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County of Placer
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8 **SUPERIOR COURT OF CALIFORNIA**
9 **IN AND FOR THE COUNTY OF PLACER**

10
11 EDEN URBINA, on behalf of all others
12 similarly aggrieved,

13 Plaintiff,

14 vs.

15 TIMCO CONSTRUCTION,
16 INCORPORATED, a California Corporation,
TIMONTY RAISTRICK, an individual, and
17 DOES 1 through 50, inclusive,

18 Defendants.
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CASE NO. S-CV-0053821

REPRESENTATIVE COMPLAINT FOR
VIOLATION OF PRIVATE ATTORNEYS
GENERAL ACT, CAL. LABOR CODE
SECTIONS 2698, *et seq.*

JURY TRIAL DEMANDED

preceding Plaintiff's submission of notice of PAGA violations to the Labor & Workforce Development Agency (LWDA"), regarding violations of the Labor Code as to aggrieved employees employed by Defendant. This action is brought solely pursuant to PAGA and seeks no relief beyond that available under PAGA.

7. During the period beginning one-year period preceding the filing of the required PAGA notice with the Labor Workforce and Development Agency ("LWDA"), and continuing through the present, as alleged herein, Defendant violated Labor Code sections 201-203, 204, 226, 226.7, 558, 1174, 1194, 1197-99, 2810.5, and all applicable Wage Orders, as to Plaintiff and other similarly aggrieved employees. These violations subject Defendant to civil penalties as set forth in the foregoing statutes as well as other provisions of the Labor Code, including without limitation Labor Code sections 210, 558, 1174.5, 1197.1 and 2699.

FIRST CAUSE OF ACTION

VIOLATION OF PRIVATE ATTORNEYS GENERAL ACT, LABOR CODE SECTIONS 2698, ET SEQ.

8. Plaintiff incorporates paragraphs 1 through 7 of this complaint as if fully alleged herein.

9. California law provides employees in California must be paid for all hours worked, up to 40 per week or 8 per day, at a regular time rate no less than the mandated minimum wage. California law also provides employees in California must be paid overtime, equal to 1.5 times the employee's regular rate of pay, for all hours worked in excess of 40 per week or 8 per day. Complainant and other aggrieved employees worked hours for which they were not paid at least the applicable minimum wage, as Defendant rounded off time punches such that Plaintiff and other aggrieved employees lost compensable hours worked and corresponding pay. Defendant further failed to pay overtime wages by failing to properly track overtime hours and not paying overtime hours at the appropriate premium rate. By requiring Plaintiff and other similarly aggrieved employees to perform "off the clock" work without counting such time as hours worked and without compensating Plaintiff and all similarly aggrieved employees for such "off the clock" work via its rounding policy, and by failing to pay for overtime hours at the correct

1 rate, Defendant violated Labor Code sections 1194-1199, and Wage Order 16-2001, section 7, as
2 to Plaintiff and all other similarly aggrieved employees. These violations subject Defendant to
3 civil penalties under the foregoing Labor Code sections and other applicable Labor Code sections,
4 including without limitation Labor Code sections 558, 1197.1 and 2699. Each violation of each
5 Labor Code section and Wage Order provision, for each aggrieved employee, results in a separate
6 civil penalty.

7 10. Under the Labor Code and IWC Wage Orders, Defendant was required to provide
8 Plaintiff and similarly aggrieved employees with one 30-minute meal period free from all duties
9 for all shifts longer than 5 hours, and a second 30-minute meal period free from all duties for all
10 shifts longer than 10 hours. Meal periods can be waived, but only under the following
11 circumstances: (1) if an employee's total work period in a day is over five (5) hours but no more
12 than six (6) hours, the required meal period may be waived by mutual consent of the Defendant
13 and employee, and (2) if an employee's total work period in a day is over ten (10) hours but no
14 more than twelve (12) hours, the required second meal period may be waived by mutual consent
15 of the Defendant and employee, but only if the first meal period was not waived. Defendants
16 covered by the Wage Orders have an obligation to both (1) relieve their employees for at least one
17 meal period for shifts over five hours (see above), and (2) to record having done so. If the
18 Defendant fails to properly record a valid meal period, it is presumed no meal period was
19 provided.

