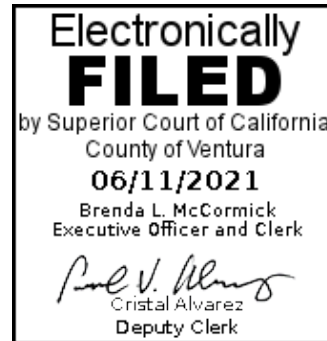




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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF VENTURA**

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

**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. Penalties Pursuant to Labor Code § 203;**
- 5. Violation of Business & Professions Code § 17200; and**
- 6. Penalties Pursuant to Labor Code §2699, et seq.**

Plaintiffs SERGIO RAYA (“RAYA”) and RUBIN LIZARRAGA (“LIZARRAGA”), as individuals, on behalf of themselves, all others similarly situated, and on behalf of the people of the State of California and as an “aggrieved employee” under Labor Code Private Attorneys

General Act of 2004, §2699, et seq. (hereafter “PAGA”), complain of Defendant STATE READY MIX, INC. (“Defendant”) and each of them, as follows:

INTRODUCTION

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

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

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

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

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

5. For at least four (4) years prior to the filing of this action continuing to the present, Defendant has had a consistent policy of failing to inform Plaintiffs and the Proposed Class Members of their right to take second meal periods by way of a lawful policy and of requiring all Proposed Class Members to work at least ten (10) hours without a second meal period. Additionally, Defendant has failed to pay such employees one (1) hour of pay at the employee’s

regular rate of compensation for each workday that the second meal period is not provided or provided after ten (10) hours, as required by California state wage and hour laws.

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

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

8. Plaintiffs, on behalf of themselves and all Proposed Class Members brings this action pursuant to Labor Code §§ 201, 202, 203, 226.7, 510, 512, 1194, 1194.2, 1199; Wage Order 1-2001; and California Code of Regulations, Title 8, Section 11090, seeking unpaid wages/overtime, other penalties, injunctive and other equitable relief, and reasonable attorneys' fees and costs.

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

10. For at least one (1) year prior to the date of the letter sent to the Labor Workforce and Development Agency ("LWDA") and Defendant giving notice of the claims pursuant to PAGA and continuing to the present, Defendant has violated several Labor Code provisions, as detailed below, giving rise to a claim pursuant to PAGA. Plaintiffs, on behalf of themselves and all aggrieved employees presently or formerly employed by Defendant during the liability period as defined in their PAGA notice letter (see Exhibit "1"), bring this representative action pursuant to Labor Code §2699, et seq. seeking penalties for Defendant's failure to pay wages and/or

overtime, failure to pay minimum wages, failure to provide compliant meal and rest periods, and failure to pay all wages due upon termination.

JURISDICTION AND VENUE

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

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

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

14. This case should be classified as complex according to Rule 3.400 of the California Rules of Court, and assigned to a complex litigation judge and department, as it will involve substantial documentary evidence, a large number of witnesses, and is likely to involve extensive motion practice raising difficult or novel issues that will be time-consuming to resolve and would require substantial post judgment judicial supervision.

PARTIES

A. PLAINTIFFS

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

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

- a. Work without being paid for all hours at the appropriate overtime rate;
- b. Work without being paid minimum wages for all hours worked;

- c. Work without being provided first and second meals periods as required;
- d. Work without being provided rest periods as required

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

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

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

B. DEFENDANTS

20. At all times herein mentioned, Plaintiffs are informed and believe, and based thereon alleges, that Defendant STATE READY MIX, INC. (“SRM”) was and is a California corporation, and at all times mentioned herein, was licensed to do business and does business throughout the state of California, including in the County of Ventura. Plaintiffs are further informed and believe, and based thereon allege, that Defendant SRM owns and operates numerous full-service concrete production and delivery facilities throughout California, including the County of Ventura. According to SRM’s own website, it touts itself “a trusted and experienced ready mixed concrete company in Ventura County. We have served the needs of contractors and homeowners throughout Ventura, Oxnard, Camarillo, Thousand Oaks, Malibu, Santa Barbara, Simi Valley, and surrounding areas for over 30 years and are known for our knowledgeable staff, exceptional customer service, high-quality concrete delivery services, and competitive prices. Ready mixed is a type of concrete that is manufactured in a factory or batching plant according to a set mix design. It is delivered to a work site by truck-mounted transit mixers, resulting in a precise mixture and allowing specialty concrete mixtures to be developed and implemented on construction sites.

