result of these policies, Mr. Jones and other aggrieved employees were prevented from being relieved of all duties and required to perform some of their assigned duties during meal periods. UTSCC further knew or should have known that UTSCC did not pay Mr. Jones and other aggrieved employees meal period premiums when meal periods were missed, shortened, interrupted, and/or late.

Moreover, UTSCC engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Jones and other aggrieved employees have not received premium pay for missed, late, and interrupted meal periods. Alternatively, to the extent that UTSCC did pay Mr. Jones and other aggrieved employees for missed, late, and interrupted meal periods, UTSCC did not pay Mr. Jones and other aggrieved employees at the correct rate of pay for premiums because UTSCC systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, UTSCC failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Jones and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, and 1198, and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any

rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that “[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period” and that the “rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof” unless the total daily work time is less than three and one-half (3 ½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 273 (2016).

During the relevant time period, UTSCC regularly failed to authorize and permit Mr. Jones and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, UTSCC’s company-wide practices, including assigning heavy workloads, resulted in a lack of rest period coverage and prevented Mr. Jones and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. UTSCC also failed to schedule rest periods, which, coupled with UTSCC’s failure to provide adequate rest period coverage, further led to Mr. Jones and other aggrieved employees not being authorized and permitted to take rest periods.

Furthermore, upon information and belief, during the relevant time period, UTSCC maintained a company-wide on-premises rest period policy, which effectively required that Mr. Jones and/or other aggrieved employees remain on the work premises during their rest periods. Because Mr. Jones and/or other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use their rest periods freely for their own purposes, such as running personal errands. Thus, UTSCC effectively maintained control over Mr. Jones and/or other aggrieved employees during rest periods.

As a result of UTSCC’s practices and policies, Mr. Jones and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, throughout his employment, Mr. Jones had to forgo 4-5 rest periods per week because the dealership was busy.

UTSCC has also engaged in a company-wide practice and/or policy of not paying rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Jones and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that UTSCC did pay Mr. Jones and other aggrieved employees one (1) additional hour of premium pay for missed rest periods, UTSCC did not pay Mr. Jones and other aggrieved employees at the correct rate of pay for premiums because UTSCC failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, UTSCC failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Jones and other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep, and provide true, accurate, and complete employment records. UTSCC has not provided Mr. Jones and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wage statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, UTSCC has knowingly and intentionally provided Mr. Jones and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, UTSCC issued uniform wage statements to Mr. Jones and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including rates of pay for overtime wages and/or meal and rest period premiums, and the corresponding number of hours worked at each hourly rate. Specifically, UTSCC violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because UTSCC did not record the time Mr. Jones and other aggrieved employees spent working off-the-clock and deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), UTSCC did not list the correct amount of gross wages and net wages earned by Mr. Jones and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, UTSCC failed to accurately list the total number of hours worked by Mr. Jones and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Second, because UTSCC did not calculate Mr. Jones's and other aggrieved employees' regular rate of pay correctly for purposes of paying overtime wages, meal and rest period premiums, paid sick leave, and/or reporting time pay, UTSCC did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, UTSCC failed to list the correct amount of net wages in violation of section 226(a)(5). UTSCC also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct rates of pay for overtime wages, meal and rest period premiums, paid sick leave, and/or reporting time pay, in violation of section 226(a)(9).

Third, and separately from these violations, UTSCC issued uniform wage statements to Mr. Jones and other aggrieved employees that failed to list the address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment or in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. During the relevant time period, UTSCC systematically, and on a company-wide basis, issued

wage statements to Mr. Jones and other aggrieved employees that fail to list the employing entity's correct address. Mr. Jones's and other aggrieved employees' wage statements incorrectly list the employer's address as "2680 S East Ave, Fresno, CA 93706," but according to the California Secretary of State's website, UTILITY TRAILER SALES OF CENTRAL CALIFORNIA, INC.'s entity address should be "12608 S. HARLAN ROAD, LATHROP, CA 95330." *See example paystub below.*

Statement of Earnings For: ROBERT W JONES				Utility Trailer Sales of Central CA Inc	
Period Begin	10/22/2023	Company Id	WP577	Employee Number	2680 S East Ave
Period End	11/4/2023	Branch	Fresno	Pay Group	Fresno, CA 93706
Check Date	11/10/2023	Department	Service		

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the inclusive dates of the period for which aggrieved employees were paid; failing to list 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; failing to list the name of the legal entity that is the employer; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[k]eep, 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" Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), UTSCC willfully failed to maintain accurate payroll records for Mr. Jones and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of failing to record the off-the-clock hours that they worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Order. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, UTSCC engaged in company-wide practices and/or policies of failing to record actual hours worked (including falsifying time records by recording that compliant meal periods were taken regardless if or when meal periods were actually taken), and thereby failed to keep accurate records of work period and meal period start and end times for Mr. Jones and other aggrieved employees, in violation of section 1198. Furthermore, in light of UTSCC's failure to provide Mr. Jones and other aggrieved employees with second 30-minute meal periods to which they were entitled, UTSCC kept no records of meal start and end times for second meal periods.