20 11. Defendant failed to maintain a company meal period policy compliant with
21 California law and failed to provide Plaintiff and other aggrieved employees with proper meal
22 periods, meal periods were not provided until after the start of the fifth hour work, meal periods
23 lasted less than 30 minutes, and/or meal periods were not free from all employer control.
24 Because Defendant failed to maintain a compliant written meal period policy, failed to provide
25 Plaintiff and other aggrieved employees with all required meal periods, failed to provide Plaintiff
26 and other aggrieved employees with timely and otherwise compliant, meal periods, it also failed
27 to provide Plaintiff and other aggrieved employees with all meal breaks required under California
28 law. Defendant also failed to pay them premiums for such missed meal breaks in violation of

1 California law. These violations subject Defendant to civil penalties under the foregoing Labor
2 Code sections and other applicable Labor Code sections, including without limitation Labor Code
3 sections 226.7 and 2699. Each violation of each Labor Code section and Wage Order provision,
4 for each aggrieved employee, results in a separate civil penalty.

5 12. Under the Labor Code and IWC Wage Orders, Defendant was required to provide
6 Plaintiff and similarly aggrieved employees with one 10-minute paid rest period free from all
7 duties for each 3.5 hours worked, or major fraction thereof. Defendant did not maintain a
8 company rest period policy and/or practice compliant with California law, and Defendant
9 frequently did not provide Plaintiff and other aggrieved employees with appropriate rest periods.
10 Per Defendant's policy and/or practice, Plaintiff and other aggrieved employees were not
11 adequately informed and instructed about, and thereby were not afforded an adequate opportunity
12 to take, proper rest breaks per California law. Further, Defendant failed to pay Plaintiff and other
13 aggrieved employees with an additional hour of pay at their regular rates of pay for each missed
14 or improper rest period. Because Defendant failed to fully and accurately calculate and record
15 hours worked by Plaintiff and aggrieved employees traveling to and from their assigned places of
16 work, it also failed to provide all required rest periods on a fully compliant basis. Defendant also
17 failed to pay Plaintiff and the aggrieved employees with one hour of pay at the regular rate for
18 each missed or non-compliant rest period. These violations subject Defendant to civil penalties
19 under the foregoing Labor Code sections and other applicable Labor Code sections, including
20 without limitation Labor Code sections 226.7 and 2699. Each violation of each Labor Code
21 section and Wage Order provision, for each aggrieved employee, results in a separate civil
22 penalty.

23 13. California law provides that, at the time of each payment of wages, an employer
24 must provide each employee with an itemized statement showing, inter alia, gross wages earned,
25 total hours worked, all deductions taken, net wages earned, the inclusive dates for which the
26 employee is being paid, the employee's name and last four digits of their social security number,
27 the name and address of the legal entity that it is the employer, and all applicable hourly rates in
28 effect during the pay period and all hours worked at each rate. For the reasons alleged above,

1 Defendant knowingly and intentionally failed to provide Plaintiff and other aggrieved employees
2 with proper, itemized wage statements as the wage statements provided by Defendant do not
3 accurately reflect, inter alia, gross wages earned, total hours worked, net wages earned, and all
4 applicable hourly rates in effect during each pay period and all hours worked at each applicable
5 hourly rate. Accordingly, Defendant has violated Labor Code section 226 as to Plaintiff and all
6 similarly aggrieved employees. These violations subject Defendant to civil penalties under the
7 Labor Code, including without limitation Labor Code sections 226 and 2699. Each violation of
8 each Labor Code section and Wage Order provision, for each aggrieved employee, results in a
9 separate civil penalty.

10 14. California Labor Code section 2802 provides an employer shall fully reimburse an
11 employee for all reasonable and necessary expenses incurred in the performance of the
12 employee's job duties. Plaintiffs and similarly situated employees regularly incurred expenses in
13 the performance of their job duties including without limitation using their personal vehicles and
14 personal cell phones, which expenses were not fully reimbursed by Defendant in violation of
15 Labor Code section 2802.

16 15. These violations subject Employer to civil penalties under, without limitation,
17 Labor Code sections 226, 245.5, and 246. Each violation results in a *separate* civil penalty, for
18 each aggrieved employee for each pay period during which the statute provisions were violated.

19 16. Under Labor Code sections 245, *et seq.*, employers are required to provide most
20 employees with paid sick leave of up to 24 hours of paid sick time per year. An employer must
21 provide employees in writing the amount of sick leave, or qualifying paid leave alternative, they
22 have available. The written notice may be listed on the employees' statement of wages (pay stub)
23 or provided on a separate document delivered to the employee on the designated pay date.

24 17 Employer did not maintain any kind of paid sick leave policy at all, much less one
25 compliant with California law. Complainant and other aggrieved employees were not provided
26 with the required notice of written notice, were not provided in writing with the amount of sick
27 leave available on their wage statements or in any other separate writing, and were not provided
28 with paid sick leave. These violations subject Employer to civil penalties under, without

1 limitation, Labor Code sections 226, 245.5, and 246. Each violation results in a *separate* civil
2 penalty, for each aggrieved employee for each pay period during which the statute provisions
3 were violated.

