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9
10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF SAN JOAQUIN
12

13 OSCAR MAGANA, as an aggrieved
employee pursuant to the Private Attorneys
14 General Act ("PAGA"), on behalf of the
State of California and other aggrieved
15 employees,

16 Plaintiff,

17 vs.

18 A & A READY MIXED CONCRETE,
INC., a California corporation;
19 ASSOCIATED READY MIXED
CONCRETE, INC., a California
20 corporation; and DOES 1 through 10,
21 inclusive,

22 Defendants.
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Case No.:

STK-CV-008-2021- 3911

**COMPLAINT – PAGA ENFORCEMENT
ACTION**

- (1) Claim for Civil Penalties for Violations
of California Labor Code, Pursuant to
PAGA, §§ 2698, *et seq.*

Jury Trial Demanded

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1 Plaintiff Oscar Magana, as an aggrieved employee and on behalf of the State of
2 California and all other aggrieved employees, alleges as follows:

3 **JURISDICTION AND VENUE**

4 1. This is an enforcement action under the Labor Code Private Attorneys General
5 Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) to recover civil penalties
6 and any other available relief on behalf of Plaintiff, the State of California, and other current
7 and former employees who worked for Defendants in California as a non-exempt, hourly paid
8 employee and received at least one wage statement and against whom one or more violations
9 of any provision in Division 2 Part 2 Chapter 1 of the Labor Code or any provision regulating
10 hours and days of work in the applicable Industrial Welfare Commission (“IWC”) Wage
11 Order were committed, as set forth in this complaint, at any time between one year prior to the
12 filing of the pre-filing written notice to the Labor and Workforce Development Agency
13 (“LWDA”) in this case on February 23, 2021, until judgment (“non-party Aggrieved
14 Employees”). Plaintiff’s share of civil penalties sought in this action does not exceed
15 \$75,000.

16 2. This Court has jurisdiction over this action pursuant to the California
17 Constitution, Article VI, section 10. The statute under which this action is brought does not
18 specify any other basis for jurisdiction.

19 3. This Court has jurisdiction over all Defendants because, on information and
20 belief, Defendants are either citizens of California, have sufficient minimum contacts in
21 California, or otherwise intentionally avail themselves of the California market so as to render
22 the exercise of jurisdiction over them by the California courts consistent with traditional
23 notions of fair play and substantial justice. There is no basis for federal diversity jurisdiction
24 in this action given that the State of California, as the real party in interest in this action, is not
25 a “citizen” for purposes of satisfying diversity jurisdiction. *Urbino v. Orkin Servs. of Cal.*,
26 726 F.3d 1118, 1123 (9th Cir. Cal. 2013). *Urbino* also holds that civil penalties cannot be
27 aggregated to satisfy the amount in controversy requirement for federal diversity jurisdiction
28 in this action, and that diversity jurisdiction cannot be established when Plaintiff’s share of the

1 civil penalties attributable to violations personally suffered are less than \$75,000. *Id.* at 1122.

2 4. Venue is proper in this Court, because Defendants employ or employed persons
3 within the County of San Joaquin, including Plaintiff, and have violated the requirements of
4 the California Labor Code and applicable Wage Order in this county which give rise to the
5 penalties sought in this action. Cal. Code Civ. P. § 393. Specifically, Defendants have
6 violated the requirements of the California Labor Code and the applicable Wage Order in at
7 least one location within the County of San Joaquin, including Defendants' locations in
8 Stockton (4035 E. Mariposa Rd., Stockton, California 95215) and Tracy (10250 W. Linne Rd.,
9 Tracy, California 95377). Pursuant to California Civil Code of Procedure section 393, venue
10 is proper for the recovery of a penalty imposed by statute in the county in which the cause, or
11 some part of the cause, arose. Because Defendants have employees in San Joaquin County,
12 and Plaintiff could bring an action filed under PAGA in any county in which an aggrieved
13 employee worked and Labor Code violations occurred, venue is proper. *Crestwood*
14 *Behavioral Health, Inc. v. Superior Court of Alameda County*, 60 Cal.App.5th 1069 (Cal.
15 2021).

16 5. California Labor Code sections 2698, *et seq.*, the "Labor Code Private
17 Attorneys General Act of 2004" ("PAGA"), authorize aggrieved employees to sue as private
18 attorneys general their current or former employers for various civil penalties for violations of
19 various provisions in the California Labor Code.

20 THE PARTIES

21 6. Plaintiff Oscar Magana is a resident of Lodi, in San Joaquin County, California.
22 Defendants employed Plaintiff as an hourly paid, non-exempt Yardman from approximately
23 November 2017 to March 2020. Plaintiff worked for Defendants at their facilities in Tracy,
24 Stockton, Sacramento, and Fairfield, California. During his employment, Plaintiff typically
25 worked eleven (11) hours or more per day, six (6) days per week, from 3:00 a.m. to 2:00 p.m.
26 At the time his employment ended, Plaintiff earned approximately \$16.00 per hour. His job
27 duties included, without limitation, opening and closing the yard gate doors; maintaining
28 cleanliness of yard facilities; operating loaders to accommodate concrete, sand, stone, and

1 gravel within the yard; performing inventory and checking conditions of yard equipment and
2 supplies; performing light mechanic work on heavy machinery; and receiving material
3 shipments.

4 7. On information and belief, Defendants required some employees, including
5 Plaintiff, to execute a dispute resolution policy and/or arbitration agreement(s) at the time of
6 their hire or during their employment. On further information and belief, Defendants' dispute
7 resolution policy and/or arbitration agreement was and is both procedurally and substantively
8 unconscionable. Specifically, Defendants presented new hires with a Mutual Agreement to
9 Arbitrate Claims ("Arbitration Agreement") during the onboarding process, which had to be
10 reviewed and signed immediately. In fact, upon information and belief, the Arbitration
11 Agreement was one of several documents presented to new employees for signature during the
12 orientation process, including an Acknowledgment of Receipt and Review of Company Code
13 of Safe Practices, Non Solicitation Consent and Confidentiality Agreement, Caillier Group
14 Companies Prohibition Against Harassment and Complaint Procedure, and "At-Will"
15 Employment Acknowledgment, among other documents. Also, employees did not have a
16 meaningful opportunity to negotiate the terms of the Arbitration Agreement. Rather, it was
17 provided to Defendants' employees for them to sign on a take-it or leave-it basis at the time
18 they were hired, along with other on-boarding documents. Further, Defendants did not set
19 forth in the agreement or otherwise provide employees with the rules which will govern the
20 arbitration, instead forcing employees to seek this information out on their own.

21 8. A & A READY MIXED CONCRETE, INC. was and is, upon information and
22 belief, a California corporation, and at all times hereinafter mentioned, an employer whose
23 employees are engaged throughout this county and the State of California.

24 9. ASSOCIATED READY MIXED CONCRETE, INC. was and is, upon
25 information and belief, a California corporation, and at all times hereinafter mentioned, an
26 employer whose employees are engaged throughout this county and the State of California.

27 10. Plaintiff is unaware of the true names or capacities of the Defendants sued
28 herein under the fictitious names DOES 1 through 10, but will seek leave of this Court to

1 amend the complaint and serve such fictitiously named Defendants once their names and
2 capacities become known.

3 11. Plaintiff is informed and believes, and thereon alleges, that DOES 1 through 10
4 were the partners, agents, owners, or managers of A & A READY MIXED CONCRETE,
5 INC. and ASSOCIATED READY MIXED CONCRETE, INC. at all relevant times.

6 12. Plaintiff is informed and believes, and thereon alleges, that each and all of the
7 acts and omissions alleged herein was performed by, or is attributable to, A & A READY
8 MIXED CONCRETE, INC.; ASSOCIATED READY MIXED CONCRETE, INC.; and/or
9 DOES 1 through 10 (collectively, “Defendants” or “A & A”), each acting as the agent,
10 employee, alter ego, and/or joint venturer of, or working in concert with, each of the other co-
11 Defendants and was acting within the course and scope of such agency, employment, joint
12 venture, or concerted activity with legal authority to act on the others’ behalf. The acts of any
13 and all Defendants were in accordance with, and represent, the official policy of Defendants.

14 13. At all relevant times, Defendants, and each of them, ratified each and every act
15 or omission complained of herein. At all relevant times, Defendants, and each of them, aided
16 and abetted the acts and omissions of each and all the other Defendants in proximately causing
17 the damages herein alleged.

18 14. Plaintiff is informed and believes, and thereon alleges, that each of said
19 Defendants is in some manner intentionally, negligently, or otherwise responsible for the acts,
20 omissions, occurrences, and transactions alleged herein.

21 15. Under California law, Defendants are jointly and severally liable as employers
22 for the violations alleged herein because they have each exercised sufficient control over the
23 wages, hours, working conditions, and employment status of Plaintiff and other non-party
24 Aggrieved Employees. Each Defendant had the power to hire and fire Plaintiff and other non-
25 party Aggrieved Employees, supervised and controlled their work schedule and/or conditions
26 of employment, determined their rate of pay, and maintained their employment records.
27 Defendants suffered or permitted Plaintiff and other non-party Aggrieved Employees to work
28 and/or “engaged” Plaintiff and other non-party Aggrieved Employees so as to create a

1 common-law employment relationship. As joint employers of Plaintiff and other non-party
2 Aggrieved Employees, Defendants are jointly and severally liable for the civil penalties
3 available to Plaintiff and other non-party Aggrieved Employees under the law.

4 16. Plaintiff is informed and believes, and thereon alleges, that at all relevant times,
5 Defendants, and each of them, have acted as joint employers with respect to Plaintiff and other
6 non-party Aggrieved Employees because Defendants have:

- 7 (a) jointly exercised meaningful control over the work performed by
8 Plaintiff and other non-party Aggrieved Employees;
- 9 (b) jointly exercised meaningful control over Plaintiff's and other non-party
10 Aggrieved Employees' wages, hours, and working conditions, including
11 the quantity, quality standards, speed, scheduling, and operative details
12 of the tasks performed by Plaintiff and other non-party Aggrieved
13 Employees;
- 14 (c) jointly required that Plaintiff and other non-party Aggrieved Employees
15 perform work which is an integral part of Defendants' businesses; and
- 16 (d) jointly exercised control over Plaintiff and other non-party Aggrieved
17 Employees as a matter of economic reality in that Plaintiff and other
18 non-party Aggrieved Employees were dependent on Defendants, who
19 shared the power to set the wages of Plaintiff and other non-party
20 Aggrieved Employees and determined their working conditions, and
21 who jointly reaped the benefits from the underpayment of their wages
22 and noncompliance with other statutory provisions governing their
23 employment.

24 17. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
25 there has existed a unity of interest and ownership between Defendants such that any
26 individuality and separateness between the entities has ceased.

27 18. A & A READY MIXED CONCRETE, INC.; ASSOCIATED READY MIXED
28 CONCRETE, INC.; and DOES 1 through 10 are therefore alter egos of each other.

1 19. Adherence to the fiction of the separate existence of Defendants would permit
2 an abuse of the corporate privilege and would promote injustice by protecting Defendants
3 from liability for the wrongful acts committed by them under the name A & A.

4 20. Plaintiff further alleges, upon information and belief, that Defendants A & A
5 READY MIXED CONCRETE, INC. and ASSOCIATED READY MIXED CONCRETE,
6 INC. are alter egos of each other for the following reasons:

- 7 (a) On the California Secretary of State’s website
8 (<https://businesssearch.sos.ca.gov/>), A & A READY MIXED
9 CONCRETE, INC. and ASSOCIATED READY MIXED CONCRETE,
10 INC. share the same entity and mailing address, “4261 Teller Ave., Ste.
11 130, Newport Beach, CA 92660;”
- 12 (b) According to A & A READY MIXED CONCRETE, INC.’s and
13 ASSOCIATED READY MIXED CONCRETE, INC.’s respective
14 websites¹, “A & A Ready Mixed Concrete, Inc[.] was created in 1949 in
15 Gardena, CA. . . . Over the years, the company has grown steadily
16 throughout Southern and Northern California. This expansion has led to
17 the addition of several subsidiary companies, including Southern
18 California based **Associated Ready Mix[ed Concrete, Inc.]** and
19 Northern California based **A & A Concrete Supply[, Inc.]**” (emphasis
20 added);
- 21 (c) According to the California Secretary of State’s website, A & A
22 Concrete Supply, Inc., which is the entity listed on Plaintiff’s paystubs,
23 was “Merged Out” in 1996 and into the surviving company A & A
24 READY MIXED CONCRETE, INC. “A & A Concrete Supply” is now
25 the fictitious business name registered in Orange and Sacramento
26 Counties registered to A & A READY MIXED CONCRETE, INC.;

27 ¹ See “Careers - Concrete Company, A & A Ready Mixed Concrete Inc,” available at
28 <https://aareadymix.com/careers/> and <https://assocrmc.com/careers/> (last visited April 28,
2021).

