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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES
UNLIMITED JURISDICTION

ESTEVAN ARNOLD, an individual,

Plaintiff,

v.

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

Defendants.

Case No. 20TRCV00191

Reservation ID: 511563982298

**Declaration of John A. Lofton in Support of
Plaintiff's Motion for Approval of
Settlement of Labor Code Section 2698, et
seq., Private Attorneys General Act
("PAGA") Claims**

Date: December 14, 2021
Time: 8:30 a.m.
Dept.: M
Judge: Hon. Deirdre Hill

Complaint Filed: February 27, 2020
Trial Date: None Set

I, John A. Lofton, declare as follows:

1. I am an attorney at law licensed to practice in the State of California and before this Court. I am of counsel at the law firm Aiman-Smith & Marcy, P.C. ("ASM"), counsel of record for Plaintiff Estevan Arnold, on behalf of the LWDA and Aggrieved Employees, in this action. The facts stated herein are true of my own personal knowledge. This declaration is provided in support of Plaintiff's Motion for Approval of Settlement of Labor Code Section 2698, et seq., Private Attorneys General Act ("PAGA") Claims.

Investigation, Mediation, and Settlement

2. Prior to filing the complaint, our office thoroughly investigated the facts and legal issues in this case. I met with and had multiple communications with Plaintiff Estevan Arnold, who provided valuable information about his experience and that of other employees.

3. On January 10, 2020, I filed Plaintiff's PAGA Notice with the Labor and Workforce Development Agency ("LWDA") and caused it to be served on Defendants Edwin Trucking, Inc. and Edwin Benitez. A true and correct copy of the PAGA Notice is attached hereto as Exhibit A.

4. The Parties exchanged discovery, with Defendants providing time and pay records for its employees for the relevant time period. Defendants also provided financial records in the form of tax returns and bank statements for several years for each Defendant. This information, along with the independent investigation conducted by Plaintiff's counsel, was sufficient for Plaintiff to assess the strengths and weaknesses of the case, to perform a thorough damages analysis, and to assess the likely amount Defendants could pay while still avoiding insolvency.

5. During the course of litigation, mediation, and settlement negotiations, the Parties exchanged information and documents that allowed all sides to analyze the risks and benefits of litigation and potential damages exposure, which included but was not limited to, the following:

- interviewing Plaintiff Estevan Arnold at length on repeated occasions;
- researching applicable laws;
- preparing and responding to formal discovery requests;
- ongoing meet and confer efforts with defense counsel;
- drafting pleadings;
- reviewing employment policies, timekeeping records, payroll documents, and other data;
- preparing a detailed mediation brief;
- attending a full-day mediation;
- preparing and negotiating the terms of the Memorandum of Understanding;

- preparing the terms of the PAGA Notice;
- preparing and negotiating about the terms of the Settlement Agreement; and
- preparing Plaintiff's Motion for Approval of PAGA Settlement and supporting documents.

6. On March 10, 2021, the parties attended a Zoom mediation before Jaime Wrage, Esq. and engaged in arm's-length negotiations. After a full day of negotiations, the parties agreed to a non-reversionary settlement of the PAGA claims in the amount of fifty thousand dollars (\$50,000). At the same time, Plaintiff also settled his individual claims for \$50,000, which represents a compromise from his estimate of \$94,254 in actual damages.

7. The parties entered into a Memorandum of Understanding at the mediation. Following mediation, counsel for the parties engaged in lengthy negotiations to finalize a long form settlement agreement, which was fully and finally signed on June 7, 2021. A true and correct copy of the Settlement Agreement is attached hereto as Exhibit B.

8. My office is serving a copy of the Settlement Agreement and Plaintiff's Motion for Approval of Settlement on the LWDA, concurrently with the court filing, on November 10, 2021.

9. The Settlement was reached only after arm's length and good faith negotiations. The mediator, Jaime Wrage, Esq. is highly regarded and has extensive experience in the mediation of employment disputes. Counsel and the parties attended a full-day mediation on March 10, 2021. Both parties provided detailed mediation briefs and our office prepared an extensive analysis of the potential exposure. The parties engaged in a significant exchange of data and had sufficient information to evaluate the strengths and weaknesses of the claims and defenses, whether to pursue litigation or settle, and the appropriate settlement value of the claims. Despite zealous advocacy from both sides, the risks of continued litigation had to be considered and a compromise of the claims was settled upon. Based on my review of Defendants' tax returns, bank statements, and my own inquiry, I determined that Defendants were in a bleak financial situation and were unlikely to be able to pay a significant settlement or judgment.

1 10. Under the PAGA, for the failure to provide meal periods, a maximum penalty of
2 \$100 per pay period is assessed for initial violations and \$200 for subsequent violations. Here,
3 because Defendant has not been previously penalized for the violations set forth in Plaintiff's
4 PAGA charge, only the initial \$100 amount per pay period would likely be awarded. Per the data
5 provided by Defendant, there were 600 pay periods during the PAGA Period. At \$100 per each of
6 the 600 pay periods, this is a maximum exposure at trial of \$60,000.00.

7 11. Rest period violations carry a smaller penalty of \$50 per pay period for initial
8 violations and \$100 per pay period for subsequent violations. If the rest period violations could be
9 proved at the same rate as the meal period violations, the maximum exposure at trial would likely
10 be \$30,000.00.

11 12. The misclassification claims carry potential penalties of \$5,000-\$15,000 per
12 violation, or \$10,000-\$25,000 per violation if the employer is engaged in a pattern and practice of
13 misclassification, so the range of potential penalties for misclassification would be \$105,000-
14 \$525,000. The additional Labor Code violations each carried penalties of \$50-\$100 per employee
15 per pay period, with a total likely exposure in excess of \$400,000.00.

16 13. Here, the settlement for \$123,000.00, is approximately 25% of the potential
17 maximum exposure at trial. This is an excellent result given (1) the fact that Defendant is a
18 restaurant that has been closed since March 2020 and has an uncertain future due to the pandemic,
19 and (2) the Court's discretion to reduce the penalty award in light of Defendant's defenses.

20 14. Plaintiff's counsel believe that this settlement is fair, reasonable, and adequate and
21 in the best interest of the LWDA and Aggrieved Employees.

22
23 **PAGA Representative Incentive Award**

24 15. Mr. Arnold spent a significant amount of time helping me, and my firm, with the
25 prosecution of this action and performing the following tasks: (1) meeting with and
26 communicating with his attorneys on numerous occasions; (2) detailing his experiences and
27 producing copies of documents; (3) contacting witnesses who also provided valuable discovery to
28 the attorneys; (4) assisting in preparing the complaint; (5) responding to formal discovery; (6)

1 reviewing the mediation documents prepared; (7) attending the mediation; and (8) reviewing the
2 terms of and signing the Settlement Agreement.

3 16. Mr. Arnold also faced great risk in challenging Defendants' employment policies
4 and bringing suit against his former employer, not least because Mr. Arnold faced potential
5 liability for Defendants' costs if Defendants prevailed.

6 17. Additionally, the notoriety of being a PAGA or class action representative is even
7 more significant today given the accessibility of court documents on-line and PAGA/class action
8 blogs. Further, employers frequently perform background checks of applicants and the fact that an
9 individual has sued a former employer in a representative action will likely be viewed negatively.
10 Thus, the incentive award is necessary to award Mr. Arnold for the notoriety and risk taken in his
11 role as a PAGA representative.
12

13 **Attorneys' Fees and Costs**

14 18. Plaintiff seeks approval of attorney's fees, as part of this Settlement, of 33.33% of
15 the Gross Settlement Amount, in the amount of sixteen thousand six hundred sixty-five
16 (\$16,665.00), in consideration of the time, effort, and expertise Plaintiff's Counsel expended on a
17 contingent basis for the benefit of the LWDA and Aggrieved Employees.