21. The true names and capacities, whether individual, corporate, associate, or otherwise, of Defendants sued herein as DOES 1 to 50, inclusive, are currently unknown to

1 Plaintiffs, who therefore sues Defendants by such fictitious names under Code of Civil Procedure
2 § 474. Plaintiffs are informed and believe, and based thereon alleges, that each of the Defendants
3 designated herein as a DOE is legally responsible in some manner for the unlawful acts referred
4 to herein. Plaintiffs will seek leave of court to amend this Complaint to reflect the true names and
5 capacities of the Defendants designated hereinafter as DOES when such identities become known.

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

11 23. Furthermore, Defendants acted in all respects as the employers or joint employers
12 of the Proposed Class. Defendants, and each of them, exercised control over the wages, hours or
13 working conditions of the Proposed Class, or suffered or permitted the Proposed Class to work, or
14 engaged, thereby creating a common law employment relationship, with the Proposed Class.
15 Therefore, Defendants, and each of them, employed or jointly employed the Proposed Class.

16 **FACTUAL BACKGROUND**

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

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

22 26. On a regular and consistent basis, Plaintiffs and the Proposed Class members were
23 not paid at the proper rate of compensation. Plaintiffs and Proposed Class members were not
24 properly compensated for all wages at the appropriate rate of pay because Defendant failed to
25 compensate them at the appropriate overtime rate when they worked over eight hours in one day
26 or forty hours in one week.
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1 27. Defendant failed to provide Plaintiffs and the Class with minimum wage
2 compensation by failing to pay them properly for all hours worked. Defendant required Plaintiffs
3 and the members of the Proposed Class to clock out for lunch and continue to perform work.
4 Defendant failed to compensate Plaintiffs and the Proposed Class for this time.

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

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

12 30. Plaintiffs and all Proposed Class Members have been forced by Defendant to work
13 over ten (10) hours in one day without being provided a second thirty (30) minute uninterrupted
14 meal break period(s) and not being compensated one (1) hour of pay at the regular rate of
15 compensation for each workday that a second meal period was not provided or provided after ten
16 (10) hours, all in violation of California labor laws, regulations, and Industrial Welfare
17 Commission Wage Orders. Additionally, Defendant failed to inform Plaintiffs and the Proposed
18 Class of their right to take second meal periods by way of a lawful policy.

19 31. Defendant failed to inform Plaintiffs and the members of the Proposed Class of
20 their right to take compliant rest periods by way of a lawful policy.

21 32. Plaintiffs and all Proposed Class Members have been forced by Defendant to work
22 without the ability to take rest periods of ten (10) minutes net rest time per four (4) hours worked
23 or major fraction thereof, and not being compensated one (1) hour of pay at the regular rate of
24 compensation for each workday that a rest period was not provided all in violation of California
25 labor laws, regulations, and Industrial Welfare Commission Wage Orders.
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33. Defendant willfully failed to pay wages and compensation, when Plaintiffs and all Proposed Class Members quit or were discharged. This failure was willful, without legal justification, and interfered with Plaintiffs' and Class Members' rights.

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

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

CLASS ACTION ALLEGATIONS

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

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

37. Plaintiffs reserve the right under Rule 3.765(b) of the California Rules of Court to amend or modify the class description with greater specificity, by division into subclasses, or by limitation to particular issues.

