

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

Norman B. Blumenthal (State Bar #068687)

Kyle R. Nordrehaug (State Bar #205975)

Aparajit Bhowmik (State Bar #248066)

Nicholas J. De Blouw (State Bar #280922)

2255 Calle Clara

La Jolla, CA 92037

Telephone: (858)551-1223

Facsimile: (858) 551-1232

Website: www.bamlawca.com

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF KERN

DAMMION MYLES, on behalf of the State
of California, as a private attorney general,

Plaintiff,

vs.

BUILDERS CONCRETE, INC., a California
Corporation; CONCRETE HOLDING
COMPANY OF CALIFORNIA, INC., a
Corporation; VIKING READY MIX CO.,
INC., a Corporation; NATIONAL READY
MIXED CONCRETE CO., a California
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. BCV-20-102905

**REPRESENTATIVE ACTION
COMPLAINT FOR:**

1. Civil Penalties Pursuant to Labor Code
§ 2699, *et seq.* for violations of Labor
Code §§ 201, 202, 203, 204 *et seq.*, 210,
226(a), 226.7, 351, 510, 512, 558(a)(1)(2),
1194, 1197, 1197.1, 1198, 2802,
California Code of Regulations, Title 8,
Section 11040, Subdivision 5(A)-(B).

1 Plaintiff Dammion Myles (“PLAINTIFF”), an individual, on behalf of the people of the
2 State of California and as an “aggrieved employee” acting as a private attorney general under
3 the Labor Code Private Attorney General Act of 2004, § 2699, *et seq.* (“PAGA”) only, alleges
4 on information and belief, except for his own acts and knowledge which are based on personal
5 knowledge, the following:

6 **INTRODUCTION**

7 1. PLAINTIFF brings this action against Defendants BUILDERS CONCRETE, INC.,
8 CONCRETE HOLDING COMPANY OF CALIFORNIA, INC., VIKING READY MIX CO., INC.,
9 NATIONAL READY MIXED CONCRETE CO. (“DEFENDANT”) seeking only to recover PAGA
10 civil penalties for himself, and on behalf of all current and former aggrieved employees that
11 worked for DEFENDANT. PLAINTIFF does **not seek to recover anything other than**
12 **penalties as permitted by California Labor Code § 2699.** To the extent that statutory
13 violations are mentioned for wage violations, PLAINTIFF does not seek underlying general
14 and/or special damages for those violations, but simply the civil penalties permitted by
15 California Labor Code § 2699.

16 2. California has enacted the PAGA to permit an individual to bring an action on
17 behalf of himself and on behalf of others for PAGA penalties *only*, which is the precise and sole
18 nature of this action.

19 3. Accordingly, PLAINTIFF seeks to obtain all applicable relief for
20 DEFENDANT’s violations under PAGA and solely for the relief as permitted by PAGA – that
21 is, penalties and any other relief the Court deems proper pursuant to the PAGA. Nothing in this
22 complaint should be construed as attempting to obtain any relief that would not be available in
23 a PAGA-only action.

24 **THE PARTIES**

25 4. Defendant Builders Concrete, Inc. is a California Corporation that at all relevant
26 times mentioned herein conducted and continues to conduct substantial business in the state of
27 California.
28

1 5. Defendant Concrete Holding Company of California, Inc. is a Corporation that
2 at all relevant times mentioned herein conducted and continues to conduct substantial business
3 in the state of California.

4 6. Defendant Viking Ready Mix Co., Inc. is a Corporation that at all relevant times
5 mentioned herein conducted and continues to conduct substantial business in the state of
6 California.

7 7. Defendant National Ready Mixed Concrete Co. is a California Corporation that
8 at all relevant times mentioned herein conducted and continues to conduct substantial business
9 in the state of California.

10 8. PLAINTIFF alleges there has existed a unity of interest and ownership between
11 these Defendants such that any individuality and separateness between the entities has ceased.
12 Defendants Builders Concrete, Inc., Concrete Holding Company of California, Inc, Viking
13 Ready Mix Co., Inc., and, National Ready Mixed Concrete Co. are therefore alter egos of each
14 other. Adherence to the fiction of the separate existence of would permit an abuse of the
15 corporative privilege, and would promote injustice by protecting Builders Concrete, Inc.,
16 Concrete Holding Company of California, Inc, Viking Ready Mix Co., Inc., and, National
17 Ready Mixed Concrete Co. from liability for the wrongful acts committed by them. As
18 evidenced by PLAINTIFF's paychecks and company documents, Defendants Builders Concrete,
19 Inc., Concrete Holding Company of California, Inc, Viking Ready Mix Co., Inc., and, National
20 Ready Mixed Concrete Co. were joint employers of PLAINTIFF and are referred to herein as
21 ("DEFENDANT").