- 1 (d) According to A & A READY MIXED CONCRETE, INC.’s Agreement
2 of Merger (merging with the entity A & A Concrete Supply, Inc.) filed
3 with the California Secretary of State and ASSOCIATED READY
4 MIXED CONCRETE, INC.’s Agreement of Merger (merging with the
5 entity L.A. Premix, Inc.) filed with the California Secretary of State,
6 A & A READY MIXED CONCRETE, INC. and ASSOCIATED
7 READY MIXED CONCRETE, INC. share the same directors and/or
8 officers, including but not limited to, Randy Caillier, who serves as
9 Secretary of both entities;
- 10 (e) According to A & A READY MIXED CONCRETE, INC.’s and
11 ASSOCIATED READY MIXED CONCRETE, INC.’s respective
12 websites², Kurt Caillier serves as President and Randy Caillier as Vice
13 President of each of the companies; and
- 14 (f) On information and belief, A & A READY MIXED CONCRETE, INC.
15 and ASSOCIATED READY MIXED CONCRETE, INC. utilize the
16 same standardized employment forms and issue the same employment
17 policies.

18 **PAGA REPRESENTATIVE ALLEGATIONS**

19 21. Defendants are the largest family-owned supplier of ready-mixed concrete in
20 California. Upon information and belief, Defendants maintain a single, centralized Human
21 Resources (“HR”) department at their corporate headquarters in Newport Beach, California,
22 which is responsible for the recruiting and hiring of new employees, and communicating and
23 implementing Defendants’ company-wide policies, including timekeeping policies and meal
24 and rest period policies, to employees throughout California.

25 22. In particular, Plaintiff and other non-party Aggrieved Employees, on
26 information and belief, received the same standardized documents and/or written policies.

27 ² See “About - Concrete Company - A & A Ready Mixed Concrete Inc,” available at
28 <https://aareadymix.com/company/> and <https://assocrmc.com/company/> (last visited April 28, 2021).

1 Upon information and belief, the usage of standardized documents and/or written policies,
2 including new-hire documents, indicate that Defendants dictated policies at the corporate level
3 and implemented them company-wide, regardless of their employees' assigned locations or
4 positions. Upon information and belief, Defendants set forth uniform policies and procedures
5 in several documents provided at an employee's time of hire.

6 23. Upon information and belief, Defendants maintain a centralized Payroll
7 department at their corporate headquarters in Newport Beach, California, which processes
8 payroll for all non-exempt, hourly paid employees working for Defendants at their various
9 locations and jobsites in California, including Plaintiff and other non-party Aggrieved
10 Employees. Based upon information and belief, Defendants issue the same formatted wage
11 statements to all non-exempt, hourly paid employees in California, irrespective of their work
12 locations. Upon information and belief, Defendants process payroll for departing employees
13 in the same manner throughout the State of California, regardless of the manner in which each
14 employee's employment ends.

15 24. Defendants continue to employ non-exempt or hourly paid employees in
16 California.

17 25. Plaintiff is informed and believes, and thereon alleges, that at all times herein
18 mentioned, Defendants were advised by skilled lawyers and other professionals, employees
19 and advisors knowledgeable about California labor and wage law, employment and personnel
20 practices, and about the requirements of California law.

21 26. Plaintiff is informed and believes, and thereon alleges, that Plaintiff and other
22 non-party Aggrieved Employees were not paid for all hours worked because all hours worked
23 were not recorded.

24 27. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
25 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
26 receive certain wages for overtime compensation and that they were not receiving certain
27 wages for overtime compensation.

28 28. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
2 receive at least minimum wages for compensation and that they were not receiving at least
3 minimum wages for work that was required to be done off-the-clock. In violation of the
4 California Labor Code, Plaintiff and other non-party Aggrieved Employees were not paid at
5 least minimum wages for work done off-the-clock.

6 29. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
7 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
8 meal periods in accordance with the Labor Code or payment of one (1) additional hour of pay
9 at their regular rates of pay when they were not provided with timely, uninterrupted, thirty
10 (30) minute meal periods and that Plaintiff and other non-party Aggrieved Employees were
11 not provided with all meal periods or payment of one (1) additional hour of pay at their
12 regular rates of pay when they did not receive a timely, uninterrupted, thirty (30) minute meal
13 period.

14 30. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
15 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
16 rest periods in accordance with the Labor Code and applicable IWC Wage Order or payment
17 of one (1) additional hour of pay at their regular rates of pay when they were not authorized
18 and permitted to take a compliant rest period. In violation of the California Labor Code,
19 Plaintiff and other non-party Aggrieved Employees were not authorized and permitted to take
20 compliant rest periods, nor did Defendants provide Plaintiff and other non-party Aggrieved
21 Employees with payment of one (1) additional hour of pay at their regular rates of pay when
22 they were not authorized and permitted to take a compliant rest period.

23 31. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
24 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
25 receive complete and accurate wage statements in accordance with California law. In
26 violation of the California Labor Code, Plaintiff and other non-party Aggrieved Employees
27 were not provided complete and accurate wage statements.

28 32. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or

1 should have known that they had a duty to maintain accurate and complete payroll records in
2 accordance with the Labor Code and applicable IWC Wage Order, but willfully, knowingly,
3 and intentionally failed to do so.

4 33. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
5 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
6 timely payment of wages during their employment. In violation of the California Labor Code,
7 Plaintiff and other non-party Aggrieved Employees did not receive payment of all wages,
8 including, but not limited to, overtime wages, minimum wages, and/or meal and rest period
9 premiums, within permissible time periods.

10 34. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
11 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
12 timely payment of all wages earned upon termination of employment. In violation of the
13 California Labor Code, Plaintiff and other non-party Aggrieved Employees did not receive
14 payment of all wages due, including, but not limited to, overtime wages, minimum wages,
15 and/or meal and rest period premiums, within permissible time periods.

16 35. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
17 should have known that Plaintiff and other non-party Aggrieved Employees were entitled to
18 receive reimbursement for all business-related expenses and costs they incurred during the
19 course and scope of their employment and that they did not receive reimbursement of
20 applicable business-related expenses and costs incurred.

21 36. Plaintiff is informed and believes, and thereon alleges, that Defendants knew or
22 should have known that they had a duty to provide Plaintiff and other non-party Aggrieved
23 Employees with safety devices and safeguards, such as personal protective equipment, to
24 protect their life, safety, and health in the workplace, but willfully, knowingly, and
25 intentionally failed to do so.

26 37. Plaintiff is informed and believes, and thereon alleges, that at all times herein
27 mentioned, Defendants knew or should have known that they had a duty to compensate
28 Plaintiff and other non-party Aggrieved Employees for all hours worked, and that Defendants

1 had the financial ability to pay such compensation, but willfully, knowingly, and intentionally
2 failed to do so, and falsely represented to Plaintiff and other non-party Aggrieved Employees
3 that they were properly denied wages, all in order to increase Defendants' profits.

4 38. At all times herein set forth, PAGA provides that any provision of law under
5 the Labor Code and applicable IWC Wage Order that provides for a civil penalty to be
6 assessed and collected by the LWDA for violations of the California Labor Code and
7 applicable IWC Wage Order may, as an alternative, be recovered by aggrieved employees in a
8 civil action brought on behalf of themselves and other current or former employees pursuant
9 to procedures outlined in California Labor Code section 2699.3.

10 39. PAGA defines an "aggrieved employee" in Labor Code section 2699(c) as "any
11 person who was employed by the alleged violator and against whom one or more of the
12 alleged violations was committed."

13 40. Plaintiff and other current and former employees of Defendants are "aggrieved
14 employees" as defined by Labor Code section 2699(c) in that they are all Defendants' current
15 or former employees and one or more of the alleged violations were committed against them.

16 41. Pursuant to California Labor Code sections 2699.3 and 2699.5, an aggrieved
17 employee, including Plaintiff, may pursue a civil action arising under PAGA after the
18 following requirements have been met:

- 19 (a) The aggrieved employee shall give written notice by online filing
20 (hereinafter "Employee's Notice") to the LWDA and by certified mail
21 to the employer of the specific provisions of the California Labor Code
22 alleged to have been violated, including the facts and theories to support
23 the alleged violations.
- 24 (b) An aggrieved employee's notice filed with the LWDA pursuant to
25 2699.3(a) and any employer response to that notice shall be
26 accompanied by a filing fee of seventy-five dollars (\$75).
- 27 (c) The LWDA shall provide notice (hereinafter "LWDA Notice") to the
28 employer and the aggrieved employee by certified mail that it does not

1 intend to investigate the alleged violation within sixty (60) calendar
2 days of the postmark date of the Employee's Notice. Upon receipt of
3 the LWDA Notice, or if the LWDA Notice is not provided within sixty-
4 five (65) calendar days of the postmark date of the Employee's Notice,
5 the aggrieved employee may commence a civil action pursuant to
6 California Labor Code section 2699 to recover civil penalties in addition
7 to any other penalties to which the employee may be entitled.

8 42. Pursuant to California Labor Code sections 2699.3(c), aggrieved employees,
9 through Plaintiff, may pursue a civil action arising under PAGA for violations of any
10 provision other than those listed in Section 2699.5 after the following requirements have been
11 met:

- 12 (a) The aggrieved employee or representative shall give written notice by
13 online filing to the LWDA and by certified mail to the employer of the
14 specific provisions of the California Labor Code alleged to have been
15 violated (other than those listed in Section 2699.5), including the facts
16 and theories to support the alleged violation.
- 17 (b) An aggrieved employee's notice filed with the LWDA pursuant to
18 2699.3(c) and any employer response to that notice shall be
19 accompanied by a filing fee of seventy-five dollars (\$75).
- 20 (c) The employer may cure the alleged violation within thirty-three (33)
21 calendar days of the postmark date of the notice. The employer shall
22 give written notice by certified mail within that period of time to the
23 aggrieved employee or representative and the agency if the alleged
24 violation is cured, including a description of actions taken, and no civil
25 action pursuant to Section 2699 may commence. If the alleged violation
26 is not cured within the 33-day period, the employee may commence a
27 civil action pursuant to Section 2699.

28 43. On February 23, 2021, Plaintiff provided written notice by online filing to the

1 LWDA and by certified mail to Defendants of the specific provisions of the California Labor
2 Code alleged to have been violated, including facts and theories to support the alleged
3 violations, in accordance with California Labor Code section 2699.3. Plaintiff's written
4 notice was accompanied with the applicable filing fee of seventy-five dollars (\$75). The
5 LWDA PAGA Administrator has confirmed receipt of Plaintiff's written notice and assigned
6 Plaintiff PAGA Case Number LWDA-CM-822502-21. A true and correct copy of Plaintiff's
7 written notice to the LWDA and Defendants dated February 23, 2021, is attached hereto as
8 "Exhibit 1."

9 44. As of the filing date of this complaint, over 65 days have passed since Plaintiff
10 sent the initial LWDA Notice described above, and the LWDA has not responded that it
11 intends to investigate Plaintiff's claims, and Defendants have not cured the violations.

12 45. Thus, Plaintiff has satisfied the administrative prerequisites under California
13 Labor Code sections 2699.3(a) and 2699.3(c) to recover civil penalties against Defendants for
14 violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a),
15 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, 6401, and 6403.

16 46. Labor Code section 558(a) provides "[a]ny employer or other person acting on
17 behalf of an employer who violates, or causes to be violated, a section of this chapter or any
18 provision regulating hours and days of work in any order of the Industrial Welfare
19 Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty
20 dollars (\$50) for each underpaid employee for each pay period for which the employee was
21 underpaid (2) For each subsequent violation, one hundred dollars (\$100) for each
22 underpaid employee for each pay period for which the employee was underpaid" Labor
23 Code section 558(c) provides "[t]he civil penalties provided for in this section are in addition
24 to any other civil or criminal penalty provided by law." Plaintiff, acting in the public interest
25 as a private attorney general, seeks assessment and collection of civil penalties under Labor
26 Code section 558 for himself, all other non-party Aggrieved Employees, and the State of
27 California against Defendants for violations of Labor Code sections 510, 512(a), 516, 1198,
28 and the applicable IWC wage order. Plaintiff, acting in the public interest as a private

1 attorney general, does not seek the recovery of unpaid wages under Labor Code section 558
2 from Defendants for violations of Labor Code sections 510, 512(a), 516, 1198, and the
3 applicable IWC wage order.

4 47. Defendants, at all times relevant to this complaint, were employers or persons
5 acting on behalf of an employer(s) who violated Plaintiff's and other non-party Aggrieved
6 Employees' rights by violating various sections of the California Labor Code as set forth
7 above.

8 48. As set forth below, Defendants have violated numerous provisions of both the
9 Labor Code sections regulating hours and days of work as well as the applicable IWC Wage
10 Order.

