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9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **COUNTY OF LOS ANGELES**
12 **UNLIMITED JURISDICTION**

13 ESTEVAN ARNOLD, an individual,

14 Plaintiff,

15 v.

16 EDWIN TRUCKING, INC., a California
17 corporation; EDWIN BENITEZ, an
18 individual; and DOES 1-25, inclusive,

19 Defendants.

Case No. 20TRCV00191

FIRST AMENDED COMPLAINT FOR:
(1) FAILURE TO PROVIDE MEAL
PERIODS;
(2) FAILURE TO PROVIDE REST
PERIODS;
(3) FAILURE TO REIMBURSE;
(4) FAILURE TO PAY OVERTIME
WAGES;
(5) FAILURE TO PROVIDE ACCURATE
WAGE STATEMENTS;
(6) FAILURE TO PAY WAGES ON TIME,
WAITING TIME PENALTIES;
(7) FAILURE TO PROVIDE
EMPLOYMENT RECORDS;
(8) UNFAIR BUSINESS PRACTICES; and
(9) PENALTIES PURSUANT TO PAGA
(LABOR CODE §2699, et seq.)

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24 Plaintiff ESTEVAN ARNOLD alleges as and for cause of action against Defendants, and
25 each of them, as follows:

26 **PARTIES**

27 1. Plaintiff Estevan Arnold is an individual residing in Los Angeles County,
28 California.

2. Defendant Edwin Trucking, Inc. is a California corporation doing business in Los Angeles County, California.

3. Defendant Edwin Benitez is an individual who, on information and belief, resides in Los Angeles County, California. On information and belief, Mr. Benitez is the principal of Edwin Trucking, Inc., and is the individual primarily responsible for the conduct alleged herein.

4. Plaintiff is informed and believes and, based upon such information and belief, alleges that each of the Defendants designated as Does 1 through 25, inclusive, is contractually, intentionally, negligently, legally, or in some manner responsible for the events and occurrences more fully described below and which proximately caused injuries and/or damages to Plaintiff as alleged. Plaintiff is unaware of the true names and capacities of those Defendants sued herein as Does 1 through 25, inclusive, and therefore sues such Defendants by fictitious names. Plaintiff will seek leave to amend this Complaint to set forth the true names and capacities of those Defendants when they have been ascertained.

5. Plaintiff is informed and believes and, based on such information and belief, alleges that at all times mentioned each of the Defendants was the agent and/or employee of the remaining Defendants, and was at all times acting within the scope and purpose of this agency and/or employment and with the consent and permission of the remaining Defendants.

6. Plaintiff is further informed and believes and, based on such information and belief, alleges that at all times relevant hereto that each of the Defendants acted as agent or alter ego of or for the other Defendants such that each is liable for the wrongdoings described herein.

FACTS

7. Defendants Edwin Trucking, Inc. and Edwin Benitez (collectively, “ETI”) operate a trucking business in and around Torrance, California. On information and belief, ETI employs

1 more than twenty employees in California. Mr. Arnold was employed by ETI as a misclassified
2 independent contractor from approximately early-2018 to October 18, 2019. Throughout his
3 employment, Mr. Arnold and other employees were and are misclassified as independent
4 contractors, and treated as such, despite the fact that they legally were and are employees, and are
5 entitled to all the rights and protections of employees under California law.
6

7 8. Throughout his employment, Mr. Arnold and other employees were denied timely
8 and uninterrupted meal periods, including within the past year. Likewise, Mr. Arnold and other
9 employees were denied timely and uninterrupted rest periods, including within the past year.
10

11 9. Because ETI failed to provide timely meal and rest periods, it owes Mr. Arnold and
12 other employees one hour of compensation for each day worked without a timely meal period and
13 one hour of compensation for each day worked with a missed rest period. ETI failed to pay Mr.
14 Arnold and other employees those wages when they were due and failed to pay Mr. Arnold and
15 other employees those wages upon separation.
16