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

A. NUMEROSITY

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

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

B. COMMONALITY

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

- a. Whether Defendant failed to pay wages and/or overtime compensation as required by the Labor Code and Wage Orders under Labor Code §§ 510, 1194, and 1199;
- b. Whether Defendant failed to pay minimum wages for all hours worked;
- c. Whether Defendant violated Labor Code § 226.7 and IWC Wage Order 1-2001 or other applicable IWC Wage Orders, by failing to inform Plaintiffs and the Proposed Class of their right to take all required meal and rest periods and by failing to provide such required meal and rest periods throughout the term of employment and failing to compensate said employees one (1) hours wages in lieu of meal and rest periods;
- d. Whether Defendant violated §§ 201-203 of the Labor Code by failing to pay compensation due and owing at the time that any Proposed Class Member's employment with Defendant terminated;
- e. Whether Defendant violated §17200, et seq. of the Business & Professions Code by engaging in the acts previously alleged; and
- f. Whether Plaintiffs and the members of the Proposed Class are entitled to equitable relief pursuant to Business & Professions Code §17200, et seq.
- g. Whether Defendant violated Labor Code § 2699, et seq. by engaging in the acts alleged herein.

1 **C. TYPICALITY**

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

6 **D. ADEQUACY OF REPRESENTATION**

7 43. Plaintiffs will fairly and adequately represent and protect the interests of the
8 members of the proposed Class.

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

11 **E. SUPERIORITY OF CLASS ACTION**

12 45. A class action is superior to other available means for the fair and efficient
13 adjudication of this controversy. Individual joinder of all Proposed Class Members is not
14 practicable, and questions of law and fact common to the Proposed Class predominate over any
15 questions affecting only individual members of the Proposed Class. Each member of the Proposed
16 Class has been damaged and is entitled to recovery by reason of Defendant's illegal policy and/or
17 practice of failing to pay all wages due and failing to pay all wages upon resignation or termination.

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

22 **STATEMENT OF FACTS**

23 47. Allegations and other factual contentions stated "on information and belief" are
24 likely to have evidentiary support after PLAINTIFFS are afforded a reasonable opportunity for
25 further investigation and discovery.
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1 48. Plaintiff RAYA was hired by SRM in October 2007 as a cement driver. RAYA's
2 job duties included the delivery of mixed concrete to various project locations and quality check
3 inspections at job sites.

4 49. While his scheduled varied, RAYA worked an average of eight to twelve hours a
5 day, Monday through Saturday. If projects required extended hours, RAYA was always willing
6 to work those additional hours. Over the years, RAYA proved to be a reliable and hardworking
7 employee.

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

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

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

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

26 54. During a Company meeting, Mr. Bradley told employees to sign a second
27 timesheet, confirming that meal periods were compliant pursuant to California law. RAYA and
28

1 LIZARRAGA both made complaints about the new timesheets because they were inaccurate. They
2 were never afforded meal breaks and their complaints were ignored.

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

7 **FIRST CLAIM OF RELIEF**

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

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

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

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

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

24 60. As a result of the unlawful acts of Defendant, Plaintiffs and the Proposed Class
25 Members have been deprived of wages and/or overtime in amounts to be determined at trial, and
26 are entitled to recovery of such amounts, plus interest and penalties thereon, attorneys' fees, and
27 costs.
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1 **SECOND CLAIM OF RELIEF**

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

3 61. Plaintiffs, on behalf of themselves and the Proposed Class, reallege and incorporate
4 by reference all previous paragraphs.

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

8 63. Defendant failed to provide Plaintiffs and the Class with minimum wage
9 compensation by failing to pay them for all hours worked. Defendant required Plaintiffs and the
10 members of the Proposed Class to perform work when clocked out for a meal period. Defendant
11 failed to compensate Plaintiffs and the Proposed Class for this time.

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

15 65. During the relevant time period, Defendant required Plaintiffs and members of the
16 Proposed Class to perform work off the clock and failed to compensate them for this time.

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

20 67. Pursuant to California Labor Code Section 1194.2, Plaintiffs request that the court
21 award interest, reasonable attorney's fees, and costs incurred in this action.