11 49. Pursuant to PAGA, and in particular, California Labor Code sections 2699(a),
12 2699.3(a), 2699.3(c), 2699.5, and section 558, Plaintiff, acting in the public interest as a
13 private attorney general, seeks assessment and collection of civil penalties for himself, all
14 other non-party Aggrieved Employees, and the State of California against Defendants for
15 violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a),
16 516, 1174(d), 1182.12, 1194, 1197, 1198, 2802, 6401, and 6403.

17 **FIRST CAUSE OF ACTION**

18 **For Civil Penalties, Pursuant to California Labor Code §§ 2698, *et seq.***

19 **(Against all Defendants)**

20 50. Plaintiff incorporates by reference and re-alleges as if fully stated herein each
21 and every allegation set forth above.

22 51. California Labor Code §§ 2698, *et seq.* ("PAGA") permits Plaintiff to recover
23 civil penalties for the violation(s) of the Labor Code sections enumerated in Labor Code
24 section 2699.5. Section 2699.5 enumerates Labor Code sections 201, 202, 203, 204, 226(a),
25 226.7, 510, 512(a), 1174(d), 1194, 1197, 1198, and 2802. Labor Code section 2699.3(c)
26 permits aggrieved employees, including Plaintiff, to recover civil penalties for violations of
27 those Labor Code sections not found in section 2699.5, including sections 516, 1182.12, 6401,
28 and 6403.

1 52. Defendants' conduct, as alleged herein, violates numerous sections of the
2 California Labor Code, including, but not limited to, the following:

- 3 (a) Violation of Labor Code sections 510, 1198, and the applicable IWC
4 Wage Order for Defendants' failure to compensate Plaintiff and other
5 non-party Aggrieved Employees with all required overtime pay, as set
6 forth below;
- 7 (b) Violation of Labor Code sections 1182.12, 1194, 1197, 1198, and the
8 applicable IWC Wage Order for Defendants' failure to compensate
9 Plaintiff and other non-party Aggrieved Employees with at least
10 minimum wages for all hours worked, as set forth below;
- 11 (c) Violation of Labor Code sections 226.7, 512(a), 516, 1198, and the
12 applicable IWC Wage Order for Defendants' failure to provide Plaintiff
13 and other non-party Aggrieved Employees with meal periods, as set
14 forth below;
- 15 (d) Violation of Labor Code sections 226.7, 516, 1198, and the applicable
16 IWC Wage Order for Defendants' failure to authorize and permit
17 Plaintiff and other non-party Aggrieved Employees to take rest periods,
18 as set forth below;
- 19 (e) Violation of Labor Code sections 226(a), 1198, and the applicable IWC
20 Wage Order for failure to provide accurate and complete wage
21 statements to Plaintiff and other non-party Aggrieved Employees, as set
22 forth below;
- 23 (f) Violation of Labor Code sections 1174(d), 1198, and the applicable
24 IWC Wage Order for failure to maintain payroll records, as set forth
25 below;
- 26 (g) Violation of Labor Code section 204 for failure to pay all earned wages
27 during employment, as set forth below;
- 28 (h) Violation of Labor Code sections 201, 202, and 203 for failure to pay all

1 earned wages upon termination, as set forth below;

2 (i) Violation of Labor Code section 2802 for failure to reimburse Plaintiff
3 and other non-party Aggrieved Employees for all business expenses
4 necessarily incurred, as set forth below; and

5 (j) Violation of Labor Code sections 6401 and 6403 for failure to provide
6 safety devices and safeguards, such as personal protective equipment, to
7 Plaintiff and other non-party Aggrieved Employees, as set forth below.

8 **FAILURE TO PAY OVERTIME**

9 **VIOLATION OF LABOR CODE SECTIONS 510 AND 1198**

10 53. Labor Code section 1198 makes it illegal to employ an employee under
11 conditions of labor that are prohibited by the applicable wage order. California Labor Code
12 section 1198 requires that “. . . the standard conditions of labor fixed by the commission shall
13 be the . . . standard conditions of labor for employees. The employment of any employee . . .
14 under conditions of labor prohibited by the order is unlawful.”

15 54. California Labor Code section 1198 and the applicable IWC Wage Order
16 provide that it is unlawful to employ persons without compensating them at a rate of pay
17 either time-and-one-half or two-times that person’s regular rate of pay, depending on the
18 number of hours worked by the person on a daily or weekly basis.

19 55. Specifically, the applicable IWC Wage Order provides that Defendants are and
20 were required to pay Plaintiff and other non-party Aggrieved Employees working more than
21 eight (8) hours in a day or more than forty (40) hours in a workweek, at the rate of time and
22 one-half (1½) for all hours worked in excess of eight (8) hours in a day or more than forty (40)
23 hours in a workweek.

24 56. The applicable IWC Wage Order further provides that Defendants are and were
25 required to pay Plaintiff and other non-party Aggrieved Employees working more than twelve
26 (12) hours in a day, overtime compensation at a rate of two (2) times their regular rate of pay.
27 An employee’s regular rate of pay includes all remuneration for employment paid to, or on
28 behalf of, the employee, including nondiscretionary bonuses and incentive pay.

1 57. California Labor Code section 510 codifies the right to overtime compensation
2 at one and one-half (1½) times the regular rate of pay for hours worked in excess of eight (8)
3 hours in a day or forty (40) hours in a week or for the first eight (8) hours worked on the
4 seventh (7th) day of work, and to overtime compensation at twice the employee's regular rate
5 of pay for hours worked in excess of twelve (12) hours in a day or in excess of eight (8) hours
6 in a day on the seventh (7th) day of work.

7 58. First, during the relevant time period, Defendants had, and continue to have, a
8 company-wide policy and/or practice of improperly rounding employees' clock-in and clock-
9 out duration times to the nearest tenth (0.10) of an hour in their timekeeping system.
10 Defendants' rounding policy resulted in the failure to compensate Plaintiff and other non-
11 party Aggrieved Employees fully for all hours worked, causing Plaintiff and other non-party
12 Aggrieved Employees to not be paid overtime wages for all of the overtime hours they
13 actually worked. Defendants' policy of rounding is unfair and has, over time, resulted in the
14 underpayment of wages to Plaintiff and other non-party Aggrieved Employees. To the extent
15 Defendants' rounding policy has taken away time worked that was eligible for overtime,
16 Plaintiff and other non-party Aggrieved Employees were denied overtime pay for all hours
17 worked.

18 59. Alternatively, Defendants had, and continue to have, a company-wide policy
19 and/or practice of failing to record hours worked by their employees. Instead, on information
20 and belief, Defendants' policy and/or practice is to simply pay employees, including Plaintiff
21 and/or other non-party Aggrieved Employees, for the hours they are scheduled to work.
22 Because Defendants failed to accurately record their actual hours worked, Plaintiff and/or
23 other non-party Aggrieved Employees were not paid for all hours worked before or after their
24 scheduled shifts.

25 60. Second, Defendants had a company-wide practice and/or policy of requiring
26 Plaintiff and other non-party Aggrieved Employees to perform work-related tasks while off-
27 the-clock, but prevented them from accounting for and recording this time in their
28 timekeeping system. For example, Plaintiff was required to report to work 10-15 minutes

1 prior to the start of his scheduled shifts to unlock the yard gates and clear any obstructions
2 blocking the gates before he could walk to the office and clock in for the day at the only
3 available timeclock. Moreover, Plaintiff and other non-party Aggrieved Employees were
4 instructed by Defendants' management that they were not permitted clock in until five (5)
5 minutes before their scheduled shift start-times. Additionally, after Plaintiff clocked out at the
6 office timeclock at the end of his scheduled shift, he was required to shut and secure the yard
7 gates, which could take 5-15 minutes to complete, as he had to walk for several minutes and
8 sometimes had to wait for other employees to move their cars outside of the yard gates. Thus,
9 Defendants failed to track all hours Plaintiff and other non-party Aggrieved Employees spent
10 working before clocking in and/or after clocking out, and Plaintiff and other non-party
11 Aggrieved Employees received no compensation for this time.

12 61. Additionally, Defendants had a company-wide policy and/or practice of
13 requiring other non-party Aggrieved Employees to call into the office while off-the-clock on a
14 daily basis to confirm which plant they were assigned to for their shifts the following day. For
15 example, other non-party Aggrieved Employees were required to call Defendants every
16 evening at 6:00 p.m. to find out which plant they were to report to work for the next day.
17 These calls could last 2-5 minutes each time, but Defendants did not provide other non-party
18 Aggrieved Employees with a mechanism to record this time.

19 62. Third, Defendants had, and continue to have, a company-wide policy of
20 understaffing, such that there were too few employees on duty to handle the heavy workload
21 and provide meal period coverage. As a result of this lack of meal period coverage, Plaintiff
22 and other non-party Aggrieved Employees were not always afforded uninterrupted 30-minute
23 meal periods to which they were entitled. For example, Plaintiff and other non-party
24 Aggrieved Employees would have their meal periods interrupted or cut short to assist trucks
25 dropping off materials. Accordingly, Plaintiff and other non-party Aggrieved Employees had
26 meal periods cut short or interrupted and/or missed meal periods in order to handle their
27 workloads.

28 63. Additionally, Defendants have failed to schedule meal periods. This company-

1 wide practice, coupled with the heavy workload and pressure from Defendants to complete
2 assigned tasks, impeded Plaintiff and other non-party Aggrieved Employees from taking
3 timely, compliant meal periods. Further, because Defendants frowned upon employees
4 accruing meal period penalties, Defendants required Plaintiff and other non-party Aggrieved
5 Employees to clock out for meal periods and/or adjusted employee time records to reflect
6 compliant meal periods, regardless of whether they had received a compliant meal period or
7 not, in order to strictly limit meal penalties that Defendants would otherwise owe. Thus,
8 Plaintiff and other non-party Aggrieved Employees performed work during meal periods for
9 which they were not paid.

10 64. Defendants knew or should have known that, as a result of these company-wide
11 practices and/or policies, Plaintiff and other non-party Aggrieved Employees were performing
12 their assigned duties during meal periods and/or while off-the-clock, and were suffered or
13 permitted to perform work for which they were not paid. Because Plaintiff and other non-
14 party Aggrieved Employees worked shifts of eight (8) hours a day or more or forty (40) hours
15 a week or more, some of this off-the-clock work qualified for overtime premium pay.
16 Therefore, Plaintiff and other non-party Aggrieved Employees were not paid overtime wages
17 for all of the overtime hours they actually worked.

18 65. Defendants' failure to pay Plaintiff and other non-party Aggrieved Employees
19 the balance of overtime compensation as required by California law, violates the provisions of
20 California Labor Code sections 510 and 1198. Plaintiff and other non-party Aggrieved
21 Employees are entitled to recover civil penalties pursuant to Labor Code sections 558 and/or
22 2699(a), (f), and (g).

23 **FAILURE TO PAY MINIMUM WAGES**

24 **VIOLATION OF LABOR CODE SECTIONS 1182.12, 1194, 1197, AND 1198**

25 66. At all relevant times, California Labor Code sections 1182.12, 1194, 1197, and
26 1198 provide that the minimum wage for employees fixed by the IWC is the minimum wage
27 to be paid to employees, and the payment of a wage less than the minimum so fixed is
28 unlawful. Compensable work time is defined in Wage Order No. 1-2001 as "the time during

1 which an employee is subject to the control of an employer, and includes all the time the
2 employee is suffered or permitted to work, whether or not required to do so.” Cal. Code.
3 Regs. tit. 8, § 11010(2)(G) (defining “Hours Worked”).

4 67. As set forth above, during the relevant time period, due to Defendants’ policy
5 of rounding Plaintiff’s and other non-party Aggrieved Employees’ clock-in and clock-out
6 times to the tenth-of-an-hour in their timekeeping system, Defendants failed to compensate
7 Plaintiff and other non-party Aggrieved Employees fully for all hours worked. Alternatively,
8 Defendants had a company-wide policy and/or practice of only paying Plaintiff and other non-
9 party Aggrieved Employees for their scheduled shifts, rather than their actual hours worked,
10 because Defendants failed to track the hours worked outside of their scheduled shifts. Also,
11 as stated, Defendants required that Plaintiff and other non-party Aggrieved Employees
12 perform work off-the-clock before and after their scheduled shifts, including opening and
13 closing the yard gates and/or calling into the office before their shifts to receive instructions
14 for which plant they were supposed to report to.

15 68. In addition, due to Defendants’ uniform practices of understaffing, assignment
16 of heavy workloads, failure to schedule meal periods, and subsequent lack of meal period
17 coverage, Plaintiff and other non-party Aggrieved Employees had their meal periods
18 interrupted by work and/or were forced to forego meal periods. In addition, Defendants
19 systematically failed to pay Plaintiff and other non-party Aggrieved Employees for actual
20 hours worked during unpaid meal periods because these hours were not always correctly
21 recorded. Moreover, as set forth above, in order to prevent employees from accruing meal
22 period penalties, Defendants’ management required Plaintiff and other non-party Aggrieved
23 Employees to clock out for meal periods and/or adjusted their time records to reflect
24 compliant meal periods, but required them to continue working, time for which they were not
25 paid.

