

VENTURA SUPERIOR COURT

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SUPERIOR COURT OF THE STATE OF CALIFORNIA**FOR THE COUNTY OF VENTURA**

SERGIO RAYA, an individual;
 RUBIN LIZARRAGA, an individual;
 for themselves and on behalf of all
 others similarly situated,

Plaintiffs,

vs.

STATE READY MIX, INC., a
 California corporation; and DOES 1
 through 50, inclusive,

Defendants.

Case No.: 56-2021-00555277-CU-WT-VTA

**AMENDED CLASS AND REPRESENTATIVE
ACTION COMPLAINT**

1. Failure to Pay Wages and/or Overtime Under Labor Code §§ 510, 1194, and 1199;
2. Failure to Pay Minimum Wages;
3. Failure to Provide Meal and Rest Periods Under Labor Code §226.7 and 512;
4. Violation of Labor Code § 226;
5. Violation of Labor Code § 221;
6. Violation of Labor Code § 204;
7. Violation of Labor Code § 2802
8. Penalties Pursuant to Labor Code § 203;
9. Failure to Maintain Records Required Under Labor Code §§ 1174, 1174.5;
10. Violation of Business & Professions Code § 17200; and
11. Penalties Pursuant to Labor Code §2699, et seq.

DEMAND FOR JURY TRIAL

1 Plaintiffs SERGIO RAYA (“RAYA”) and RUBIN LIZARRAGA (“LIZARRAGA”), as
2 individuals, on behalf of themselves, all others similarly situated, and on behalf of the people of
3 the State of California and as an “aggrieved employee” under Labor Code Private Attorneys
4 General Act of 2004, §2699, et seq. (hereafter “PAGA”), complain of Defendant STATE READY
5 MIX, INC. (“Defendant”) and each of them, as follows:

6 **INTRODUCTION**

7 1. This is a Class and Representative Action, pursuant to Code of Civil Procedure
8 §382, and Labor Code §2699, et seq., on behalf of Plaintiffs and a Proposed Class defined:

9 All employees who worked as a non-exempt employee for State Ready Mix, Inc.,
10 in the State of California since four (4) years prior to the filing of this action to the
11 present. (“Proposed Class”)

12
13 2. From at least four (4) years prior to the filing of this action continuing to the present,
14 Defendant has had a consistent policy of failing to pay wages and/or overtime to all Proposed Class
15 Members when they work more than eight hours in a day or forty hours in a week. Plaintiffs and
16 other Proposed Class members were not properly compensated for all hours worked at the
17 appropriate rate of pay.

18 3. From at least four (4) years prior to the filing of this action and continuing to the
19 present, Defendant failed to provide Plaintiffs and the Class with minimum wage compensation
20 by failing to pay them properly for all hours worked, including off the clock work.

21 4. From at least four (4) years prior to the filing of this action and continuing to the
22 present, Defendant has had a consistent policy of failing to inform Proposed Class Members of
23 their right to take meal periods by way of a lawful policy and requiring Proposed Class Members
24 within the State of California, including Plaintiffs, to work at least five (5) hours without a timely
25 meal period and failing to pay such employees one (1) hour of pay at the employees’ regular rate
26 of compensation for each workday that the meal period is not provided or provided after five (5)
27 hours, as required by California state wage and hour laws.

28 5. For at least four (4) years prior to the filing of this action continuing to the present,

1 Defendant has had a consistent policy of failing to inform Plaintiffs and the Proposed Class
2 Members of their right to take second meal periods by way of a lawful policy and of requiring all
3 Proposed Class Members to work at least ten (10) hours without a second meal period.
4 Additionally, Defendant has failed to pay such employees one (1) hour of pay at the employee's
5 regular rate of compensation for each workday that the second meal period is not provided or
6 provided after ten (10) hours, as required by California state wage and hour laws.

7 6. From at least four (4) years prior to the filing of this action and continuing to the
8 present, Defendant has had a consistent policy of failing to inform Proposed Class Members of
9 their right to take rest periods by way of a lawful policy and requiring Proposed Class Members
10 within the State of California, including Plaintiffs, to work at four (4) hours or a major fraction
11 thereof, without a rest period of ten (10) minutes net rest time and failing to pay such employees
12 one (1) hour of pay at the employees' regular rate of compensation for each workday that the rest
13 period is not provided or provided after four (4) hours, as required by California state wage and
14 hour laws.

15 7. For at least three (3) years prior to the filing of this action continuing to the present,
16 Defendant has failed to pay all wages due at the time of termination or resignation to Plaintiffs and
17 the Proposed Class.

18 8. From at least four years prior to the filing of this lawsuit and continuing to the
19 present, Defendants have also consistently violated Labor Code § 221 by unlawfully collecting or
20 deducting the Employees' earned wages, including by the above described off the clock work and
21 on-duty work while on unpaid meal breaks and by unlawfully deducting rest break time from hours
22 worked. By not compensating Employees for all hours worked, Defendants unlawfully deducted
23 wages earned in violation of Labor Code § 221.

24 9. Plaintiffs, on behalf of themselves and all Proposed Class Members brings this
25 action pursuant to Labor Code §§ 201, 202, 203, 204, 221, 226, 226.7, 246, 248.1, 248.5, 510, 512,
26 511, 558, 1174, 1174.5, 1185, 1194, 1194.2, 1197, 1199; 2802, Wage Order 1-2001; and California
27 Code of Regulations, Title 8, Section 11090, seeking unpaid wages/overtime, other penalties,
28 injunctive and other equitable relief, and reasonable attorneys' fees and costs.

1 10. Plaintiffs, on behalf of themselves and all Proposed Class Members, pursuant to
2 Business & Professions Code §§ 17200-17208, also seeks injunctive relief, restitution, and
3 disgorgement of all benefits Defendant enjoyed from its unlawful conduct as described herein.

4 11. Plaintiffs have exhausted their administrative remedies by submitting a certified
5 letter to the LWDA and Defendants on November 16, 2020 (LWDA-CM-812726-20) addressing
6 in detail the specific provisions of the Labor Code Defendants have violated and addressing the
7 facts and legal theories to support the alleged violations and requested penalties. The LWDA has
8 not provided notice of its intent to investigate the alleged violations within 65 calendar days of the
9 postmark date of the letter, and Plaintiffs adds this claim seeking penalties under the PAGA for
10 the violations addressed herein and in the PAGA Notice letter, the original Complaint and the
11 Amended PAGA Notice letter.

12 **JURISDICTION AND VENUE**

13 12. This Court has subject matter jurisdiction over all causes of action asserted herein
14 pursuant to Article VI, § 10 of the California Constitution and California Code of Civil Procedure
15 § 410.10 by virtue of the fact that this is a civil action in which the matter in controversy, exclusive
16 of interest, exceeds \$25,000, and because each cause of action asserted arises under the laws of the
17 State of California or is subject to adjudication in the courts of the State of California.

18 13. This Court has personal jurisdiction over Defendant because Defendant has caused
19 injuries in the County of Ventura and the State of California through their acts, and by their
20 violation of the California Labor Code, California state common law, and California Business &
21 Professions Code § 17200, et seq.

22 14. Venue as to each Defendant is proper in this judicial district, pursuant to Code of
23 Civil Procedure § 395. Defendant operates within California and does business within Ventura
24 County. The unlawful acts alleged herein have a direct effect on Plaintiffs and all Proposed Class
25 Members within the State of California and the county of Ventura.

26 15. This case should be classified as complex according to Rule 3.400 of the California
27 Rules of Court, and assigned to a complex litigation judge and department, as it will involve
28 substantial documentary evidence, a large number of witnesses, and is likely to involve extensive

1 motion practice raising difficult or novel issues that will be time-consuming to resolve and would
2 require substantial post judgment judicial supervision.

3 **PARTIES**

4 **A. PLAINTIFFS**

5 16. Plaintiffs SERGIO RAYA (“RAYA”) and RUBIN LIZARRAGA
6 (“LIZARRAGA”), are residents of Ventura County, State of California.

7 17. Plaintiffs and all Proposed Class members, were regularly required to:

- 8 a. Work without being paid for all hours at the appropriate overtime rate;
9 b. Work without being paid minimum wages for all hours worked;
10 c. Work without being provided first and second meals periods as required;
11 d. Work without being provided rest periods as required;
12 e. failing to pay all wages owed to the Class members twice monthly in
13 accordance with the requirements of Labor Code § 204;
14 f. failing to produce timekeeping records in response to Plaintiff’s timely and
15 lawful request to receive them under these authorities.