18 19. Plaintiff's Counsel are experienced in civil litigation and representative actions.
19 My firm substantially concentrates its practice in the prosecution of representative actions and we
20 have successfully served as class counsel and PAGA counsel in prosecuting dozens of complex
21 actions against major corporations, including taking cases to judgment and to appeal. We have
22 recovered tens of millions of dollars in benefits for individuals across the country. Two of our
23 recent class action appellate opinions are Bradley v. Networkers International LLC, 211
24 Cal.App.4th 1129 (2012), and Benton v. Telecom Network Specialists, Inc., 220 Cal.App.4th 701
25 (2013), which have been cited in case law more than one hundred times. A true and correct copy
26 of the firm résumé of ASM is attached hereto as Exhibit C.

27 20. From the outset of the case to the present, prosecution of this action has involved
28 significant financial risk for Plaintiff's Counsel. We undertook this matter solely on a contingent

1 basis, with no guarantee of recovery, and have placed our own resources at risk to prosecute this
2 action with no guarantee of success.

3 21. If Defendants prevailed on any one of the affirmative defenses raised, it could
4 substantially reduce, if not wholly defeat, recovery. Despite such challenges, Plaintiff's Counsel
5 were able to persuade Defendants that it faced sufficient exposure such that Defendants were
6 willing to settle Plaintiff's claims brought on behalf of the LWDA.

7 22. The quality of opposing counsel is also important to evaluating the quality of the
8 work done by Plaintiff's Counsel. Here, Matthew Knez of the Knez Law Group, LLP, an
9 experienced employment law litigator, represented Defendants. Thus, the complexity and
10 potential duration of the case, and that in the face of experienced and resourceful opposition,
11 weigh in favor of awarding the requested attorney's fees.

12 23. The results achieved by the Settlement support Plaintiff's Counsel's request for
13 attorney's fees. The Settlement will result in payment of \$18,178.70 to the LWDA and \$6,059.57
14 to Aggrieved Employees. This is a significant sum of money in light of Defendants' bleak
15 financial circumstances.

16 24. The efficiency with which this litigation was conducted and resolved should also be
17 rewarded. The LWDA and Aggrieved Employees will directly benefit from the prompt and fair
18 resolution of their claims. They will be receiving a significant award in a short period of time as
19 opposed to waiting years to recover some undetermined amount if they succeeded at trial, which is
20 an uncertainty in itself.

21 25. As California law recognizes, Plaintiff's Counsel's commitment to this litigation
22 should not be assessed in a vacuum. A relevant factor in determining attorney's fees is whether
23 the litigation required Plaintiff's Counsel to forego other employment. Here, there was additional
24 work that was available to my firm that we had to forgo to devote the time necessary to pursue this
25 litigation.

26 26. Accordingly, attorney's fees in the amount of sixteen thousand six hundred sixty-
27 five dollars (\$16,665.00), which is approximately one-third the Gross Settlement Amount is fair
28

1 and reasonable under the circumstances, and under California precedent. For the purposes of a
2 lodestar cross-check, I have spent approximately 47.8 hours working on this matter, at my regular
3 hourly rate of \$650, for a total of \$31,070.00.

4 27. Plaintiff's Counsel's litigation costs were all reasonable and necessary expenses in
5 litigating and resolving this action. A true and correct copy of the itemized list of costs, in the
6 amount of \$3,193.45 is attached hereto as Exhibit D. An apportionment of 50% of those costs to
7 Plaintiff's PAGA claims and 50% to his individual claims is a fair and accurate approximation of
8 the division of costs in this matter.

9
10 **Settlement Administrator**

11 28. The Settlement Administrator will pay out of the Gross Settlement Amount to itself
12 its reasonable fees and expenses, not to exceed \$2,500.00, after such payment has been approved
13 by the Court. Atticus Administration is a well-known and respected Settlement Administrator. A
14 true and correct copy of the quote from Atticus Administration for \$2,500.00 is attached hereto as
15 Exhibit E. I have used Atticus Administration in other matters, and knows its rates to be fair and
16 competitive.

17
18 I declare under penalty of perjury under the laws of the State of California that the
19 foregoing is true and correct. This Declaration was executed on November 10, 2021 at Oakland,
20 California.

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22 _____
23 John A. Lofton
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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

Exhibit B

PAGA SETTLEMENT AND RELEASE

This PAGA Settlement and Release is made and entered into by and between Plaintiff Estevan Arnold (“Plaintiff”), an individual, on behalf of the State of California, as a private attorney general, and Defendants Edwin Benitez and Edwin Trucking, Inc. (“Employer”). Employee and Employer are referred to collectively as the “Parties” and individually as a “Party.”

I. REPRESENTATIONS AND DEFINITIONS

1. “Aggrieved Employees” or singularly “Aggrieved Employee” shall mean and refer to: Plaintiff and all persons who are employed or have been employed by Defendants but misclassified as independent contractors, in the State of California and who have worked for Defendants one or more pay periods between January 10, 2019 and the present.
2. “Court” refers to the Los Angeles County Superior Court.
3. “Settlement Administrator” shall mean and refer to Atticus Administration.
4. “Covered Claims” shall mean and refer to: any and all claims, demands, rights, liabilities, and/or causes of action for PAGA penalties pursuant to California Labor Code Section 2698, *et seq.*, for violation of California Labor Code sections 201, 202, 204, 226, 226.7, 226.8, 510, 512, 558, 2802, and IWC Wage Order No. 9-2001 (8 C.C.R. §11090), and any claims that could have been brought based on the facts asserted in the Complaint.
5. “Covered Period” shall mean and refer to the period from January 10, 2019 to the present.
6. “Eligible Pay Periods” shall mean and refer to the total number of pay periods that each Aggrieved Employee worked during the Covered Period.
7. “Effective Date” will be the date the Court has signed and entered an Order approving this Settlement or the final judgment, whichever is sooner.
8. “Lawsuit” refers to the civil action filed in the Superior Court of the State of California for the County of Los Angeles, entitled Arnold v. Edwin Trucking, Inc., Case No. 20TRCV00191 filed March 3, 2020.
9. “Complaint” refers to the operative civil complaint in the Lawsuit, the First Amended Complaint filed March 20, 2020.
10. “LWDA” refers to the California Labor and Workforce Development Agency.

11. "PAGA" refers to the Private Attorneys General Act of 2004, codified at Labor Code §2698, et seq.
12. "PAGA Counsel" shall refer to John Lofton of Aiman-Smith & Marcy, P.C.
13. "Counsel for Defendants" shall refer to Matthew J. Knez of Knez Law Group, LLP.
14. "Plaintiff" refers to Named Plaintiff Estevan Arnold.
15. "Defendants" shall mean and refer to Edwin Trucking, Inc. and Edwin Benitez.
16. "Parties" shall collectively refer to Plaintiff and Defendants.
17. "Settlement" or "Settlement Agreement" shall mean the terms and conditions as set forth in this PAGA Settlement and Release agreement.

II. NATURE OF ACTION

18. On January 10, 2020, Plaintiff sent a letter to the Labor and Workforce Development Agency ("LWDA") and Defendants giving notice of his intent to pursue a representative action pursuant to PAGA on behalf of himself and the State of California as well as on behalf of a proposed group of aggrieved employees.

19. On March 3, 2020, Plaintiff filed his complaint in this matter, and on March 20, 2020, Plaintiff filed his First Amended Complaint containing PAGA allegations on behalf of all Aggrieved Employees of Defendant.

20. Plaintiff asserted individual claims as well as penalties pursuant to Labor Code §2698, *et seq.*, for violations of Labor Code §§201, 202, 204, 226, 226.7, 226.8, 512, 558, 2802, and IWC Wage Order No. 9-2001 (8 C.C.R. §11090).

21. Plaintiff alleges that Defendants' policies and practices resulted in misclassification of Plaintiff and Aggrieved Employees, and failure to provide Plaintiff and the Aggrieved Employees with all wages owed, compliant wage statements, meal and rest periods, uniform reimbursements, and the like. Plaintiff alleges that this underlying conduct gives rise to a claim pursuant to Labor Code §2698, *et seq.*

22. After the matter was at issue, the Parties engaged in an informal exchange of information to understand the nature of the allegations and the scope of potential liability.