26 69. Thus, Defendants did not pay minimum wages for all hours worked by Plaintiff
27 and other non-party Aggrieved Employees. To the extent that these off-the-clock hours did
28 not qualify for overtime premium payment, Defendants did not pay at least minimum wages

1 for those hours worked off-the-clock in violation of California Labor Code sections 1182.12,
2 1194, 1197, and 1198. Plaintiff and other non-party Aggrieved Employees are therefore
3 entitled to recover civil penalties pursuant to Labor Code sections 2699(a), (f), and (g).

4 **FAILURE TO PROVIDE AND RECORD MEAL PERIODS**
5 **VIOLATION OF LABOR CODE SECTIONS 226.7, 512(a), 516, AND 1198**

6 70. At all relevant times herein set forth, the applicable IWC Wage Order(s) and
7 California Labor Code sections 226.7, 512(a), 516, and 1198 were applicable to Plaintiff's and
8 non-party Aggrieved Employees' employment by Defendants.

9 71. At all relevant times herein set forth, California Labor Code section 512(a)
10 provides that an employer may not require, cause, or permit an employee to work for a period
11 of more than five (5) hours per day without providing the employee with a meal period of not
12 less than thirty (30) minutes, except that if the total work period per day of the employee is
13 not more than six (6) hours, the meal period may be waived by mutual consent of both the
14 employer and the employee. Under California law, first meal periods must start after no more
15 than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal.
16 2012).

17 72. At all relevant times herein set forth, California Labor Code sections 226.7,
18 512(a), 516, and 1198 provide that no employer shall require an employee to work during any
19 meal period mandated by an applicable order of the IWC.

20 73. At all relevant times herein set forth, Labor Code sections 226.7, 512(a), 1198,
21 and the applicable IWC Wage Order also require employers to provide a second meal period
22 of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay
23 an employee one (1) additional hour of pay at the employee's regular rate, except that if the
24 total hours worked is no more than twelve (12) hours, the second meal period may be waived
25 by mutual consent of the employer and the employee only if the first meal period was not
26 waived.

27 74. Under California law, an employer cannot evade meal period requirements via
28 the use of "on-duty" meal agreements because it understaffs its locations. *Abdullah v. U.S.*

1 *Sec. Assocs.*, 2011 U.S. Dist. LEXIS 156685 (C.D. Cal. Jan. 11, 2011).

2 75. First, as stated, Defendants had, and continue to have, a company-wide policy
3 and/or practice of understaffing while simultaneously assigning heavy workloads, which
4 resulted in a lack of meal period coverage and prevented Plaintiff and other non-party
5 Aggrieved Employees from taking all timely, uninterrupted meal periods to which they were
6 entitled. Additionally, Defendants failed to schedule meal periods, resulting in Plaintiff and
7 other non-party Aggrieved Employees having their meal periods interrupted to return to work
8 or waiting extended periods of time before taking meal periods, due to the workload. For
9 example, Plaintiff's unpaid meal periods were also interrupted or cut short approximately
10 three (3) times per week in order to assist trucks dropping off materials. As another example,
11 Plaintiff rarely took his meal periods before 1:00 p.m., after he had worked for 10 hours,
12 because the plants were often very busy in the mornings with departing and arriving trucks. In
13 addition, on information and belief, other non-party Aggrieved Employees who drove cement
14 trucks were not provided with meal periods at all, due to their heavy workload.

15 76. Further, because Defendants frowned upon employees accruing meal period
16 penalties, Defendants required Plaintiff and other non-party Aggrieved Employees to clock
17 out for meal periods and/or adjusted employee time records to reflect compliant meal periods,
18 regardless of whether they had received a compliant meal period or not, in order to strictly
19 limit meal penalties that Defendants would otherwise owe. To the extent Defendants required
20 other non-party Aggrieved Employees to sign written "on-duty" meal period agreements, such
21 agreements are invalid, as the nature of the work performed by other non-party Aggrieved
22 Employees do not necessitate an "on-duty" meal period under California law.

23 77. Moreover, Defendants did not provide Plaintiff and other non-party Aggrieved
24 Employees with second 30-minute meal periods on days that they worked in excess of ten (10)
25 hours in one day. Plaintiff and other non-party Aggrieved Employees regularly worked shifts
26 in excess of ten (10) hours but Defendants did not schedule or permit them to take second 30-
27 minute meal periods.

28 78. Plaintiff and other non-party Aggrieved Employees did not sign valid meal

1 period waivers on days that they were entitled to meal periods and were not relieved of all
2 duties. Defendants' company-wide written policy was to treat missed meals as voluntarily
3 waived meal periods instead of paying meal period premiums. For example, Defendants'
4 "Reminder of Company Policy regarding meal periods" states: "**IF YOU DO NOT RECORD**
5 **THAT YOU TOOK THESE 30 MINUTE MEAL PERIODS ON A TIMELY BASIS:** If
6 you do not record that you took your 30 minute off duty meal periods beginning by [the start
7 of the 6th hour of work and/or the start of the 11th hour of work], you are advising us that you
8 voluntarily chose not to take them. . . ." (Emphasis in original.)

9 79. Defendants knew or should have known that as a result of their policies,
10 Plaintiff and other non-party Aggrieved Employees were not actually relieved of all duties to
11 take timely, uninterrupted meal periods. Defendants further knew or should have known that
12 they did not pay Plaintiff and other non-party Aggrieved Employees meal period premiums
13 when meal periods were missed, late, short, and/or interrupted.

14 80. Thus, Defendants failed to provide Plaintiff and other non-party Aggrieved
15 Employees compliant meal periods and failed to pay the full meal period premiums due.
16 Defendants' conduct violates the applicable IWC Wage Order, and California Labor Code
17 sections 226.7, 512(a), 516, and 1198. Plaintiff and other non-party Aggrieved Employees are
18 entitled to recover civil penalties pursuant to Labor Code sections 558 and/or 2699(a), (f), and
19 (g).

20 **FAILURE TO AUTHORIZE AND PERMIT REST PERIODS**
21 **VIOLATION OF LABOR CODE SECTIONS 226.7, 516, AND 1198**

22 81. At all relevant times herein set forth, the applicable IWC Wage Order and
23 California Labor Code sections 226.7, 516, and 1198 were applicable to Plaintiff and other
24 non-party Aggrieved Employees' employment by Defendants.

25 82. At all relevant times, the applicable IWC Wage Order provides that "[e]very
26 employer shall authorize and permit all employees to take rest periods, which insofar as
27 practicable shall be in the middle of each work period" and that the "rest period time shall be
28 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” unless the total daily work time is less than three and one-half (3½) hours.

83. At all relevant times, California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must “relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest.” *Augustus v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

84. Pursuant to the applicable IWC Wage Order and California Labor Code section 226.7(c), Plaintiff and other non-party Aggrieved Employees are entitled to recover from Defendants one (1) additional hour of pay at their regular rates of pay for each work day that a required rest period was not authorized and permitted.

85. During the relevant time period, Defendants regularly failed to authorize and permit Plaintiff and other non-party Aggrieved Employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, Defendants’ policy and/or practice of understaffing while assigning of heavy workloads, prevented Plaintiff and other non-party Aggrieved Employees from being relieved of all duty in order to take compliant rest periods. Defendants also failed to schedule rest periods, which, coupled with Defendants’ failure to provide adequate rest period coverage, further led to Plaintiff and other non-party Aggrieved Employees not being authorized and permitted to take rest periods.

86. Additionally, during the relevant time period, Defendants maintained and implemented a company-wide on-premises rest period policy, which mandated that Plaintiff and other non-party Aggrieved Employees remain on the work premises during their rest periods. Because Plaintiff and other non-party Aggrieved Employees were restricted from leaving the premises during rest periods, they were denied the ability to use rest periods freely

1 for their own purposes, such as running personal errands. Thus, Defendants effectively
2 maintained control over Plaintiff and other non-party Aggrieved Employees during rest
3 periods and/or caused them to perform work during rest periods.

4 87. As a result of Defendants' practices and policies, Plaintiff and other non-party
5 Aggrieved Employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in
6 excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they
7 were entitled. For example, during his employment, Plaintiff missed all of his rest periods due
8 to the heavy workload and the lack of coverage for rest periods.

9 88. Defendants also have engaged in a company-wide practice and/or policy of not
10 paying all rest period premiums owed when compliant rest periods are not authorized and
11 permitted. Because of this practice and/or policy, Plaintiff and other non-party Aggrieved
12 Employees have not received premium pay for all missed rest periods.

13 89. Defendants' conduct violates the applicable IWC Wage Order and California
14 Labor Code sections 226.7, 516, and 1198. Plaintiff and other non-party Aggrieved
15 Employees are therefore entitled to recover civil penalties pursuant to Labor Code sections
16 558 and/or 2699(a), (f), and (g).

17 **FAILURE TO PROVIDE AND MAINTAIN COMPLIANT WAGE STATEMENTS**
18 **VIOLATION OF LABOR CODE SECTIONS 226(a), 1174(d), AND 1198**

19 90. At all relevant times herein, California Labor Code section 226(a) provides that
20 every employer shall furnish each of his or her employees an accurate and complete itemized
21 wage statement in writing, including, but not limited to, the name and address of the legal
22 entity that is the employer, the inclusive dates of the pay period, total hours worked, and all
23 applicable rates of pay.

24 91. During the relevant time period, Defendants have knowingly and intentionally
25 provided Plaintiff and other non-party Aggrieved Employees with uniform, incomplete, and
26 inaccurate wage statements. For example, Defendants issued uniform wage statements to
27 Plaintiff and other non-party Aggrieved Employees that fail to correctly list: gross wages
28 earned; total hours worked; net wages earned; the address of the legal entity that is the

1 employer; and all applicable hourly rates in effect during the pay period, including overtime
2 rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically,
3 Defendants violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

4 92. Because Defendants did not record the time Plaintiff and other non-party
5 Aggrieved Employees spent working off-the-clock, deducted time from their records for meal
6 periods that were interrupted and/or missed (and therefore time for which they should have
7 been paid), and/or improperly rounded their total hours worked, Defendants did not list the
8 correct amount of gross wages and net wages earned by Plaintiff and other non-party
9 Aggrieved Employees in compliance with section 226(a)(1) and section 226(a)(5),
10 respectively. For the same reason, Defendants failed to accurately list the total number of
11 hours worked by Plaintiff and other non-party Aggrieved Employees, in violation of section
12 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period
13 and the corresponding accurate number of hours worked at each hourly rate, in violation of
14 section 226(a)(9).

15 93. Additionally, and separate from these violations, Defendants issued uniform
16 wage statements to Plaintiff and other non-party Aggrieved Employees that failed to correctly
17 list the address of the legal entity of the actual employer in violation of 226(a)(8). The
18 purpose of section 226(a)(8) is to provide California employees with transparency as to the
19 true identity of their employer, to allow the employee to contact their employer during
20 employment in the future for various reasons, including filing an administrative claim, judicial
21 claim, or other action to seek relief against their employer, to obtain unemployment benefits,
22 etc. During the relevant time period, Plaintiff's and other non-party Aggrieved Employees'
23 wage statements incorrectly list the employer's address as "8272 BERRY AVENUE,
24 SACRAMENTO, CALIFORNIA 95828." Upon information and belief, the correct address of
25 the employing entity is "4621 TELLER AVE STE 130, NEWPORT BEACH CA 92660."

26 94. The wage statement deficiencies also include, without limitation, failing to list
27 the number of piece-rate units earned and any applicable piece rate if the employee is paid on
28 a piece-rate basis; failing to list all deductions; failing to list the name of the employee and

1 only the last four digits of his or her social security number or an employee identification
2 number other than a social security number; failing to list the name of the legal entity that is
3 the employer; failing to list the inclusive dates of the period for which employees were paid;
4 and/or failing to state all hours worked as a result of not recording or stating hours worked
5 off-the-clock.

6 95. California Labor Code section 1174(d) provides that “[e]very person employing
7 labor in this state shall . . . [k]eep a record showing the names and addresses of all employees
8 employed and the ages of all minors” and “[keep, at a central location in the state or at the
9 plants or establishments at which employees are employed, payroll records showing the hours
10 worked daily by and the wages paid to, and the number of piece-rate units earned by and any
11 applicable piece rate paid to, employees employed at the respective plants or
12 establishments. . . .” Labor Code section 1174.5 provides that employers are subject to a \$500
13 civil penalty if they fail to maintain accurate and complete records as required by section
14 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d),
15 Defendants willfully failed to maintain accurate payroll records for Plaintiff and other non-
16 party Aggrieved Employees showing the daily hours they worked and the wages paid thereto
17 as a result of failing to record the off-the-clock hours that they worked and improperly
18 rounding Plaintiff’s and other non-party Aggrieved Employees’ total hours worked.