16 18. Defendant willfully failed to compensate Plaintiffs and all Proposed Class
17 members for wages at the termination of their employment with Defendant.

18 19. Defendant has had a consistent policy of failing to furnish accurate wage statement
19 in violation of the California Labor Code.

20 20. As a result of this conduct, Defendant has engaged in unfair competition and
21 unlawful business practices.

22 21. Plaintiffs and all aggrieved employees as defined in their notice letter to the LWDA
23 are “aggrieved employees” within the meaning of Labor Code § 2699, et seq. (see Labor Code
24 §2699(c).)

25 **B. DEFENDANTS**

26 22. At all times herein mentioned, Plaintiffs are informed and believe, and based
27 thereon alleges, that Defendant STATE READY MIX, INC. (“SRM”) was and is a California
28 corporation, and at all times mentioned herein, was licensed to do business and does business

1 throughout the state of California, including in the County of Ventura. Plaintiffs are further
2 informed and believe, and based thereon allege, that Defendant SRM owns and operates numerous
3 full-service concrete production and delivery facilities throughout California, including the County
4 of Ventura. According to SRM's own website, it touts itself "a trusted and experienced ready
5 mixed concrete company in Ventura County. We have served the needs of contractors and
6 homeowners throughout Ventura, Oxnard, Camarillo, Thousand Oaks, Malibu, Santa Barbara,
7 Simi Valley, and surrounding areas for over 30 years and are known for our knowledgeable staff,
8 exceptional customer service, high-quality concrete delivery services, and competitive prices.
9 Ready mixed is a type of concrete that is manufactured in a factory or batching plant according to
10 a set mix design. It is delivered to a work site by truck-mounted transit mixers, resulting in a precise
11 mixture and allowing specialty concrete mixtures to be developed and implemented on
12 construction sites.

13 23. The true names and capacities, whether individual, corporate, associate, or
14 otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to
15 Plaintiffs, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
16 § 474. Plaintiffs are informed and believe, and based thereon alleges, that each of the Defendants
17 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
18 to herein. Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and
19 capacities of the Defendants designated hereinafter as DOES when such identities become known.

20 24. Plaintiffs are informed and believe, and based thereon alleges, that each Defendant
21 acted in all respects pertinent to this action as the agent of the other Defendants, carried out a joint
22 scheme, business plan or policy in all respects pertinent hereto, and the acts of each Defendant are
23 legally attributable to the other Defendants. Furthermore, Defendants in all respects acted as the
24 employer and/or joint employer of Plaintiffs and the Proposed Class Members.

25 25. Furthermore, Defendants acted in all respects as the employers or joint employers
26 of the Proposed Class. Defendants, and each of them, exercised control over the wages, hours or
27 working conditions of the Proposed Class, or suffered or permitted the Proposed Class to work, or
28

engaged, thereby creating a common law employment relationship, with the Proposed Class. Therefore, Defendants, and each of them, employed or jointly employed the Proposed Class.

FACTUAL BACKGROUND

26. Plaintiffs and the Proposed Class are, and at all times pertinent hereto, have been classified as non-exempt employees by Defendant. Defendant hires employees who work as hourly employees who are paid on an hourly basis.

27. Upon information and belief, Plaintiffs and the Proposed Class are covered by California Industrial Welfare Commission Occupational Wage Order No. 1-2001.

28. On a regular and consistent basis, Plaintiffs and the Proposed Class members were not paid at the proper rate of compensation. Plaintiffs and Proposed Class members were not properly compensated for all wages at the appropriate rate of pay because Defendant failed to compensate them at the appropriate overtime rate when they worked over eight hours in one day or forty hours in one week.

29. Defendant failed to provide Plaintiffs and the Class with minimum wage compensation by failing to pay them properly for all hours worked. Defendant required Plaintiffs and the members of the Proposed Class to clock out for lunch and continue to perform work. Defendant failed to compensate Plaintiffs and the Proposed Class for this time.

30. Defendant failed to inform Plaintiffs and the members of the Proposed Class of their right to take compliant first and second meal periods by way of a lawful policy.

31. Plaintiffs and all Proposed Class Members have been forced by Defendant to work over five (5) hours in one day without being provided with a timely thirty (30) minute uninterrupted first meal break and not being compensated one (1) hour of pay at the regular rate of compensation for each workday that a meal period was not provided or provided after five (5) hours, all in violation of California labor laws, regulations, and Industrial Welfare Commission Wage Orders.

32. Plaintiffs and all Proposed Class Members have been forced by Defendant to work over ten (10) hours in one day without being provided a second thirty (30) minute uninterrupted meal break period(s) and not being compensated one (1) hour of pay at the regular rate of compensation for each workday that a second meal period was not provided or provided after ten

1 (10) hours, all in violation of California labor laws, regulations, and Industrial Welfare
2 Commission Wage Orders. Additionally, Defendant failed to inform Plaintiffs and the Proposed
3 Class of their right to take second meal periods by way of a lawful policy.

4 33. Defendant failed to inform Plaintiffs and the members of the Proposed Class of
5 their right to take compliant rest periods by way of a lawful policy.

6 34. Plaintiffs and all Proposed Class Members have been forced by Defendant to work
7 without the ability to take rest periods of ten (10) minutes net rest time per four (4) hours worked
8 or major fraction thereof, and not being compensated one (1) hour of pay at the regular rate of
9 compensation for each workday that a rest period was not provided all in violation of California
10 labor laws, regulations, and Industrial Welfare Commission Wage Orders.

11 35. Defendant willfully failed to pay wages and compensation, when Plaintiffs and all
12 Proposed Class Members quit or were discharged. This failure was willful, without legal
13 justification, and interfered with Plaintiffs' and Class Members' rights.

14 36. Defendants have also consistently failed to provide Class members with timely,
15 accurate, and itemized wage statements, in writing, as required by California wage-and-hour laws,
16 including by the above-described requirement of off the clock work, failure to pay all overtime
17 and double time wages owed, and failure to pay premium wages for unprovided or otherwise
18 unlawful meal and rest breaks, or by miscalculating any overtime or meal period or rest break
19 premium wages. Defendants have also made it difficult to account with precision for the
20 unlawfully withheld wages and meal and rest period compensation owed to Plaintiffs and the
21 Class, during the liability period, including to the extent they did not calculate the regular rate of
22 pay correctly when paying overtime or meal period premiums and because they did not implement
23 and preserve a record-keeping method as required for non-exempt employees by California Labor
24 Code §§ 226, 1174(d), and paragraph 7 of the applicable California Wage Orders. Upon
25 information and belief, time clock punches were not maintained or were not accurately maintained
26 for work shifts and meal periods, which were automatically presumed by Defendants to have been
27 lawfully provided when they were not. Defendants also failed to accurately record and pay for all
28

1 regular and overtime hours worked and submitted by Plaintiffs and the Class members, including
2 by failing to pay all overtime hours at the correctly calculated overtime premium rate.

3 37. Defendants have thus also failed to comply with Labor Code § 226(a) by
4 inaccurately reporting total hours worked and total wages earned by Plaintiffs and the Class
5 members, along with the appropriate applicable rates, among others requirements. Plaintiffs and
6 Class Members are therefore entitled to penalties not to exceed \$4,000.00 for each employee
7 pursuant to Labor Code § 226(b). Defendants have also failed to comply with paragraph 7 of the
8 applicable California IWC Wage Orders by failing to maintain time records showing when the
9 employee begins and ends each work period, meal periods, and wages earned pursuant to Labor
10 Code § 226.7, and total daily hours worked by itemizing in wage statements all deductions from
11 payment of wages and accurately reporting total hours worked.

12 38. Defendants also required Plaintiffs and the Class members to work hours off the
13 clock for which they were not compensated. They were also required to endure off the clock work
14 and systematic rounding and failure to pay all wages as addressed above and during interrupted or
15 otherwise on-duty meal and rest periods and were not provided with rest breaks or with sick pay
16 and supplemental sick leave. Defendants also failed to pay all overtime premium wages owed for
17 work conducted on a work shift and a workday, as addressed above. Therefore, Defendants have
18 also followed a uniform and consistent policy of failing to pay all wages owed to Plaintiffs and
19 other similarly situated Employees at the time of their termination or within seventy-two hours of
20 their resignation, as required by California wage-and-hour laws.

21 39. Additionally, from at least four years prior to the filing of this lawsuit and
22 continuing to the present, Defendants have regularly required Plaintiffs and the Class members to
23 incur necessary business expenses in the course of performing their required job duties without
24 reimbursement. Defendants regularly communicated with Plaintiffs and other similarly situated
25 Employees in the Class during their work shifts by calling and texting them on their personal
26 cellular phones. Plaintiffs received various calls throughout the day from managers instructing him
27 on what needed to be done. Defendants did so without regard to whether Plaintiffs were attempting
28 to take a meal period or rest break of any kind. In addition to failing to compensate Plaintiffs and

1 the Class members for failure to pay wages during on-duty breaks, Defendants also failed to
2 reimburse them for any of their personal cellular phone expenses. Defendants also required
3 Plaintiffs and the Class members to incur other expenses necessary to perform their required job
4 duties.

5 40. Upon information and belief, the other Class members incurred similar expenses
6 for performing necessary work-related communications, for which they were also not reimbursed
7 by Defendant. Plaintiffs and the Class members must be reimbursed for these necessary business
8 expenses under Labor Code § 2802 and Defendants systematically failed to do so. Defendants
9 uniformly failed to reimburse those lawful and necessary work-related expenses or losses incurred
10 in direct discharge of their job duties during employment with Defendants and at the direction of
11 the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph
12 9.

13 41. Defendants also violated California Labor Code § 246 by not providing all required
14 paid sick days to Plaintiffs and the aggrieved employees. Labor Code § 246 provides that an
15 Employee who “works in California for the same employer for 30 or more days within a year from
16 the commencement of employment is entitled to paid sick days as specified in this section.”
17 Defendants failed to provide Plaintiffs and the other similarly Aggrieved Employees with all their
18 required and earned sick days, in violation of Labor Code § 246.

19 42. Additionally and upon information and belief, Defendants have failed to provide
20 COVID-19 supplemental sick leave to the Class members during the relevant time period,
21 including by failing to provide two work weeks of COVID-19 supplemental paid sick leave as
22 required under Labor Code §§ 248.1 and 248.2 and including damages and penalties as these
23 sections are enforced through Labor Code § 248.5, which requires that: “If paid sick days were
24 unlawfully withheld, the dollar amount of paid sick days withheld from the employee multiplied
25 by three, or two hundred fifty dollars (\$250), whichever amount is greater, but not to exceed an
26 aggregate penalty of four thousand dollars (\$4,000), shall be included in the administrative
27 penalty.” Plaintiffs accordingly seek this relief available for Defendants’ failure to provide
28 Employees with all their required and earned sick days and all their COVID-19 supplemental sick

1 leave in violation of Labor Code §§ 246, 248.1, 248.2, and the civil and statutory penalties
2 available and applicable under Labor Code §§ 246, 248.1, 248.2, 248.5, 558, 1194.2, 1197.1, 1198,
3 1199, and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

4 43. In light of the foregoing, Plaintiffs and the Employees in the Class bring this action
5 pursuant to, *inter alia*, Labor Code §§ 201, 202, 203, 204, 218, 218.5, 218.6, 221, 226, 226.7, 246,
6 248.1, 248.5, 510, 511, 512, 558, 1174, 1185, 1194, 1194.2, 1197, 2802, Wage Order 1-2001; and
7 California Code of Regulations, Title 8, Section 11090, and 2698 *et seq.*, and California Code of
8 Regulations, Title 8, section 11000 *et seq.*

9 44. Furthermore, pursuant to Business and Professions Code §§ 17200-17208,
10 Plaintiffs and the Class members seek injunctive relief, restitution, and disgorgement of all benefits
11 Defendants have enjoyed from their violations of Labor Code and the other unfair, unlawful, or
12 fraudulent practices alleged in this Complaint.

13 45. As a result of the facts alleged above, Defendant has engaged in unfair competition
14 and unlawful business practices.

15 46. As a result of the acts alleged herein, Defendant violated Labor Code §2699, *et seq.*

16 **CLASS ACTION ALLEGATIONS**

17 47. Plaintiffs bring this action on behalf of themselves and all others similarly situated
18 as a Class Action pursuant to § 382 of the Code of Civil Procedure. Plaintiffs seek to represent a
19 proposed class composed of and defined as follows:

20 All employees who worked as a non-exempt employee for State Ready Mix, Inc.,
21 in the State of California since four (4) years prior to the filing of this action to the
22 present. ("Proposed Class")

23 48. Further, Plaintiffs seek to represent the Subclasses composed of and defined as
24 follows:

25 a. Subclass 1. Minimum Wages Subclass. All Class members who were not
26 compensated for all hours worked for Defendants at the applicable minimum wage.

1 b. Subclass 2. Wages and Overtime Subclass. All Class members who were not
2 compensated for all hours worked for Defendants at the required rates of pay, including for all
3 hours worked in excess of eight in a day and/or forty in a week.

4 c. Subclass 3. Meal Period Subclass. All Class members who were subject to
5 Defendants' policy and/or practice of failing to provide unpaid 30-minute uninterrupted and duty-
6 free meal periods or one hour of pay at the Employee's regular rate of pay in lieu thereof.

7 d. Subclass 4. Rest Break Subclass. All Class members who were subject to
8 Defendants' policy and/or practice of failing to authorize and permit Employees to take
9 uninterrupted, duty-free, 10-minute rest periods for every four hours worked, or major fraction
10 thereof, and failing to pay one hour of pay at the Employee's regular rate of pay in lieu thereof.

11 e. Subclass 5. Wage Statement Subclass. All Class members who, within the
12 applicable limitations period, were not provided with accurate itemized wage statements.

13 f. Subclass 6. Unauthorized Deductions from Wages Subclass. All Class members
14 who were subject to Defendants' policy and/or practice of deducting wages earned from their pay,
15 including by requiring off the clock work.

16 g. Subclass 7. Failure to Timely Pay Wages Twice Monthly Subclass. All Class
17 members who were subject to Defendants' policy and practice of not timely paying all wages
18 earned when they were due and payable at least twice monthly.

19 h. Subclass 8. Termination Pay Subclass. All Class members who, within the
20 applicable limitations period, either voluntarily or involuntarily separated from their employment
21 and were subject to Defendants' policy and/or practice of failing to timely pay wages upon
22 termination.

23 i. Subclass 9. Expense Reimbursement Subclass. All Class members who incurred
24 necessary and reasonable expenses in connection with performing their job duties for Defendants
25 and who were subject to a policy and/or practice under which such expenses were not reimbursed.

26 j. Subclass 10. Payroll Records Subclass. All Class members who were subject to
27 Defendants' policy and/or practice of failing to keep accurate time and wage records as required
28 by California wage-and-hour laws.

1 k. Subclass 11. UCL Subclass. All Class members who are owed restitution as a
2 result of Defendants' business acts and practices, to the extent such acts and practices are found to
3 be unlawful, deceptive, and/or unfair.

4 49. Plaintiffs reserve the right under California Rule of Court 3.765 to amend or modify
5 the class description with greater particularity or to provide further division into subclasses or
6 limitation to particular issues. To the extent equitable tolling operates to toll claims by the Class
7 against Defendants, the Class Period should be adjusted accordingly.

8 50. Defendants, as a matter of company policy, practice and procedure, and in violation
9 of the applicable Labor Code, Industrial Welfare Commission ("IWC") Wage Order requirements,
10 and the applicable provisions of California law, intentionally, knowingly, and willfully, engaged
11 in a practice whereby Defendants failed to correctly calculate and pay compensation for the time
12 worked by the Plaintiffs and the other members of the Class, even though Defendants enjoyed the
13 benefit of this work, required Employees to perform this work and permitted or suffered to permit
14 this work. Defendants have uniformly denied these Class members wages to which these
15 employees are entitled, and failed to provide meal periods or authorize and permit rest periods, in
16 order to unfairly cheat the competition and unlawfully profit.

17 51. This action has been brought and may properly be maintained as a class action
18 under the provisions of § 382 of the Code of Civil Procedure because there is a well-defined
19 community of interest in the litigation and the Proposed Classes are easily ascertainable.