17 10. Mr. Arnold and other employees routinely worked in excess of eight hours a day
18 and/or forty hours a week for a daily flat rate of pay. Consequently, they were denied overtime
19 pay for hours worked in excess of eight hours a day, forty hours a week, and/or for the seventh
20 consecutive day of work.
21

22 11. Because they were misclassified as independent contractors, ETI failed to provide
23 Mr. Arnold and other employees with accurate, itemized wage statements as required by Labor
24 Code §226.
25

26 12. During the relevant time period, ETI required Mr. Arnold and other employees to
27 wear a uniform consisting of a shirt designated by ETI, and to purchase and use their own tools in
28 the course of their work, namely, to install and build furniture for customers. ETI failed to

1 compensate Mr. Arnold or the other employees for the expense of purchasing these uniforms and
2 tools, despite the fact that they were expenses incurred at the instruction of ETI and for the benefit
3 of ETI's business.

4
5 13. During the relevant time period, ETI failed to pay employees all wages owed at the
6 time of separation or within 72 hours of said members' resignation.

7 14. On January 10, 2020, Mr. Arnold requested his employment records pursuant to
8 Labor Code §§226, 247.5, 432, 1198.5, and all other applicable record keeping requirements of the
9 Labor Code. ETI failed to provide any records whatsoever.

10
11 **PAGA ALLEGATIONS**

12 15. Mr. Arnold brings his Ninth Cause of Action in a representative capacity on behalf
13 of the Labor & Workforce Development Agency and his fellow aggrieved employees under the
14 Private Attorney General Act ("PAGA"), and seeks to vindicate his rights under the Labor Code as
15 well as those of all other aggrieved current and former employees of Defendant.

16
17 16. The group of aggrieved employees consists of those employees of Defendant
18 working in California at any time since January 10, 2019, and through the date of entry of final
19 judgment in this matter.

20 17. Plaintiff sent the PAGA notice attached hereto as Exhibit A to Defendant on
21 January 10, 2019. Plaintiff alleges that by the conduct described herein, Defendant violated Labor
22 Code §§201, 202, 204, 226, 226.7, 226.8, 510, 512, 558, 2802, and IWC Wage Order No. 9-2001
23 (8 C.C.R. §11090), for which it is subject to civil penalties under PAGA.

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1 **FIRST CAUSE OF ACTION**

2 **(Failure to Provide Meal Periods;**

3 **Violation of Labor Code §§226.7, 512, I.W.C. Wage Order No. 5-2001)**

4 18. Plaintiff incorporates the allegations above as though they were fully set forth
5 herein.

6
7 19. Plaintiff often worked more than five hours in a workday without being provided a
8 30-minute, uninterrupted, off-duty meal period. When he did receive a meal period, Plaintiff was
9 generally considered “on-call” and often had to interrupt his meal period to return to work.

10 20. On these occasions, Defendants failed to pay Plaintiff one additional hour of pay at
11 his regular rate of compensation.
12

13 **SECOND CAUSE OF ACTION**

14 **(Failure to Provide Rest Periods;**

15 **Violation of Labor Code §§226.7, 512, I.W.C. Wage Order No. 5-2001)**

16 21. Plaintiff incorporates the allegations above as though they were fully set forth
17 herein.
18

19 22. Plaintiff typically worked more than three and one-half hours in a workday without
20 being authorized or permitted to take a paid rest break. When he did receive a rest period, Plaintiff
21 was generally considered “on-call” and when he was allowed a rest period he would often have to
22 interrupt it to return to work.

23 23. On these occasions, Defendants failed to pay Plaintiff one additional hour of pay at
24 his regular rate of compensation.
25

26 **THIRD CAUSE OF ACTION**

27 **(Failure to Reimburse Employment-Related Expenses; Violation of Labor Code §2802)**

28 24. Plaintiff incorporates the allegations above as though they were fully set forth

1 herein.