19 96. California Labor Code section 1198 provides that the maximum hours of work
20 and the standard conditions of labor shall be those fixed by the Labor Commissioner and as
21 set forth in the applicable IWC Wage Orders. Section 1198 further provides that “[t]he
22 employment of any employees for longer hours than those fixed by the order or under
23 conditions of labor prohibited by the order is unlawful.” Pursuant to the applicable IWC
24 Wage Order, employers are required to keep accurate time records showing when the
25 employee begins and ends each work period and meal period. During the relevant time
26 period, Defendants failed, on a company-wide basis, to keep accurate records of work period
27 and meal period start and stop times for Plaintiff and other non-party Aggrieved Employees,
28 in violation of section 1198. As stated, Defendants engaged in a company-wide practice

1 and/or policy of falsifying Plaintiff's and other non-party Aggrieved Employees' time records
2 by recording that compliant meal periods were taken regardless of if or when meal periods
3 were actually taken, and thereby failed to keep accurate records of meal start and end times for
4 Plaintiff and other non-party Aggrieved Employees. Furthermore, in light of Defendants'
5 failure to provide Plaintiff and other non-party Aggrieved Employees with second 30-minute
6 meal periods to which they were entitled, Defendants kept no records of meal start and end
7 times for second meal periods.

8 97. Defendants' conduct violates sections 226(a), 1174(d), and 1198. Plaintiff and
9 other non-party Aggrieved Employees are entitled to recover civil penalties pursuant to Labor
10 Code sections 226.3, 1174.5, and/or 2699(a), (f), and (g).

11 **FAILURE TO PAY WAGES DURING EMPLOYMENT**

12 **VIOLATION OF LABOR CODE SECTION 204**

13 98. At all relevant times herein set forth, California Labor Code section 204
14 requires that all wages earned by any person in any employment between the 1st and the 15th
15 days, inclusive, of any calendar month, other than those wages due upon termination of an
16 employee, are due and payable between the 16th and the 26th day of the month during which
17 the labor was performed. Labor Code section 204 further provides that all wages earned by
18 any person in any employment between the 16th and the last day, inclusive, of any calendar
19 month, other than those wages due upon termination of an employee, are due and payable
20 between the 1st and the 10th day of the following month.

21 99. At all relevant times herein, California Labor Code section 204 also requires
22 that all wages earned for labor in excess of the normal work period shall be paid no later than
23 the payday for the next regular payroll period. Alternatively, at all relevant times herein,
24 Labor Code section 204 provides that the requirements of this section are deemed satisfied by
25 the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
26 more than seven (7) calendar days following the close of the payroll period.

27 100. During the relevant time period, Defendants willfully failed to pay Plaintiff and
28 other non-party Aggrieved Employees all wages due to them, including, but not limited to,

1 overtime wages, minimum wages, and/or meal and rest period premiums, within any time
2 period specified by California Labor Code section 204.

3 101. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
4 recover civil penalties pursuant to Labor Code sections 210 and/or 2699(a), (f), and (g).

5 **FAILURE TO PAY WAGES UPON TERMINATION**

6 **VIOLATION OF LABOR CODE SECTIONS 201, 202, AND 203**

7 102. At all times relevant herein set forth, Labor Code sections 201 and 202 provide
8 that if an employer discharges an employee, the wages earned and unpaid at the time of
9 discharge are due and payable immediately, and that if an employee voluntarily leaves his or
10 her employment, his or her wages shall become due and payable not later than seventy-two
11 (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of
12 his or her intention to quit, in which case the employee is entitled to his or her wages at the
13 time of quitting.

14 103. Defendants willfully failed to pay Plaintiff and other non-party Aggrieved
15 Employees who are no longer employed by Defendants all their earned wages, including, but
16 not limited to, overtime wages, minimum wages, and/or meal and rest period premiums, either
17 at the time of discharge, or within seventy-two (72) hours of their leaving Defendants'
18 employ.

19 104. Defendants' failure to pay Plaintiff and those non-party Aggrieved Employees
20 who are no longer employed by Defendants their wages earned and unpaid at the time of
21 discharge, or within seventy-two (72) hours of their leaving Defendants' employ, violates
22 Labor Code sections 201 and 202. Plaintiff and other non-party Aggrieved Employees are
23 therefore entitled to recover civil penalties pursuant to Labor Code sections 256 and/or
24 2699(a), (f), and (g).

25 **FAILURE TO REIMBURSE NECESSARY BUSINESS EXPENSES**

26 **VIOLATION OF LABOR CODE SECTION 2802**

27 105. At all times herein set forth, California Labor Code section 2802 provides that
28 an employer must reimburse employees for all necessary expenditures and losses incurred by

1 the employee in the performance of his or her job. The purpose of Labor Code section 2802 is
2 to prevent employers from passing off their cost of doing business and operating expenses on
3 to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144
4 (2014). The applicable wage order, IWC Wage Order 1-2001, provides that: "[w]hen the
5 employer requires the use of tools or equipment or they are necessary to the performance of a
6 job, such tools and equipment shall be provided and maintained by the employer, except that
7 an employee whose wages are at least two (2) times the minimum wage may provide and
8 maintain hand tools and equipment customarily required by the particular trade or craft."

9 106. First, during the relevant time period, Defendants, on a company-wide basis,
10 required that Plaintiff and other non-party Aggrieved Employees use their own personal
11 cellular phones and/or cellular data to carry out their job duties, but failed to reimburse them
12 for the costs of their work-related cellular phone expenses. For example, Plaintiff and other
13 non-party Aggrieved Employees received work-related calls from their supervisors and were
14 required to discuss their assignments with Defendants' managers throughout their shifts. As a
15 further example, Defendants required other non-party Aggrieved Employees to call into the
16 office on their personal cellular phones on a daily basis to obtain their job site assignments.
17 Although Defendants required Plaintiff and other non-party Aggrieved Employees to utilize
18 their personal cellular phones to carry out their work-related responsibilities, Defendants
19 failed to fully reimburse them for this cost.

20 107. Second, Defendants also had a company-wide policy of requiring Plaintiff and
21 other non-party Aggrieved Employees to travel in their own personal vehicles for work
22 purposes, but failed to reimburse them for all costs of travel, including mileage. Plaintiff and
23 other non-party Aggrieved Employees were required to use their own vehicles to drive to
24 other plants to pick up and drop off materials, but were not reimbursed for their travel
25 expenses or mileage. Although Defendants required Plaintiff and other non-party Aggrieved
26 Employees to use their own vehicles and complete these tasks as part of their job duties,
27 Defendants failed to reimburse them for all of these expenses.

28 108. Third, during the relevant time period, Defendants, on a company-wide basis,

1 forced Plaintiff and other non-party Aggrieved Employees to purchase supplies and/or tools to
2 complete their work assignments. For example, Plaintiff was required to spend approximately
3 \$20 per week on fuel for the gas-powered leaf blower he used to clean the yard premises.
4 Although Defendants required Plaintiff and other non-party Aggrieved Employees to purchase
5 their own supplies and/or tools for use on the job, Defendants did not fully reimburse them for
6 these expenses.

7 109. Fourth, Defendants, on a company-wide basis, mandated that Plaintiff and other
8 non-party Aggrieved Employees purchase special safety shoes, such as steel-toed boots, which
9 they were required to wear while at work. Plaintiff and other non-party Aggrieved Employees
10 purchased steel-toed boots to wear inside Defendants' facilities and construction zones, but
11 were not reimbursed fully for these costs.

12 110. Defendants could have provided Plaintiff and other non-party Aggrieved
13 Employees with the actual tools for use on the job, such as company phones, company
14 vehicles, supplies/tools, and steel-toed boots to be used for fulfilling work-related tasks. Or,
15 Defendants could have reimbursed employees for the costs of their cellular phone usage,
16 mileage, travel expenses, supply/tool expenses, and boot expenses. Instead, Defendants
17 passed these operating costs off onto Plaintiff and other non-party Aggrieved Employees. At
18 all relevant times, Plaintiff did not earn at least two (2) times the minimum wage.

19 111. Defendants' company-wide policy and/or practice of passing on their operating
20 costs to Plaintiff and other non-party Aggrieved Employees violates California Labor Code
21 section 2802. Defendants have intentionally and willfully failed to reimburse Plaintiff and
22 other non-party Aggrieved Employees for necessary business-related expenses and costs.
23 Plaintiff and other non-party Aggrieved Employees are therefore entitled to recover civil
24 penalties pursuant to Labor Code sections 2699(a), (f), and (g).

25 **FAILURE TO PROVIDE SAFETY DEVICES AND SAFEGUARDS**

26 **VIOLATION OF LABOR CODE SECTIONS 6401 AND 6403**

27 112. At all times herein set forth, California Labor Code section 6401 provides that
28 employers must furnish and use safety devices and safeguards, and adopt and use practices,

1 means, methods, operations, and processes which are reasonably adequate to render the
2 employment and place of employment safe and healthy. California Labor Code Section 6401
3 further provides that an employer must do everything reasonably necessary to protect the life,
4 safety and health of its employees. California Labor Code section 6403(a) requires that
5 employers provide and use safety devices and safeguards reasonably adequate to render the
6 employment and place of employment safe.

7 113. Defendants, on a company-wide basis, failed to provide Plaintiff and other non-
8 party Aggrieved Employees with safety devices and safeguards, such as personal protective
9 equipment, including steel-toed boots, to keep them safe in the workplace. Despite the fact
10 that Defendants required employees to wear certain personal protective equipment, including
11 steel-toed boots, Defendants failed to provide such reasonably necessary equipment to
12 Plaintiff and other non-party Aggrieved Employees to keep them safe.

13 114. Defendants' failure to provide Plaintiff and other non-party Aggrieved
14 Employees with safety devices and safeguards for the workplace violates Labor Code sections
15 6401 and 6403. Plaintiff and other non-party Aggrieved Employees are therefore entitled to
16 recover civil penalties pursuant to Labor Code section 2699(a), (f), and (g).

17 **REQUEST FOR JURY TRIAL**

18 Plaintiff requests a trial by jury.

19 **PRAYER FOR RELIEF**

20 Plaintiff, on behalf of all other non-party Aggrieved Employees, prays for relief and
21 judgment against Defendants, jointly and severally, as follows:

22 1. For civil penalties and attorneys' fees in excess of twenty-five thousand dollars
23 (\$25,000). Plaintiff reserves the right to amend his prayer for relief to seek a different amount.

24 **As to the First Cause of Action**

25 2. That the Court declare, adjudge and decree that Defendants violated the
26 following California Labor Code provisions as to Plaintiff and/or other non-party Aggrieved
27 Employees: 510 and 1198 (by failing to pay all overtime compensation); 1182.12, 1194, 1197,
28 and 1198 (by failing to pay at least minimum wages for all hours worked); 226.7, 512(a), 516,

1 and 1198 (by failing to provide all meal periods); 226.7, 516, and 1198 (by failing to authorize
2 and permit all rest periods); 226(a), 1174(d), and 1198 (by failing to provide accurate wage
3 statements and maintain accurate payroll records); 201, 202, and 203 (by failing to timely pay
4 all earned wages upon termination); 204 (by failing to timely pay all earned wages during
5 employment); 2802 (by failing to reimburse business expenses); and 6401 and 6403 (by
6 failing to provide safety devices and safeguards);

7 3. For civil penalties, pursuant to California Labor Code sections 210, 226.3, 256,
8 558, 1174.5, 2699(a), (f), and (g), for violations of California Labor Code sections 201, 202,
9 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 2802, 6401, and
10 6403;

11 4. For attorneys' fees and costs pursuant to California Labor Code section
12 2699(g)(1), and any and all other relevant statutes, for Defendants' violations of California
13 Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12,
14 1194, 1197, 2802, 6401, and 6403;

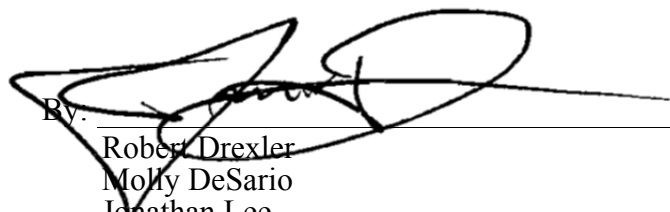
15 5. For pre-judgment and post-judgment interest as provided by law; and

16 6. For such other and further relief as the Court may deem equitable and
17 appropriate.