23. Thereafter, the Parties engaged in arms-length settlement discussions. Through the exchange of information and attendant discussions between the Parties, Plaintiff learned that the number of Aggrieved

Employees is approximately 21 (including Plaintiff), and there are approximately 600 pay periods at issue during the Covered Period.

24. PAGA Counsel considered the following facts and arguments in determining that the Settlement was fair and reasonable: Plaintiff believed that Defendants may persuasively argue that the Court should exercise its discretion to significantly reduce any penalties under PAGA. In accordance with PAGA, the court in a PAGA action has the same discretion “to assess a civil penalty” that the Labor Commissioner would have, as well as complete discretion to “award a lesser amount than the maximum civil penalty amount specified [by PAGA] if, based on the facts and circumstances of the particular case, to do otherwise would result in an award that is unjust, arbitrary and oppressive, or confiscatory.” (Labor Code § 2699(e)(1) and (e)(2)). PAGA Counsel anticipated that, at trial, Counsel for Defendants could make a potentially persuasive argument that: (1) any misclassification was inadvertent and/or not a misclassification under the FAAAA, and that California’s AB5 regarding classification is preempted by federal law, and therefore all the alleged violations flowing from the misclassification are moot; (2) any errors on Defendants’ itemized wage statements were not intentional and only the result of oversight or mistake; (3) until this lawsuit was filed, no employees had complained about the matters alleged in the Complaint; (4) Defendants’ employees were authorized and permitted to take compliant meal and rest periods; and (5) Defendants are no longer in the business of employing truck drivers. All of which, Counsel for Defendants would argue, should mitigate in favor of significantly reducing any PAGA penalties. While Plaintiff disagrees that this analysis is legally correct or persuasive, PAGA Counsel had to consider the foregoing facts and arguments and how they might impact any judgment ultimately awarded to Aggrieved Employees if the Court were persuaded by them. Additionally, Defendants are a business that is struggling during this time of coronavirus, and have presented persuasive evidence of their inability to pay a substantial judgment.

25. In light of all these significant risks and given that PAGA gives the Court broad discretion to reduce any penalties ultimately awarded, PAGA Counsel determined that the Settlement described herein was fair and reasonable.

26. Defendants deny any liability or wrongdoing of any kind associated with the claims alleged in the Lawsuit and further deny that this action is appropriate for representative treatment for any purpose other

than settling this Lawsuit. Defendants contend, among other things, that they have complied at all times with the California Labor Code, the related California Wage Orders, and the California Business & Professions Code, all other state and federal wage laws, and further contend that all of their respective employees were and are classified and paid properly and that the Lawsuit is without merit.

27. Neither the existence of this Settlement nor anything contained in this Settlement shall be construed or deemed as an admission of liability, culpability, negligence, or wrongdoing on the part of Defendants. Nothing herein shall constitute an admission by Defendants that the Lawsuit was properly brought as a class or representative action other than for settlement purposes. Settlement of the Lawsuit, the negotiation and execution of this Settlement, and all acts performed or documents executed pursuant to or in furtherance of this Settlement or the settlement of the Lawsuit: (a) are not, shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of Defendants or of the truth of any of the factual allegations in the operative Complaint in the Lawsuit; (b) are not, shall not be deemed to be, and may not be used as, an admission or evidence of any fault or omissions on the part of Defendants in any civil, criminal, or administrative proceeding in any court, administrative agency or other tribunal; (c) are not, shall not be deemed to be, and may not be used as, an admission or evidence of the appropriateness of these or similar claims for representative treatment, class certification or administration other than for purposes of administering this Settlement; and (d) shall not constitute or be deemed a waiver of Defendants' right to compel arbitration of any dispute with Aggrieved Employees that is not the subject of the releases in the Settlement.

28. The Parties recognize that the issues presented in the Lawsuit are likely only to be resolved with extensive and costly pretrial and trial proceedings, and that further litigation will cause inconvenience, distraction, disruption, delay and expense disproportionate to the potential benefits of litigation. The Parties have taken into account the risk and uncertainty of the outcome inherent in any litigation.

29. Plaintiff and PAGA Counsel have diligently pursued an investigation of the Aggrieved Employees' claims against Defendants.

30. Based on their own independent investigations and evaluations, the Parties and their respective counsel are of the opinion that the Settlement for the consideration and on the terms set forth in this Settlement is fair, reasonable, adequate, and is in the best interests of Plaintiff, the Aggrieved Employees, and Defendants

in light of all known facts and circumstances and the risks inherent in litigation, including the potential appellate issues. Further, PAGA Counsel believes that the settlement amount entered into is in the best interests of the Aggrieved Employees and that the settlement for each Aggrieved Employee is fair, reasonable, and adequate given the inherent risk of litigation.

III. TERMS OF SETTLEMENT

31. In consideration of the mutual covenants, promises and representations set forth in this Settlement, Plaintiff, on behalf of himself, the State of California, and Defendants agree to settle and compromise the Lawsuit and the Covered Claims.

A. The Amount of Settlement

32. As consideration for the settlement described herein and the release contained in this Settlement, Defendants agrees to pay a total settlement of \$50,000.00 (“Settlement Amount”). The Settlement Amount will include:

- a) \$5,000.00 litigation enhancement to Plaintiff; and
- b) Claims administration costs not to exceed \$2,000.00; and
- c) PAGA Counsel will request Court approval of a 33.33% fee in the amount of \$16,665.00 and cost reimbursement of up to \$3,000.00; and
- d) The remaining balance of at least \$23,335.00 allocated as “PAGA Penalties” to be split between the LWDA and the Aggrieved Employees as required by Labor Code §2699(i) with at least \$17,501.25 (75%) going to the LWDA and at least \$5,833.75 (25%) going to the Aggrieved Employees.

B. Timing of Payment

33. Defendants shall pay \$50,000 within thirty days of the Effective Date.

C. Allocation and Calculation of the PAGA Penalties

34. Each Aggrieved Employee shall receive a portion of the Settlement Payment on a pro-rata basis. The actual amount paid will be calculated through a two-step process. First, 75% of the at least \$23,335.00 allocated as “PAGA Penalties” will be paid to the LWDA as is required by PAGA. Second, the remaining 25% of the at least \$23,335.00 allocated as “PAGA Penalties” shall be divided by the total number of Eligible Pay

Periods paid by Defendants to all Aggrieved Employees during the Covered Period (the “Pay Period Amount”) and then the Pay Period Amount will be multiplied by the number of Eligible Pay Periods worked by the individual Aggrieved Employee as determined by the Settlement Administrator. The resulting number is the “Individual PAGA Payment.” The Settlement Administrator shall send a check to each respective Aggrieved Employee for that Aggrieved Employee’s Individual PAGA Payment (“Individual Settlement Check”).

D. PAGA Counsel’s Fees and Costs.

35. As part of the request for approval of this Settlement, PAGA Counsel will request Court approval of 33.33% of Plaintiff’s representative and individual payments, which is \$16,665.00 and cost reimbursement of already-incurred costs of up to \$3,000.00. Any attorneys’ fees and costs awarded to PAGA Counsel, hereinafter referred to as “PAGA Counsel Fees & Costs,” shall fully compensate and reimburse PAGA Counsel for any and all of the work already performed in connection with the Lawsuit and all work remaining to be performed in fully and finally resolving the Lawsuit. Defendants will not object to PAGA Counsel’s request for fees and costs.

36. Should PAGA Counsel request a lesser amount for attorneys’ fees or costs and/or the Court approve a lesser amount, the difference shall be divided among the LWDA and participating Aggrieved Employees pursuant to the allocation described above.

37. Payment of PAGA Counsel Fees & Costs will be reflected in a Form 1099 to PAGA Counsel who shall assume full responsibility and liability for the payment of taxes due on such payments.