2 25. As set forth above, Defendants required Plaintiff and other employees to purchase
3 and wear a uniform consisting of a shirt designated by Defendants, and to purchase and use their
4 own tools in the course of their work, namely, to install and build furniture for customers.
5

6 26. Defendants failed to compensate Plaintiff or the other employees for the expense of
7 purchasing and maintaining these uniforms and tools, despite the fact that they were expenses
8 incurred at the instruction of Defendants and for the benefit of Defendant's business.
9

10 27. As a result, Plaintiff has been damaged in an amount equal to the cost of the items
11 comprising the uniform.

12 **FOURTH CAUSE OF ACTION**

13 **(Failure to Pay Overtime Wages;**

14 **Violation of Labor Code §§510, 1194, I.W.C. Wage Order No. 5)**

15 28. Plaintiff incorporates the allegations above as though they were fully set forth
16 herein.
17

18 29. As set forth above, Plaintiff regularly worked in excess of eight hours a day, forty
19 hours a week, and/or on the seventh consecutive day in a workweek for a daily flat rate of pay
20 without any overtime pay.
21

22 30. Defendants failed to pay Plaintiff for the overtime hours worked, and failed to pay
23 Plaintiff any overtime premiums for the overtime hours worked.

24 **FIFTH CAUSE OF ACTION**

25 **(Failure to Provide Accurate Wage Statements; Violation of Labor Code §226)**

26 31. Plaintiff incorporates the allegations above as though they were fully set forth
27 herein.
28

1 32. Defendants failed to furnish Plaintiff with an accurate itemized statement in writing
2 on the regular paydays showing gross wages earned, total hours worked, net wages earned, and all
3 applicable hourly rates of pay in effect during the pay period, and the corresponding number of
4 hours worked at each hourly rate.

5
6 33. Defendants knew that they were required by law to furnish accurate itemized
7 statements in writing and intentionally failed to furnish accurate statements to Plaintiff on the
8 regular paydays.

9
10 34. Plaintiff suffered injury from Defendants' failure to provide accurate itemized
11 statements in writing on the regular paydays. Plaintiff could not promptly and easily determine
12 the amount of gross or net wages earned, the total number of hours worked, or the applicable rates
13 in effect for the corresponding hours.

14 **SIXTH CAUSE OF ACTION**

15 **(Failure to Pay Wages on Time; Violation of Labor Code §§201-204)**

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17 35. Plaintiff incorporates the allegations above as though they were fully set forth
18 herein.

19 36. Defendants willfully failed to pay Plaintiff all wages owed both (1) at the time they
20 were due and (2) upon his termination from employment. To date, Defendants have not paid those
21 wages.

22 **SEVENTH CAUSE OF ACTION**

23 **(Failure to Provide Employment Records;**

24 **Violation of Labor Code §§226, 247.5, 432, and 1198.5)**

25
26 37. Plaintiff incorporates the allegations above as though they were fully set forth
27 herein.

28 38. On January 10, 2020, counsel for Plaintiff requested all his employment records

1 pursuant to Labor Code §§226, 247.5, 432, and 1198.5. Defendants failed to respond to that
2 request within the required timeframe or at all.

3 **EIGHTH CAUSE OF ACTION**

4 **(Unfair Business Practices, Violation of Bus. & Prof. Code §17200)**

5 39. Plaintiff incorporates the allegations above as though they were fully set forth
6 herein.

7
8 40. Defendants' conduct, as set forth above, violates the California Unfair Competition
9 Law, Bus. & Prof. Code §17200, *et seq.* ("UCL"). Defendants' conduct constitutes unlawful,
10 unfair, or fraudulent business acts or practices in that they willfully misclassify employees as
11 independent contractors, fail to pay employees for hours worked, fail to pay overtime wages, fail
12 to provide meal and rest breaks, fail to provide accurate wage statements, fail to reimburse
13 employees for work expenses, and the like.