18
19 Dated: April 30, 2021

Respectfully submitted,

Capstone Law APC

21
22  By: _____
23 Robert Drexler
24 Molly DeSario
25 Jonathan Lee
26 Helga Hakimi

27 Attorneys for Plaintiff Oscar Magana
28

Exhibit 1

ANTHONY CASTILLO
310.712.8169 Direct
Anthony.Castillo@capstonelawyers.com

February 23, 2021

VIA ONLINE SUBMISSION

California Labor & Workforce Development Agency
ATTN: PAGA Administrator
(<https://dir.tfaforms.net/308>)

Subject: *Oscar Magana v. A & A Ready Mixed Concrete, Inc., et al.*

Dear PAGA Administrator:

This office represents Oscar Magana in connection with his claims under the California Labor Code. Mr. Magana was an employee of A & A READY MIXED CONCRETE, INC. and/or ASSOCIATED READY MIXED CONCRETE, INC. For the purpose of this letter, Mr. Magana collectively refers to these entities as “A & A.”

The employers may be contacted directly at the addresses below:

A & A READY MIXED CONCRETE, INC.
4621 TELLER AVE STE 130
NEWPORT BEACH CA 92660

ASSOCIATED READY MIXED CONCRETE, INC.
4621 TELLER AVE SUITE 130
NEWPORT BEACH CA 92660

Mr. Magana intends to seek civil penalties, attorney’s fees, costs, and other available relief for violations of the California Labor Code, which are recoverable under sections 2698, *et seq.*, the Labor Code Private Attorneys General Act of 2004 (“PAGA”). Mr. Magana seeks relief on behalf of himself, the State of California, and other persons who are or were employed by A & A as a non-exempt, hourly paid employee in California and who received at least one wage statement (“aggrieved employees”). This letter is sent in compliance with the notice and reporting requirements of California Labor Code section 2699.3.

A & A employed Mr. Magana as an hourly paid, non-exempt employee from approximately November 2017 to March 27, 2020. Mr. Magana worked for A & A as a Yardman at the A & A facilities in Tracy, Stockton, Sacramento, and Fairfield, California. During his employment, Mr. Magana typically worked eleven (11) hours or more per day, six (6) days per week, from 3:00 a.m. to 2:00 p.m. At the time his employment ended, Mr. Magana was compensated approximately \$16.00

per hour. His job duties included, without limitation, opening and closing the yard gate doors; maintaining cleanliness of yard facilities; operating loaders to accommodate concrete, sand, stone, and gravel materials within the yard; performing inventory and checking condition of yard equipment and supplies; performing light mechanic work on heavy machinery; and receiving material shipments.

A & A committed one or more of the following Labor Code violations against Mr. Magana, the facts and theories of which follow, making him an “aggrieved employee” pursuant to California Labor Code section 2699(c):¹

A & A’s Company-Wide and Uniform Payroll and HR Practices

A & A READY MIXED CONCRETE, INC. and ASSOCIATED READY MIXED CONCRETE, INC. are California corporations. Together, they are the largest family-owned supplier of ready mixed concrete in California. Upon information and belief, A & A maintains a single, centralized Human Resources (HR) department at its corporate headquarters in Newport Beach, California, for all non-exempt, hourly paid employees working for A & A in California, including Mr. Magana and other aggrieved employees. At all relevant times, A & A issued and maintained uniform, standardized scheduling and timekeeping practices and procedures for all non-exempt, hourly paid employees in California, including Mr. Magana and other aggrieved employees, regardless of its location or position.

Upon information and belief, A & A maintains a centralized Payroll department at its corporate headquarters in Newport Beach, California, which processes payroll for all non-exempt, hourly paid employees working for A & A in California, including Mr. Magana and other aggrieved employees. Further, A & A issues the same formatted wage statements in the same manner for all non-exempt, hourly paid employees working in California, including Mr. Magana and other aggrieved employees, irrespective of their location, position, or manner in which each employee’s employment ended. In other words, A & A utilized the same methods and formulas when calculating wages due to Mr. Magana and other aggrieved employees in California.

Violation of California Labor Code §§ 510 and 1198 – Unpaid Overtime

California Labor Code sections 510 and 1198 and the applicable Industrial Welfare Commission (“IWC”) Wage Order require employers to pay employees working more than eight (8) hours in a day or more than forty (40) hours in a workweek at the rate of time-and-one-half (1½) times the regular rate of pay for all hours worked in excess of eight (8) hours in a day or more than forty (40) hours in a workweek. The applicable IWC Wage Order further provides that employers are required to pay employees working more than twelve (12) hours in a day overtime compensation at a rate of two (2) times their regular rate of pay. An employee’s regular rate of pay includes all remuneration

¹ These facts, theories, and claims are based on Mr. Magana’s experience and counsel’s review of those records currently available relating to Mr. Magana’s employment. Discovery conducted in litigation of wage and hour claims such as these often reveals additional claims that the aggrieved employee was not initially aware of (because the aggrieved employee was not aware of the law’s requirements, the employer misinformed its employee of the law’s requirements, or because the employer effectively hid the violations). Thus, Mr. Magana reserves the right to supplement this letter with additional facts, theories, and claims if he becomes aware of them subsequent to the submission of this letter.

for employment paid to, or on behalf of, the employee, including nondiscretionary bonuses and incentive pay.

A & A willfully failed to pay all overtime wages owed to Mr. Magana and other aggrieved employees. During the relevant time period, Mr. Magana and other aggrieved employees were not paid overtime premiums for all of the hours they worked in excess of eight (8) hours in a day, in excess of twelve (12) hours in a day, and/or in excess of forty (40) hours in a week, because all hours that they worked were not recorded.

First, during the relevant period, A & A had, and continues to have, a company-wide policy and/or practice of improperly rounding employees' clock-in and clock-out duration times to the nearest tenth (0.10) of an hour in its timekeeping system. A & A's rounding policy resulted in the failure to compensate Mr. Magana and other aggrieved employees fully for all hours worked, causing Mr. Magana and other aggrieved employees to not be paid overtime wages for all of the overtime hours they actually worked. A & A's policy of rounding is unfair and has, over time, resulted in the underpayment of wages to Mr. Magana and other aggrieved employees. To the extent A & A's rounding policy has taken away time worked that was eligible for overtime, Mr. Magana and other aggrieved employees were denied overtime pay for all hours worked. Alternatively, A & A had, and continues to have, a company-wide policy and/or practice of failing to record hours worked by its employees. Instead, on information and belief, A & A's policy and/or practice is to simply pay employees, including Mr. Magana and/or other aggrieved employees, for the hours they are scheduled to work. Because A & A failed to accurately record their actual hours worked, Mr. Magana and/or other aggrieved employees were not paid for all hours worked before or after their scheduled shifts.

Second, A & A had a company-wide practice and/or policy of requiring Mr. Magana and other aggrieved employees to perform work-related tasks while off-the-clock, but prevented them from accounting for and recording this time in its timekeeping system. For example, Mr. Magana was required to report to work 10-15 minutes prior to the start of his scheduled shifts to unlock the yard gates and clear any obstructions blocking the gates before he could walk to the office and clock in for the day at the only available timeclock. Moreover, Mr. Magana and other aggrieved employees were instructed by A & A's management that they were not permitted clock in until five (5) minutes before their scheduled shift start-times. Additionally, after Mr. Magana clocked out at the office timeclock at the end of his scheduled shift, he was required to shut and secure the yard gates, which could take 5-15 minutes to complete, as he had to walk for several minutes and sometimes had to wait for other employees to move their cars outside of the yard gates. Thus, A & A failed to track all hours Mr. Magana and other aggrieved employees spent working before clocking in and/or after clocking out, and Mr. Magana and other aggrieved employees received no compensation for this time.

Additionally, A & A had a company-wide policy and/or practice of requiring other aggrieved employees to call into the office while off-the-clock on a daily basis to confirm which plant they were assigned to for their shifts the following day. For example, other aggrieved employees were required to call A & A every evening at 6:00 p.m. to find out which plant they were to report to work for the next day. These calls could last 2-5 minutes each, but A & A did not provide other aggrieved employees with a mechanism to record this time.

Third, A & A had, and continues to have, a company-wide policy of understaffing, such that there were too few employees on duty to handle the heavy workload and provide meal period coverage.

As a result of this lack of meal period coverage, Mr. Magana and other aggrieved employees were not always afforded uninterrupted 30-minute meal periods to which they were entitled. For example, Mr. Magana and other aggrieved employees would have their meal periods interrupted or cut short to assist trucks dropping off materials. Accordingly, Mr. Magana and other aggrieved employees had meal periods cut short or interrupted and/or missed meal periods in order to handle their workloads.

Additionally, A & A has, on a company-wide basis, failed to adhere to a schedule of meal periods. This company-wide practice, coupled with the heavy workload and pressure from A & A to complete assigned tasks, impeded Mr. Magana and other aggrieved employees from taking timely, compliant meal periods. Further, because A & A frowned upon employees accruing meal period penalties, A & A required Mr. Magana and other aggrieved employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that A & A would otherwise owe. Thus, Mr. Magana and other aggrieved employees performed work during meal periods for which they were not paid.

Because Mr. Magana and other aggrieved employees regularly worked shifts of eight (8) hours a day or more, or forty (40) hours a week or more, some of this off-the-clock work qualified for overtime premium pay. Therefore, Mr. Magana and other aggrieved employees were not paid overtime wages for all of the overtime hours they actually worked. A & A's failure to pay Mr. Magana and other aggrieved employees the balance of overtime compensation, as required by California law, violates the provisions of California Labor Code sections 510 and 1198.

Furthermore, A & A did not pay other aggrieved employees the correct overtime rate for the recorded overtime hours that they generated. In addition to an hourly wage, A & A paid other aggrieved employees incentive pay, nondiscretionary bonuses, and/or other forms of remuneration. However, in violation of the California Labor Code, A & A failed to incorporate all compensation, including incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, into the calculation of the regular rate of pay for purposes of calculating the overtime wage rate. Therefore, during times when other aggrieved employees worked overtime and received these other forms of pay, A & A failed to pay all overtime wages by paying a lower overtime rate than required.

Mr. Magana and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 1182.12, 1194, 1197, 1197.1, and 1198 – Unpaid Minimum Wages

California Labor Code sections 1182.12, 1194, 1197, 1197.1, and 1198 require employers to pay employees the minimum wage fixed by the IWC. The payment of a lesser wage than the minimum so fixed is unlawful. Compensable work time is defined in Wage Order No. 1 as "the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so." Cal. Code. Regs. tit. 8, § 11010(2)(G) (defining "Hours Worked").

As set forth above, during the relevant time period, due to A & A's policy of rounding Mr. Magana's and other aggrieved employees' clock-in and clock-out times to the tenth-of-an-hour in its timekeeping system, A & A failed to compensate Mr. Magana and other aggrieved employees fully for all hours worked. Alternatively, A & A had a company-wide policy and/or practice of only

paying Mr. Magana and other aggrieved employees for their scheduled shifts, rather than their actual hours worked, because A & A failed to track hours worked outside scheduled shifts. Also, as stated, A & A required that Mr. Magana and other aggrieved employees perform work off-the-clock before and after their scheduled shifts, including opening and closing the yard gates and/or calling into the office before their shifts to receive instructions for which plant they were supposed to report to.

In addition, due to A & A's uniform practices of understaffing, assignment of heavy workloads, failure to schedule meal periods, and subsequent lack of meal period coverage, Mr. Magana and other aggrieved employees had their meal periods interrupted by work and/or were forced to forego meal periods. In addition, A & A systematically failed to pay Mr. Magana and other aggrieved employees for actual hours worked during unpaid meal periods because these hours were not always correctly recorded. Moreover, as set forth above, in order to prevent employees from accruing meal period penalties, A & A's management required Mr. Magana and other aggrieved employees to clock out for meal periods and/or adjusted their time records to reflect compliant meal periods, but required them to continue working, time for which they were not paid.

Thus, A & A did not pay at least minimum wages for off-the-clock hours that qualified for overtime premium payment. Also, to the extent that these off-the-clock hours did not qualify for overtime premium payment, A & A did not pay at least minimum wages for those hours worked off-the-clock in violation of California Labor Code sections 1182.12, 1194, 1197, and 1197.1. Accordingly, A & A regularly failed to pay at least minimum wages to Mr. Magana and other aggrieved employees for all of the hours they worked in violation of California Labor Code sections 1182.12, 1194, 1197, 1197.1 and 1198.

Mr. Magana and other aggrieved employees are therefore entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 1197.1 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 512(a), 516, and 1198 – Failure to Provide Meal Periods

California Labor Code sections 226.7, 512(a), 516, 1198 and the applicable IWC Wage Order require employers to provide meal periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. Pursuant to Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order, an employer may not require, cause or permit an employee to work for a period of more than five (5) hours per day without providing the employee with an uninterrupted meal period of not less than thirty (30) minutes, except that if the total work period per day of the employee is not more than six (6) hours, the meal period may be waived by mutual consent of both the employer and the employee. Under California law, first meal periods must start after no more than five hours. *Brinker Rest. Corp. v. Superior Court*, 53 Cal. 4th 1004, 1041-1042 (Cal. 2012). Labor Code sections 226.7 and 512(a) and the applicable IWC Wage Order also require employers to provide a second meal period of not less than thirty (30) minutes if an employee works over ten (10) hours per day or to pay an employee one (1) additional hour of pay at the employee's regular rate, 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.