20 **A. NUMEROSITY**

21 52. The potential members of the Proposed Class as defined are so numerous that
22 joinder of all the members of the Proposed Class is impracticable. While the precise number of
23 proposed Class Members has not been determined at this time, Plaintiffs are informed and believe
24 that Defendant currently employ, and during the relevant time periods employed over 50 members
25 of the Proposed Class.

26 53. Plaintiffs allege that Defendant's employment records would provide information
27 as to the number and location of all Proposed Class Members. Joinder of all members of the
28 Proposed Class is not practicable.

1 **B. COMMONALITY**

2 54. There are questions of law and fact common to the Proposed Class that predominate
3 over any questions affecting only individual Proposed Class Members. These common questions
4 of law and fact include, without limitation:

- 5 a. Whether Defendant failed to pay wages and/or overtime compensation as required
6 by the Labor Code and Wage Orders under Labor Code §§ 510, 1194, and 1199;
- 7 b. Whether Defendant failed to pay minimum wages for all hours worked;
- 8 c. Whether Defendant violated Labor Code § 226.7 and IWC Wage Order 1-2001 or
9 other applicable IWC Wage Orders, by failing to inform Plaintiffs and the Proposed
10 Class of their right to take all required meal and rest periods and by failing to
11 provide such required meal and rest periods throughout the term of employment
12 and failing to compensate said employees one (1) hours wages in lieu of meal and
13 rest periods;
- 14 d. Whether Defendant violated §§ 201-203 of the Labor Code by failing to pay
15 compensation due and owing at the time that any Proposed Class Member's
16 employment with Defendant terminated;
- 17 e. Whether Defendants violated California Labor Code §§ 246 and 248.1 by not
18 providing employees with all required sick days and COVID-19 supplemental sick
19 leave;
- 20 f. Whether Defendants violated Labor Code § 226(a) by providing Employees with
21 inaccurate wage statements
- 22 g. Whether Defendants violated Labor Code § 221;
- 23 h. Whether Defendants' conduct was willful;
- 24 i. Whether Defendants violated Labor Code § 226 and § 1174 and the IWC Wage
25 Orders by failing to maintain accurate records of Class members' earned wages and
26 work periods;

- j. Whether Defendants violated Labor Code § 1194 by failing to compensate all Employees during the relevant time period for all hours worked, whether regular or overtime;
- k. Whether Defendants violated Labor Code § 204 by failing to pay Employees all wages earned at least twice monthly;
- l. Whether Defendants violated Labor Code § 2802 by failing to reimburse necessary business expenses incurred by Employees;
- m. Whether Defendant violated §17200, et seq. of the Business & Professions Code by engaging in the acts previously alleged; and
- n. Whether Plaintiffs and the members of the Proposed Class are entitled to equitable relief pursuant to Business & Professions Code §17200, et seq.
- o. Whether Defendant violated Labor Code § 2699, et seq. by engaging in the acts alleged herein.

C. TYPICALITY

55. The claims of Plaintiffs are typical of the claims of the Proposed Class. Plaintiffs and all members of the Proposed Class sustained injuries and damages arising out of and caused by Defendant's common course of conduct in violation of laws, regulations that have the force and effect of law, and statutes as alleged herein.

D. ADEQUACY OF REPRESENTATION

56. Plaintiffs will fairly and adequately represent and protect the interests of the members of the proposed Class.

57. Counsel who represent Plaintiffs and the Proposed Class are competent and experienced in litigating large employment class actions.

E. SUPERIORITY OF CLASS ACTION

58. A class action is superior to other available means for the fair and efficient adjudication of this controversy. Individual joinder of all Proposed Class Members is not practicable, and questions of law and fact common to the Proposed Class predominate over any questions affecting only individual members of the Proposed Class. Each member of the Proposed

1 Class has been damaged and is entitled to recovery by reason of Defendant's illegal policy and/or
2 practice of failing to pay all wages due and failing to pay all wages upon resignation or termination.

3 59. Class action treatment will allow those similarly situated persons to litigate their
4 claims in the manner that is most efficient and economical for the parties and the judicial system.
5 Plaintiffs are unaware of any difficulties that are likely to be encountered in the management of
6 this action that would preclude its maintenance as a class action.

7 **STATEMENT OF FACTS**

8 60. Allegations and other factual contentions stated "on information and belief" are
9 likely to have evidentiary support after PLAINTIFFS are afforded a reasonable opportunity for
10 further investigation and discovery.

11 61. Plaintiff RAYA was hired by SRM in October 2007 as a cement driver. RAYA's
12 job duties included the delivery of mixed concrete to various project locations and quality check
13 inspections at job sites.

14 62. While his scheduled varied, RAYA worked an average of eight to twelve hours a
15 day, Monday through Saturday. If projects required extended hours, RAYA was always willing
16 to work those additional hours. Over the years, RAYA proved to be a reliable and hardworking
17 employee.

18 63. From 2017 until his termination in November 2019, RAYA made a number of
19 specific complaints regarding wage and hour violations. Specifically, RAYA reported that he was
20 required to work long hours without being afforded his legally required meal and rest periods.
21 RAYA was required to clock in/out for meal breaks and continue working. He made a number of
22 verbal complaints to his supervisor, Mr. Melendez but no corrective action was ever taken. His
23 last complaint was shortly prior to his termination. Despite the fact that SRM required RAYA to
24 sign a on-duty meal period waiver and a short-shift meal period waiver, did not excuse SRM from
25 its obligations under California meal and rest laws.

26 64. LIZARRAGA was hired as a cement driver by SRM in January 2013 and held that
27 position until his termination in June 2020. Like RAYA, LIZARRAGA drove and delivered mixed
28 concrete products to various job sites throughout Ventura County.

1 65. While working for SRM, LIZARRAGA was not able to take an uninterrupted meal
2 break on or before his fifth hour of work. In fact, he was discouraged from taking a meal break
3 while working for SRM. On one occasion, LIZARRAGA recalls his supervisor, Mike Bradley,
4 announcing to all employees, "If you decide to take a lunch you might return to work, or you might
5 get sent home."

6 66. If employees chose to take a lunch, LIZARRAGA specifically observed that those
7 employees had their hours reduced, their work scrutinized, and/or they were terminated.

8 67. During a Company meeting, Mr. Bradley told employees to sign a second
9 timesheet, confirming that meal periods were compliant pursuant to California law. RAYA and
10 LIZARRAGA both made complaints about the new timesheets because they were inaccurate. They
11 were never afforded meal breaks and their complaints were ignored.

12 68. To the best of Plaintiffs' collective knowledge, they both were precluded from
13 taking a 10-minute uninterrupted rest break for every four hours that they worked. Moreover,
14 Plaintiffs cannot recall a time wherein they received any premium payment for either a
15 missed/late/interrupted rest break and/or for a missed/late/interrupted meal break.

16 69. Plaintiffs were not provided accurate wage statements.

17 70. Plaintiffs' were required to call into work after hours to see if they were schedule
18 to work the following day. If they were not scheduled, then they would remain on call until the
19 following morning. Plaintiffs' were not provided additional compensation for this time.

20 71. Plaintiffs used their personal cell phones for work related purposes. Managers and
21 Dispatchers would often contact Plaintiffs on their personal cell phones. Plaintiffs were not
22 reimbursed for the use of their personal cell phones.

23 72. Plaintiffs were not provided with all their required and earned sick days. Plaintiffs
24 were not provided COVID-19 supplemental sick leave during their employment.

1 **FIRST CLAIM OF RELIEF**

2 **(Failure To Pay Wages and/or Overtime Under Labor Code §§ 510, 1194, and 1199)**

3 **(Against All Defendants)**

4 73. Plaintiffs reallege and incorporate herein by reference each and every allegation
5 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

6 74. Labor Code §§ 510, 1194 and 1199 require an employer to compensate its
7 employees at the rate of no less than one and one-half times the regular rate of pay for any work
8 in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek.

9 75. Plaintiffs and the Proposed Class were forced to work on a regular and consistent
10 basis without receiving compensation for all hours worked at the proper rate. Specifically,
11 Plaintiffs and the Proposed Class were not paid at the proper overtime rate when they were working
12 more than eight (8) hours in one day or forty (40) hours in one week. Plaintiffs and the Proposed
13 Class were regularly required to work in excess of eight (8) hours in one day or forty (40) hours in
14 one week without receiving compensation for all hours worked at the proper rate.