Mr. Jones and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, UTSCC willfully failed to pay Mr. Jones and other aggrieved employees all wages due including, but not limited to, overtime wages, minimum wages, meal and rest period premiums, sick leave pay, and/or reporting time pay, within the time periods specified by California Labor Code section 204.

Mr. Jones and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201 and 202 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

UTSCC willfully failed to pay Mr. Jones and other aggrieved employees who are no longer employed by UTSCC the earned and unpaid wages set forth above, including but not limited to, overtime wages, minimum wages, meal and rest period premiums, sick leave pay, and/or reporting time pay, either at the time of discharge, or within seventy-two (72) hours of their leaving UTSCC's employ.

Mr. Jones and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 246 – Failure to Properly Calculate Paid Sick Leave

At all relevant times herein, California Labor Code sections 245.5, 246, 246.5, 247, 247.5, 248.5, and 249 provide employees who have worked in California for 30 or more days from the commencement of employment with paid sick days, to be accrued at least one hour for every 30 hours worked. Effective January 1, 2024, California Labor Code section 246(b)(4) requires employers to provide no less than 40 hours or five (5) days of paid sick leave (or equivalent paid leave or paid time off) in each year of the employee's employment. Further, Labor Code section 246(l) provides that an

employer shall calculate paid sick leave by using one of two calculations: 1) “[p]aid sick time for nonexempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time, whether or not the employee actually works overtime in that workweek[;]” or 2) “[p]aid sick time for nonexempt employees shall be calculated by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days of employment.”

During the relevant time period, UTSCC did not pay Mr. Jones and/or other aggrieved employees the correct sick leave rates of pay. In addition to an hourly wage, UTSCC paid Mr. Jones and/or other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, UTSCC failed to incorporate all remunerations, including incentive pay and/or nondiscretionary bonuses, into the calculation of the regular rate of pay for purposes of calculating the sick leave pay rate. Therefore, during times when Mr. Jones and/or other aggrieved employees took sick leave and received these other forms of pay, UTSCC failed to pay all sick leave benefits by paying a lower sick leave pay rate than required. Specifically, UTSCC paid Mr. Jones and/or other aggrieved employees sick leave based on their hourly rate of pay instead of their regular rate of pay.

UTSCC’s failure to properly calculate the sick leave rates of pay based on all remuneration paid has resulted in an underpayment of sick leave benefits to Mr. Jones and/or other aggrieved employees on a company-wide basis in violation of Labor Code section 246(l).

Mr. Jones and/or other aggrieved employees are entitled to recover civil penalties, attorney’s fees, costs, and interest thereon, pursuant to Labor Code sections 248.5 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 1198 and California Code of Regulations Title 8, Section 11070 Subdivision 5(A) – Failure to Pay Reporting Time Pay

California Labor Code section 1198 dictates that no employer may employ an employee under conditions of labor that are prohibited by the applicable IWC Wage Order. California Labor Code section 1198 further requires that “. . . the standard conditions of labor fixed by the commission shall be the . . . standard conditions of labor for employees. The employment of any employee . . . under conditions of labor prohibited by the order is unlawful.”

California Code of Regulations, Title 8, section 11070(5)(A) provides that “[e]ach workday an employee is required to report for work and does report, but is not put to work or is furnished less than half said employee’s usual or scheduled day’s work, the employee shall be paid for half the usual or scheduled day’s work, but in no event for less than two (2) hours nor more than four (4) hours, at the employee’s regular rate of pay, which shall not be less than the minimum wage.” The “primary purpose of the reporting time regulation” is “to guarantee at least partial compensation for employees who report to work expecting to work a specified number of hours, and who are deprived of that amount because of inadequate scheduling or lack of proper notice by the employer.” *Aleman v. AirTouch Cellular*, 209 Cal. App. 4th 556 (2012).

During the relevant time period, UTSCC violated California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(5)(A), because UTSCC failed to pay Mr. Jones and/or other aggrieved employees reporting time pay when they reported to work for their scheduled shift but were put to work for less than half of the usual or scheduled day’s work.

UTSCC had a company-wide practice of sending Mr. Jones and/or other aggrieved employees home early from their shifts, including before they had worked at least half of their usual or scheduled shift, but would not pay Mr. Jones and/or other aggrieved employees for half of their usual or scheduled shift. Although Mr. Jones and/or other aggrieved employees reported to work based on the schedule that was provided to them, UTSCC would send them home before they worked at least half of their usual or scheduled shifts. When this occurred, UTSCC did not pay Mr. Jones and/or other aggrieved employees for at least half of their scheduled day's work or the minimum reporting time pay.

Accordingly, Mr. Jones and/or other aggrieved employees were not properly compensated with reporting time pay in violation of California Labor Code section 1198 and California Code of Regulations, Title 8, section 11070(5)(A). Mr. Jones and/or other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order No. 7-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft." IWC Wage Order No. 7-2001 further provides that: "[w]hen uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer."

During the relevant time period, UTSCC, on a company-wide basis, required that Mr. Jones and other aggrieved employees use their own personal mobile devices, including, but not limited to, cellular phones, and/or mobile data to carry out their job duties, but failed to reimburse them for the costs of their work-related mobile device expenses. For example, Mr. Jones and other aggrieved employees were required to use their personal mobile devices and/or mobile data for work-related tasks, including responding to calls from management and customers and taking and sending photos of trailers to document any damage and upload to the company's system on his work computer. Moreover, Mr. Jones and other aggrieved employees were required to download mobile applications on their personal cellular phones such as the Verkada Pass application, in order to lock and unlock the service department doors. Although UTSCC required Mr. Jones and other aggrieved employees to utilize their personal mobile devices and/or mobile data to carry out their work-related responsibilities, UTSCC failed to reimburse them for these costs.

Additionally, during the relevant time period, UTSCC, on a company-wide basis, required Mr. Jones and other aggrieved employees to report to work in uniforms bearing the company logo. However, UTSCC did not provide their employees with sufficient uniforms to wear for their shifts throughout the week. UTSCC only provided Mr. Jones with three (3) shirts at the time of hire. Because UTSCC failed to provide employees with an adequate number of uniforms in relation to the tasks they were required to perform, Mr. Jones had to wash his uniforms more frequently than he otherwise would do laundry, and incurred expenses in doing so. Thus, UTSCC failed to maintain the uniforms they

required Mr. Jones and other aggrieved employees to wear during their shifts and forced them to incur the cost of maintaining employee uniforms.

UTSCC could have provided Mr. Jones and other aggrieved employees with the actual equipment for use on the job, such as company mobile devices and an adequate number of uniforms or access to laundering services. Or, UTSCC could have reimbursed employees for the costs of their mobile device usage and laundering expenses or provided a uniform maintenance allowance. Instead, UTSCC passed these operating costs off onto Mr. Jones and other aggrieved employees. At all relevant times, Mr. Jones did not earn at least two (2) times the minimum wage.

Thus, UTSCC had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Jones and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid" Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." UTSCC, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Jones's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Jones seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Jones, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against UTSCC for violations of California Labor Code sections 201, 202, 204, 226(a), 226.7, 246, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, and 2802.

Therefore, on behalf of all aggrieved employees, Mr. Jones seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Pre-Litigation Demand

This notice shall further serve as Mr. Jones's reasonable attempt to settle his dispute with UTSCC prior to litigation. Pursuant to *Graham v. Daimler Chrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform UTSCC of Mr. Jones's aforementioned grievances and the proposed remedies as detailed below, while affording UTSCC a reasonable opportunity to satisfy Mr. Jones's demands.

Demand is hereby made that UTSCC shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. UTSCC shall pay Mr. Jones and all other aggrieved employees employed by UTSCC at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. UTSCC shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked, provided lawful meal and rest periods, and paid reporting time pay.
3. UTSCC shall conduct a survey or interview all current and former aggrieved employees in California who worked for UTSCC in the past three years to obtain information from them regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for mobile device expenses; uniform maintenance costs; or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.
4. UTSCC shall pay Mr. Jones and each aggrieved employee one hour of pay at her or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512(a), 516, and 1198. UTSCC also shall pay Mr. Jones and each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. UTSCC shall properly calculate aggrieved employees' rates of pay for overtime, meal and rest period premiums, and paid sick leave based on all remuneration paid, pursuant to Labor Code sections 226.7, 510, and 246(l).
6. UTSCC shall provide aggrieved employees who are required to report for work and do report but are not put to work or are furnished less than half their usual or scheduled day's work, with pay for half the usual or scheduled day's work, but in no event for less than two (2) hours nor more than four (4) hours, at the aggrieved employee's regular rate of pay.
7. UTSCC shall reimburse Mr. Jones and all aggrieved employees who were required to pay for any business expenses incurred for UTSCC's benefit, including, but not limited to, mobile device usage and uniform maintenance costs, as required by Labor Code section 2802.
8. UTSCC shall pay accrued legal interest to Mr. Jones and all aggrieved employees at the rate of 10% per annum for said unpaid wages.
9. UTSCC shall provide Mr. Jones and all aggrieved employees employed by UTSCC at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
10. UTSCC shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.

UTSCC shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but

not limited to, penalties under Labor Code sections 210, 226.3, 248.5, 256, 1174.5, 1197.1, and 2699, and Wage Order No. 7-2001, section 20.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Ninel Kocharyan
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,

A handwritten signature in black ink, appearing to read "Ninel", with a stylized flourish at the end.

Ninel Kocharyan

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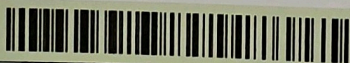
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US POSTAGE
PRIORITY MAIL
0281 102 200 3
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ZIP 90067
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Suite #1000
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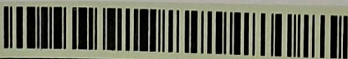
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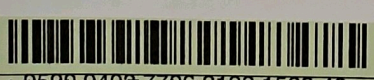
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