14
15 41. As a result of Defendants' unlawful, unfair, and fraudulent conduct, Plaintiff has
16 suffered injury in fact.

17
18 42. Plaintiff is informed and believes, and on that basis alleges, that Defendants
19 continue to engage in the unlawful, unfair, and fraudulent practices as alleged herein, and that they
20 will continue to do so unless enjoined by this court.

21 43. Pursuant to Bus. & Prof. Code §17203, Plaintiff seeks declaratory and injunctive
22 relief for Defendants' unlawful, unfair, and fraudulent conduct, and to recover restitution.

23 **NINTH CAUSE OF ACTION**

24 **(Violations of the California Labor Code under the Private Attorneys General Act**

25 **(Lab. Code §2699, *et seq.*))**

26 44. Plaintiff incorporates the allegations above as though they were fully set forth
27
28

1 herein.

2 45. Plaintiff brings this cause of action in a representative capacity on behalf of the
3 Labor & Workforce Development Agency (“LWDA”) and his fellow aggrieved employees
4 pursuant to the California Private Attorneys General Act (Labor Code §2699, et seq.), and seeks to
5 vindicate his rights under the Labor Code as well as those of all other aggrieved current and
6 former employees of Defendant.
7

8 46. For purposes of this cause of action, the group of aggrieved employees consist of
9 those employees of ETI working in California (the “Representative Group”) at any time since
10 January 10, 2019, and through the date of entry of final judgment in this matter (the “Claim
11 Period”).
12

13 47. As set forth above, Defendants have violated Labor Code §§201, 202, 204, 226,
14 226.7, 226.8, 510, 512, 558, 2802, and IWC Wage Order No. 9-2001 (8 C.C.R. §11090) with
15 respect to Plaintiff and the Representative Group, who have been injured as a result of these
16 violations.
17

18 48. Plaintiff seeks to recover civil penalties for violations of the Labor Code committed
19 by Defendant against Plaintiff and all other aggrieved employees as set out in the PAGA notice
20 and amended PAGA notice documents submitted to the LWDA. A true and correct copy of the
21 PAGA notice is attached hereto as Exhibit A, and its contents are incorporated herein by reference
22 as though expressly set out herein.
23

24 49. For the violations of the Labor Code alleged, Plaintiff and other aggrieved
25 employees have no administrative remedies to exhaust.
26

27 50. Plaintiff has fully complied with notice requirements under PAGA by giving
28 written notice to both the LWDA and Defendant pursuant to Labor Code §2699.3(a)(1)(A), and by

1 paying the filing fee required by subsection (a)(1)(B) of the same.

2 51. Sixty-five calendar days have now passed since Plaintiff gave the LWDA notice of
3 their PAGA claims, and the LWDA has not responded or taken any position as to those claims.
4 Accordingly, Plaintiff now has the right to pursue those claims through a representative civil suit
5 pursuant to Labor Code §2699.3(a)(2)(A).
6

7 52. Plaintiff has been injured as a direct and proximate result of Defendant's violations
8 of the Labor Code as set out in Exhibit A.
9

10 53. Pursuant to Labor Code §2699(a) and (f), Plaintiff accordingly seek to recover civil
11 penalties against Defendant for the specified Labor Code violations against Plaintiff and all other
12 aggrieved employees.