E. Tax Treatment of Individual Settlement Checks to Aggrieved Employees.

38. The Parties agree that Individual Settlement Checks sent to Aggrieved Employees will be characterized 100% as penalties and Form 1099s will be issued. Nothing in this Settlement is intended to constitute legal advice regarding federal, state and/or local tax obligations. Plaintiff acknowledges that he has obtained no tax advice from Defendants and that neither Defendants nor Counsel for Defendants have made any representation concerning the tax consequences, if any, of the Settlement Amount in this Agreement. To the extent that this Settlement or any of its attachments is interpreted to contain or constitute advice regarding any U.S. or Federal tax issue, such advice is not intended or written to be used, and cannot be used, by any person for the purpose of avoiding penalties under the Internal Revenue Code. Defendants are not responsible

for any employee tax obligations regarding the allocation of the settlement payments.

39. The Settlement Payment and any Individual Settlement Check paid to Plaintiff and the Aggrieved Employees pursuant to this Settlement is not intended to count as earnings by Plaintiff or the Aggrieved Employees.

IV. RELEASE

40. Upon the final approval by the Court of this Settlement, Plaintiff, on behalf of himself and the LWDA, shall, for the Covered Period, fully release and forever discharge Defendants and their respective present and former officers, directors, employees, shareholders, agents, trustees, representatives, attorneys, insurers, parent companies, subsidiaries, divisions, affiliates, predecessors, successors, assigns, including and any individual or entity that could be jointly liable with Defendants (the foregoing are collectively referred to hereafter as the "Releasees") from the Covered Claims.

41. In addition, Plaintiff expressly waives the rights provided under California Civil Code Section 1542, which states that:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

42. Plaintiff understands the significance and consequences of a California Civil Code Section 1542 waiver, and understands that he hereby waives all claims, known or unknown, suspected or unsuspected against Defendants.

43. Nothing contained in this Agreement shall be deemed a release or waiver by Plaintiff of claims Plaintiff may have against any Releasees for: (a) unemployment, disability and paid family leave insurance benefits pursuant to the terms of applicable California law; (b) workers' compensation insurance injury or pay benefits pursuant to Division 4 of the California Labor Code, under the terms of any worker's compensation insurance policy or fund of the Plaintiff; and (c) any claims that, under applicable federal, state or local law, are not waivable.

44. Notwithstanding any other provision of this agreement, the releases set forth in paragraphs 39-42 are expressly conditioned on Defendants' performance of that certain Confidential Settlement Agreement

and Release of All Claims, negotiated concurrently herewith, pursuant to which Plaintiff releases his individual, non-PAGA claims against Defendants and receives compensation therefor. Likewise, Plaintiff's release of his individual, non-PAGA claims against Defendants is expressly conditioned on Court approval of this Settlement.

V. DUTIES OF THE PARTIES PRIOR TO COURT APPROVAL

45. The Parties recognize in accordance with Labor Code §2699(1)(2) that Court approval is required in the event of any settlement of a PAGA action ["The superior court shall review and approve any settlement of any civil action filed pursuant to this part."]. However, as explained in *Arias v. Superior Court* (2009) 46 Cal.4th 969, the Parties are not obligated to follow the class action procedural rules in PAGA cases and therefore need not obtain approval of the PAGA settlement thorough a motion for primary or final approval. Instead, in order to comply with the requirements of Labor Code §2699, promptly upon execution of this Settlement, Plaintiff will submit a noticed motion to the Court identifying the key terms of the Settlement and requesting that the Court approve the PAGA Penalties provided for in this Settlement Agreement ("Approval Motion"). Plaintiff shall concurrently apply to the Court for the entry of an order approving the PAGA Penalties provided for in this Settlement in the amount of \$50,000.00.

46. At the same time Plaintiff submits the Approval Motion to the Court, he shall also submit a copy of the Approval Motion to the LWDA.

47. If the Court should fail to approve the Settlement as agreed upon by the Parties, the Parties shall coordinate efforts to address the Court's questions or concerns and resubmit the noticed motion if and as required by the Court. If, after the Parties coordinate their efforts to make a second attempt to obtain approval of the terms of the Settlement, unless the Parties specifically agree to continue with their coordinated efforts to obtain Court approval, (a) the Court fails to approve this Settlement in the form agreed to by the Parties (except for the amount of attorneys' fees or costs requested), or (b) the Court's approval of this Settlement is reversed, modified, or declared or rendered void, then (i) this Settlement shall be considered null and void; (ii) neither this Settlement nor any of the related negotiations or proceedings shall be of any force or effect; and (iii) all Parties to this Settlement shall stand in the same position, without prejudice, as if the Settlement had been neither entered into nor filed with the Court. Invalidation of any material portion of this Settlement, except for the amount of attorneys' fees and costs, shall invalidate this Settlement in its entirety unless the Parties shall

subsequently mutually agree in writing that the remaining provisions shall remain in full force and effect.

VI. DUTIES AFTER COURT APPROVAL AND ADMINISTRATION OF THE SETTLEMENT

48. Within fourteen (14) calendar days after the Effective Date, Defendants will compile and send a list of all Aggrieved Employees to the Settlement Administrator containing: (1) name; (2) last known home address and telephone number; (3) number of pay periods as an Aggrieved Employee during the Covered Period; and (4) last four digits of social security number ("Group List"). The format and transmittal of the list shall be in Excel format and determined by the requirements of the Settlement Administrator.

49. Within thirty (30) calendar days after the Effective Date, Defendants shall transmit \$50,000 to the Settlement Administrator. Upon receipt of the entire Settlement Payment, the Settlement Administrator shall release the PAGA Counsel Fees & Costs to PAGA Counsel.

50. Within three (3) calendar days of receipt of the Group List, the Settlement Administrator shall send an email to the Parties confirming receipt of the Group List and indicating the number of Aggrieved Employees and the number of Eligible Pay Periods included in the data.

51. Within thirty (30) calendar days after the Effective Date, the Settlement Administrator shall run all the addresses provided in the Group List through the United States Postal Service NCOA database (which provides updated addresses for any individual who has moved in the previous four years who has notified the U.S. Postal Service of a forwarding address) to obtain current address information.

52. Within thirty (30) calendar days after the receipt of the entire Settlement Payment, the Settlement Administrator shall mail via U.S. First Class mail each Individual Settlement Check to the last known address with directions to the Postmaster to forward the payment checks and return all undeliverable payment checks to the Settlement Administrator. It will be conclusively presumed that an Aggrieved Employee's Individual Settlement Check was received if the payment check has not been returned within thirty (30) days of the original mailing of the payment check. The date of the initial mailing of the payment check, shall be conclusively determined according to the records of the Settlement Administrator.

53. Settlement checks shall remain valid and negotiable for one hundred twenty (120) calendar days from the date of their issuance. After those 120 days have passed, the Settlement Administrator shall pay any remaining funds to the LWDA, including the amounts of any uncashed checks.

VII. BEST EFFORTS

54. The Parties agree to use their best efforts to carry out the terms of this Settlement.

VIII. PARTIES' AUTHORITY

55. The signatories hereto hereby represent that they are fully authorized to enter into this Settlement and bind the Parties hereto to the terms and conditions hereof.

IX. MUTUAL FULL COOPERATION

56. The Parties agree to fully cooperate with each other to accomplish the terms of this Settlement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Settlement. The Parties to this Settlement shall use their best efforts, including all efforts contemplated by this Settlement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Settlement and the terms set forth herein. As soon as practicable after execution of this Settlement, PAGA Counsel shall, with the assistance and cooperation of Defendants and its counsel, take all necessary steps to secure the approval of this Settlement from the Court.

X. NO PRIOR ASSIGNMENTS

57. The Parties hereto represent, covenant, and warrant that they have not directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights herein released and discharged except as set forth herein.

XI. NO ADMISSION

58. Nothing contained herein nor is the consummation of this Settlement to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendants or any of the Releasees. Each of the Parties hereto has entered into this Settlement with the intention to avoid further disputes and litigation with the attendant inconvenience and expenses.