4 18. California law requires employers to keep “accurate and complete” payroll records
5 showing, among other things, the hours worked daily by all non-exempt employees. IWC Wage
6 Order 16-2001, section 7, similarly requires Defendants to keep time records showing, inter alia,
7 when the employees begin and end each work period. At all relevant times, Defendant has failed,
8 and continues to fail, to keep the required time records, as Defendant did not provide and/or
9 record all of Plaintiff’s and other similarly aggrieved employees hours worked, as alleged herein.
10 Defendant’s failure to keep “accurate and complete” payroll records for Plaintiff and other
11 similarly aggrieved employees violates Labor Code sections 1174, 1198-99, and Wage Order 7-
12 2001, section 7. These violations subject Defendant to civil penalties under the Labor Code,
13 including without limitation sections 1174.5 and 2699. Each violation of each Labor Code
14 section and Wage Order provision, for each aggrieved employee, results in a separate civil
15 penalty.

16 19. Together, Labor Code sections 1198 and 1199 make unlawful employment of any
17 individual under conditions of labor prohibited by the Wage Orders, and any violation, refusal, or
18 neglect to comply with any provision within Part 4, Chapter 1 of the Labor Code, including
19 sections 1174, 1197, and 1198, or other order or ruling of the IWC. Defendant’s violations with
20 respect to minimum wages and/or overtime wages, as alleged herein, result in separate violations
21 of Labor Code sections 1198 and 1199, and subject Defendant to civil penalties under the Labor
22 Code, including without limitation Labor Code sections 1197.1 and 2699. Each violation of each
23 Labor Code section and Wage Order provision, for each aggrieved employee, results in a separate
24 civil penalty.

25 20. California Labor Code section 204 requires an employer to pay employees all
26 wages due and payable at least twice each calendar month. Defendant failed to comply with
27 Labor Code section 204 by failing to timely pay twice during each calendar month all wages due
28 and payable to Plaintiff and other similarly aggrieved employees. Defendant’s violations of Labor

1 Code section 204 subject Defendant to civil penalties, including but not limited to the penalties
2 set forth in California Labor Code sections 210 and 2699. Each violation results in a separate civil
3 penalty, for each aggrieved employee for each pay period during which the statutory provisions
4 were violated

5 21. Labor Code section 201 requires employers to pay all wages earned and unpaid at
6 the time of discharge, immediately upon discharge. Labor Code section 202 states similar
7 provisions with respect to employees who resign. For all aggrieved employees no longer
8 employed by Defendant, Defendant had a policy and practice of not paying employees their final
9 wages within the time frames set forth in Labor Code sections 201, et seq, and still has not paid
10 the aggrieved employees all wages earned and unpaid at the time of discharge for the reasons
11 alleged herein. These violations subject Defendant to civil penalties under the Labor Code,
12 including without limitation Labor Code sections 203, 256 and 2699. Each violation results in a
13 separate civil penalty, for each aggrieved employee for each pay period during which the
14 statutory provisions were violated.

15 22. Plaintiff complied with the procedures for bringing suit specified in Labor Code
16 sections 2699.3 and 2699.5. By letter dated and postmarked May 20, 2024, Plaintiff gave
17 written notice to the LWDA via electronic mail at PAGAfilings@dir.ca.gov, and via certified
18 mail to all Defendants, of the specific provisions of the Labor Code and Wage Orders allegedly
19 violated, including the facts and theories to support the alleged violations.

20 23. Under Labor Code section 2699.3, the LWDA must give written notice by
21 certified mail to the parties it intends to investigate the alleged violations within 65 days of the
22 date of the Plaintiff's written notice. As of the filing of this complaint, the LWDA has not
23 provided the parties any notice of its intention to investigate Plaintiff's claims on behalf of
24 herself and other similarly aggrieved employees. As of the filing of this complaint, Defendant
25 has not responded to Plaintiff's PAGA notice in an attempt to cure. Accordingly, Plaintiff
26 has exhausted all administrative remedies required by law.

27 PRAYER

28 WHEREFORE, Plaintiff prays for judgment against each Defendant, jointly and severally,

1 as follows:

- 2 1. For civil penalties according to proof;
- 3 2 For reasonable attorney's fees and costs of suit; and
- 4 3. For such other and further relief as the Court deems just and proper.

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6 Dated: October 15, 2024

LAW OFFICES OF J. KIRK DONNELLY, APC

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8 
9 J. Kirk Donnelly
Attorneys for Plaintiff EDEN URBINA

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11 DEMAND FOR JURY TRIAL

12 Plaintiff hereby demands a trial by jury on all claims so triable.

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14 Dated: October 15, 2024

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16 
17 J. Kirk Donnelly
Attorneys for Plaintiff EDEN URBINA