

JAMES HAWKINS APLC

James R. Hawkins, Esq. (#192925)

Gregory Mauro, Esq. (#222239)

Michael Calvo, Esq. (#314986)

9880 Research Drive, Suite 200

Irvine, CA 92618

Tel.: (949) 387-7200

Fax: (949) 387-6676

Email: James@jameshawkinsaplc.com

Email: Greg@jameshawkinsaplc.com

Email: Michael@jameshawkinsaplc.com

Attorneys for Plaintiff JONATHAN THOMAS,

On behalf of the general public as private attorney general

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES**

JONATHAN THOMAS, On behalf of the
general public as private attorney general,

Plaintiff,

v.

ROBERTSON'S READY MIX, LTD, a
California Limited Company, and DOES 1-50,
inclusive,

Defendants.

Case No.

ASSIGNED FOR ALL PURPOSES TO:

JUDGE:

DEPT:

**PAGA REPRESENTATIVE ACTION
COMPLAINT PURSUANT TO THE
PRIVATE ATTORNEYS GENERAL ACT
(Labor Code §§ 2698 *et seq*).**

COMES NOW Plaintiff JONATHAN THOMAS (“Plaintiff”), on behalf the general public and all non-exempt aggrieved employees, acting on behalf of the California Attorney General as private attorney general, asserts claims against Defendants ROBERTSON’S READY MIX LTD; and DOES 1-50, inclusive (collectively “Defendants”) as follows:

I. INTRODUCTION

1. This is a representative action for recovery of penalties under the Private Attorneys General Act of 2004 (“PAGA”), Cal. Lab. Code sections 2698 *et seq.* PAGA permits “aggrieved employees” to bring a lawsuit as a representative action on behalf of the general public as private attorney general and all other current and former aggrieved employees, to recover civil penalties and address an employer’s violations of the California Labor Code.

2. In this case, Defendants violated various provisions of the California Labor Code. As set forth below, Defendants implemented policies and practices which led to unpaid wages resulting from Defendant’s: (a) to pay wages including overtime, (b) failure to provide meal periods for every work period exceeding more than ten (10) hours per day and failure to pay an additional hour’s of pay or accurately pay an additional hour’s of pay in lieu of providing a meal period; (c) failure to provide rest breaks for every four hours or major fraction thereof worked and failure to pay an additional hour’s of pay or accurately pay an additional hour’s of pay in lieu of providing a rest period; (d) failing to pay all wages earned and owed upon separation from Defendant’s employ, and (e) failing to provide accurate itemized wage statements. As a result of Plaintiff seeks penalties under Labor Code 2698, *et. seq.* on behalf of the general public as private attorney general and all other aggrieved employees..

II. JURISDICTION AND VENUE

3. The California Superior Court has jurisdiction over this action pursuant to California Constitution Article VI, Section 10, which grants the Superior Court “original jurisdiction in all cases except those given by statute to other trial courts.” The statutes under which this action is brought do not give jurisdiction to any other court.

4. This Court has jurisdiction over Defendants because, upon information and belief,

1 each Defendant either has sufficient minimum contacts in California, or otherwise intentionally
2 avails itself of the California market so as to render the exercise of jurisdiction over it by the
3 California Courts consistent with traditional notions of fair play and substantial justice.

4 5. Venue as to each Defendant is proper in this judicial district pursuant to Code of
5 Civil Procedure section 395. Defendants are doing business throughout California, including but
6 not limited to Los Angeles County, and each Defendant is within the jurisdiction of this Court for
7 service of process purposes. The unlawful acts alleged herein have a direct effect on Plaintiff and
8 all other aggrieved employees within the State of California. Defendants employ numerous
9 aggrieved employees in in the State of California.

10 6. On information and belief, Defendants have conducted business within the State of
11 California during the purported liability period and continue to conduct business throughout the
12 State of California. The unlawful acts alleged herein have had a direct effect on Plaintiff, and the
13 similarly situated non-exempt aggrieved employees within California.

14 7. The California Superior Court also has jurisdiction in this matter because on
15 information and belief there are no federal questions at issue, as the issues herein are based solely
16 on California statutes and law, including the California Labor Code, the IWC Wage Orders, the
17 California Code of Civil Procedure, the California Civil Code, and the California Business and
18 Professions Code.

19 8. On information and belief, during the statutory liability period and continuing to
20 the present ("liability period"), Defendant consistently maintained and enforced against
21 Defendant's Non-Exempt Aggrieved Employees, among others, the following unlawful practices
22 and policies, in violation of California state wage and hour laws: (a) to pay wages including
23 overtime, (b) failure to provide meal periods for every work period exceeding more than ten (10)
24 hours per day and failure to pay an additional hour's of pay or accurately pay an additional hour's
25 of pay in lieu of providing a meal period; (c) failure to provide rest breaks for every four hours or
26 major fraction thereof worked and failure to pay an additional hour's of pay or accurately pay an
27 additional hour's of pay in lieu of providing a rest period; (d) failing to pay all wages earned and
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1 owed upon separation from Defendant's employ, and (e) failing to provide accurate itemized wage
2 statements.

3 9. On information and belief, during the statutory liability period and continuing to
4 the present, Defendants have had a consistent policy of failing to provide its Non-Exempt
5 Employees within the State of California, including Plaintiff, unfettered, uninterrupted, duty free
6 rest periods of at least (10) minutes per four (4) hours worked or major fraction thereof and failing
7 to pay such employees one (1) hour of pay at the employees regular rate of compensation for each
8 workday that the rest period is not provided, as required by California state wage and hour laws.

9 10. On information and belief, during the statutory liability period and continuing to
10 the present, Defendants have had a consistent policy of failing to pay wages including overtime
11 wages for hours worked while subject to the control of Defendants.

12 11. On information and belief, during the statutory liability period and continuing to
13 the present (rest and meal period liability period), Defendants have had a consistent policy of
14 requiring its Non-Exempt Employees within the State of California, including Plaintiff, to work at
15 least five (5) and or ten (10) hours without a meal period and failing to pay or accurately pay such
16 employees one (1) hour of pay at the employees regular rate of compensation for each workday
17 that the meal period is not provided, as required by California state wage and hour laws.

18 12. On information and belief, during the statutory liability period and continuing to
19 the present (rest and meal period liability period), Defendants have had a consistent policy of
20 requiring its Non-Exempt Employees within the State of California, including Plaintiff, to work in
21 excess of four hours and or ten (10) hours without authorizing and permitting a rest period and
22 failing to pay or accurately pay such employees one (1) hour of pay at the employees regular rate
23 of compensation for each workday that the rest period is not authorized and permitted, as required
24 by California state wage and hour laws.

25 13. On information and belief, during the statutory liability period and continuing to
26 the present, Defendants have had a consistent policy of failing to timely pay wages upon
27 separation.
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14. On information and belief, during the statutory liability period and continuing to the present, Defendants have failed to provide Plaintiff and aggrieved employees accurate itemized wage statements.

15. Plaintiff on behalf of the general public as private attorney general and all other aggrieved employees bring this action pursuant to Labor Code 2698, et. seq. for violations enumerated under 2699.5 as follows: sections 201-203, 510, 512, 558, 226, 266.3, 226.7, 266.3, 1174, 1174.5, 1175, 1194, 1197, 1197.1, 1198, and seeking penalties, interest, attorneys' fees and costs.

III. PARTIES

A. Plaintiff

16. Plaintiff, JONATHAN THOMAS, was at all times relevant to this action, a resident of Los Angeles, California. Plaintiff was employed by Defendants in approximately July 2019 as a Non-Exempt Employee working as a driver until Plaintiff's separation from Defendants' employ in approximately May 2020.

17. As Defendants' employee, Plaintiff, and all other aggrieved employees were regularly required to and subsequently suffered:

- a) perform work subject to the control of the employer without being compensated all wages including overtime, all in violation of California labor laws, regulations, and the Industrial Welfare Commission Wage Order (“IWC”);
- b) work without being permitted or authorized a minimum ten-minute rest period for every four hours or major fraction thereof worked and not compensated one (1) hour of pay at his regular rate of compensation for each workday that a rest period was not provided, all in violation of California labor laws, regulations, and the Industrial Welfare Commission Wage Orders (“IWC”);
- c) work in excess of six and ten hours per day without being provided meal periods and not compensated one (1) hour of pay at the regular rate of compensation for each workday that a meal period was not provided, all in violation of California labor laws,

1 regulations, and the Industrial Welfare Commission Wage Orders (“IWC”); and
2 d) not provided accurate itemized wage statements.

3 18. On information and belief, Defendants willfully failed to pay all earned wages in
4 the form regular wages and overtime wages, and meal and rest period premium wages, to its
5 Non-Exempt Employees and members of the Representative Group; nor have Defendants
6 returned to Plaintiff or members of the Representative Group, upon or after separation from
7 employment with Defendants, all wages earned and owing. Plaintiff seeks penalties under Labor
8 Code 2698, *et. seq.* on behalf of the general public as private attorney general and all other
9 aggrieved employees..

10 **B. Defendants**

11 19. Defendants ROBERTSON’S READY MIX, LTD, is a producer of ready-mix
12 concrete and construction aggregates throughout Southern and Northern California. Plaintiff
13 estimates there are in excess of 100 Non-Exempt Employees who work or have worked for
14 Defendants over the last year.

15 20. Other than identified herein, Plaintiff is unaware of the true names, capacities,
16 relationships and extent of participation in the conduct alleged herein, of the defendants sued as
17 DOES 1 through 50, but is informed and believes and thereon alleges that said defendants are
18 legally responsible for the wrongful conduct alleged herein and therefore sues these defendants by
19 such fictitious names. Plaintiff will amend this complaint when their true names and capabilities
20 are ascertained.

21 21. Plaintiff is informed and believes and thereon alleges that each Defendant, directly
22 or indirectly, or through agents or other persons, employed Plaintiff and other members of the
23 Representative Group , and exercised control over their wages, hours, and working conditions.
24 Plaintiff is informed and believes and thereon alleges that each defendant acted in all respects
25 pertinent to this action as the agent of the other defendants, carried out a joint scheme, business
26 plan or policy in all respects pertinent hereto, and the acts of each defendant are legally attributable
27 to the other defendants.
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1 excess of five hours without being provided a lawful meal period and over ten hours in a day
2 without being provided a second lawful meal period as required by law.

3 33. Indeed, during the relevant time, as a consequence of Defendants' staffing and
4 scheduling practices, lack of coverage, work demands, and Defendants' policies and practices,
5 Defendants frequently failed to provide Plaintiff and the Aggrieved Employees timely, legally
6 complaint uninterrupted 30-minute meal periods on shifts over five hours as required by law.

7 34. Similarly, as a consequence of Defendants' staffing and scheduling practices, lack
8 of coverage, work demands, and Defendants' policies and practices, Defendants frequently failed
9 to provide Plaintiff and the Aggrieved Employees legally compliant second meal periods on shifts
10 over ten hours as required by law.

11 35. On information and belief, Plaintiff and Aggrieved Employees did not validly
12 waive their rights to meal periods under the law.

13 36. Plaintiff and the Aggrieved Employees were not provided with valid lawful on-duty
14 meal periods.

15 37. Despite the above-mentioned meal period violations, Defendants failed to
16 compensate Plaintiff, and on information and belief, failed to compensate Aggrieved Employees,
17 one additional hour of pay at their regular rate as required by California law when meal periods
18 were not timely or lawfully provided in a compliant manner.

19 38. Defendants also automatically deducted 30-minutes of time from Plaintiff and
20 Aggrieved Employees for meal periods that were never provided, late, and/or cut-short, resulting
21 in an failure to pay minimum and overtime wages.

22 39. Plaintiff are informed and believe, and thereon alleges, that Defendants know,
23 should know, knew, and/or should have known that Plaintiff and the other Aggrieved Employees
24 were entitled to receive premium wages based on their regular rate of pay under Labor Code §226.7
25 but were not receiving such compensation.

26 40. In addition, during the relevant time frame, Plaintiff and the Non-Exempt
27 Employees were systematically not authorized and permitted to take one net ten-minute paid, rest
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1 period for every four hours worked or major fraction thereof, which is a violation of the Labor
2 Code and IWC wage order.

3 41. Defendants maintained and enforced scheduling practices, policies, and imposed
4 work demands that frequently required Plaintiff and Aggrieved Employees to forego their lawful,
5 paid rest periods of a net ten minutes for every four hours worked or major fraction thereof. Such
6 requisite rest periods were not timely authorized and permitted as a result of Defendants' failure
7 to provide relief for Plaintiff and Aggrieved Employees to take their lawfully required breaks.

8 42. Despite the above-mentioned rest period violations, Defendants did not compensate
9 Plaintiff, and on information and belief, did not pay Aggrieved Employees one additional hour of
10 pay at their regular rate as required by California law, including Labor Code section 226.7 and the
11 applicable IWC wage order, for each day on which lawful rest periods were not authorized and
12 permitted.

13 43. Defendants also failed to provide accurate, lawful itemized wage statements to
14 Plaintiff and the Aggrieved Employees in part because of the above specified violations. In
15 addition, upon information and belief, Defendants omitted an accurate itemization of total hours
16 worked, including hours worked for purposes of double time pay, premiums due and owing for
17 meal and rest period violations, gross pay and net pay figures from Plaintiff and the Aggrieved
18 Employees' wage statements. Defendants also failed to identify Plaintiff's and Aggrieved
19 Employees' shift differential pay as no hourly rate or total hours are listed.

20 44. Plaintiff are informed and believe, and thereon alleges, that at all times herein
21 mentioned, Defendants knew that at the time of termination of employment (or within 72 hours
22 thereof for resignations without prior notice as the case may be) they had a duty to accurately
23 compensate Plaintiff and Aggrieved Employees for all wages owed including minimum wages,
24 meal and rest period premiums, and that Defendants had the financial ability to pay such
25 compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so in part
26 because of the above-specified violations.

27 45. Upon information and belief, Defendants knew and or should have known that it is
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improper to implement policies and commit unlawful acts such as:

(a) requiring employees to work four (4) hours or a major fraction thereof without being provided a minimum ten (10) minute rest period and without compensating the employees with one (1) hour of pay at the employees' regular rate of compensation for each workday that a rest period was not provided;

(b) requiring employees to work in excess of five (5) hours or ten (10) hours per day without being provided an uninterrupted thirty minute meal period and/or a second meal period, and without compensating employees with one (1) hour of pay at the regular rate of compensation for each workday that such a meal period was not provided;

(c) failing to provide accurate itemized wage statements;

(d) failing to pay all wages including overtime;

(e) failing to timely pay Plaintiff and Aggrieved Employees; and

(f) conducting and engaging in unfair business practices.

46. In addition to the violations above, and on information and belief, Defendants knew they had a duty to compensate Plaintiff and Aggrieved Employees for the allegations asserted herein and that Defendants had the financial ability to pay such compensation, but willfully, knowingly, recklessly, and/or intentionally failed to do so.

V. REPRESENTATIVE CLAIMS

THE PRIVATE ATTORNEYS GENERAL ACT- LABOR CODE §§ 2698 et seq.

47. Plaintiff incorporates by reference and re-alleges each and every allegation contained above, as though fully set forth herein.

48. On August 11, 2020 Plaintiff complied with notice requirements pursuant to Labor Code section 2699.3. A copy of the letter sent to the LWDA is attached hereto as **Exhibit A**, indicating that the LWDA and Defendants were put on notice of the claims alleged here and that the notice requirement has been satisfied. Sixty five days have passed and the LWDA has not indicated intent to investigate the claims. Therefore, Plaintiff may proceed with this action in a representative capacity. The substance and violations set forth in this Complaint of which the

1 LWDA was provided timely notice, Plaintiff has also sent a copy of this PAGA Representative
2 Action Complaint to the LWDA.

3 49. Plaintiff is an aggrieved employee as defined in Labor Code Section 2699(a).
4 Plaintiff brings this cause of action on behalf of all current and former California Non-Exempt
5 Employees of Defendants.

6 50. Pursuant to Labor Code section 2699(a) Plaintiff seek to recover civil penalties for
7 which Defendants are liable due to numerous Labor Code violations as set forth in this Complaint,
8 including without limitation Labor Code section 201-203, 226, 266.3, 226.7, 510, 558, 512, 1174,
9 1174.5, 1175, 1194, 1197, 1197.1, and, 2698 *et seq.*, applicable IWC Wage Orders and California
10 Code of Regulations, Title 8, section 11000 *et. seq.*

11 51. At all times relevant, Plaintiff and all other aggrieved employees regularly
12 performed non-exempt work in excess of 50% of the time, and thus, were subject to the meal and
13 rest break requirements of the applicable IWC wage order and the Labor Code.

14 52. Defendants violated Labor Code section 510, and 1194 by failing to accurately pay
15 overtime wages owed as discussed above Defendants' failure to account for shift differentials into
16 the regular rates of pay. Therefore, Defendants violated section 510, and 1194 by not compensating
17 its Non-Exempt Employees for work performed in excess of eight hours (8) in a day or forty hours
18 in a work week (40). Section 510 of the Labor Code codifies the right to overtime compensation
19 at the rate of one and one-half times the regular rate of pay for all hours worked in excess of eight
20 (8) hours in a day or forty (40) hours in a work week and to overtime compensation twice the
21 regular rate of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight
22 (8) hours in a day on the seventh day of work in a particular work week

23 53. Defendants violated Labor Code section 200, 510, 558, 1194, 1197, by failing to
24 accurately pay at minimum wages and overtime wages due as a result Defendants' failure to
25 compensate Plaintiff and Aggrieved Employees for meal periods that were automatically deducted
26 but were unprovided, late, and/or cut short.

27 54. Defendants violated Labor Code sections 512 and 226.7 for failing to provide
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1 timely, uninterrupted first and second meal periods and requiring unlawful on duty meal periods,
2 or compensation in lieu thereof. Pursuant to Labor Code section 512, no employer shall employ
3 an employee for a work period of more than five (5) hours without providing a meal break of not
4 less than thirty (30) minutes in which the employee is relieved of all of his or her duties. An
5 employer may not employ an employee for a work period of more than ten (10) hours per day
6 without providing the employee with a second meal period of not less than thirty (30) minutes,
7 except that if the total hours worked is no more than twelve (12) hours, the second meal period
8 may be waived by mutual consent of the employer and the employee only if the first meal period
9 was not waived.

10 55. Defendants failed to provide Plaintiff and all other aggrieved employees
11 uninterrupted duty free meal periods of not less than thirty (30) minutes. Defendants implemented
12 and enforced policies of on duty meal period practices which required employees to work during
13 their meal periods, to forego their meal periods, and/or to return to work from meal periods prior
14 to thirty (30) uninterrupted minutes. As a proximate result of the aforementioned violations,
15 Plaintiff and all other aggrieved employees have been damaged in an amount according to proof
16 at time of trial.

17 56. Plaintiff, and on information and belief, all aggrieved employees, were
18 systematically not permitted or authorized to take ten minute rest periods for every four hours
19 worked or major fraction thereof, which is a violation of the Labor Code and IWC wage order.
20 Plaintiff and on information and belief, aggrieved employees, were not compensated with one hour
21 of wages for every day in which a rest period was missed or untimely as a result of Defendants'
22 policies, practices, or work demands. By failing to authorize and permit a ten-minute rest period
23 for every four hours or major fraction thereof worked per day by its Non-Exempt Employees, and
24 by failing to provide compensation for such non-provided or shortened rest periods, as alleged
25 above, Defendants willfully violated the provisions of Labor Code sections 226.7, 512 and the
26 applicable IWC Wage Order.

27 57. Defendants also willfully violated Labor Code sections 201-203 by failing to
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1 provide all owed wages at separation from employment. Labor Code sections 201 and 202 require
2 Defendants to pay their employees all wages due either at time of firing, or within seventy-two
3 (72) hours of voluntary separation, if not sooner. Section 203 of the Labor Code provides that if
4 an employer willfully fails to timely pay such wages the employer must, as a penalty, continue to
5 pay the subject employee's wages until the back wages are paid in full or an action is commenced.
6 The penalty cannot exceed 30 days of wages.

7 58. Plaintiff and all other aggrieved employees who were separated from employment
8 are entitled to compensation for all forms of wages earned, including but not limited to
9 compensation regular and overtime wages, and for non-provided meal and rest periods, but to date
10 have not received such compensation, therefore entitling them to penalties under PAGA for
11 violations of Labor Code sections 201-203.

12 59. On information and belief, Defendants willfully failed to pay all wages due and
13 owing upon separation from employment. These wages include regular and overtime wages, and
14 meal and rest period premiums.

15 60. On information and belief, Defendants failed to provide accurate itemized wage
16 statements which failed to include all hours worked, including overtime, accurate accounting of,
17 the lawful meal and rest period premiums due and owing to Plaintiff and the aggrieved employees,
18 and the address of the legal entity that is the employer pursuant to Labor Code section 226(a).

19 61. Additionally, Defendants have no accurate records relating to aggrieved
20 employees' work periods, meal periods, total daily hours worked, total hours worked per payroll
21 period and applicable pay rates, in violation of Wage Order. Defendants also failed to correctly
22 record Plaintiff's and Class Member's Net Pay as Defendant failed to include deductions and/or
23 incorporated deductions that were not deductions on wage statements. Similarly, Defendants
24 failed to maintain accurate records relating to hours worked daily in violation of Labor Code
25 sections 1174(d), 1174.5.

26 62. As a result of Defendants' unlawful conduct, Plaintiff and Aggrieved employees
27 are entitled to penalties to the extent they were not paid at the prevailing wage rate for all hours
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1 worked.

2 63. Plaintiff and the Representative Aggrieved Employees are entitled to recover
3 Penalties and attorneys' fees and costs sunder Labor Code section 2698, et. seq.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

- 6 1. For penalties according to proof, pursuant to Labor Code §§ 2698 et seq.;
- 7 2. For reasonable attorneys' fees and costs; and
- 8 3. For such other and further relief as the Court deems proper.
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10 Dated: August 11, 2020

JAMES R. HAWKINS, APLC

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13 James R. Hawkins, Esq.
14 Gregory E. Mauro, Esq.
15 Michael Calvo, Esq.

16 Attorneys for Plaintiff, and the general public
17 as private attorneys general
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