XII. NON-EVIDENTIARY USE

59. Whether or not the Effective Date occurs, neither this Agreement nor any of its terms nor the Settlement itself shall be: (a) construed as, offered, or admitted in evidence as, received as, or deemed to be evidence for any purpose adverse to Defendants, including but not limited to, evidence of a presumption,

concession, indication, or admission by any of the Released Parties of any liability, fault, wrongdoing, omission, concession, or damage, or (b) disclosed, referred to, or offered in evidence against any of the Released Parties in any further proceeding in the Lawsuit, or any other civil, criminal, or administrative action or proceeding except for the purposes of effectuating the Settlement pursuant to this Agreement or for Defendants to establish that an Aggrieved Employee has resolved any of his/her claims released through this Agreement.

XIII. NULLIFICATION

60. If (a) the Court should for any reason fail to approve this Settlement in the form agreed to by the Parties (except for the amount of attorneys' fees or costs), or (b) the Court's approval of this Settlement is reversed, modified, or declared or rendered void, then (i) this Agreement shall be considered null and void; (ii) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect; and (iii) all Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court. Invalidation of any material portion of this Agreement, except for the amount of attorneys' fees and costs, shall invalidate this Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

XIV. ATTORNEYS' FEES, COSTS AND EXPENSES

61. Except as specifically set forth herein, each party shall bear its/his/her own attorneys' fees, costs and expenses, taxable or otherwise, incurred by him/her/it/them arising out of the Lawsuit, and shall not seek reimbursement thereof from any other party to this Settlement.

XV. CONSTRUCTION

62. The Parties hereto agree that the terms and conditions of this Settlement are the result of lengthy, intensive arm's-length negotiations between the Parties and that this Agreement constitutes the entire agreement between Plaintiff and Defendants regarding actual or potential claims asserted by Plaintiff against Releasees. Excluding any Arbitration or Confidentiality Agreement executed by Plaintiff with Defendants, both of which will remain in full force and effect, this Agreement supersedes all prior agreements, written or oral, between or among the Parties regarding those claims or potential claims and the resolution of those claims, no other agreement, statement, or promise made by one Party to another as to any matter addressed in this Agreement shall be binding or valid.

XVI. CAPTIONS AND INTERPRETATIONS

63. Paragraph titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Settlement or any provision hereof. Each term of this Settlement is contractual and not merely a recital.

XVII. MODIFICATION

64. This Settlement may not be changed, altered, or modified, except in writing and signed by the Parties hereto, and approved by the Court. This Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by the Parties hereto.

XVIII. MISCELLANEOUS

65. This Settlement contains the entire agreement between the Parties relating to the Settlement of the Covered Claims and Plaintiff's released claims, and all prior or contemporaneous agreements, understandings, representations, and statements, whether oral or written and whether by a party or such Party's legal counsel, are merged herein. No rights hereunder may be waived except in writing.

66. This Settlement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

67. This Settlement may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one Settlement, which shall be binding upon and effective as to all Parties. The counterparts may be transmitted electronically (PDF) or by facsimile.

68. Upon full execution of this Agreement, the Parties agree that based upon Code of Civil Procedure §583.310 ("the 5 year rule"), the Lawsuit shall be stayed in its entirety except for the submission of documents needed to obtain approval of the PAGA Penalties provided for in this Settlement. Should the Court fail to grant approval of this Settlement, the stay will be lifted five (5) calendar days thereafter and the Parties will be restored to their positions prior to the Settlement and the Settlement shall be null and void.

69. The Parties agree that upon approval by the Court, this Settlement shall be enforceable by the Court, and the Court shall retain exclusive and continuing equity jurisdiction pursuant to California Code of Civil Procedure §664.6 of this action over all Parties and Aggrieved Employees to interpret and enforce the

terms, conditions, and obligations set forth in this Settlement. The Parties agree that if any immaterial provision of this Settlement is determined to be invalid, the invalid portion shall be deemed severed and the remaining Settlement deemed enforceable. In the event further legal action is required to interpret or enforce this Settlement, the prevailing party will be entitled to recover its costs and reasonable attorneys' fees incurred in conjunction with that legal action, in addition to any other relief granted.

I HAVE READ THE FOREGOING SETTLEMENT AND RELEASE. I ACCEPT AND AGREE TO THE PROVISIONS IT CONTAINS, AND HEREBY EXECUTE IT VOLUNTARILY WITH FULL UNDERSTANDING OF ITS CONSEQUENCES.

Dated: 5/16/2021

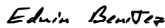

ESTEVAN ARNOLD

Dated: 5/11/2021

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EDWIN BENITEZ

Dated: 5/11/2021

DocuSigned by:

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EDWIN TRUCKING, INC.
By: Edwin Benitez
Its: CEO

Approved as to form:

Dated: 6/7/21


AIMAN-SMITH & MARCY P.C.
Attorneys for Plaintiff

Dated: _____

KNEZ LAW GROUP, LLP
Attorneys for Defendants

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I HAVE READ THE FOREGOING SETTLEMENT AND RELEASE. I ACCEPT AND AGREE TO THE PROVISIONS IT CONTAINS, AND HEREBY EXECUTE IT VOLUNTARILY WITH FULL UNDERSTANDING OF ITS CONSEQUENCES.

Dated: _____

ESTEVAN ARNOLD

Dated: 5/11/2021

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EDWIN BENITEZ

Dated: 5/11/2021

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Edwin Benitez
53E612B181B9412...

EDWIN TRUCKING, INC.
By: Edwin Benitez
Its: CEO

Approved as to form:

Dated: _____

AIMAN-SMITH & MARCY P.C.
Attorneys for Plaintiff

Dated: 5/13/2021



KNEZ LAW GROUP, LLP
Attorneys for Defendants

Exhibit C

CURRICULUM VITAE OF AIMAN-SMITH & MARCY

FIRM BIOGRAPHY

Aiman-Smith & Marcy, PC, is a boutique plaintiffs' law firm that has successfully litigated individual and class action cases for plaintiffs across a broad variety of areas, including unpaid wages, unpaid overtime, missed meal and rest breaks, uniform reimbursement, consumer fraud, securities fraud, employment discrimination, civil rights, sex harassment, wrongful termination, whistleblower retaliation, and others. The firm represents exclusively plaintiffs, in all aspects of litigation, including trial and appeals. Aiman-Smith & Marcy began in 2005, although the principals have worked together since 1997.

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Tel.: 510-817-2711
Fax: 510-562-6830
www.asmlawyers.com

ATTORNEYS

RANDALL B. AIMAN-SMITH (SBN 124599)

Despite never graduating from high school or college, Randall Aiman-Smith was able to earn his Juris Doctor degree from Boalt Hall (University of California, Berkeley) School of Law in 1986. While at Boalt Hall, Mr. Aiman-Smith served as a member of the editorial board of the California Law Review and, additionally, on the Moot Court Board. Mr. Aiman-Smith was an adjunct faculty member at University of California, Hastings College of the Law for seven years and has been a frequent presenter at continuing educational seminars.

Mr. Aiman-Smith is admitted to practice in state and federal courts in California, including the Northern District, Central District, Ninth Circuit, and the Tenth Circuit Court of Appeals, and the California Supreme Court. Additionally, Mr. Aiman-Smith has been admitted *pro hac vice* in several other jurisdictions.

Over the 30 years that Mr. Aiman-Smith has been practicing law, he has worked exclusively as a litigator in the state and federal trial and appellate courts on behalf of plaintiffs seeking to vindicate their rights under the law. Mr. Aiman-Smith has tried numerous cases in the state and federal courts and has taken at least twenty-five cases to judgment or verdict, including an individual discrimination verdict in excess of \$1.6 million in *Williams v. Union Pacific Railroad* in 2009. Most recently, Mr. Aiman-Smith was lead trial counsel in *Aghmane v. Bank of America*, which was successfully tried to a \$1.6 million verdict on defamation and blacklisting in February 2018.