Under California law, an employer cannot evade meal period requirements via the use of “on-duty” meal agreements because it understaffs its locations. *Abdullah v. U.S. Sec. Assocs.*, 2011 U.S. Dist. LEXIS 156685 (C.D. Cal. Jan. 11, 2011).

As stated, A & A has, and continues to have, a company-wide policy and/or practice of understaffing while simultaneously assigning heavy workloads, which resulted in a lack of meal period coverage and prevented Mr. Magana and other aggrieved employees from taking all timely, uninterrupted meal periods to which they were entitled. Additionally, A & A failed to schedule meal periods, resulting in Mr. Magana and other aggrieved employees having their meal periods interrupted to return to work or waiting extended periods of time before taking meal periods, due to the workload. For example, Mr. Magana’s unpaid meal periods were also interrupted or cut short approximately three (3) times per week in order to assist trucks dropping off materials. As another example, Mr. Magana rarely took his meal periods before 1:00 p.m., after he had worked for 10 hours, because the plants were often very busy in the mornings with departing and arriving trucks. In addition, on information and belief, other aggrieved employees who drove cement trucks were not provided with meal periods at all due to their heavy workload.

Further, because A & A frowned upon employees accruing meal period penalties, A & A required Mr. Magana and other aggrieved employees to clock out for meal periods and/or adjusted employee time records to reflect compliant meal periods, regardless of whether they had received a compliant meal period or not, in order to strictly limit meal penalties that A & A would otherwise owe. To the extent A & A required other aggrieved employees to sign written “on-duty” meal period agreements, such agreements are invalid, as the nature of the work performed by other aggrieved employees do not necessitate an “on-duty” meal period under California law.

Moreover, A & A did not provide Mr. Magana and other aggrieved employees with second 30-minute meal periods on days that they worked in excess of ten (10) hours in one day. Mr. Magana and other aggrieved employees regularly worked shifts in excess of ten (10) hours but A & A did not schedule or permit them to take second 30-minute meal periods.

Mr. Magana and other aggrieved employees did not sign valid meal period waivers on days that they were entitled to meal periods and were not relieved of all duties. A & A’s company-wide written policy was to treat missed meals as voluntarily waived meal periods instead of paying meal period premiums. For example, A & A’s “Reminder of Company Policy regarding meal periods” states: **“IF YOU DO NOT RECORD THAT YOU TOOK THESE 30 MINUTE MEAL PERIODS ON A TIMELY BASIS:** If you do not record that you took your 30 minute off duty meal periods beginning by [the start of the 6th hour of work and/or the start of the 11th hour of work], you are advising us that you voluntarily chose not to take them. . . .”

A & A knew or should have known that as a result of its company-wide policies and/or practices, that Mr. Magana and other aggrieved employees were not actually relieved of all duties to take timely, uninterrupted meal periods. A & A further knew or should have known that it did not pay Mr. Magana and other aggrieved employees meal period premium wages when meal periods were missed, late, short, and/or interrupted.

Furthermore, A & A engaged in a company-wide practice and/or policy of not paying all meal period premiums owed when compliant meal periods are not provided. Because of this practice and/or policy, Mr. Magana and other aggrieved employees have not received premium pay for missed, interrupted, or late meal periods. Alternatively, to the extent that A & A did pay other aggrieved

employees premium pay for missed, late, and interrupted meal periods, A & A did not pay other aggrieved employees at the correct rate of pay for premium wages because A & A systematically failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, A & A failed to provide all meal periods in violation of California Labor Code sections 226.7, 512(a), 516, and 1198. Mr. Magana and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226.7, 516, and 1198 – Failure to Authorize and Permit Rest Periods

California Labor Code sections 226.7, 516, 1198 and the applicable IWC Wage Order require employers to provide rest periods and to pay an employee one (1) additional hour of pay at the employee's regular rate for each work day that a meal or rest period is not provided. California Labor Code section 226.7 provides that no employer shall require an employee to work during any rest period mandated by an applicable order of the California IWC. The applicable IWC Wage Order provides that "[e]very employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period" and that the "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" unless the total daily work time is less than three and one-half (3½) hours.

To comply with its obligation to authorize and permit rest periods under California Labor Code section 226.7 and the applicable IWC Wage Order, an employer must "relinquish any control over how employees spend their break time, and relieve their employees of all duties—including the obligation that an employee remain on call. A rest period, in short, must be a period of rest." *Augustus, et al. v. ABM Security Services, Inc.*, 2 Cal. 5th 257, 269-270 (2016).

During the relevant time period, A & A regularly failed to authorize and permit Mr. Magana and other aggrieved employees to take a ten (10) minute rest period per each four (4) hour period worked or major fraction thereof. As with meal periods, A & A's policy and/or practice of understaffing while assigning of heavy workloads, prevented Mr. Magana and other aggrieved employees from being relieved of all duty in order to take compliant rest periods. A & A also failed to schedule rest periods, which, coupled with A & A's failure to provide adequate rest period coverage, further led to Mr. Magana and other aggrieved employees not being authorized and permitted to take rest periods.

Additionally, during the relevant time period, A & A maintained and implemented a company-wide on-premises rest period policy, which mandated that Mr. Magana and other aggrieved employees remain on the work premises during their rest periods. Because Mr. Magana and other aggrieved employees were restricted from leaving the premises during rest periods, they were denied the ability to use rest periods freely for their own purposes. Thus, A & A effectively maintained control over Mr. Magana and other aggrieved employees during rest periods and/or caused them to perform work during rest periods.

As a result of A & A's practices and policies, Mr. Magana and other aggrieved employees worked shifts in excess of 3.5 hours, in excess of 6 hours, and/or in excess of 10 hours without receiving all uninterrupted 10-minute rest periods to which they were entitled. For example, during his

employment, Mr. Magana missed all of his rest periods due to the heavy workload and the lack of coverage for rest periods.

A & A also has engaged in a company-wide practice and/or policy of not paying all rest period premiums owed when compliant rest periods are not authorized and permitted. Because of this practice and/or policy, Mr. Magana and other aggrieved employees have not received premium pay for all missed rest periods. Alternatively, to the extent that A & A did pay other aggrieved employees one (1) additional hour of premium pay for missed rest periods, A & A did not pay other aggrieved employees at the correct rate of pay for premium wages because A & A failed to include all forms of compensation, such as incentive pay, nondiscretionary bonuses, and/or other forms of remuneration, in the regular rate of pay.

Accordingly, A & A failed to authorize and permit all rest periods in violation of California Labor Code sections 226.7, 516, and 1198. Mr. Magana and other aggrieved employees are entitled to civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 558 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 226(a), 1174(d), and 1198 – Non-Compliant Wage Statements and Failure to Maintain Accurate Payroll Records

California Labor Code section 226(a) requires employers to make, keep and provide true, accurate, and complete employment records. A & A has not provided Mr. Magana and other aggrieved employees with properly itemized wage statements. Labor Code section 226(e) provides that if an employer fails to comply with providing an employee with properly itemized wages statements as set forth in 226(a), then the employee is entitled to recover the greater of all actual damages or \$50.00 for the initial pay period in which a violation occurs and \$100 per employee for each violation in a subsequent pay period, not to exceed \$4,000. Further, Labor Code section 226.3 provides that any employer who violates section 226(a) shall be subject to a civil penalty in the amount of \$250 per employee per violation in an initial citation and \$1,000 per employee for each violation in a subsequent citation, for which the employer fails to provide the employee a wage statement or fails to keep the required records pursuant to Section 226(a).

During the relevant time period, A & A has knowingly and intentionally provided Mr. Magana and other aggrieved employees with uniform, incomplete, and inaccurate wage statements. For example, A & A issued uniform wage statements to Mr. Magana and other aggrieved employees that fail to correctly list: gross wages earned; total hours worked; net wages earned; the address of the legal entity that is the employer; and all applicable hourly rates in effect during the pay period, including overtime rates of pay, and the corresponding number of hours worked at each hourly rate. Specifically, A & A violated sections 226(a)(1), 226(a)(2), 226(a)(5), 226(a)(8), and 226(a)(9).

First, because A & A did not record the time Mr. Magana and other aggrieved employees spent working off-the-clock, deducted time from their records for meal periods that were interrupted and/or missed (and therefore time for which they should have been paid), and/or improperly rounded their total hours worked, A & A did not list the correct amount of gross wages and net wages earned by Mr. Magana and other aggrieved employees in compliance with section 226(a)(1) and section 226(a)(5), respectively. For the same reason, A & A failed to accurately list the total number of hours worked by Mr. Magana and other aggrieved employees, in violation of section 226(a)(2), and failed to list the applicable hourly rates of pay in effect during the pay period and the corresponding accurate number of hours worked at each hourly rate, in violation of section 226(a)(9).

Second, because A & A did not calculate other aggrieved employees' regular rate of pay correctly for purposes of paying overtime, A & A did not list the correct amount of gross wages in compliance with section 226(a)(1). For the same reason, A & A also failed to list the correct amount of net wages in violation of section 226(a)(5). A & A also failed to correctly list all applicable hourly rates in effect during the pay period, namely, correct overtime rates of pay and correct rates of pay for meal and rest premium wages, in violation of section 226(a)(9).

Third, and separate from these violations, A & A issued uniform wage statements to Mr. Magana and other aggrieved employees that failed to correctly list the address of the legal entity of the actual employer in violation of 226(a)(8). The purpose of section 226(a)(8) is to provide California employees with transparency as to the true identity of their employer, to allow the employee to contact their employer during employment in the future for various reasons, including filing an administrative claim, judicial claim, or other action to seek relief against their employer, to obtain unemployment benefits, etc. During the relevant time period, Mr. Magana's and other aggrieved employees' wage statements incorrectly list the employer's address as "8272 BERRY AVENUE, SACRAMENTO, CALIFORNIA 95828." Upon information and belief, the correct address of the employing entity is "4621 TELLER AVE STE 130, NEWPORT BEACH CA 92660." *See example paystub below.*

CO. FILE DEPT. CLOCK NUMBER
SEQ 000434 003-0008
A & A CONCRETE SUPPLY
8272 BERRY AVENUE
SACRAMENTO, CALIFORNIA 95828
(916)383-2652

Earnings Statement ADP

Period Beginning: 02/24/2020
Period Ending: 03/08/2020
Pay Date: 03/13/2020

Taxable Marital Status: [REDACTED]
Exemptions/Allowances:
Federal: [REDACTED]
CA: [REDACTED]

OSCAR MAGANA
[REDACTED]

The wage statement deficiencies also include, among other things, failing to list the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis; failing to list all deductions; failing to list the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number; failing to list the name of the legal entity that is the employer; failing to list the inclusive dates of the period for which aggrieved employees were paid; and/or failing to state all hours worked as a result of not recording or stating the hours they worked off-the-clock.

California Labor Code section 1174(d) provides that "[e]very person employing labor in this state shall . . . [k]eep a record showing the names and addresses of all employees employed and the ages of all minors" and "[keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. . . ." Labor Code section 1174.5 provides that employers are subject to a \$500 civil penalty if they fail to maintain accurate and complete records as required by section 1174(d). During the relevant time period, and in violation of Labor Code section 1174(d), A & A willfully failed to maintain accurate payroll records for Mr. Magana and other aggrieved employees showing the daily hours they worked and the wages paid thereto as a result of

failing to record the off-the-clock hours that they worked and improperly rounding Mr. Magana's and other aggrieved employees' total hours worked.

California Labor Code section 1198 provides that the maximum hours of work and the standard conditions of labor shall be those fixed by the Labor Commissioner and as set forth in the applicable IWC Wage Orders. Section 1198 further provides that "[t]he employment of any employees for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful." Pursuant to the applicable IWC Wage Order, employers are required to keep accurate time records showing when the employee begins and ends each work period and meal period. During the relevant time period, A & A failed, on a company-wide basis, to keep accurate records of work period and meal period start and stop times for Mr. Magana and other aggrieved employees, in violation of section 1198. As stated, A & A engaged in a company-wide practice and/or policy of falsifying Mr. Magana's and other aggrieved employees' time records by recording that compliant meal periods were taken regardless of if or when meal periods were actually taken, and thereby failed to keep accurate records of meal start and end times for Mr. Magana and other aggrieved employees. Furthermore, in light of A & A's failure to provide Mr. Magana and other aggrieved employees with second 30-minute meal periods to which they were entitled, A & A kept no records of meal start and end times for second meal periods.

Because A & A failed to provide the correct net and gross wages earned, applicable rates of pay, and number of total hours worked on wage statements, Mr. Magana and other aggrieved employees have been prevented from verifying, solely from information on the wage statements themselves, that they were paid correctly and in full. Instead, Mr. Magana and other aggrieved employees have had to look to sources outside of the wage statements themselves and reconstruct time records to determine whether in fact they were paid correctly and the extent of underpayment, thereby causing them injury.

