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10 SUPERIOR COURT OF CALIFORNIA
11 COUNTY OF LOS ANGELES, CENTRAL DISTRICT
12

BC397600

13 **PEOPLE OF THE STATE OF CALIFORNIA, ex**
14 **rel. EDMUND G. BROWN JR., Attorney General of**
the State of California,

15 **Plaintiff,**

16 **v.**

17 **PAC ANCHOR TRANSPORTATION, INC., a**
18 **California corporation, ALFREDO BARAJAS aka**
19 **“Alfredo Barajas Ramirez”, and DOES 1 through**
20 **100, inclusive,**

21 **Defendants**

**COMPLAINT FOR
RESTITUTION, PENALTIES
AND INJUNCTIVE RELIEF**

22 Plaintiff, the People of the State of California ex rel. Edmund G. Brown Jr., as the Attorney
23 General of the State of California:
24

25 **INTRODUCTION**

26 1. This action is brought by the Plaintiff, the People of the State of California ex rel.
27 Edmund G. Brown, Jr., Attorney General of the State of California, against PAC ANCHOR
28 TRANSPORTATION, INC. (“Pac Anchor”), ALFREDO BARAJAS (“Barajas”), and Does 1

1 through 100 (collectively “Defendants”), in order to halt an unlawful practice by Defendants of
2 misclassifying their truck driver employees who do not own a truck as “independent contractors”
3 rather than employees. As a consequence of misclassifying the truck driver employees,
4 Defendants illegally lowered their costs of doing business by failing to reimburse business
5 expenses and losses pursuant to Labor Code §2802, failing to properly pay the California
6 Employment Development Department payroll taxes which were due, by failing to at all times
7 pay the minimum wage, and failing to secure promised workers compensation insurance
8 covering those truck drivers. Defendants’ misclassification of truck driver employees who do
9 not own a truck (“drivers”) as “independent contractors” permitted Defendants to gain an unfair
10 advantage over competing trucking companies, harmed Defendants’ driver employees, and
11 violated California law.

12 13 PARTIES

14 2. Plaintiff Edmund G. Brown Jr. is the Attorney General of the State of California and is
15 the chief law officer of the State. (Cal. Const., art. V, § 13.) The Attorney General is
16 empowered by the California Constitution to take whatever action is necessary to ensure that the
17 laws of the State are uniformly and adequately enforced. He is statutorily authorized to bring
18 actions in the name of the People of the State of California to enforce California's statutes
19 governing unfair competition. (Bus. & Prof. Code, §§ 17200 et seq.).

20 3. Defendant Pac Anchor is now, and has been at various relevant times, a California
21 corporation engaged in the transportation industry. Pac Anchor has agreements with various
22 shipping companies which require Pac Anchor to transport the cargo and containers from the
23 ports of Los Angeles and Long Beach to various locations in the Southern California area,
24 including warehouses and railroad freight depots. Pac Anchor maintains an office and freight
25 yard at 609-665 West Cowles Street, in Long Beach, California in the County of Los Angeles,
26 and has conducted business at all times relevant to this lawsuit in, among other places, the
27 County of Los Angeles in the State of California.

28 4. Defendant Barajas, also known as “Alfredo Barajas Ramirez,” is an individual.

Barajas is employed by Pac Anchor as a manager and truck dispatcher. Plaintiff is informed and believes that Barajas is owner, or part owner of Pac Anchor. Barajas also owns approximately 75 truck tractors (“trucks”) which he leases to Pac Anchor. Barajas recruits drivers for his trucks. Barajas enters into leases, for an indefinite time, often lasting several years, with Pac Anchor to supply his trucks and drivers for those trucks to Pac Anchor. Barajas is employed at 609-665 West Cowles Street, in Long Beach, California in the County of Los Angeles, and has conducted business at all times relevant to this lawsuit in, among other places, the County of Los Angeles in the State of California. Plaintiff is informed and believes that Barajas is also a resident of Los Angeles County.

5. Plaintiff is not aware of the true names, identities, or capacities of the defendants sued herein as Does 1 through 100, and therefore sues said defendants by such fictitious names. Plaintiff is informed and believes that, at various relevant times, said Doe defendants participated in, or otherwise were in some manner responsible for the harm to the general public that arose from the facts and occurrences alleged in this complaint. Plaintiff will seek leave of the court to amend this complaint to state the true names of the fictitiously named defendants once they are discovered.

GENERAL ALLEGATIONS

6. Whenever reference is made in this complaint to any act of the corporate defendant, such allegation shall mean that the corporation did the acts alleged in this complaint through its officers, directors, employees, agents and/or representatives while they were acting within the actual or ostensible scope of their authority.

7. Whenever reference is made in this complaint to any act of any of the Defendants, including those named herein as Doe defendants, such allegation shall mean that each Defendant and/or Doe defendant acted individually and jointly with the other defendants, including other Doe defendants named in this complaint.

8. At all relevant times, each defendant knew or realized that the other defendants and/or Doe defendants were engaging in or planned to engage in the violations of law alleged in this complaint. Knowing or realizing that other defendants were engaging in such unlawful conduct,

1 each defendant nevertheless facilitated the commission of those unlawful acts. Each defendant
2 encouraged, facilitated, or assisted in the commission of the unlawful acts, and thereby, aided
3 and abetted the other defendants in the unlawful conduct.

4 9. Defendants have engaged in a conspiracy, common enterprise, and a common course
5 of conduct to facilitate a common unlawful and unfair practice of profiting by the unlawful
6 evasion of California Labor Code and IWC Wage Order protections for employees, state payroll
7 tax, and workers' compensation obligations. The conspiracy, common enterprise, and common
8 course of conduct continues to the present.

9 10. At all relevant times, each defendant has operated, and currently operates, as an
10 integrated enterprise on account of their interrelation of operations, common management,
11 centralized control of labor relations, and common ownership or financial control.

12 11. At all relevant times, each defendant, including those named herein as Doe defendants,
13 have operated, and currently operate, as a single business enterprise. Though such Defendants
14 have multiple corporate, entity, and individual personalities, there is but one enterprise and this
15 enterprise has been so handled that it should respond, as a whole and jointly and severally by
16 each of its constituent parts, for the acts committed by defendants. Each corporation, individual
17 and entity has been, and is, merely an instrument and conduit for the others in the prosecution of
18 a single business venture. There is such a unity of interest and ownership among these
19 Defendants that the separate personalities of the corporations, individuals and entities no longer
20 exist. If the separate acts of the defendants are treated as those of each Defendant alone, an
21 inequitable result will follow in that Defendants will evade and effectively frustrate the statutes
22 and statutory schemes set forth below which are meant to protect employee and the public's
23 welfare, and defendants separately may have insufficient assets to respond to the ultimate award
24 of restitution, costs, and penalties entered in this case. Further, an award of penalties against one
25 or more of the defendants alone will not accurately reflect the amount necessary for punishment
26 of the entire business enterprise conducted by defendants.

1 **FIRST CAUSE OF ACTION**

2 **VIOLATIONS OF BUSINESS AND PROFESSIONS CODE SECTION 17200**

3 **(Against all Defendants)**

4 12. The People reallege and incorporate by reference paragraphs 1 through 11 of this
5 complaint as if set fully herein.

6 13. Defendants misclassified their drivers: the drivers are Defendants' employees, not
7 independent contractors. Defendants can discharge the drivers without cause at any time. The
8 drivers are not skilled workers with substantial control over operational details. The drivers take
9 all necessary instructions from defendants, given the nature of the trucking business. The drivers
10 are an integrated part of defendants' trucking business, engaged in the core activity of
11 defendants' usual business: delivering cargo. The drivers do not have their own businesses or
12 their own customers. The drivers have no significant opportunity for profit or loss other than
13 working more hours. The drivers do not have DOT operating authority or other necessary
14 permits and/or licenses to independently engage in the transport of cargo. The drivers are
15 employed for extended periods of time. The drivers are using trucks, tools and equipment
16 furnished by defendants. The drivers do not own their trucks.

17 14. Defendants have violated and continue to violate Business and Professions Code
18 §§17200, et seq. by engaging in acts of unfair competition including, but not limited to, the
19 following:

20 a. Failing to pay Unemployment Insurance taxes as required by Unemployment
21 Insurance Code § 976;

22 b. Failing to pay Employment Training Fund taxes as required by
23 Unemployment Insurance Code §976.6;

24 c. Failing to withhold State Disability Insurance taxes as required by
25 Unemployment Insurance Code §984;

26 d. Failing to withhold State income taxes as required by Unemployment
27 Insurance Code §13020;

28 e. Failing to provide workers' compensation as required by Labor Code §3700;

1 f. Failing to provide employees with itemized written statements as required by
2 Labor Code §226 and to maintain and provide employees with records required by I.W.C. Wage
3 Order 9, subsection 7;

4 g. Failing to reimburse employees for business expenses and losses as required
5 by Labor Code §2802;

6 h. Failing to ensure payment at all times of California's minimum wage as
7 required by Labor Code §1194 and I.W.C. Wage Order 9, subsection 4.

8 15. Due to Defendants' unfair and unlawful practices described above, Defendants have
9 obtained an unfair advantage over its competitors, deprived employees of benefits and
10 protections to which they are entitled under California law, harmed their truck driver employees,
11 harmed the general public, and deprived the State of California of payments for California state
12 payroll taxes.

13 16. Due to Defendants' unfair and unlawful practices described above, Defendants' driver
14 employees suffered monetary losses and are entitled to restitution for those losses. Plaintiff
15 estimates the losses to be in excess of \$1,000,000.

16 17. Plaintiff requests that the Court, pursuant to Business & Professions Code §17206,
17 assess a civil penalty of two thousand five hundred dollars (\$2,500) against Defendants jointly
18 and severally for each violation of Business & Professions Code §17200 in an amount not less
19 than \$4,160,000.00, or as proved at trial.

20 18. Defendants' violations of California statutes and administrative orders have caused
21 irreparable damage to the People of the State of California. There is no adequate remedy at law
22 that might justify denial of preliminary or permanent injunctive relief, and Plaintiff requests that
23 an injunction issue prohibiting the unlawful and unfair conduct described above.

24
25 **PRAYER FOR RELIEF**

26 WHEREFORE, the People pray for the following relief:

27 1. Pursuant to Business and Professions Code §17203, that defendants, their successors,
28 agents, representatives, employees and all persons who act in concert with defendants be

1 permanently enjoined from engaging in unfair competition as defined in Business and
2 Professions Code §17200, including, but not limited to, acts and practices alleged in this
3 complaint;

4 2. Pursuant to Business and Professions Code §17206, that the Court assess a civil
5 penalty of two thousand five hundred dollars (\$2,500) against Defendants for each violation of
6 Business and Professions Code §17200, the total amount being no less than \$4,160,000 or as
7 proved at trial;

8 3. That Defendants be ordered to make restitution of unpaid minimum wages and money
9 or property which Defendants acquired by their violations of Business & Professions Code
10 §§17200 et seq. in an amount not less than \$1,000,000, or as proved at trial.

11 4. That the People recover their costs of suit; and

12 5. Such other and further relief that the Court deems appropriate and just.

13
14 Dated: September 4, 2008

15 Respectfully submitted,

16 EDMUND G. BROWN JR.
17 Attorney General of the State of California

18 MARK J. BRECKLER,
19 Senior Assistant Deputy Attorney General
20 JON M. ICHINAGA
21 Supervising Deputy Attorney General
22 MAURICE R. JOURDANE
23 Deputy Attorney General

24 Signature By: CAROLYN Y. LA

25 TIMOTHY J. KOLESNIKOW
26 Deputy Attorney General
27 Attorneys for Plaintiff
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