13 54. In addition, Plaintiff seeks to recover their reasonable attorneys' fees and costs
14 pursuant to Labor Code §2699(g)(1).
15

16
17 WHEREFORE, Plaintiff prays for relief against Defendants as follows:

- 18 1. For damages according to proof at trial;
- 19 2. For unpaid wages owed;
- 20 3. For prejudgment interest on that amount at the legal rate;
- 21 4. For one additional hour of pay for each workday that Defendants failed to provide a
22 meal period pursuant to Labor Code Sec. 226.7;
- 23 5. For one additional hour of pay for each workday that Defendants failed to provide
24 rest periods pursuant to Labor Code Sec. 226.7;
- 25 6. For waiting time penalties pursuant to Labor Code §203;
- 26 7. For penalties pursuant to Labor Code §§226 and 1198.5;
- 27 8. For injunctive relief enjoining Defendants from continuing to engage in the
28 unlawful conduct described herein;

1 9. That Defendants be ordered to pay all civil penalties due to Plaintiff and the
2 Representative Group for Defendants' violations of the Labor Code as alleged, to be distributed to
3 the LWDA and the Representative Group as provided by Labor Code §§558 and 2699 and other
4 applicable law;

5 10. For costs of suit herein incurred, including attorneys' fees; and

6 11. For such further relief as the court deems just.
7
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9 DATED: March 20, 2020

AIMAN-SMITH & MARCY, P.C.

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12 _____
13 John A. Lofton, Esq.
14 Attorney for Plaintiff Estevan Arnold
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Exhibit A

January 10, 2020

Via Certified Mail

Edwin Trucking, Inc.
2810 Sonoma Street
Torrance, CA 90503

Edwin Benitez
2810 Sonoma Street
Torrance, CA 90503

Re: PAGA Notice Pursuant to Labor Code § 2699.3(a)(1) of Edwin Trucking, Inc.'s and Edwin Benitez's Violations of the California Labor Code

Dear Sirs or Madams:

Pursuant to California Labor Code §2699.3, Estevan Arnold hereby gives notice of violations of the following sections of the California Labor Code by Edwin Trucking, Inc.: §§201, 202, 204, 226, 226.7, 226.8, 510, 512, 558, 2802, and IWC Wage Order No. 9-2001 (8 C.C.R. §11090). Mr. Arnold is informed and believes that Edwin Benitez is an owner, director, officer, managing agent, and/or alter ego of Edwin Trucking, Inc. and was acting on behalf of Edwin Trucking, Inc. in causing the violations alleged herein within the meaning of Labor Code §558.1. Edwin Trucking, Inc. and Mr. Benitez are referred to collectively as "ETI." ETI's legal violations as described herein were and are knowing and intentional.

Mr. Arnold is an aggrieved employee of ETI as defined by California Labor Code §2699(c) because he was: (1) an employee of ETI within the past 12 months, (2) against whom ETI's violations of the California Labor Code as described herein were committed.

I. Facts and Theories Giving Rise to ETI's Violations of the California Labor Code

ETI operates a trucking business in and around Torrance, California. On information and belief, ETI employs more than twenty employees in California. Mr. Arnold was employed by ETI as a misclassified independent contractor from approximately early-2018 to October 18, 2019. Throughout his employment, Mr. Arnold and other employees were and are misclassified as independent contractors, and treated as such, despite the fact that they legally were and are employees, and are entitled to all the rights and protections of employees under California law.

Throughout his employment, Mr. Arnold and other employees were denied timely and uninterrupted meal periods, including within the past year. Likewise, Mr. Arnold and other employees were denied timely and uninterrupted rest periods, including within the past year.

Because ETI failed to provide timely meal and rest periods, it owes Mr. Arnold and other employees one hour of compensation for each day worked without a timely meal period and one hour of compensation for each day worked with a missed rest period. ETI failed to pay Mr. Arnold and other employees those wages when they were due and failed to pay Mr. Arnold and other employees those wages upon separation.

Mr. Arnold and other employees routinely worked in excess of eight hours a day and/or forty hours a week for a daily flat rate of pay. Consequently, they were denied overtime pay for hours worked in excess of eight hours a day, forty hours a week, and/or for the seventh consecutive day of work.

Because they were misclassified as independent contractors, ETI failed to provide Mr. Arnold and other employees with accurate, itemized wage statements as required by Labor Code §226.