22 **THIRD CLAIM OF RELIEF**

23 **(Missed and Unpaid Meal Periods and Rest Periods Pursuant to Wage Order 1-2001**
24 **and California Labor Code Section 226.7)**

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

27 69. Section 11 of Wage Order 1-2001, specifically reads:
28

(A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and employee. Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal 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.

70. 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.

1 71. Plaintiffs and other members of the class (collectively the “Class Members”) are or
2 were employees of Defendants in the State of California and Defendants were and are employers
3 employing persons in the State of California. As such, the Class Members were the type of persons
4 contemplated to be protected by the Labor Code and the Wage Orders and said regulations were
5 intended to apply to Defendants and to prevent the type of injury and damage herein. Plaintiffs
6 and other members of the Class were paid on an hourly basis.

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

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

20 **FOURTH CLAIM OF RELIEF**

21 **(Violation of California Labor Code Section 203)**

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

24 75. Numerous members of the Proposed Class, including Plaintiff, are no longer
25 employed by Defendant. They were either fired or quit Defendant’s employ.

26 76. Defendant’s failure to pay wages, as alleged above was willful in that Defendant
27 knew wages to be due but failed to pay them, thus entitling Plaintiffs and the Proposed Class to
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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.

77. 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.

FIFTH CLAIM OF RELIEF

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

78. 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.

79. 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.

80. Defendants, and each of them, are "persons" as defined under Business & Professions Code Section 17095.

81. 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.

82. Defendants, and each of them, through its facilities provides ready-mixed concrete products to construction sites throughout the state of California. This provides services to the public as defined in Business & Professions Code Sections 17022 and 17024.

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

6 84. Plaintiffs are informed and believe, and based thereon allege, that Defendants have
7 under-reported to federal and state authorities wages earned by the Class Members and therefore,
8 have underpaid federal and state taxes, employer matching funds, unemployment premiums,
9 Social Security, Medicare, and Workers' Compensation premiums. The aforesaid conduct is
10 criminal in nature and subjects Defendants to sanctions, fines and imprisonment, and is actionable
11 under Business & Professions Code Sections 17000 et seq. and 17200 et seq.

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

15 86. Pursuant to Business & Professions Code Sections 17071 and 17075, the failure of
16 the Defendants, and each of them, to properly pay unpaid wages, related benefits and employment
17 taxes, is admissible as evidence of Defendants' intent to violate Chapter 4 of the Unfair Business
18 Practices Act.

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

- 24 a. Class Members are required to work without proper wages and without
25 being provided with timely meal and rest periods;
26 b. Plaintiffs are informed and believe, and based thereon allege, that
27 Defendants were able to compete unfairly with other similar ready mix
28

1 concrete manufactures in the State of California by not properly providing
2 its employees timely meal and rest periods in violation of Business &
3 Professions Code, Chapters 4 and 5, et seq.

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

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

9 90. The failure to pay wages is a crime punishable by both a statutory fine and
10 imprisonment for each violation pursuant to Business & Professions Code Section 17000, and
11 other statutes. The acts constitute a continuing and ongoing unlawful activity prohibited by
12 Business & Professions Code Sections 17000 et seq. and 17200 et seq., and justify the issuance of
13 an injunction. All remedies are cumulative pursuant to Business & Professions Code Section
14 17205.

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

19 92. Pursuant to Business & Professions Code Sections 17200 and 17203, Plaintiffs and
20 members of the general public are entitled to restitution of all funds wrongfully not paid by
21 Defendants to the Class Members, together with interest, penalties, and attorney fees and costs.
22 Plaintiffs are also entitled to an injunction prohibiting Defendants from requiring its employees to
23 work without timely meal and rest periods.
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SIXTH CLAIM OF RELIEF

(Private Attorney General Act; Violations of Labor Code Sections 201-203, 226.7, 510, 512, 1194 and 1199)

93. 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.

94. As a result of the acts alleged above and specifically incorporated herein, Plaintiffs seek penalties under Labor Code §2699, et seq. as a result of Defendant's violation of Labor Code §§ 201, 202, 203, 226.7, 510, 512, 1194, and 1199; Wage Order 1-2001; and California Code of Regulations, Title 8, Section 11010, which call for civil penalties.