Mr. Magana and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon pursuant to Labor Code sections 226.3, 1174.5, and/or 2699(a), (f)-(g).

Violation of California Labor Code § 204 – Failure to Timely Pay Wages During Employment

California Labor Code section 204 requires that all wages earned by any person in any employment between the 1st and the 15th days, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 16th and the 26th day of the month during which the labor was performed, and that all wages earned by any person in any employment between the 16th and the last day, inclusive, of any calendar month, other than those wages due upon termination of an employee, are due and payable between the 1st and the 10th day of the following month. California Labor Code section 204 also requires that all wages earned for labor in excess of the normal work period shall be paid no later than the payday for the next regular payroll period. Alternatively, California Labor Code section 204 provides that the requirements of this section are deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven (7) calendar days following the close of the payroll period.

During the relevant time period, A & A failed to pay Mr. Magana and other aggrieved employees all wages due to them, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages within any time period specified by California Labor Code section 204.

Mr. Magana and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 210 and/or 2699(a), (f)-(g).

Violation of California Labor Code §§ 201, 202, and 203 – Failure to Timely Pay Final Wages Upon Termination

California Labor Code sections 201, 202, and 203 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and that if an employee voluntarily leaves his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

A & A willfully failed to pay Mr. Magana and other aggrieved employees who are no longer employed by A & A all their earned wages, including, but not limited to, overtime wages, minimum wages, and/or meal and rest period premium wages either at the time of discharge, or within seventy-two (72) hours of their leaving A & A's employ in violation of California Labor Code sections 201, 202, and 203.

Mr. Magana and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 256 and/or 2699(a), (f)-(g).

Violation of California Labor Code § 2802 – Unreimbursed Business Expenses

California Labor Code section 2802 requires employers to pay for all necessary expenditures and losses incurred by the employee in the performance of his or her job. The purpose of Labor Code section 2802 is to prevent employers from passing off their cost of doing business and operating expenses on to their employees. *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137, 1144 (2014). The applicable wage order, IWC Wage Order 1-2001, provides that: "[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the trade or craft."

First, during the relevant time period, A & A, on a company-wide basis, required that Mr. Magana and other aggrieved employees use their own personal cellular phones and/or cellular data to carry out their job duties, but failed to reimburse them for the costs of their work-related cellular phone expenses. For example, Mr. Magana and other aggrieved employees received work-related calls from their supervisors and were required to discuss their assignments with A & A's managers throughout their shifts. As a further example, A & A required other aggrieved employees to call into the office on their personal cellular phones on a daily basis to obtain their job site assignments. Although A & A required Mr. Magana and other aggrieved employees to utilize their personal cellular phones to carry out their work-related responsibilities, A & A failed to fully reimburse them for this cost.

Second, A & A also had a company-wide policy of requiring Mr. Magana and other aggrieved employees to travel in their own personal vehicles for work purposes, but failed to reimburse them for all costs of travel, including mileage. Mr. Magana and other aggrieved employees were required to use their own vehicles to drive to other plants to pick up and drop off materials, but were not

reimbursed for their travel expenses or mileage. Although A & A required Mr. Magana and other aggrieved employees to use their own vehicles and complete these tasks as part of their job duties, A & A failed to reimburse them for all of these expenses.

Third, during the relevant time period, A & A, on a company-wide basis, forced Mr. Magana and other aggrieved employees to purchase supplies and/or tools to complete their work assignments. For example, Mr. Magana was required to spend approximately \$20 per week on fuel for the gas-powered leaf blower he used to clean the yard premises. Although A & A required Mr. Magana and other aggrieved employees to purchase their own supplies and/or tools for use on the job, A & A did not fully reimburse them for these expenses.

Fourth, A & A, on a company-wide basis, mandated that Mr. Magana and other aggrieved employees purchase special safety shoes such as steel-toed boots, which they were required to wear while at work. Mr. Magana and other aggrieved employees purchased steel-toed boots to wear inside A & A's facilities and construction zones, but were not reimbursed fully for these costs.

A & A could have provided Mr. Magana and other aggrieved employees with the actual tools for use on the job, such as company phones, company vehicles, supplies/tools, and steel-toed boots to be used for fulfilling work-related tasks. Or, A & A could have reimbursed employees for the costs of their cellular phone usage, mileage, travel, supply/tool expenses, and boot expenses. Instead, A & A passed these operating costs off onto Mr. Magana and other aggrieved employees. At all relevant times, Mr. Magana and other aggrieved employees did not earn at least two (2) times the minimum wage.

Thus, A & A had, and continues to have, a company-wide policy and/or practice of not reimbursing employees for expenses necessarily incurred in violation of California Labor Code section 2802. Mr. Magana and other aggrieved employees are entitled to recover civil penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code sections 2699(a), (f)-(g).

Violation of California Labor Code §§ 6401 and 6403 – Failure to Provide Safety Devices and Safeguards

California Labor Code section 6401 provides that employers must furnish and use safety devices and safeguards, and adopt and use practices, means, methods, operations, and processes which are reasonably adequate to render the employment and place of employment safe and healthy. California Labor Code Section 6401 further provides that an employer must do everything reasonably necessary to protect the life, safety and health of its employees. California Labor Code section 6403(a) requires that employers provide and use safety devices and safeguards reasonably adequate to render the employment and place of employment safe.

A & A, on a company-wide basis, failed to provide Mr. Magana and other aggrieved employees with personal protective equipment, such as steel-toed boots, to keep them safe in the workplace. Despite the fact that A & A required employees to wear certain personal protective equipment, including steel-toed boots, A & A failed to provide such reasonably necessary equipment to Mr. Magana and other aggrieved employees to keep them safe.

A & A's failure to provide Mr. Magana and other aggrieved employees with safety devices and safeguards for the workplace violates Labor Code sections 6401 and 6403. Mr. Magana and other

aggrieved employees are therefore entitled to recover penalties, attorney's fees, costs, and interest thereon, pursuant to Labor Code section 2699(a), (f)-(g).

California Labor Code § 558(a)

California Labor Code section 558(a) provides "[a]ny employer or other person acting on behalf of an employer who violates, or causes to be violated, a section of this chapter or any provision regulating hours and days of work in any order of the Industrial Welfare Commission shall be subject to a civil penalty as follows: (1) For any initial violation, fifty dollars (\$50) for each underpaid employee for each pay period for which the employee was underpaid. . . . (2) For each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period for which the employee was underpaid. . . ." Labor Code section 558(c) provides that "[t]he civil penalties provided for in this section are in addition to any other civil or criminal penalty provided by law." A & A, at all relevant times, was an employer or person acting on behalf of an employer(s) who violated Mr. Magana's and other aggrieved employees' rights by violating various sections of the California Labor Code.

Accordingly, Mr. Magana seeks the remedies set forth in Labor Code section 558 for himself, the State of California, and all other aggrieved employees. Specifically, pursuant to PAGA, and in particular California Labor Code sections 2699(a), 2699.3(a) and 2699.3(c), 2699.5, and 558, Mr. Magana, acting in the public interest as a private attorney general, seeks assessment and collection of civil penalties for himself, all other aggrieved employees, and the State of California against A & A for violations of California Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 516, 1174(d), 1182.12, 1194, 1197, 1197.1, 1198, 2802, 6401, and 6403.

Therefore, on behalf of all aggrieved employees, Mr. Magana seeks all applicable civil penalties related to these violations of the California Labor Code pursuant to PAGA.

Pre-Litigation Demand

This notice shall further serve as Mr. Magana's reasonable attempt to settle his dispute with A & A prior to litigation. Pursuant to *Graham v. DaimlerChrysler Corp.*, 34 Cal. 4th 553 (2004), this notice serves to inform A & A of Mr. Magana's aforementioned grievances and the proposed remedies as detailed below, while affording A & A a reasonable opportunity to satisfy Mr. Magana's demands.

Demand is hereby made that A & A shall, within 30 calendar days of this notice, agree, in writing to the following corrective actions:

1. A & A shall pay Mr. Magana and all other aggrieved employees employed by A & A at any time during the past three years from the date of this notice unpaid wages and compensation for the above-referenced violations.
2. A & A shall comply with all California labor laws and ensure that its non-exempt employees are paid overtime wages and minimum wages for all hours worked, and provided lawful meal and rest periods.
3. A & A shall conduct a survey or interview all current and former aggrieved employees in California who worked for A & A in the past three years to obtain information from them

regarding the above-referenced violations, including, but not limited to: the number of meal periods which were not provided; the number of rest periods which were not authorized and permitted; and the number of employees who were required to pay for cellular phone expenses, travel expenses, supply and tool expenses, boot expenses, or other expenditures in the discharge of their duties, with the investigation to be completed within 60 days.

4. A & A shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not provided one or more meal periods, as required by Labor Code sections 226.7, 512, 516, and 1198. A & A also shall pay each aggrieved employee one hour of pay at his or her regular rate of pay for each work day he or she was not authorized and permitted one or more rest periods, as required by Labor Code sections 226.7, 516, and 1198.
5. A & A shall reimburse those aggrieved employees who were required to pay for any business expenses incurred for A & A's benefit, including, but not limited to, cellular phone expenses, mileage, travel expenses, supply and tool expenses, boot expenses, or other expenditures, as required by Labor Code section 2802.
6. A & A shall pay accrued legal interest to all aggrieved employees at the rate of 10% per annum for said unpaid wages.
7. A & A shall provide Mr. Magana and all aggrieved employees employed by A & A at any time during the past three years from the date of this notice corrected wage statements that include the requisite information set forth in Labor Code section 226(a).
8. A & A shall provide all aggrieved employees with safety devices and safeguards reasonably adequate to render the employment and place of employment safe, pursuant to Labor Code sections 6401 and 6403.
9. A & A shall pay waiting time penalties, equal to 30 days of pay, to each former aggrieved employee who was not paid all wages due as described herein.
10. A & A shall pay all penalties arising from the violations of the Labor Code and IWC Wage Order sections referenced above and pursuant to PAGA, Labor Code sections 2698, *et seq.*, including, but not limited to, penalties under Labor Code sections 210, 226.3, 256, 558, 1174.5, 1197.1, and 2699, and Wage Order No. 1-2001, section 20.

Thank you for your attention to this matter. If you have any questions, please contact me at the phone number or address below:

Anthony Castillo
Capstone Law APC
1875 Century Park East, Suite 1000
Los Angeles, CA 90067
(310) 556-4811

Best Regards,



Anthony Castillo

Copy: A & A READY MIXED CONCRETE, INC. (via U.S. Certified Mail); ASSOCIATED
READY MIXED CONCRETE, INC. (via U.S. Certified Mail)

one
LAW APC
y Park East, Ste 1000
, CA 90067



7020 1290 0001 8879 1449

A & A READY MIXED CONCRETE, INC.
4621 TELLER AVE STE 130
NEWPORT BEACH CA 92660



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NEWPORT BEACH CA 92660



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Total Postage and Fees

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A & A READY MIXED CONCRETE, INC.

Street and Apt. No., P.O. Box, or other address

4621 TELLER AVE STE 130

City, State, ZIP+4®

NEWPORT BEACH CA 92660

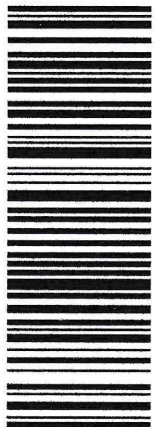
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Magana v. A & A
Ready Mixed Concrete
Inc

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tone

LAW APC

ury Park East, Ste 1000
s, CA 90067

ASSOCIATED READY MIXED CONCRETE, INC.
4621 TELLER AVE SUITE 130
NEWPORT BEACH CA 92660



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INC.
4621 TELLER AVE SUITE 130
NEWPORT BEACH CA 92660



9590 9402 1512 5362 2719 57

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- ☐ Adult Signature Required \$
- ☐ Adult Signature Restricted Delivery \$

Postage

\$ 1.63

Total Postage and Fees

\$ 7.93

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INC.

Street and Apt. No., or PO Box No.

4621 TELLER AVE SUITE 130

City, State, ZIP+4®

NEWPORT BEACH CA 92660

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Magana v. Associated
Ready Mixed Concrete
Inc.

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☐ Adult Signature	☐ Priority Mail Express®														
☐ Adult Signature Restricted Delivery	☐ Registered Mail™														
☒ Certified Mail®	☐ Registered Mail Restricted Delivery														
☐ Certified Mail Restricted Delivery	☐ Return Receipt for Merchandise														
☐ Collect on Delivery	☐ Signature Confirmation™														
☐ Collect on Delivery Restricted Delivery	☐ Signature Confirmation Restricted Delivery														
☐ Registered Mail Restricted Delivery (over \$500)															

PS Form 3811, July 2015 PSN 7530-02-000-9053
Domestic Return Receipt