

September 20, 2024

**VIA ELECTRONIC SUBMISSION;
VIA CERTIFIED MAIL TO EMPLOYER**

California Labor and Workforce Development Agency
Attn: PAGA Administrator
455 Golden Gate Avenue, 9th Floor
San Francisco, CA 94102

MB Roadway, Inc.
3607 Granite Creek Ct
Bakersfield, CA 93313

Re: Notice of Claim Under Private Attorneys General Act (“PAGA”)

Dear LWDA:

My firm represents Anthony Medina (“Plaintiff”) and all other aggrieved employees who intend to file an action against MB Roadway, Inc. (“Defendant” or “MB Roadway”) in connection with Defendant’s violations of the California Labor Code. This letter shall serve as notice, and a request, pursuant to Labor Code section 2699.3, *et seq.* (“PAGA”), that the Labor and Workforce Development Agency (“LWDA”) investigate the violations by Defendant described herein against Plaintiff and other current and/or former employees. If LWDA does not intend to investigate the violations described herein, we respectfully request that the agency specifically notify our office of the same at your earliest possible opportunity.

Statement of Specific Provisions of the Labor Code Violated

Plaintiffs intend to prosecute a civil action against Defendant for violations of Labor Code sections 201-204, 226, subdivision (a), 226.7, 512, 226.8, subdivision (a), 558, 2750.3, and 2802.

Facts and Theories in Support of Violations

Defendant provides transportation services and is registered to do business in the State of California. Defendant employed Plaintiff from on or about August 21, 2023 to mid-April 2024. Plaintiff worked as truck driver.

Plaintiff’s position as a truck driver and his duties, which included picking up and delivering loads, are within the purview of Defendant’s usual course of business as transportation company. Moreover, Defendant exercised requisite control over Plaintiff by setting Plaintiff’s hours and routes, as well as providing him with a truck. As a result, Plaintiff was Defendant’s employee.

However, Defendant misclassified Plaintiff as an independent contractor when it hired him in 2023. Defendant willfully misclassified Plaintiff in an attempt to avoid providing Plaintiff with meal and rest breaks, overtime, and accurate wage statements. Plaintiff is informed and believes, and on that basis alleges, that Defendant misclassified many of its other employees as independent contractors, as well.

Plaintiff was also not reimbursed for reasonable expenses necessarily incurred in the performance of his job duties, such as the electronic logging device required by Federal Motor Carrier Safety Administration (“FMCSA”).

Misclassification as an Independent Contractor

Pursuant to Labor Code section 226.8, it is unlawful for an employer to willfully misclassify an individual as an independent contractor.

An employer in violation of section 226.8 is subject to civil penalties. (*See* Lab. Code § 226.8, subds. (b)-(c).) The California Supreme Court has set forth the stringent requirements for an individual to be considered an independent contractor. (*Dynamex Operations v. Superior Court* (2018) 4 Cal.5th 903.) The “ABC test” as articulated in *Dynamex* requires the following:

- (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 of the same nature as the work performed.

These requirements have been codified in Labor Code section 2750.3. Because the test is phrased in the conjunctive, all three prongs of the ABC test must be answered in the affirmative for a worker to be lawfully classified as an independent contractor.

Here, none of the prongs are satisfied. Plaintiff and other truck drivers working for Defendant were undoubtedly employees and not independent contractors under the ABC test. First, the employees’ schedules and routes were set by Defendant and Defendant directed the work they would perform. Further, Defendant provided employees with a truck to perform their duties.

Second, Plaintiff and Defendant’s other truck drivers picked up and delivered loads. According to its website, MB Roadway’s goal is to “provide a safe and reliable transportation solution to our clients.” (*See* <https://www.mbbroadwayinc.com/>) Simply put, Plaintiff’s job duties

of picking up and delivering loads fall squarely within Defendant's business as a transportation company.

Finally, while truck driving can be an independently established trade, as in owner-operator trucking, Defendant's employees was provided a truck by MB Roadway and was not free to choose what loads to haul, as owner-operator truck drivers are. Nor were Plaintiff or Defendant's other employees providing such services to other companies or individuals. Nearly all of these employees worked only for Defendant. Defendant was well aware of this difference in business model. On one occasion, Plaintiff objected to driving out-of-state in inclement weather, complained about being assigned out-of-state loads, Mr. Singh stated that theirs was not an owner-operator arrangement and further stated, "it's my truck, you go wherever I tell you."

It is also clear that Defendant's misclassification of its employees was willful. In or about late 2021, Defendant informed Plaintiff that he would be converting independent contractors to employees at an unspecified time in the future. Defendant further stated "It's the law... [the government] is forcing us." This conduct shows that Defendant knew of its obligations under *Dynamex* and Labor Code section 2750.3 but chose to ignore the law, at the expense of its employees. Moreover, Plaintiff is informed and believes that certain other employees remained unlawfully classified as independent contractors at the time of his termination in April 2024.

Failure to Provide Accurate Wage Statements

Pursuant to Labor Code section 226 ("Section 226"), subdivision (a), an employer is required to provide itemized wage statements. Plaintiff was issued inaccurate wage statements, which failed to list premium pay and all hours worked. Plaintiff is informed and believes, and on that basis alleges, that Defendant failed to notify other employees of their premium pay for each payroll period.

Failure to Maintain Accurate Payroll Records

Pursuant to Labor Code section 1174, subdivision (d), an employer is required to keep payroll records showing the hours worked daily and wages paid to employees. Plaintiff is informed and believes, and on that basis alleges, that Defendant failed to maintain payroll records in compliance with this statute.

Labor Code section 1174.5 provides that any employer who fails to maintain accurate payroll records required by section 1174, subdivision (d), "shall be subject to a civil penalty of five hundred dollars (\$500)."

Failure to Reimburse Necessary Business Expenses

Pursuant to Labor Code section 2802, an employee is entitled to be reimbursed by an employer for "all necessary expenditures or losses incurred by the employee in direct consequence of discharge of his or her duties." Defendant failed to reimburse Plaintiff for

necessary business expenses, including the electronic logging device required by Federal Motor Carrier Safety Administration (“FMCSA”).

As a result of these Labor Code violations, Defendant is liable for civil penalties. (Lab. Code § 2698, *et seq.*)

Penalties for Unpaid Wages

Pursuant to Labor Code section 558, subdivision (a), and employer who violates “any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty.” (Lab. Code § 558, subd. (a).)

An employer’s initial violation is subject to a “fifty dollar penalty (\$50) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.” (*Ibid.*) Thereafter, each subsequent violation is subject to a penalty of “one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid in addition to an amount sufficient to recover underpaid wages.” (*Ibid.*)

Here, when Defendant was fined by the FMCSA for failure to comply with logging regulations, he deducted the fine amounts from the independent contractors pay. Defendant is therefore liable for civil penalties under section 558, subdivision (a).

Unlawful Failure to Provide Uninterrupted Off-Duty Meal and Rest Periods

Plaintiff and similarly situated employees regularly worked in excess of five hours per day without being provided at least one half-hour meal period in which they were relieved of all duties. (Lab. Code §§ 226.7, 512; *see also* Industrial Welfare Commission Order No. 4-2001.) Plaintiff and similarly situated employees also regularly worked in excess of four hours without being provided at least a ten-minute rest period in which they were relieved of all their duties. (Lab. Code §§ 226.7, 512; *see also* Industrial Welfare Commission Order No. 4-2001.)

Throughout Plaintiff’s employment, he was not able to take uninterrupted off-duty meal and rest periods in accordance with Labor Code. Defendant did not maintain a policy that ensured Plaintiff received requisite meal and rest periods. Furthermore, Defendant caused Plaintiff to miss meal and rest periods and failed to pay him the premium compensation mandated by Labor Code section 226.7, subdivisions (b)-(c). As a result of these Labor Code violations, Defendant is liable for civil penalties. (Lab. Code § 2698, *et seq.*)

Conclusion

As described above, Defendant has violated numerous wage and hour provisions of the Labor Code. As a result, Defendant is liable to Plaintiff and other current and former employees



for civil penalties, attorney's fees, and costs, pursuant to Labor Code sections 201-204, 226, subdivision (a), 226.7, 512, 226.8, subdivision (a), 558, 2750.3, and 2802.

This letter shall serve as Plaintiff's notice pursuant to Labor Code section 2699.3 and we ask that LWDA conduct an investigation concerning the violations described herein. Alternatively, if LWDA does not intend to investigate these violations, we ask that it issue a notification letter to our office confirming the same so that we may proceed with our civil action asserting the PAGA claims described herein.

Please feel free to contact me if you have any questions or if you would like to discuss this matter further. Nothing in this letter is intended to be, or should be construed as, an admission against the interests of Plaintiff or other current or former employees of Defendant and shall not be construed as a waiver of their rights, remedies, claims, or defenses, all of which are expressly reserved.

Sincerely,

A handwritten signature in blue ink, appearing to read "Arash Sadat", with a long horizontal flourish extending to the right.

Arash Sadat