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

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

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

97. Pursuant to Labor Code § 2699.3(a)(1), Plaintiffs uploaded a notice letter to the LWDA and mailed a letter by certified mail to Defendant STATE READY MIX INC.'s entity address, which is 11011 Azahar Street, Suite 1, Ventura, CA 93004 as proscribed by the Code on November 16, 2020, describing Defendants' conduct in violation of Labor Code §§ 201, 202, 203, 226.7, 510, 512, 1194, and 1199. (see Exhibit "1.") Plaintiffs also obtained an e-filing confirmation from the LWDA confirming receipt of the notice (see Exhibit "2").

98. As no letter evidencing the LWDA's intention to investigate was received by Plaintiffs' Counsel within sixty-five (65) calendar days, Plaintiffs are entitled to commence a civil action as though the LWDA had not chosen to investigate pursuant to Labor Code §2699.3(a)(2)(A). Plaintiffs will also provide the LWDA with a filed-stamped copy of the Class and Representative Action Complaint immediately.

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, 226.7, 510, 512, 1194, and 1199.

27 11. An award providing for payment of costs of suit;
28

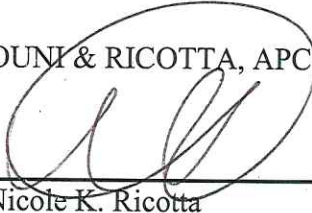
- 1 12. An award of attorneys' fees; and
2 13. Such other and further relief as this Court may deem proper and just.

3 **DEMAND FOR JURY TRIAL**

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

5
6 Dated: June 7, 2021

ANTICOUNI & RICOTTA, APC

7
8 By: 

Nicole K. Ricotta
Attorney for Plaintiff

EXHIBIT 1

ANTICOUNI & ASSOCIATES

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW



201 N. CALLE CESAR CHAVEZ, SUITE 105
SANTA BARBARA, CA 93103
TELEPHONE (805) 845-0864 • FACSIMILE (805) 845-0965
www.anticounilaw.com

November 16, 2020

LABOR & WORKFORCE DEVELOPMENT AGENCY
Attn. PAGA Administrator
1515 Clay Street, Ste. 801
Oakland, CA 94612

State Ready Mix, Inc.
11011 Azahar Street, Ste. 1
Ventura, CA 93004

Re: SERGIO RAYA and RUBEN LIZARRAGA v. STATE READY MIX, INC.
California Labor Code § 2699 Penalties

Gentlepersons:

This office represents SERGIO RAYA and RUBEN LIZARRAGA ("Plaintiffs") and a proposed group of current and former employees working for STATE READY MIX, INC. ("Defendants") in the State of California. The purpose of this letter is to comply with the Private Attorneys General Act of 2004, pursuant to California Labor Code § 2698, *et. seq.* We herein set forth the facts and theories of California Labor Code violations which we allege Defendants engaged in with respect to Plaintiffs and all of Defendants' aggrieved employees.

Plaintiffs wish to bring a representative action on behalf of themselves and the State of California as well as on behalf of a group of aggrieved employees defined as: All employees who worked one or more shifts as a non-exempt employee for STATE READY MIX, INC in the State of California since one (1) year prior to the date of this letter and continuing to the present. ("aggrieved employees").

Defendant has violated Labor Code §§ 510, 1194 and 1199. These statutes require an employer to compensate its employees at the minimum wage rate for all hours worked and at a rate of no less than one and one-half times the regular rate of pay for any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and no less than twice the regular rate of pay for an employee who works in excess of 12 hours in one day. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee.

Defendant has had a consistent policy of failing to pay minimum wage for all hours worked. Defendant required Plaintiffs and aggrieved employees to work off-the-clock. Plaintiffs and aggrieved employees were required to clock out for meal periods and continue working while they were off-the-clock.