22 9. DEFENDANT is a ready mixed concrete supplier that serves the Southern
23 California market.

24 10. PLAINTIFF was employed by DEFENDANT in California from November of
25 2019 to January 10, 2020 and was at all times classified by DEFENDANT as a non-exempt
26 employee, paid on an hourly basis, and entitled to the legally required meal and rest periods and
27 payment of minimum and overtime wages due for all time worked.

28 11. PLAINTIFF, and such persons that may be added from time to time who satisfy

1 the requirements and exhaust the administrative procedures under the Private Attorney General
2 Act, brings this Representative Action on behalf of the State of California with respect to
3 himself and all individuals who are or previously were employed by Builders Concrete, Inc.,
4 and/or Concrete Holding Company of California, Inc, and/or Viking Ready Mix Co., Inc.,
5 and/or National Ready Mixed Concrete Co. in California and classified as non-exempt
6 employees ("AGGRIEVED EMPLOYEES") during the time period of October 1, 2019 until
7 a date as determined by the Court (the "PAGA PERIOD").

8 12. PLAINTIFF, on behalf of himself and all AGGRIEVED EMPLOYEES presently
9 or formerly employed by DEFENDANT during the PAGA PERIOD, brings this representative
10 action pursuant to Labor Code § 2699, *et seq.* seeking fixed civil penalties for DEFENDANT's
11 violation of California Labor Code §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510,
12 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8,
13 Section 11040, Subdivision 5(A)-(B), and the applicable Wage Order(s). Based upon the
14 foregoing, PLAINTIFF and all AGGRIEVED EMPLOYEES are aggrieved employees within
15 the meaning of Labor Code § 2699, *et seq.*

16 13. The true names and capacities, whether individual, corporate, subsidiary,
17 partnership, associate or otherwise of defendants DOES 1 through 50, inclusive, are presently
18 unknown to PLAINTIFF who therefore sues these Defendants by such fictitious names pursuant
19 to Cal. Civ. Proc. Code § 474. PLAINTIFF will seek leave to amend this Complaint to allege
20 the true names and capacities of Does 1 through 50, inclusive, when they are ascertained.
21 PLAINTIFF is informed and believes, and based upon that information and belief alleges, that
22 the Defendants named in this Complaint, including DOES 1 through 50, inclusive, are
23 responsible in some manner for one or more of the events and happenings that proximately
24 caused the injuries and damages hereinafter alleged.

25 14. The agents, servants and/or employees of the Defendants and each of them acting
26 on behalf of the Defendants acted within the course and scope of his, her or its authority as the
27 agent, servant and/or employee of the Defendants, and personally participated in the conduct
28 alleged herein on behalf of the Defendants with respect to the conduct alleged herein.

1 Consequently, the acts of each Defendant are legally attributable to the other Defendants and
2 all Defendants are jointly and severally liable to PLAINTIFF and the other AGGRIEVED
3 EMPLOYEES, for the loss sustained as a proximate result of the conduct of the Defendants'
4 agents, servants and/or employees.

5 6 **THE CONDUCT**

7 15. Pursuant to the Industrial Welfare Commission Wage Orders, DEFENDANT was
8 required to pay PLAINTIFF and AGGRIEVED EMPLOYEES for all their time worked,
9 meaning the time during which an employee is subject to the control of an employer, including
10 all the time the employee is suffered or permitted to work. DEFENDANT required PLAINTIFF
11 and AGGRIEVED EMPLOYEES to work without paying them for all the time they were under
12 DEFENDANT's control. Specifically, DEFENDANT required PLAINTIFF to work while
13 clocked out during what was supposed to be PLAINTIFF's off-duty meal break. PLAINTIFF
14 was from time to time interrupted by work assignments while clocked out for what should have
15 been PLAINTIFF's off-duty meal break. Additionally, PLAINTIFF and AGGRIEVED
16 EMPLOYEES would clock out of DEFENDANT's timekeeping system, in order to perform
17 additional work for DEFENDANT as required to meet DEFENDANT's job requirements.
18 DEFENDANT's policy and practice not to pay PLAINTIFF and other AGGRIEVED
19 EMPLOYEES for all time worked, is evidenced by DEFENDANT's business records.

20 16. As a result of their rigorous work schedules, PLAINTIFF and other AGGRIEVED
21 EMPLOYEES were from time to time unable to take thirty (30) minute off duty meal breaks
22 and were not fully relieved of duty for their meal periods. PLAINTIFF and other AGGRIEVED
23 EMPLOYEES were required from time to time to perform work as ordered by DEFENDANT
24 for more than five (5) hours during some shifts without receiving a meal break. Further,
25 DEFENDANT from time to time failed to provide PLAINTIFF and AGGRIEVED
26 EMPLOYEES with a second off-duty meal period for some workdays in which these employees
27 were required by DEFENDANT to work ten (10) hours of work. PLAINTIFF and other
28 AGGRIEVED EMPLOYEES therefore forfeited meal breaks without additional compensation

1 and in accordance with DEFENDANT's corporate policy and practice.

2 17. During the PAGA PERIOD, PLAINTIFF and other AGGRIEVED EMPLOYEES
3 were also required from time to time to work in excess of four (4) hours without being provided
4 ten (10) minute rest periods. Further, these employees were denied their first rest periods of at
5 least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours from time to
6 time, a first and second rest period of at least ten (10) minutes for some shifts worked of
7 between six (6) and eight (8) hours from time to time, and a first, second and third rest period
8 of at least ten (10) minutes for some shifts worked of ten (10) hours or more from time to time.
9 PLAINTIFF and other AGGRIEVED EMPLOYEES were also not provided with one hour
10 wages in lieu thereof. Additionally, the applicable California Wage Order requires employers
11 to provide employees with off-duty rest periods, which the California Supreme Court defined
12 as time during which an employee is relieved from all work related duties and free from
13 employer control. In so doing, the Court held that the requirement under California law that
14 employers authorize and permit all employees to take rest period means that employers must
15 relieve employees of all duties and relinquish control over how employees spend their time
16 which includes control over the locations where employees may take their rest period.
17 Employers cannot impose controls that prohibit an employee from taking a brief walk - five
18 minutes out, five minutes back. Here, DEFENDANT's policy restricted PLAINTIFF and other
19 AGGRIEVED EMPLOYEES from unconstrained walks and was unlawful based on
20 Defendant's rule which stated PLAINTIFF and other AGGRIEVED EMPLOYEES could not
21 leave the work premises during their rest period.

22 18. During the PAGA PERIOD, DEFENDANT failed to accurately record and pay
23 PLAINTIFF and other AGGRIEVED EMPLOYEES for the actual amount of time these
24 employees worked. Pursuant to the Industrial Welfare Commission Wage Orders,
25 DEFENDANT is required to pay PLAINTIFF and other AGGRIEVED EMPLOYEES for all
26 time worked, meaning the time during which an employee was subject to the control of an
27 employer, including all the time the employee was permitted or suffered to permit this work.
28 DEFENDANT required these employees to work off the clock without paying them for all the

1 time they were under DEFENDANT's control. As such, DEFENDANT knew or should have
2 known that PLAINTIFF and the other AGGRIEVED EMPLOYEES were under compensated
3 for all time worked. As a result, PLAINTIFF and other AGGRIEVED EMPLOYEES forfeited
4 time worked by working without their time being accurately recorded and without compensation
5 at the applicable minimum wage and overtime wage rates. To the extent that the time worked
6 off the clock did not qualify for overtime premium payment, DEFENDANT failed to pay
7 minimum wages for the time worked off-the-clock in violation of Cal. Lab. Code §§ 1194,
8 1197, and 1197.1.

9 19. DEFENDANT intentionally and knowingly failed to reimburse and indemnify
10 PLAINTIFF and the other AGGRIEVED EMPLOYEES for required business expenses
11 incurred by PLAINTIFF and other AGGRIEVED EMPLOYEES in direct consequence of
12 discharging their duties on behalf of DEFENDANT. Under California Labor Code Section
13 2802, employers are required to indemnify employees for all expenses incurred in the course
14 and scope of their employment. Cal. Lab. Code § 2802 expressly states that "an employer shall
15 indemnify his or her employee for all necessary expenditures or losses incurred by the employee
16 in direct consequence of the discharge of his or her duties, or of his or her obedience to the
17 directions of the employer, even though unlawful, unless the employee, at the time of obeying
18 the directions, believed them to be unlawful."

19 20. In the course of their employment PLAINTIFF and other AGGRIEVED
20 EMPLOYEES as a business expense, were required by DEFENDANT to use their own personal
21 cellular phones as a result of and in furtherance of their job duties as employees for
22 DEFENDANT but were not reimbursed or indemnified by DEFENDANT for the cost
23 associated with the use of their personal cellular phones for DEFENDANT's benefit. As a
24 result, in the course of their employment with DEFENDANT, PLAINTIFF and other
25 AGGRIEVED EMPLOYEES incurred unreimbursed business expenses which included, but
26 were not limited to, costs related to the use of their personal cellular phones all on behalf of and
27 for the benefit of DEFENDANT.

28 21. From time to time, DEFENDANT also failed to provide PLAINTIFF and the

1 AGGRIEVED EMPLOYEES with complete and accurate wage statements which failed to
2 show, among other things, the correct gross and net wages earned and failed to list the correct
3 legal entity that employed PLAINTIFF. Cal. Lab. Code § 226 provides that every employer
4 shall furnish each of his or her employees with an accurate itemized wage statement in writing
5 showing, among other things, gross wages earned and all applicable hourly rates in effect during
6 the pay period and the corresponding amount of time worked at each hourly rate. Aside, from
7 the violations listed above in this paragraph, DEFENDANT failed to issue to PLAINTIFF an
8 itemized wage statement that lists all the requirements under California Labor Code 226 *et seq.*
9 As a result, DEFENDANT from time to time provided PLAINTIFF and the other AGGRIEVED
10 EMPLOYEES with wage statements which violated Cal. Lab. Code § 226.

11 22. In violation of the applicable sections of the California Labor Code and the
12 requirements of the Industrial Welfare Commission ("IWC") Wage Order, DEFENDANT
13 intentionally and knowingly and failed to compensate PLAINTIFF and the other AGGRIEVED
14 EMPLOYEES for missed meal and rest periods. This policy and practice of DEFENDANT is
15 intended to purposefully avoid the payment for all time worked as required by California law
16 which allows DEFENDANT to illegally profit and gain an unfair advantage over competitors
17 who complied with the law. To the extent equitable tolling operates to toll claims by the
18 AGGRIEVED EMPLOYEES against DEFENDANT, the PAGA PERIOD should be adjusted
19 accordingly.

20 23. By reason of this conduct applicable to PLAINTIFF and all AGGRIEVED
21 EMPLOYEES, DEFENDANT engaged in a company-wide policy and procedure which failed
22 to accurately calculate and record all missed meal and rest periods by PLAINTIFF and other
23 AGGRIEVED EMPLOYEES. The proper recording of these employees' missed meal and rest
24 breaks is the DEFENDANT's burden. As a result of DEFENDANT's intentional disregard of
25 the obligation to meet this burden, DEFENDANT failed to properly calculate and/or pay all
26 required compensation for work performed by the AGGRIEVED EMPLOYEES and violated
27 the California Labor Code and regulations promulgated thereunder as herein alleged.

28 24. All of the conduct and violations alleged herein occurred during the PAGA

1 PERIOD. To the extent that any of the conduct and violations alleged herein did not affect
2 PLAINTIFF during the PAGA PERIOD, PLAINTIFF seeks penalties for those violations that
3 affected other AGGRIEVED EMPLOYEES pursuant to *Carrington v. Starbucks Corp.* 2018
4 AJDAR 12157 (Certified for Publication 12/19/18).

5
6 **JURISDICTION AND VENUE**

7 25. This Court has jurisdiction over this Action pursuant to California Code of Civil
8 Procedure, Section 410.10.

9 26. Venue is proper in this Court pursuant to California Code of Civil Procedure,
10 Sections 395 and 395.5, because PLAINTIFF worked in this County for DEFENDANT and
11 DEFENDANT (i) currently maintains and at all relevant times maintained offices and facilities
12 in this County and/or conducts substantial business in this County, and (ii) committed the
13 wrongful conduct herein alleged in this County against PLAINTIFF and the AGGRIEVED
14 EMPLOYEES.

15 **FIRST CAUSE OF ACTION**

16 **For Violation of the Private Attorneys General Act**

17 **[Cal. Lab. Code §§ 2698, *et seq.*]**

18 **(By PLAINTIFF and Against All Defendants)**

19 27. PLAINTIFF incorporates by reference the allegations set forth in paragraphs 1-26,
20 supra, as though fully set forth at this point.

21 28. PAGA is a mechanism by which the State of California itself can enforce state
22 labor laws through the employee suing under the PAGA who do so as the proxy or agent of the
23 state's labor law enforcement agencies. An action to recover civil penalties under PAGA is
24 fundamentally a law enforcement action designed to protect the public and not to benefit private
25 parties. The purpose of the PAGA is not to recover damages or restitution, but to create a
26 means of "deputizing" citizens as private attorneys general to enforce the Labor Code. In
27 enacting PAGA, the California Legislature specified that "it was ... in the public interest to
28 allow aggrieved employees, acting as private attorneys general to recover civil penalties for

1 Labor Code violations ..." Stats. 2003, ch. 906, § 1. Accordingly, PAGA claims cannot be
2 subject to arbitration.

3 29. PLAINTIFF, and such persons that may be added from time to time who satisfy
4 the requirements and exhaust the administrative procedures under the Private Attorney General
5 Act, brings this Representative Action on behalf of the State of California with respect to
6 himself and all individuals who are or previously were employed by Builders Concrete, Inc.,
7 and/or Concrete Holding Company of California, Inc, and/or Viking Ready Mix Co., Inc.,
8 and/or National Ready Mixed Concrete Co. in California and classified as non-exempt
9 employees ("AGGRIEVED EMPLOYEES") during the time period of October 1, 2019 until
10 a date as determined by the Court (the "PAGA PERIOD").

11 30. On October 1, 2020, PLAINTIFF gave written notice by electronic mail to the
12 Labor and Workforce Development Agency (the "Agency") and by certified mail to the
13 employer of the specific provisions of this code alleged to have been violated as required by
14 Labor Code § 2699.3. The statutory waiting period for PLAINTIFF to add these allegations to
15 the Complaint has expired. As a result, pursuant to Section 2699.3, PLAINTIFF may now
16 commence a representative civil action under PAGA pursuant to Section 2699 as the proxy of
17 the State of California with respect to all AGGRIEVED EMPLOYEES as herein defined.

18 31. The policies, acts and practices heretofore described were and are an unlawful
19 business act or practice because DEFENDANT (a) failed to provide PLAINTIFF and the other
20 AGGRIEVED EMPLOYEES accurate itemized wage statements, (b) failed to properly record
21 and provide legally required meal and rest periods, (c) failed to pay overtime wages, (d) failed
22 to pay minimum wages, (e) failed to reimburse for required business expenses, and (f) failed to
23 pay wages when due, all in violation of the applicable Labor Code sections listed in Labor Code
24 §§ 201, 202, 203, 204 *et seq.*, 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197,
25 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-
26 (B), and the applicable Industrial Wage Order(s), and thereby gives rise to civil penalties as a
27
28

1 result of such conduct.¹ PLAINTIFF hereby seeks recovery of only civil penalties as prescribed
2 by the Labor Code Private Attorney General Act of 2004 as the representative of the State of
3 California for the illegal conduct perpetrated on PLAINTIFF and the other AGGRIEVED
4 EMPLOYEES.

5
6 **PRAYER FOR RELIEF**

7 WHEREFORE, PLAINTIFF prays for judgment against each Defendant, jointly and
8 severally, as follows:

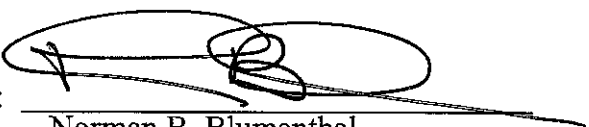
9 1. On behalf of the State of California and with respect to all AGGRIEVED
10 EMPLOYEES:

11 A) Recovery of civil penalties as prescribed by the Labor Code Private
12 Attorneys General Act of 2004; and,

13 B) An award of attorneys' fees and cost of suit, as allowable under the
14 law, including, but not limited to, pursuant to Labor Code §2699.

15
16 Dated: December 10, 2020

BLUMENTHAL NORDREHAUG BHOWMIK DE BLOUW LLP

17
18
19 By: 

20 Norman B. Blumenthal
21 Attorneys for Plaintiff
22
23
24
25
26

27
28 ¹Plaintiff specifically excludes and/or does not allege any claims under California Labor
Code §558(a)(3).