15 76. By their policy of requiring Plaintiffs and members of the Proposed Class to work
16 in excess of eight (8) hours in a workday and/or forty (40) hours in a workweek without
17 compensating them at the rate of one-half (1 ½) their regular rate of pay, Defendant willfully
18 violated the provisions of Labor Code §§ 510, 1194 and 1199.

19 77. As a result of the unlawful acts of Defendant, Plaintiffs and the Proposed Class
20 Members have been deprived of wages and/or overtime in amounts to be determined at trial, and
21 are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and
22 costs.

23 **SECOND CLAIM OF RELIEF**

24 **(Failure To Pay Minimum Wages)**

25 **(Against All Defendants)**

26 78. Plaintiffs, on behalf of themselves and the Proposed Class, reallege and incorporate
27 by reference all previous paragraphs.
28

79. Labor Code Section 1194 requires an employer to pay the unpaid balance of any minimum wage that was not paid to an employee. Employees are entitled to minimum wages for each hour of work.

81. Pursuant to the California Labor Code, Plaintiffs are entitled to recover all wages due for all hours that were not compensated at the minimum wage rate, in a sum to be proven at trial, plus liquidated damages in the same amount (Labor Code §1194.2).

83. Defendant's own pay and time records, including time sheets, schedules, payroll earnings records, and electronic data can establish with particularity the shifts when Plaintiffs and the Proposed Class were not paid for all hours worked at the appropriate rate.

THIRD CLAIM OF RELIEF

85. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents an employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to. The written agreement shall state that the employee may, in writing, revoke the agreement at any time.

(B) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the meal period is not provided.

(C) In all places of employment where employees are required to eat on the premises, a suitable place for that purpose shall be designated.

(D) Notwithstanding any other provision of this order, employees in the health care industry who work shifts in excess of eight (8) total hours in a workday may voluntarily waive their right to one of their two meal periods. In order to be valid, any such waiver must be documented in a written agreement that is voluntarily signed by both the employee and the employer. The employee may revoke the waiver at any time by providing the employer at least one day's written notice. The employee shall be fully compensated for all working time, including any on-the-job meal period, while such a waiver is in effect.

87. Section 12 of Wage Order 1-2001 specifically reads:

(A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof. However, a rest period need not be authorized for employees whose total daily work time is less than three and one-half (3 ½) hours. Authorized rest period time shall be counted, as hours worked, for which there shall be no deduction from wages.

(B) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this Order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each work day that the rest period is not provided.

88. Plaintiffs and other members of the class (collectively the "Class Members") are or were employees of Defendants in the State of California and Defendants were and are employers employing persons in the State of California. As such, the Class Members were the type of persons contemplated to be protected by the Labor Code and the Wage Orders and said regulations were

intended to apply to Defendants and to prevent the type of injury and damage herein. Plaintiffs and other members of the Class were paid on an hourly basis.

89. Defendants failed to provide Plaintiffs and the Class Members with a ten minute uninterrupted rest period for every four hours worked and also failed to provide uninterrupted thirty minute meal periods that Plaintiffs and Class Members were entitled to based on the number of hours that they worked in a given day. Defendants also failed to pay Plaintiffs and Class Members an hour of pay for each rest period and each meal period that was not provided.

90. The failure of the Defendants to provide Plaintiffs and the Class Members with the required meal periods and rest periods, along with the failure of Defendants to pay Plaintiffs and the Class Members with one hour of pay for each such missed meal period and rest period was done willfully and violates the Wage Orders. Consequently, Defendants were not in compliance with California law. As a direct and proximate result of Defendants' conduct as herein above alleged, Plaintiffs and Class Members have sustained and will continue to sustain damages in an amount to be proven at trial consisting of unpaid meal and rest break premiums, together with interest thereon and attorneys' fees and costs of the suit.

FOURTH CLAIM OF RELIEF

(Violation of Labor Code section 226(a))

(Against All Defendants)

91. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

92. California Labor Code § 226(a) requires an employer to furnish each of his or her employees with an accurate, itemized statement in writing showing the gross and net earnings, total hours worked, and the corresponding number of hours worked at each hourly rate; these statements must be appended to the detachable part of the check, draft, voucher, or whatever else serves to pay the employee's wages; or, if wages are paid by cash or personal check, these statements may be given to the employee separately from the payment of wages; in either case the employer must give the employee these statements twice a month or each time wages are paid.

1 93. Defendants failed to provide Plaintiffs and the similarly situated Employee Class
2 members with accurate itemized wage statements in writing, as required by the Labor Code and
3 paragraph 7 of the applicable IWC Wage Orders. Specifically, the wage statements issued to
4 Employees by Defendants failed to accurately account for wages, overtime, and premium pay,
5 including for all overtime and double time hours worked and for deficient meal periods and rest
6 breaks, all of which Defendants knew or reasonably should have known were owed to the
7 Employees, as alleged above.

8 94. As detailed above, Defendants intentionally failed throughout the liability period to
9 furnish to Plaintiffs and the Class members, upon each payment of wages, itemized statements
10 accurately showing: (1) gross wages earned, (2) total hours worked by the employee, (3) the
11 number of piece-rate units earned and any applicable piece rate paid on a piece-rate basis, (4) all
12 deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is
13 paid, (7) the name of the employee and only the last four digits of his or her social security number
14 or an employee identification number other than a social security number, (8) the name and address
15 of the legal entity that is the employer and (9) all applicable hourly rates in effect during the pay
16 period and the corresponding number of hours worked at each hourly rate by the employee
17 pursuant to Labor Code § 226 and paragraph 7 of the applicable IWC Wage Orders, amongst other
18 statutory requirements. Defendants knowingly and intentionally failed to provide Plaintiffs and the
19 Class members with such timely and accurate wage and hour statements, and omitted required
20 information that Plaintiffs and the Class members could not resolve by reference to the alleged
21 wage statement alone.

22 95. Plaintiffs and the Class members suffered injury as a result of Defendants' knowing
23 and intentional failure to provide them with the wage and hour statements as required by law and
24 are presumed to have suffered injury and entitled to penalties under Labor Code § 226(e), as the
25 Defendants have failed to provide an accurate wage statement, failed to provide accurate and
26 complete information as required by any one or more of items Labor Code § 226 (a)(1) to (9),
27 inclusive, and the Plaintiffs and Class members cannot promptly and easily determine from the
28 wage statement alone one or more of the following: (i) The amount of the gross wages or net wages

1 paid to the employee during the pay period or any of the other information required to be provided
2 on the itemized wage statement pursuant to items (2) to (4), inclusive, (6), and (9) of subdivision
3 (a), (ii) Which deductions the employer made from gross wages to determine the net wages paid
4 to the employee during the pay period, (iii) The name and address of the employer and, (iv) The
5 name of the employee and only the last four digits of his or her social security number or an
6 employee identification number other than a social security number. For purposes of Labor Code
7 § 226(e) “promptly and easily determine” means a reasonable person [i.e. an objective standard]
8 would be able to readily ascertain the information without reference to other documents or
9 information.

10 96. Additionally, under paragraph 4(B) of the applicable IWC Wage Orders, employers
11 are required “to pay each employee, on the established payday for the period involved, not less
12 than the applicable minimum wage for all hours worked in the payroll period, ...” Under Labor
13 Code § 1198, “[t]he employment of any employee for longer hours than those fixed by the order
14 or under conditions of labor prohibited by the order is unlawful.” Plaintiffs and the Class members
15 may therefore pursue damages and penalties for violations of Labor Code § 204 and paragraph
16 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable
17 IWC Wage Orders.

18 97. Therefore, as a direct and proximate cause of Defendants’ violation of Labor Code §
19 226(a) and paragraphs 4(b), 7, and 20 of the applicable IWC Wage Orders, the Employees in the
20 Class suffered injuries, including among other things confusion over whether they received all
21 wages owed them, the difficulty and expense involved in reconstructing pay records, and forcing
22 them to make mathematical computations to analyze whether the wages paid in fact compensated
23 them correctly for all hours worked.

24 98. Pursuant to Labor Code §§ 226(a) and 226(e), and paragraph 20 of the applicable
25 IWC Wage Order, Plaintiffs and the Employee Class members are entitled to recover the greater
26 of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs
27 and one hundred dollars (\$100) for each violation in a subsequent pay period, not exceeding an
28

1 aggregate penalty of four thousand dollars (\$4,000) under Section 226(e). They are also entitled
2 to an award of costs and reasonable attorneys' fees.

3 **FIFTH CLAIM OF RELIEF**

4 **(Violation of Labor Code section 221)**

5 **(Against All Defendants)**

6 99. Plaintiffs reallege and incorporate herein by reference each and every allegation
7 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

8 100. Labor Code § 221 provides, "It shall be unlawful for any employer to collect or
9 receive from an employee any part of wages theretofore paid by said employer to said employee."
10 Additionally, pursuant to California Labor Code § 204, other applicable laws and regulations, and
11 public policy, an employer must timely pay its employees for all hours worked. Defendants failed
12 to do so.

13 101. Defendants unlawfully received and/or collected wages from the Employees in the
14 Class by requiring off the clock work and by rounding and automatically deducting time for meal
15 periods when they were not lawfully provided and not paying one hour of pay at the regular rate
16 of compensation for every meal and rest period violation endured by Plaintiffs and the other Class
17 members, as alleged above. Given Defendants failure to provide any separate rest breaks from
18 meal periods, Plaintiffs and the Class members had 20-30 minutes of their hours worked deducted
19 for alleged rest breaks that were never even provided despite the fact Defendant was required to
20 compensate them for rest break time at their regular rate of pay.

21 102. As a direct and proximate cause of the unauthorized deductions, Employees have
22 been damaged, in an amount to be determined at trial.

23 **SIXTH CLAIM OF RELIEF**

24 **(Violation of Labor Code section 204)**

25 **(Against All Defendants)**

26 103. Plaintiffs reallege and incorporate herein by reference each and every allegation
27 contained in the preceding paragraphs of this Complaint as though fully set forth herein.
28

1 104. Labor Code § 204 instructs that: “All wages, ...earned by any person in any
2 employment are due and payable twice during each calendar month, on days designated in advance
3 by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive,
4 of any calendar month shall be paid for between the 16th and the 26th day of the month during
5 which the labor was performed, and labor performed between the 16th and the last day, inclusive,
6 of any calendar month, shall be paid for between the 1st and 10th day of the following month.”
7 Additionally, the requirements of this section shall be deemed satisfied by the payment of wages
8 for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar
9 days following the close of the payroll period.” As detailed above, Defendants maintained a
10 consistently applied policy and practice of not paying all wages earned between the 1st and 15th
11 days of a month between the 16th and 26th day and failed to pay all wages earned between the 16th
12 and the last day of the month between the 1st and 10th day of the following month. Defendants
13 similarly failed to pay all wages earned by not more than seven calendar days following the close
14 of the payroll period. Defendants also committed ongoing violations by failing to issue compliant
15 wage statements to Plaintiffs and the Class members.

16 105. All wages due and owing to Plaintiffs and the Class members, including as required
17 under Labor Code § 510, were therefore not timely paid by Defendants. Additionally, wages
18 required by Labor Code § 1194 and other sections became due and payable to each employee in
19 each pay period that he or she was not provided with a meal period or rest period or paid straight
20 or overtime wages to which he or she was entitled

21 106. Defendants violated Labor Code § 204 by systematically refusing to timely pay
22 wages due under the Labor Code, as addressed above. Additionally, under paragraph 4(B) of the
23 applicable IWC Wage Orders, employers are required “to pay each employee, on the established
24 payday for the period involved, not less than the applicable minimum wage for all hours worked
25 in the payroll period, ...” Under Labor Code § 1198, “[t]he employment of any employee for
26 longer hours than those fixed by the order or under conditions of labor prohibited by the order is
27 unlawful.” Plaintiffs and the Class members may therefore pursue damages and penalties for
28

violations of Labor Code § 204 and paragraph 4(B) of the applicable IWC Wage Orders, including penalties under paragraph 20 of the applicable IWC Wage Orders.

107. As a result of the unlawful acts of Defendants, Plaintiffs and the Class he seeks to represent have been deprived of wages in amounts to be determined at trial, and they are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and costs, pursuant to Labor Code § 204, 210, 218.5, 1194 and 1198, and paragraphs 4(B) and 20 of the applicable IWC Wage Orders.

SEVENTH CLAIM FOR RELIEF

Violation of Labor Code section 2802)

(Against All Defendants)

108. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein

109. Plaintiffs and the Class are informed and believe and based thereon allege that throughout the period applicable, Defendants required Plaintiffs and the Class members to pay for necessary work-related expenses they incurred. As detailed above, Plaintiffs received various calls throughout the day from managers instructing him on what needed to be done for plant operations that required his attention. In addition to failing to compensate Plaintiffs and the Class members for failure to pay wages during on-duty breaks, Defendants also failed to reimburse them for any of their personal cellular phone expenses. Defendants also required Plaintiffs and the Class members to incur other expenses necessary to perform their required job duties. For example, Plaintiffs was required to purchase a flashlight so he could work when the sun went or was down, a grinder, wrenches and tools for machine repairs, and gloves, all without reimbursement and all of which were necessary to perform his daily job duties.

110. Defendants thus followed a uniform policy and practice of failing to reimburse Employees for these necessary work related expenses or losses incurred in direct discharge of their job duties during employment with Defendants and at the direction of the Defendants pursuant to Labor Code § 2802(a) and the applicable IWC Wage Orders, paragraph 9

111. Defendants' knowing and willful failure to reimburse lawful necessary work related expenses and losses to Plaintiffs and the Class members resulted in damages because, among other things, Defendants did not inform employees of their right to be reimbursed for those work related expenses. As Defendants failed to inform and misled Plaintiffs and the Class members with regard to their rights, Plaintiffs and the Class members were led to believe that incurring those lawful and necessary expenses was an expected and essential function of their employment with Defendants and that failure to incur those expenses would have adverse consequences on their employment.

112. Therefore, Plaintiffs and the Class members are entitled to reimbursement for any and all necessary work related expenses, as provided for in Labor Code § 2802(b) and paragraph 9 of the applicable IWC Wage Orders, incurred during the direct discharge of their duties while employed by Defendants, as well as accrued interest on those expenses that were not reimbursed from the date Plaintiffs and the Class members incurred those expenses. Further, Plaintiffs and the Class members are entitled to costs and attorney's fees pursuant to Labor Code § 2802(c).

EIGHTH CLAIM OF RELIEF

(Violation of California Labor Code Section 203)

(Against All Defendants)

113. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

114. Numerous members of the Proposed Class, including Plaintiffs, are no longer employed by Defendant. They were either fired or quit Defendant's employ.

115. Defendant's failure to pay wages, as alleged above was willful in that Defendant knew wages to be due but failed to pay them, thus entitling Plaintiffs and the Proposed Class to penalties under Labor Code § 203, which provides that an employee's wages shall continue as a penalty until paid for a period of up to thirty (30) days from the time they were due.

116. Defendant has failed to pay Plaintiffs and others a sum certain at the time of termination or within seventy-two (72) hours of their resignation, and have failed to pay those sums for thirty (30) days thereafter. Pursuant to the provisions of Labor Code § 203, Plaintiffs and

the Proposed Class are entitled to a penalty in the amount of Plaintiffs' and the Proposed Class Members' daily wage multiplied by thirty (30) days.

NINTH CLAIM OF RELIEF

(Failure to Keep Required Payroll Records, Labor Code sections 1174, 1174.5)

(Against All Defendants)

117. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

118. Plaintiffs reallege and incorporate herein by reference each and every allegation contained in the preceding paragraphs of this Complaint as though fully set forth herein.

119. California Labor Code § 1174 requires that all employers shall keep accurate time and wage records for all employees. California Labor Code § 1174.5 further requires that an employee suffering injury due to a willful violation of the aforementioned obligations may seek damages, including civil penalties, from the employer.

120. During the course of Plaintiff's and Employees' employment, Defendants consistently failed to maintain accurate time and wage records for Plaintiffs and Employees as required by California Labor Code § 1174 by failing to pay Plaintiffs and Employees proper wages, overtime, and premium pay as discussed above and failing to maintain records of hours worked and of meal periods taken.

121. Defendants are also required by the California Labor Code § 1198 and the applicable Wage Order to maintain a tracking system that accurately records the times at which Employees work. Defendants have maintained a common unlawful policy and practice of failing to accurately record hours worked and meal breaks.

122. Defendants' failure to pay wages, as alleged above, was willful in that Defendants knew wages to be due but failed to pay them.

123. Accordingly, Defendants are liable for civil penalties pursuant to the California Labor Code including § 1174.5, for the three years prior to the filing of this Complaint.

(Unfair Business Practices, Business & Professions Code, Sections 17000 et seq.)

(Against All Defendants)

125. The Unfair Practices Act defines unfair competition to include any “unfair”, “unlawful”, or “deceptive business practice. The Unfair Trade Practices Act provides for injunctive and restitutionary relief for violations. The failure to compensate Class Members for all time worked, including, but not limited to, the failure to provide missed meal and rest periods and the failure to pay for missed meal and rest periods, is an unfair business practice as defined by the Unfair Practices Act.

127. Each of the directors, officers and/or agents of the Defendants are equally responsible for the acts of the other officers, directors, employees and/or agents as set forth in & Professions Code Section 17095.

129. Plaintiffs are informed and believe, and based thereon allege, that Defendants, and each of them, have intentionally and improperly altered time records of the Class Members, and required Class Members to perform tasks without receiving pay for them, and failing to provide meal and rest periods, and failing to compensate Class Members for missed meal and rest periods, for the period from April 30, 2017 to the present.

130. Plaintiffs are informed and believe, and based thereon allege, that Defendants have under-reported to federal and state authorities wages earned by the Class Members and therefore, have underpaid federal and state taxes, employer matching funds, unemployment premiums, Social Security, Medicare, and Workers' Compensation premiums. The aforesaid conduct is

1 criminal in nature and subjects Defendants to sanctions, fines and imprisonment, and is actionable
2 under Business & Professions Code Sections 17000 et seq. and 17200 et seq.

3 131. Plaintiffs are informed and believe, and based thereon allege, that by failing to
4 provide and timely meal and rest periods, and payments for missed meal and rest periods for Class
5 Members for the time period from April 30, 2017 to the present was intentional.

6 132. Pursuant to Business & Professions Code Sections 17071 and 17075, the failure of
7 the Defendants, and each of them, to properly pay unpaid wages, related benefits and employment
8 taxers, is admissible as evidence of Defendants' intent to violate Chapter 4 of the Unfair Business
9 Practices Act.

10 133. Plaintiffs are informed and believe, and based thereon allege, that Defendants, and
11 each of them, have instructed its directors, officers, employees and/or agents to intentionally and
12 unlawfully avoid payment of wages for all hours worked, in order to take advantage over
13 Defendants' competitors in violation of Business & Professions Code Section 17043 including,
14 without limitation:

15 a. Class Members are required to work without proper wages and without
16 being provided with timely meal and rest periods;

17 b. Plaintiffs are informed and believe, and based thereon allege, that
18 Defendants were able to compete unfairly with other similar ready mix
19 concrete manufactures in the State of California by not properly providing
20 its employees timely meal and rest periods in violation of Business &
21 Professions Code, Chapters 4 and 5, et seq.

22 134. The victims of this unfair business practice include, but are not limited to, the Class
23 Members, competing businesses in the State of California and the general public.

24 135. Plaintiffs are informed and believe, and based thereon allege, that Defendants by
25 committing the above-described acts, have deceived the public by illegally depriving its employees
26 of wages, thus injuring its employees who are members of the community.

27 136. The failure to pay wages is a crime punishable by both a statutory fine and
28 imprisonment for each violation pursuant to Business & Professions Code Section 17000, and

1 other statutes. The acts constitute a continuing and ongoing unlawful activity prohibited by
2 Business & Professions Code Sections 17000 et seq. and 17200 et seq., and justify the issuance of
3 an injunction. All remedies are cumulative pursuant to Business & Professions Code Section
4 17205.

5 137. Pursuant to Business & Professions Code Section 17082, Plaintiffs, on behalf of
6 themselves and all other Class Members, request three (3) times the amount of the Class Members'
7 damages resulting from each of Defendants' violations of Chapter 4 of the Unfair Trade Practices
8 Act.

9 138. Pursuant to Business & Professions Code Sections 17200 and 17203, Plaintiffs and
10 members of the general public are entitled to restitution of all funds wrongfully not paid by
11 Defendants to the Class Members, together with interest, penalties, and attorney fees and costs.
12 Plaintiffs are also entitled to an injunction prohibiting Defendants from requiring its employees to
13 work without timely meal and rest periods.

14 **ELEVENTH CLAIM OF RELIEF**

15 **(Private Attorney General Act, Labor Code 2698, et seq.)**

16 **(Against All Defendants)**

17 139. Plaintiffs reallege and incorporate herein by reference each and every allegation
18 contained in the preceding paragraphs of this Complaint as though fully set forth herein.

19 140. As a result of the acts alleged above and specifically incorporated herein, Plaintiffs
20 seek penalties under Labor Code §2699, et seq. as a result of Defendant's violation of Labor Code
21 §§ 201, 202, 203, 204, 206.5, 226, 226.2, 226.7, 510, 512, 558, 1174, 1174.5, 1185, 1194, 1194.1,
22 1194.2, 1197, 1198, 1199, 2802, 2698, et seq. which call for civil penalties.

23 141. For each such penalty, Plaintiffs and the aggrieved employees are entitled to
24 penalties in an amount to be shown at trial, subject to the following formula:

- 25 a. \$100 for the initial violation per employee per pay period.
26 b. \$200 for each subsequent violation per employee per pay period.

27 142. These penalties shall be allocated seventy-five percent (75%) to the LWDA and
28 twenty-five percent (25%) to the affected employees.

1 143. More specifically, after complying with the notice procedures of Labor Code §
2 2699.3, Plaintiffs assert, as a representative action on behalf of the California Attorney General
3 and the other similarly Aggrieved Employees, a PAGA claim for violations of the above addressed
4 underlying claims and seeking penalties as specified by the applicable corresponding provisions,
5 including as follows:

6 (a) Wage Claims: For failure to provide Plaintiffs and the Aggrieved Employees all earned
7 regular pay and minimum wages for regular hours worked and for failure to pay
8 overtime premium wages for overtime hours worked under Labor Code §§ 226.2, 510,
9 1194(a), 1197, and 1198, and paragraphs 2(K), 3(A), 4(A), 4(B) and 20 of the
10 applicable IWC Wage Order(s) seeking all civil and statutory penalties available and
11 applicable, and wages, under Labor Code §§ 510, 558, 1194.2, 1197.1, 1199,
12 2699(f)(2), and 2699.5, and also for attorneys' fees and costs pursuant to Labor Code
13 § 2699(g)(1);

14 (b) Meal and Rest Period Claims: For failure to provide Plaintiffs and the Aggrieved
15 Employees off-duty, timely, and unpaid meal periods and failure to authorize and
16 permit them to take off-duty, timely, and paid rest periods, or pay one hour of regular
17 pay in lieu thereof, under Labor Code §§ 512, 1198, and 226.7, and Sections 11, 12(A),
18 and 12(B) of the applicable IWC Wage Order(s) seeking all civil and statutory penalties
19 available and applicable, including under paragraph 20 of the applicable IWC Wage
20 Orders, and wages under Labor Code §§ 226.7, 512, 558, including sections 558(a)(1)-
21 (3), 1199 and 2699(f)(2), and also for attorneys' fees and costs pursuant to Labor Code
22 § 2699(g)(1);

23 (c) Inaccurate Wage Statements and Failure to Maintain Records: For failure to provide
24 Plaintiffs and the Aggrieved Employees with accurate, itemized wage statements and
25 failure to maintain employment records for Plaintiffs and Aggrieved Employees under
26 Labor Code §§ 226, 1174, and 1198.5, and Sections 7(A), 7(B), and 7(C) of the
27 applicable IWC Wage Order(s) seeking all civil and statutory penalties and wages
28 available and applicable under Labor Code §§ 226(e), 226.3, 558, 1174.5, 1199, and

2699(f)(2), and paragraph 20 of the applicable IWC Wage Order, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1). More specifically, by providing inaccurate wage statements and failing to maintain records as required under Labor Code § 226(a), Defendants committed ongoing violations giving rise to civil penalties under Labor Code § 226.3, which in addition to other penalties provided by law, subjects Defendants to "a penalty in the amount of two hundred fifty dollars (\$250) per employee per violation in an initial citation and one thousand dollars (\$1,000) per employee for each violation in a subsequent citation, ...";

(d) Failure to Timely Pay Wages: For failure to timely pay all wages owed, including at least semi-monthly and upon separation or termination, under Labor Code §§ 201, 201, 203, 204, 226.2, 1197.5, 2926, and 2927 seeking all civil penalties available and applicable, and wages, under Labor Code §§ 201, 202, 203, 210, 558, 1197, 1198, 1199 and 2699(f)(2), and paragraph 20 of the applicable IWC Wage Orders, and also for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(e) Unlawful Deductions and Failure to Reimburse Necessary Business Expenses: For Defendants' unlawful deductions from wages and for Defendants' failure to reimburse the necessary work related expenses incurred under Labor Code §§ 221, 1197, 1197.1, 1198, and 2802, and Sections 2(K), 4, 9, and 20 of the applicable IWC Wage Order(s), seeking civil penalties available and applicable under Labor Code §§ 221, 1197, 1197.1, 1198, 2802, 2699.5, and 2699(f)(2) and paragraph 9 and 20 of the IWC Wage Orders, and also attorneys' fees and costs pursuant to Labor Code § 2699(g)(1);

(f) All Alleged Violations of the IWC Wage Orders and Other Labor Code Sections: For any above addressed violation of the applicable provisions of the IWC Wage Orders, each of which constitute separate violations of Labor Code § 1198 and Labor Code § 2699.5, and seeking penalties available and applicable under Labor Code § 2699(f)(2) and paragraph 20 of the applicable IWC Wage Orders, and for attorneys' fees and costs pursuant to Labor Code § 2699(g)(1).

1 144. As also addressed above, Plaintiffs, on behalf of the Aggrieved Employees, also
2 seek the penalties and remedies set forth in Labor Code § 558, which states:

3 (a) Any employer or other person acting on behalf of an employer who violates, or
4 causes to be violated, a section of this chapter or any provision regulating hours and days of work
5 in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows:

6 (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period
7 for which the employee was underpaid in addition to an amount sufficient to recover underpaid
8 wages. (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee
9 for each pay period for which the employee was underpaid in addition to an amount sufficient to
10 recover underpaid wages. (3) Wages recovered pursuant to this section shall be paid to the affected
11 employee.

12 (b) If upon inspection or investigation the Labor Commissioner determines that a
13 person had paid or caused to be paid a wage for overtime work in violation of any provision of this
14 chapter, or any provision regulating hours and days of work in any order of the Industrial Welfare
15 Commission, the Labor Commissioner may issue a citation. The procedures for issuing, contesting,
16 and enforcing judgments for citations or civil penalties issued by the Labor Commissioner for a
17 violation of this chapter shall be the same as those set out in Section 1197.1.

18 (c) The civil penalties provided for in this section are in addition to any other civil or
19 criminal penalty provided by law.

20 145. Plaintiffs has exhausted his administrative remedies by submitting a certified letter
21 to the LWDA and Defendants on November 16, 2020 (LWDA-CM-812726-20) addressing in
22 detail the specific provisions of the Labor Code Defendants have violated and addressing the facts
23 and legal theories to support the alleged violations and requested penalties. The LWDA has not
24 provided notice of its intent to investigate the alleged violations within 65 calendar days of the
25 postmark date of the letter, and Plaintiffs adds this claim seeking penalties under the PAGA for
26 the violations addressed herein and in the PAGA Notice letter, the original Complaint and the
27 Amended PAGA Notice.

1 **RELIEF REQUESTED**

2 **WHEREFORE**, Plaintiffs prays for the following relief:

3 1. For compensatory damages in the amount of unpaid minimum wages and/or
4 overtime not paid to Plaintiffs and each Proposed Class member from at least four (4) years prior
5 to the filing of this action to the present as may be proven;

6 2. For compensatory damages in the amount of Plaintiffs' and each Proposed Class
7 Members' hourly wage for each meal period missed or taken late from at least four (4) years prior
8 to the filing of this action to the present as may be proven;

9 3. For compensatory damages in the amount of Plaintiffs' and each Proposed Class
10 Members' hourly wage for each rest period missed from at least four (4) years prior to the filing
11 of this action to the present as may be proven;

12 4. Liquidated damages pursuant to California Labor Code §1194 from at least four (4)
13 years prior to the filing of this action to the present as may be proven;

14 5. For penalties pursuant to Labor Code §203 for all employees who were terminated
15 or resigned equal to their daily wage times thirty (30) days;

16 6. For treble damages pursuant to the Unfair Practices Act;

17 7. An award of prejudgment and post judgment interest;

18 8. An order enjoining Defendant and its agents, servants, and employees, and all
19 persons acting under, in concert with, or for it from providing Plaintiffs with proper wages and/or
20 overtime, meal periods, rest periods, accurate itemized wage statements, and wages upon
21 termination/resignation pursuant to Labor Code §§ 201, 202, 203, 226.7, 510, 512, 1194, 1194.2,
22 1199, and IWC 1-2001;

23 9. For restitution for unfair competition pursuant to Business & Professions Code
24 §17200, *et seq.*, including disgorgement or profits, in an amount as may be proven;

25 10. For penalties under Labor Code §2699, *et seq.* for Defendant's violation of Labor
26 Code §§ 201, 202, 203, 226(e), 226.7, 510, 512, 1194, and 1199.

27 11. For restitution and/or damages and penalties for Defendants' failure to pay all
28 wages due twice monthly under Labor Code section 204;

1 12. For restitution and/or damages for all amounts unlawfully withheld from the wages
2 for all class members in violation of Labor Code section 221, as may be proven;

3 13. For damages and restitution for failure to reimburse all reasonable and necessary
4 business expenses incurred by Employees as required by labor Code section 2802;

5 14. For penalties under Labor Code section 558;

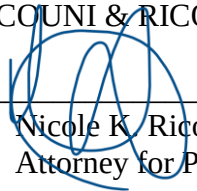
6 15. An award providing for payment of costs of suit;

7 16. An award of attorneys' fees; and

8 17. Such other and further relief as this Court may deem proper and just.

9
10
11 Date: January 27, 2025

ANTICOUNI & RICOTTA, PC

By: 

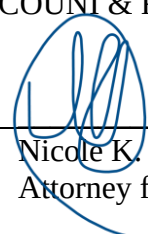
Nicole K. Ricotta
Attorney for Plaintiffs

12
13
14 **DEMAND FOR JURY TRIAL**

15 Plaintiffs hereby demand a trial of their claims by jury to the extent authorized by law.

16
17 Dated: January 27, 2025

ANTICOUNI & RICOTTA, PC

18
19 By: 

Nicole K. Ricotta
Attorney for Plaintiffs

PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF SANTA BARBARA:

I am employed in the County of Santa Barbara, State of California. I am over the age of eighteen (18) years and not a party to the within action; my business address is 201 N. Calle Cesar Chavez, Suite 105, Santa Barbara, California 93103.

On April 21, 2025, I served the foregoing document described as: **FIRST AMENDED CLASS COMPLAINT FOR DAMAGES** on the interested parties in this action by placing

☐ the original ☐ a true copy thereof enclosed in a sealed envelope addressed as follows:

Mark Pachowicz, Esq. PACHOWICZ GOLDENRING APC 6050 Seahawk Street Ventura, CA 93003-6622	Garry Tetelman, Esq. THE LAW OFFICE OF GARRY TETELMAN 15 W. Carrillo Street, Ste. 101 Santa Barbara, CA 93101
Rafael Gonzalez, Esq. MULLEN & HENZELL LLP 112 E. Victoria Street Santa Barbara, CA 93101	

☒ by sending a true copy thereof via email as follows: mark@pglaw.law; info@employmentlawyersb.com; rgonzalez@mullenlaw.com

☐ BY MAIL

☐ I deposited such envelope in the mail at Santa Barbara, State of California. The envelope was mailed with postage fully prepaid.

☐ As follows: I am “readily familiar” with the firm’s practice for collection and processing of correspondence for mailing. Under that practice it would be deposited with United States Postal Service on that same day with postage thereon fully prepaid at Santa Barbara, California, in the ordinary course of business. I am aware that service made pursuant to Code of Civil Procedure § 1013a(3) upon motion of a party served shall be presumed invalid if the postal cancellation date or postage meter date on the envelope is more than one day after the date of deposit for mailing contained in the affidavit.

I certify and declare under penalty of perjury under the laws of the State of CALIFORNIA that the foregoing is true and correct.

Executed April 21, 2025 at Santa Barbara, California.

Nicole Ricotta
[PRINT NAME]

[SIGNATURE]