Labor Code §§ 226.7 and 512 require an employer to pay an additional hour of compensation for each meal period the employer fails to provide. Employees are entitled to a first meal period of at least thirty (30) minutes for shifts over five (5) hours, to be provided within the first five (5) hours of the shift, and a second meal period of at least thirty (30) minutes for shifts over ten (10) hours. If an employee is entitled to a second meal period, it must be provided after no more than ten (10) hours of work. Defendants failed to maintain a policy informing Plaintiffs and the Proposed Class of these rights. Likewise, the Wage Order (1-2001) state that: An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than thirty (30) minutes, except that if the total hours worked is no more than twelve (12) hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. Pursuant to Labor Code § 226.7(c), if an employer fails to provide an employee with a lawful meal period, the employer must pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that a thirty (30) minute uninterrupted meal period was not provided, was not provided in full, or was not provided in a timely manner.

Here, Defendants failed to apprise Plaintiffs and the Aggrieved Employees of their rights associated with meal periods and failed to provide timely meal periods. Defendants have had a consistent policy of: (1) requiring Plaintiffs and the Aggrieved Employees to work shifts over five (5) hours without providing a compliant first meal period of thirty minutes in length within the first 5 hours of the shift; (2) required Plaintiffs and the Aggrieved Employees to work shifts over ten (10) hours without providing a second meal period of thirty minutes in length altogether; and (3) failed to pay such employees one (1) hour of pay at the employees regular rate of compensation for each workday that the first meal period was not provided within the first (5) hours of the shift or that a second meal period was not provided.

Pursuant to Labor Code § 226.7 and Wage Order 1-2001, Defendants failed to provide Plaintiffs and the Aggrieved Employees with rest breaks of not less than ten (10) minutes per four (4) hour work period, or major fraction thereof. On a regular and consistent basis, Defendants failed to provide Plaintiffs and the Aggrieved Employees with a compliant rest periods despite regularly requiring Plaintiffs and the Aggrieved Employees to work over ten (10) hours. As such, Defendants failed to provide Plaintiffs and the Aggrieved Employees with compliant rest periods. Further, Plaintiffs and the Aggrieved Employees were not compensated with one (1) hour of wages for each missed rest period as required by Labor Code § 226.7.

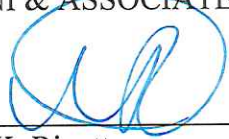
Labor Code section 203 provides that if "an employer willfully fails to pay...any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days." Here, Plaintiffs and all aggrieved employees were not paid all wages due upon their separation from Defendants' employment. As such, Plaintiffs are aggrieved employees and Defendants failed to pay Plaintiffs and all aggrieved employees all wages due 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 in violation of Labor Code §203.

LABOR & WORKFORCE DEVELOPMENT AGENCY
California Labor Code §2699 Penalties
November 16, 2020
Page 3 of 3

We are constrained to move forward with the filing of this complaint alleging causes of action pursuant to Labor Code §§ 201, 202, 203, 226.7, 510, 512, 1194 and 1199 and with or without the PAGA claim. Thus, any action by the LWDA would not resolve the entirety of the case, and the interest of judicial economy will be served by allowing the case to proceed as a cohesive whole.

Very truly yours,

ANTICOUNI & ASSOCIATES

By: 
Nicole K. Ricotta

- Cc:
1. LWDA Letter filed via Electronic Submission: <https://dir.tfaforms.net/295>
 2. State Ready Mix, Inc. via USPS Certified Mail # 70192280000075284263

Misclassification Employee Classified as Contractor	☐
Misclassification Nonexempt Classified as Exempt	☐
Child Labor	☐
Specify Ages	☐
Minimum Wage	☒
Overtime	☒
Not paid for all hours worked	☒
Not paid wages due on termination	☒
Other Unpaid Wages	☐
Tips or Gratuities	☐
Payment or Reimbursement of Employee Expenses	☐
Improper Form of Payment Including NSF Checks	☐
Kickbacks	☐
Meal and Rest Breaks	☒
Sick Leave	☐
Lactation Accommodation (Labor Code 1030-1033)	☐
Not providing required time off, other	☐
Pay Discrimination on basis of sex, (Labor Code 1197.5)	☐
No Wage Statements	☐
Improper or Incomplete Wage Statements	☒
Other Notice or Posting or Recordkeeping	☐
Public Works (Labor Code 1720 - 1815)	☐
Apprenticeship (Labor Code 3070 - 3098)	☐
Occupational Safety and Health (Labor Code 6300 et seq)	☐
No Workers' Compensation	☐
Licensing, Registration, or Permit	☐
Unfair Immigration Activities	☐
Agricultural Labor Relations	☐
Industrial Homework	☐
Retaliation for Protected Status or Activity (Specify)	☐
Other(Maybe Multiple)	☐