During the relevant time period, ETI required Mr. Arnold and other employees to wear a uniform consisting of a shirt designated by ETI, and to purchase and use their own tools in the course of their work, namely, to install and build furniture for customers. ETI failed to compensate Mr. Arnold or the other employees for the expense of purchasing these uniforms and tools, despite the fact that they were expenses incurred at the instruction of ETI and for the benefit of ETI's business.

During the relevant time period, ETI failed to pay employees all wages owed at the time of separation or within 72 hours of said members' resignation.

II. Provisions of the California Labor Code Violated by ETI and Penalties Sought

As a result of ETI's violations of the California Labor Code, as alleged herein, Mr. Arnold is entitled to recover civil penalties pursuant to Labor Code §2699 *et seq.* on behalf of himself and all other former or current California employees of ETI who were subjected to its violations of the Labor Code as described herein.

For willfully misclassifying employees and/or engaging in a pattern and practice of misclassifying employees in violation of Labor Code §226.8, ETI is subject to civil penalties in the amount of \$5,000-\$25,000 for each violation.

For failing to provide meal periods in violation of Labor Code §§512, 558 and Industrial Welfare Commission Wage Order No. 9-2001 (8 C.C.R. §11090), ETI is subject to civil penalties in the amount of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation pursuant to Labor Code §2699(f).

For failing to provide one hour of pay to each employee who was not provided a timely meal period under Labor Code §§512, 558 and Industrial Welfare Commission Wage Order No. 9-2001 (8 C.C.R. §11090), in violation of Labor Code §226.7, ETI is subject to civil penalties in the amount of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation pursuant to Labor Code §2699(f).

For failing to provide rest periods in violation of Labor Code §558 and Industrial Welfare Commission Wage Order No. 9-2001 (8 C.C.R. §11090), ETI is subject to civil penalties in the amount of \$50 for each aggrieved employee per pay period for the initial violation and \$100 for each aggrieved employee per pay period for each subsequent violation pursuant to Labor Code §2699(f).

For failing to provide one hour of pay to each employee who was not provided a rest period under Labor Code §558 and Industrial Welfare Commission Wage Order No. 9-2001 (8 C.C.R. §11090), in violation of Labor Code §226.7, ETI is subject to civil penalties in the amount of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation pursuant to Labor Code §2699(f).

For failing to pay overtime wages in violation of Labor Code §§510, 558, and Industrial Welfare Commission Wage Order No. 9-2001 (8 C.C.R. §11090), ETI is subject to civil penalties in the amount of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation pursuant to Labor Code §2699(f).

For failing to reimburse employees for expenditures incurred by the employees at the instruction of ETI, in violation of Labor Code §2802, ETI is subject to civil penalties in the amount of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each aggrieved employee per pay period for each subsequent violation pursuant to Labor Code §2699(f).

For failing to pay all wages due at separation from employment in violation of Labor Code §§201 and 202, ETI is subject to civil penalties in the amount of \$100 for each aggrieved employee per pay period for the initial violation and \$200 for each

aggrieved employee per pay period for each subsequent violation pursuant to Labor Code §2699(f).

For failing to pay wages on time in violation of Labor Code §204, ETI is subject to civil penalties in the amount of \$100 for each failure to pay each employee for any initial violation, and for each subsequent violation, \$200 for each failure to pay each employee, plus twenty-five percent of the amount unlawfully withheld pursuant to Labor Code §210(a).

For failing to provide accurate, itemized wage statements in violation of Labor Code §226, ETI is subject to civil penalties in the amount of \$50 for the initial pay period in which the violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of \$4,000 pursuant to Labor Code 226(e).

Please note that further investigation may shed light upon additional violations beyond those contained herein, and Mr. Arnold reserves the right to file and serve a further amended notice should additional violations be discovered.

Sincerely,

AIMAN-SMITH MARCY
A PROFESSIONAL CORPORATION



John A. Lofton