The firm and Mr. Aiman-Smith have taken approximately 25 matters to the state and federal courts of appeal on behalf of both appellants and respondents resulting in the creation of significant legal precedents favorable to plaintiffs. Published decisions where Mr. Aiman-Smith was counsel of record and had primary responsibility for writing briefs and making oral arguments include: *Bergemann v. United States*, 820 F.2d 1117 (10th Cir. 1987); *Eidsmore v. R.B.B., Inc.*, 25 Cal.App.4th 1989 (1994); *Rivero v. Superior Court (Smith)* (1997) 54 Cal.App.4th 1048; *Rivero v. City and County of San Francisco*, 316 F.3d 857 (9th Cir. 2002); *Bradley v. Networkers International LLC* (2012) 211 Cal.App.4th 1129; and *Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701.

REED W. L. MARCY (SBN 191531)

Reed W. L. Marcy obtained his Bachelor's degree with High Honors in French Literature in 1983 and his Master's degree in French Literature in 1985, both from the University of California, Berkeley. After completing his Master's degree, Mr. Marcy worked at U.C. Berkeley's English Department for five years and at California College of Art (formerly known as CCAC) for three years prior to attending law school. Mr. Marcy graduated from University of California, Hastings College of Law, in 1997 and was admitted to practice in California in December 1997. Mr. Marcy was awarded numerous academic honors at Hastings, including the American Jurisprudence Award, the David Snodgrass Oral Advocacy Award, the California Computerized Legal Instruction Award, and awards for civil rights and art law. Mr. Marcy was Associate Executive Editor for *Comm/Ent*, the journal of intellectual property law, and published a note on patent law. Mr. Marcy has been a frequent presenter of continuing legal education programs on employment law and legal research topics through National Business Institute.

Mr. Marcy is admitted to practice in state and federal courts in California, including the Northern District, Central District, Ninth Circuit, and Court of Appeals, along with the California Supreme Court, and has been admitted *pro hac vice* in Ohio and Oklahoma.

Mr. Marcy began working as a law clerk for Randall Aiman-Smith in 1995, while still a law student. After graduation and admission to the Bar in 1997, Mr. Marcy continued working as an attorney for Mr. Aiman-Smith, becoming a partner in Mr. Aiman-Smith's firm in 2002. In 2005, Mr. Marcy and Mr. Aiman-Smith formed Aiman-Smith & Marcy.

Mr. Marcy has abundant experience as a civil litigator, including extensive experience in all phases of employment law and class actions from initial client intake through trial and appeal. Mr. Marcy has been the lead attorney for dozens of employment and consumer class actions. Mr. Marcy has extensive experience in employment law appellate practice. Published decisions where Mr. Marcy had responsibility for writing briefs and making oral arguments include *Rivero v. City and County of San Francisco*, 316 F.3d 857 (9th Cir. 2002); *Bradley v. Networkers International LLC* (2012) 211 Cal.App.4th 1129; and *Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701. Mr. Marcy's most recent decision was an unpublished memorandum opinion overturning summary judgment in a defamation and blacklisting action in the Ninth Circuit in *Aghmane v. Bank of America, N.A.* 696 Fed. Appx. 175 (9th Cir. May 17, 2017) Case Number 15-15482. The case was successfully tried to a \$1.6 million verdict for defamation and blacklisting in February 2018.

HALLIE VON ROCK (SBN 233152)

Ms Von Rock graduated with a Bachelor of Arts degree from University of California, Berkeley with Honors in 1999. Ms Von Rock graduated from the University of California, Hastings College of Law, in 2004 and was admitted to practice in California in December, 2004. Ms Von Rock was awarded numerous academic honors at Hastings, including the Witkin Award for Excellence for Trial Advocacy and CERCLA Outstanding Achievement Awards for Trial Advocacy and for Moot Court. Ms Von Rock was an Editor for Hastings West Northwest Environmental Law Journal.

Ms Von Rock is admitted to practice in state and federal courts in California, including the Northern District, Central District, Southern District, and Court of Appeals, along with the California Supreme Court.

Ms Von Rock has worked with Randall Aiman-Smith and Reed Marcy since 1996, first doing administrative work while still an undergraduate at University of California, Berkeley. Ms Von Rock began working as a law clerk for Mr. Aiman-Smith and Mr. Marcy during her last year of law school in June 2003 and was hired as an Associate following admission to the California Bar in 2004. Ms Von Rock has been a partner at Aiman-Smith & Marcy since 2012.

During Ms Von Rock's significant litigation experience, she has worked on numerous employment and consumer cases and class action cases. Ms Von Rock has experience in all aspects of litigation and class action work, including trial and appeal Published decisions where Ms Von Rock had responsibility for writing briefs include *Bradley v. Networkers International LLC* (2012) 211 Cal.App.4th 1129; and *Benton v. Telecom Network Specialists, Inc.* (2013) 220 Cal.App.4th 701, and the unpublished decision in *Aghmane v. Bank of America, N.A.*, 696 Fed. Appx. 175 (9th Cir. May 17, 2017) Case Number 15-15482. Most recently, Ms Von Rock was trial counsel in *Aghmane v. Bank of America*, which was successfully tried to a \$1.6 million verdict on defamation and blacklisting in February 2018.

CAREY JAMES (SBN 269270)

Mr. James graduated with a Bachelor of Arts degree from University of California, Berkeley with Honors in 2006. Mr. James graduated from the University of California, Hastings College of Law, in 2009 and was admitted to practice in California in April 2010. Mr. James obtained his LLM from University of California, Los Angeles in 2014, where he was a Dean's Fellow ,with a specialization in Securities Regulation. Mr. James was awarded several academic honors at Hastings, including CALI and Witkin awards for top student in class in Constitutional Law, United Nations Systems, and International War. Mr. James has also published articles in the Hastings International and Comparative Law Review: Legal Implications of the Enemy Entity Designation of the Gaza Strip – 32 Hast. Int'l & Comp. L. Rev. 643 (2009); the Denver Journal of International Law and Policy: International Legal Dimensions of Conflict in the Gaza Strip (with George Bisharat, et al.) – 38 Denv. J. Int'l L. & Pol'y 41 (2009); and the Berkeley Journal of Middle Eastern and Islamic Law: Israel's Raid of the "Freedom Flotilla" in International Law (with George Bisharat) – publication forthcoming.

Mr. James has worked as an associate at Aiman-Smith & Marcy since September 2011. Prior to that, Mr. James worked as a contract attorney and also worked internationally as an associate at the Mossawa Center, European Union Office, in Brussels, Belgium and as an associate at the Al Mustakbal Foundation for Strategic and Policy Studies, Ramallah, West Bank. Mr. James worked as a judicial intern for the 165th Civil District Court Harris County, TX, Honorable Elizabeth Ray.

Mr. James has a breadth of experience in numerous investment, employment, and consumer cases, including class actions. Mr. James served as the firm's lead attorney in the securities fraud class action, *Mendes, et al. v. B-4 Partners, LLC, et al.*, Alameda County Superior Court, Case No. RG11603095, consolidated with *Noble v. Greenberg Traurig, LLP*, Alameda County Superior Court, Case No. RG11593201, and related actions.

Mr. James had primary responsibility for preparing the successful class certification motion in *Brown v. Abercrombie & Fitch Co.*, 2014 U.S. Dist. LEXIS 19414, N.D. Cal., February 14, 2014, Case No.: 4:13-CV-05205 YGR, a 62,000 member retail employment class action, which was consolidated with the firm's nationwide, 250,000 employee class action in *Bojorquez v. Abercrombie & Fitch Co.*, Southern Dist. of Ohio, Case No. 2:16-cv-00551-MHW.

Mr. James is admitted to practice in state and federal courts in California, and has been admitted to practice *pro hac vice* in Texas, Ohio, and Oklahoma.

JOHN A. LOFTON (SBN 222259) Of Counsel

Mr. Lofton graduated with a Bachelor of Arts degree in from University of Texas, Austin in 1998. Mr. Lofton graduated from the University of California School of Law (formerly Boalt Hall), in 2002 and was admitted to practice in California that same year.

Mr. Lofton began his career with Sonnenschein, Nath & Rosenthal (now SNR Denton). After acting as the class representative in *Lofton v. Bank of America* (N.D.Cal. 3:07-cv-05892) and *Lofton v. Verizon Wireless (VAW), LLC* (308 F.R.D. 276 (N.D.Cal. 2015)), he dedicated his practice exclusively to representing individual plaintiffs against large corporations, unscrupulous employers, and anyone who seeks to defraud members of the public.

Mr. Lofton currently serves as lead attorney prosecuting PAGA and wage and hour class claims in *North v. Layers, LLC, et al.* (San Francisco Sup. Ct. Case No. CGC-19-577983; *Paningbatan v. Motivate, LLC, et al.* (N.D.Cal. 3:20-cv-04865); *Briseno v. Acqua E Farina Ristorante, LLC* (Alameda Sup. Ct. Case No. RG19045636); *Eagles v. Pentagon Technologies Group, Inc.* (Alameda Sup. Ct. Case No. RG19046330); and *Arnold v. Edwin Trucking, Inc.* (Los Angeles Sup. Ct. Case No. 20TRCV00191).

JOSEPH CLAPP (SBN 99194) Of Counsel

Mr. Clapp received his Bachelor of Arts degree in Economics from the University of California at Berkeley in 1978. While attending college, he organized the 1,500 workers in Yosemite National Park into a union. In 1981, Mr. Clapp received his J.D. degree from McGeorge School of Law, University of the Pacific, and while attending McGeorge he served as the Comments Editor for the Pacific Law Journal.

Mr. Clapp is admitted to practice in federal and state courts in California, including the U.S. District Court for the Northern District of California, the U.S. District Court for the Eastern District of California, the Ninth Circuit Court of Appeals, and the California Supreme Court.

Mr. Clapp began his career with the trial firm of Herron & Herron in 1982 and remained with that firm for 26 years. Thereafter, he spent a year with the firm of Kumin Sommers before opening his own practice. In 2012, he became “of counsel” to Aiman-Smith & Marcy.

Throughout his career, Mr. Clapp has always fought for those who work for a living. He has litigated all aspects of the employment relationship, and his cases have included wrongful or discriminatory discharges, the failure to pay wages due (e.g., overtime, prevailing wages), substandard working conditions (e.g., meal periods), and the failure to pay earned pensions (ERISA). He has tried numerous cases and has prosecuted numerous appeals in both in state and federal courts. He was lead counsel for two published appellate victories: *George v. California Unemployment Insurance Appeals Board* (2009) 179 Cal.App.4th 1475 (public employee’s retaliation lawsuit survives claim and issue preclusion defenses), and *Walker v. Berkeley Housing Authority*, 951 F.2d 182 (9th Cir. 1991) (biased decision-maker violates public employee’s Due Process rights).

REPRESENTATIVE CASES FOR AIMAN-SMITH & MARCY

A representative list of significant class actions, representative actions, and jury trials in which the attorneys at Aiman-Smith & Marcy have served as lead counsel or co-class counsel includes:

Aghmane v. Bank of America NA, U.S. District Court, Northern District, Case No. No.: C 13-03698 DMR. (\$1.6 million jury verdict on defamation and blacklisting in February 2018) (Ninth Circuit Opinion reversing summary judgment on defamation and blacklisting claim appears at 696 Fed. Appx. 175 (9th Cir. 2017)).

Bean v. Hugo Boss Retail, Inc., U.S. District Court, Northern District, Case No. 3:13-cv-05921-RS (class action for uniform reimbursement, bag searches, and missed breaks)

Benton, et al. v. Telecom Network Specialists, Inc., Los Angeles County Superior Court, Case No. BC354230, published as (2013) 220 Cal.App.4th 701 (class action for overtime, meal and rest breaks; established important principles for class certification of wage and hour cases).

Booker, et al. v. Tanintco, Inc., Los Angeles County Superior Court, Case No. BC349267 (class action for overtime, meal and rest breaks)

Bradley, et al. v. Networkers International, LLC, San Diego County Superior Court, Case No. GIC 862417, published as (2012) 211 Cal.App.4th 1129 (class action for overtime,

meal and rest breaks; established important principles for class certification of wage and hour cases).

Brawner v. Bank of America, United States District Court, Northern District of California, Case No. 3:2014cv02702 (class action for misclassification as exempt)

Brown v. Abercrombie & Fitch Co., 2014 U.S. Dist. LEXIS 19414, N.D. Cal., February 14, 2014, Case No.: 4:13-CV-05205 YGR (uniform reimbursement class action; 62,000 person class certified), consolidated with *Bojorquez v. Abercrombie & Fitch Co.*, Southern District of Ohio, Case No. 2:16-cv-00551-MHW (250,000 employees) (\$25 million settlement).

Cohen v. FedEx Office and Print Services, Inc., Alameda County Superior Court Case No. RG17810621 (consumer class action under Fair and Accurate Credit Transactions Act)

Cruz v. Goodman Networks, Inc., U.S. District Court, Northern District, Case No. 4:2010cv03820 (misclassification).

Flournoy, et al. v. 3S Network, Inc., Contra Costa County Superior Court, Case No. C09-00113 (misclassification)

Green, et al. v. Presidio International, Inc. dba A|X Armani Exchange, San Francisco Superior Court, Case No. CGC 13-536365 (class action for uniform reimbursement, bag searches, and missed breaks)

Guess Outlet Stores Pricing Cases, Los Angeles County Superior Court Case No. JCCP 4883 (consumer retail pricing class actions)

Hernandez, et al. v. FocusMicro, Inc., U.S. District Court, Northern District, Case No. CV 11-05621 EDL (off-the-clock work and missed breaks)

Hurtado, et al. v. Lowe's HIW, U.S. District Court, Northern District, Case No. CV-11-1996 (consumer class action under Song-Beverly Credit Card Act)

Holmes, et al. v. Big Five Sporting Goods, Los Angeles County Superior Court, Case No. JCCP4667 (consumer class action under Song-Beverly Credit Card Act)

Jerominski v. Walgreen Co., consolidated as *In re Walgreen Co. Wage and Hour Class Action*, U.S. District Court, Central District of California, Case No. 11-cv-07664-PSG (FFMx) (40,000 employee class action for bag searches) (\$23 million settlement)

Jones v. Armanino LLP, Alameda County Superior Court, Case No. RG 13-68105

(consumer class action for accounting negligence)

Kulvicki, et al. v. Pick-N-Pull Auto Dismantlers, Alameda County Superior Court, Case No. RG11560441 (class action for misclassification)

Maldonado, et al. v. ME Cal, Inc., San Francisco County Superior Court, Case No. CGC-11-5109000 (class action for misclassification)

Mendes, et al. v. B-4 Partners, LLC, et al., Alameda County Superior Court, Case No. RG11603095, consolidated with *Noble v. Greenberg Traurig, LLP*, Alameda County Superior Court, Case No. RG11593201 (consumer class action for securities fraud, Ponzi scheme)

Milton v. Best Buy Stores, L.P., U. S. District Court, Central District of California, Case No. CV11-6913, consolidated as *Gass, et al. v. Best Buy Stores, L.P.*, U.S. District Court, Central District of California, Case No. CV 11-01507 SJO (JCGx) (consumer class action under the Song-Beverly Credit Card Act)

Nakooka v. Dollar Tree Stores, Inc., U.S. District Court, Northern District of California, Case No. 3:17-CV-03955-JD (employee class action for uniform reimbursement)

Ortiz v. CVS Caremark Corporation, et al., U.S. District Court, Northern District of California, Case No. CV 12-05859 EDL; related with *Murphy v. CVS Caremark Corp.*, Los Angeles County Superior Court No. BC464785 (30,000 employee class action for bag searches, off-the-clock work) (\$12.75 million settlement)

Price, et al. v. EXI Parsons Telecom, Los Angeles County Superior Court, Case No. BC351252 (class action for overtime, meal and rest breaks)

Rivera v. Uniqlo California, LLC, U.S. District Court for the Central District of California, Case No. 17-CV-02848-JAK (JPR) (uniform reimbursement class action)

Robinson, et al. v. Defender Security Company, Alameda County Superior Court, Case No. RG10505016 (class action for misclassification and off-the-clock work)

Saberi, et al. v. Bridgestone Firestone Retail & Commercial Operations, Alameda County Superior Court. Case No. RG08406555 (\$14 million settlement)

Smith, et al. v. S.Com, Inc., San Francisco County Superior Court, Case No. CGC-02-412968 (misclassification class action)

Westman, et al. v. Rogers Family Funeral Homes, Contra Costa County Superior Court, Case No. C 98-03165 (consumer class action for negligence)

Williams v. Bank of America, N.A., U.S. District Court, Central District of California, Case No. SACV 15-01597 AG (KESx) (misclassification class action)

Williams v. Union Pacific Railroad Co., Alameda County Superior Court Case No. RG 06251955 (race discrimination jury verdict of \$1.6 million)

Zimmelman Jewelry v. CrossCheck, Sonoma County Superior Court, Case No. SCV 229654 (consumer class action for unfair business practices)

Exhibit D

Arnold v. Edwin Trucking
Cost Detail

Date	Description	Cost
01/10/20	LWDA – filing fee re: PAGA Notice	\$75.00
02/27/20	One Hour Legal – filing fee re Summons and Complaint	523.45
03/04/20	One Hour Legal – filing fee re Civil Case Cover Sheet Addendum	44.95
03/20/20	One Hour Legal – filing fee re First Amended Complaint	39.95
04/09/20	One Hour Legal – service of process of First Amended Complaint on Edwin Trucking, Inc.	95.00
04/09/20	One Hour Legal – service of process of First Amended Complaint on Edwin Benitez individually	50.00
04/20/20	One Hour Legal – filing fee re Proof of Service of Summons and Complaint	44.95
05/07/20	One Hour Legal – filing fee re Notice and Acknowledgment of Receipt of Summons and Complaint on Edwin Benitez Trucking and Edwin Benitez individually	44.95
05/18/20	Los Angeles County Superior Court – advance deposit toward jury fees	150.00
06/11/20	One Hour Legal – filing fee re Case Management Conference Statement	44.95
06/19/20	CourtCall – JAL telephonic appearance at 06/26/20 CMC and hearing on OSC	94.00
07/27/20	CourtCall – JAL telephonic appearance at 07/27/20 CMC and hearing on Notice of Related Case	94.00
07/31/20	LexisNexis – July 2020 legal research	3.61
09/30/20	LexisNexis – September 2020 legal research	6.95
02/19/20	RCBA Dispute Resolution Service – deposit toward mediation fees for 0310/21 mediation	600.00
02/25/21	L.A. Court Connect – JAL telephonic appearance at 02/19/21 mediation	15.00
03/21/21	LexisNexis – March 2021 legal research	16.89
06/09/21	RCBA Dispute Revolution Service – additional mediation fees for 03/31/21 mediation	900.00
06/24/21	L.A. Superior Court – fee to download Minute Orders, Notice re Continuance of Hearing, Stipulation and Order to Continue Trial and Post-	12.20

07/11/21	Mediation Status Conference	
	L.A. Superior Court – JAL telephonic appearance	15.00
	at 08/06/21 Post-Mediation Status Conference	
	Estimated Closing Costs – settlement agreement,	250.00
	Notice of Settlement, Request for Dismissal;	
	shipping settlement checks to client	
	Postage total	15.10
	Copier total 230 @ \$0.25	\$57.50
TOTAL		\$3,193.45

Exhibit E

Atticus Administration, LLC
Chris Longley - CEO

ASM [JAL] – small PAGA

Prepared for

John Lofton | Attorney

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ATTICUS
SMART | ACCOUNTABLE | BETTER

Class Action Administration

Estimate E2021-11-E10
ASM [JAL] – small PAGA

Prepared on November 9, 2021
By Chris Longley – CEO | Atticus Administration LLC

Estimate Summary

Atticus Services & Cost Description

NOTICE MAILING-Mailed First Class	\$ 0
<i>Not applicable</i>	
PROJECT MANAGEMENT/ADMIN FEES/Technical	\$1,045
COMMUNICATIONS	\$ 0
<i>PO Box rental, translation, objections</i>	Included
<i>IVR, 800#</i>	Included
<i>correspondence</i>	Included
FUND, TAX, REPORTING	\$ 900
<i>setup QSF, file annual tax returns</i>	included
DISTRIBUTION	\$1,082
<i>check printing, payment calculation & verification, bank fees</i>	included
DISCOUNT	(\$527)

TOTAL: \$2,500

Key Assumptions

- Class Size: **21 Aggrieved Employees PAGA case**
- No Noticing.
- Data review, cleansing and preparing file for mailing; including NCOA, and New Address searches (skip-tracing).
- Communications includes, dedicated 800#, and IVR for FAQ.
- PAGA payments to all 21 individuals along with explanatory letter.
- Class Member tax reporting will consist of 1099's.
- CA only.

Bid is capped unless > 50% increase in class size.

PRINT NAME

ROLE

Client Signature

By signing above, I understand and agree to the pricing terms and services to be provided by Atticus Administration for the stated project.

PLEASE NOTE: *This estimate and pricing is for the services stated herein and is valid for 30 days from the date of the estimate. If the Settlement Agreement or other service scope document(s) require additional services not included or priced in this estimate, we will separately price those scope changes and submit an updated quote prior to proceeding with the work.*

Date

Payment Terms:

100% payable PAGA distribution



Detailed Budget

Atticus Services & Cost Description

DESCRIPTION	UNITS	SUBTOTAL
NOTICE MAILING (not applicable)	21 Class Mbrs	\$0
PROJECT MANAGEMENT	9 hrs	\$945
TECHNICAL SET UP (includes project kick-off)	1 hrs	\$100
COMMUNICATIONS - English only		\$0
FUND, TREASURY & TAX Reporting		\$900
Set-Up QSF	1.00 Hrs	\$117
Prepare/File Annual Fund Return, 1096 and other Tax Forms	6.00 Hrs	\$702
Mail 1099s no postage - mailed with check	- postage	\$0
Print 1099's	21 1099's	\$81
DISTRIBUTION, Payment Calculations & Reporting		\$1,082
Cover Letter & Check - Design/Review/Finalize	2.00 Hrs	\$182
Payment Data - Calculate & Verify Payments	2.00 Hrs	\$182
Prepare Payment Reports	2.00 Hrs	\$182
Check - Print Set-up/Printing/Mail Prep	21 checks	\$119
Check Mailing Postage (will be 1x mailings)	21 mailed	\$10
Check - Undeliverable/ NCAO /Return Mail Processing & Remail (1% Return)	0 1.0% est	\$81
Bank Fees (Account Set-Up & Monthly Fee)	6 months	\$325
DATA STORAGE	n/a	\$0
DISCOUNT		(527)
TOTAL		\$2,500

Operating Assumptions

- Class Size: **21 – Aggrieved Employees PAGA**
- Class Notice-no noticing. Distribution includes explanatory letter to check recipients.
- Data review, cleansing and preparing file for mailing; including NCOA, and New Address searches, and skip tracing if required.
- Communications includes, PO BOX, Mail Correspondence, 800# and IVR.
- Project management assumes 10 hours at a blended rate of \$105 per hour. Includes summary reporting on a weekly basis if needed otherwise monthly.
- Qualified Settlement fund assumes 6 months. Price includes positive pay fraud protection and tax reporting both state and federal returns. All bank fees are included in pricing.
- All Class members receive a PAGA check along with explanatory letter.
- Uncashed checks – Cy Pres or escheat.
- Disbursement includes positive pay "anti-fraud" features.

Thank you



Chris Longley – CEO

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