APPROVED FOR FILING
by: _____

PAGA Claim Type - Check All that Apply

Includes one or more listed in Labor Code 2699.5- not curable subject to 2699.3(a) <i>[(subdivision (k) of Section 96, Sections 98.6, 201, 201.3, 201.5, 201.7, 202, 203, 203.1, 203.5, 204, 204a, 204b, 204.1, 204.2, 205, 205.5, 206, 206.5, 208, 209, and 212, subdivision (d) of Section 213, Sections 221, 222, 222.5, 223, and 224, paragraphs (1) to (5), inclusive, (7), and (9) of subdivision (a) of Section 226, Sections 226.7, 227, 227.3, 230, 230.1, 230.2, 230.3, 230.4, 230.7, 230.8, and 231, subdivision (c) of Section 232, subdivision (c) of Section 232.5, Sections 233, 234, 351, 353, and 403, subdivision (b) of Section 404, Sections 432.2, 432.5, 432.7, 435, 450, 510, 511, 512, 513, 551, 552, 601, 602, 603, 604, 750, 751.8, 800, 850, 851, 851.5, 852, 921, 922, 923, 970, 973, 976, 1021, 1021.5, 1025, 1026, 1101, 1102, 1102.5, and 1153, subdivisions (c) and (d) of Section 1174, Sections 1194, 1197, 1197.1, 1197.5, and 1198, subdivision (b) of Section 1198.3, Sections 1199, 1199.5, 1290, 1292, 1293, 1293.1, 1294, 1294.1, 1294.5, 1296, 1297, 1298, 1301, 1308, 1308.1, 1308.7, 1309, 1309.5, 1391, 1391.1, 1391.2, 1392, 1683, and 1695, subdivision (a) of Section 1695.5, Sections 1695.55, 1695.6, 1695.7, 1695.8, 1695.9, 1696, 1696.5, 1696.6, 1697.1, 1700.25, 1700.26, 1700.31, 1700.32, 1700.40, and 1700.47, Sections 1735, 1771, 1774, 1776, 1777.5, 1811, 1815, 2651, and 2673, subdivision (a) of Section 2673.1, Sections 2695.2, 2800, 2801, 2802, 2806, and 2810, subdivision (b) of Section 2929, and Sections 3095, 6310, 6311, and 6399.7.]</i>	☒
Includes one or more OSHA violations subject to requirements of 2699.3(b)	☐
Includes one or more violations not listed in Labor Code 2699.5 - curable subject to 2699.3(c) <i>[(6) and (8) of subdivision (a) of Section 226]</i>	☐

EXHIBIT 2

Nicole Ricotta

From: noreply@salesforce.com on behalf of LWDA DO NOT REPLY
<lwdadonotreply@dir.ca.gov>
Sent: Monday, November 16, 2020 4:16 PM
To: Nicole Ricotta
Subject: Thank you for submission of your PAGA Case.

11/16/2020

LWDA Case No. LWDA-CM-812726-20
Law Firm : Anticouni & Associates
Plaintiff Name : Sergio Raya, Ruben Lizarraga
Employer: State Ready Mix, Inc.
Filing Fee : \$75.00
IFP Claimed : No

Item submitted: Initial PAGA Notice

Thank you for your submission to the Labor and Workforce Development Agency. Please make a note of the LWDA Case No. above as you may need this number for future reference when filing any subsequent documents for this Case.

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm