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Superior Court of California
County of Los Angeles

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SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

HAROLD WALTERS, an individual, on behalf
of himself and all others similarly situated,

Plaintiff,

vs.

ASSOCIATED READY MIXED CONCRETE,
INC., a California Corporation; and DOES 1
through 100,

Defendants.

CASE NO. 21STCV05326

**FIRST AMENDED REPRESENTATIVE
ACTION COMPLAINT:**

**(1) CIVIL PENALTIES UNDER THE
PRIVATE ATTORNEYS
GENERAL ACT (LABOR CODE §
2698, et seq.)**

UNLIMITED CIVIL CASE

1 Plaintiff Harold Walters (hereinafter “Plaintiff”) on behalf of himself and all others
2 similarly situated, hereby brings this First Amended Complaint (“FAC”) against Associated Ready
3 Mixed Concrete, Inc., a California Corporation; and DOES 1 to 100, inclusive (collectively
4 “Defendants”), and on information and belief alleges as follows:

5 **JURISDICTION**

6 1. Plaintiff, on behalf of other aggrieved employees, and the State of California,
7 hereby brings this FAC for recovery of civil penalties under the California Labor Code Private
8 Attorneys General Act (“PAGA”) and California Labor Code § 2698, *et seq.* This Court has
9 jurisdiction over Defendants, because the amount in controversy exceeds this Court’s jurisdictional
10 minimum, and upon information and belief, Defendants are citizens of California, Defendants have
11 sufficient minimum contacts in California, or otherwise intentionally avail themselves to the
12 California market so as to render the exercise of jurisdiction over them by the California courts
13 consistent with the traditional notions of fair play and substantial justice.

14 **VENUE**

15 2. Venue is proper in this judicial district pursuant to California Code of Civil
16 Procedure §§ 395(a) and 395.5, as at least some of the acts and omissions complained of hereon
17 occurred in the County of Los Angeles. Defendants own, maintain offices, transact business, have
18 an agent or agents within the County of Los Angeles, and/or otherwise are found within the County
19 of Los Angeles, and Defendants are within the jurisdiction of this Court for purposes of service of
20 process.

21 **PARTIES**

22 3. Plaintiff is an individual over the age of eighteen (18). At all relevant times herein,
23 Plaintiff was and currently is, a California resident, residing in the County of Los Angeles. During
24 the one year immediately preceding Plaintiff’s giving of the required notice under the PAGA, and
25 within the statute of limitations periods applicable to each cause of action pled herein, Plaintiff
26 was employed by Defendants in the County of Los Angeles.

27 4. Plaintiff is informed and believes, and based thereon alleges, that during the one
28 year preceding the filing of this FAC and continuing to the present, Defendants did (and continue

1 to do) business by manufacturing and delivering concrete and employed Plaintiff and other
2 employees within the County of Los Angeles and the State of California and, therefore, were (and
3 are) doing business in the County of Los Angeles and the State of California.

4 5. Plaintiff does not know the true names or capacities, whether individual, partner,
5 or corporate, of the defendants sued herein as DOES 1 through 100, and for that reason, said
6 defendants are sued under such fictitious names, and Plaintiff will seek leave from this Court to
7 amend this FAC when such true names and capacities are discovered. Plaintiff is informed and
8 believes, and based thereon alleges, that each of said fictitious defendants, whether individual,
9 partner, or corporate, were responsible in some manner for the acts and omissions alleged herein,
10 and proximately caused Plaintiff and other aggrieved employees to be subject to the unlawful
11 employment practices, wrongs, injuries, and damages complained of herein.

12 6. Plaintiff is informed, and believes, and thereon alleges, that at all times mentioned
13 herein, Defendants were and are the employers of Plaintiff and other aggrieved employees.

14 7. At all times herein mentioned, each of said Defendants participated in the doing
15 of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the
16 Defendants, and each of them, were the agents, servants, and employees of each and every one of
17 the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned
18 were acting within the course and scope of said agency and employment. Defendants, and each
19 of them, approved of, condoned, and/or otherwise ratified each and every one of the acts or
20 omissions complained of herein.

21 8. At all times mentioned herein, Defendants, and each of them, were members of and
22 engaged in a joint venture, partnership, and common enterprise, and acting within the course and
23 scope of and in pursuance of said joint venture, partnership, and common enterprise. Further,
24 Plaintiff alleges that all Defendants were joint employers for all purposes of Plaintiff and other
25 aggrieved employees.

26 **GENERAL FACTUAL ALLEGATIONS**

27 9. Plaintiff was hired by Defendants as a non-exempt Truck Driver on or about March
28 15, 2015. Plaintiff still works for Defendants but has been on medical leave since about July 25,

2020. As a Truck Driver, Plaintiff is responsible for driving cement mixing trucks around Los Angeles County. Plaintiff's hours are sporadic, but he typically works Monday through Saturday from about 6:30 a.m. to 7:00 or 8:00 p.m.

10. Defendants fail to provide Plaintiff and other non-exempt employees with all required meal periods because, upon information and belief, Plaintiff and other non-exempt employees are unable to take meal periods due to the demands of their job, and as a result, Defendants have required Plaintiff and other non-exempt employees to sign on-duty meal period agreements. However, Defendants also do not allow Plaintiff and other Truck Drivers to eat in their vehicles, so Plaintiff and the other Truck Drivers often are not able to eat at all during their shifts. Additionally, Plaintiff and other non-exempt employees face discipline from Defendants if they are caught snacking in their vehicles, which are monitored by Defendants through onboard cameras. Thus, even though Plaintiff and the other Truck Drivers signed on-duty meal agreements, they are not valid given that Plaintiff and other non-exempt employees are prohibited from taking *any* meal periods, even while remaining on-duty.

11. Defendants also fail to authorize and permit Plaintiff and other non-exempt employees to take all required duty-free rest periods because the nature of the work being performed by Plaintiff and other non-exempt employees does not permit for duty-free rest periods while working. This truth is necessarily admitted by Defendants by requiring employees to sign on-duty meal period agreements. Additionally, despite Defendants' failure to provide Plaintiff and other non-exempt employees with all meal and rest periods to which they are legally entitled due to Defendants' uniform and unlawful policies and/or practices, Defendants do not provide Plaintiff and other non-exempt employees with an hour of pay at their regular rate for each meal and rest period violation as required by Labor Code 226.7.

12. Defendants also did not introduce "CB" radios to their vehicles until recently, and prior to the introduction of "CB" radios, required Plaintiff and the other Truck Drivers to use their personal cellphones for all necessary work-related communications with Defendants' dispatchers. Despite requiring employees to use their personal cell phones for work-related purposes Defendants have failed to reimburse Plaintiff and other non-exempt employees for any portion of

the cellphone bills, in direct violation of *Cochran v. Schwan's Home Service, Inc.*, 228 Cal. App. 4th 1137 (2014), and Labor Code § 2802.

13. As a result of Defendants' failure to pay meal and rest period premium wages, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Plaintiff.

14. Based on the foregoing, Plaintiff seeks to represent himself and other aggrieved employees, which for purposes of this FAC are defined as all of Defendants' current and former non-exempt employees who have worked in California since February 11, 2020 to the present.

FIRST CAUSE OF ACTION

PRIVATE ATTORNEYS GENERAL ACT

(AGAINST ALL DEFENDANTS)

15. Plaintiff re-alleges and incorporates by reference all prior paragraphs as though fully set forth herein.

16. Defendants have committed Labor Code violations against Plaintiff and other aggrieved employees. Plaintiff is an "aggrieved employee" within the meaning of Labor Code §§ 2698 *et seq.*, and acting on behalf of himself, other aggrieved employees, and the State of California, brings this representative action against Defendants to recover the civil penalties due to Plaintiff and other aggrieved employees against whom one or more of the violations has been committed, and the State of California according to proof, pursuant to Labor Code § 2699, including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully withheld; (2) \$100.00 for each initial violation and \$250.00 for each subsequent violation pursuant to Labor Code § 1197.1 per employee per pay period; (3) \$250.00 for each initial violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per employee per pay period; and/or (4) \$100.00 for each initial violation and \$200.00 for each subsequent violation per employee per pay period for those violations of the Labor Code for which

no civil penalty is specifically provided, based on the following Labor Code violations:

- a. Failing to provide all legally required meal periods, and failing to pay meal period premium pay, to Plaintiff and other aggrieved employees in violation of Labor Code §§ 226.7, 512, and 558;
- b. Failing to authorize and permit all legally required rest periods, and failing to pay rest period premiums, to Plaintiff and other aggrieved employees in violation of Labor Code §§ 226.7, 516, and 558;
- c. Failing to reimburse necessary business expenditures incurred by Plaintiff, and other aggrieved employees in violation of Labor Code §§ 2802 and 2804;
- d. Failing to furnish Plaintiff and other aggrieved employees with complete, accurate, itemized wage statements in violation of Labor Code § 226;
- e. Failing to maintain accurate records on behalf of Plaintiff and other aggrieved employees in violation of Labor Code § 1174.

17. On February 11, 2021, Plaintiff notified Defendant Associated Ready Mixed Concrete, Inc. via certified mail, and the California Labor and Workforce Development Agency (“LWDA”) via its website, of Defendants’ violations of the California Labor Code and Plaintiff’s intent to bring a claim for civil penalties under California Labor Code § 2698, *et seq.* with respect to violations of the California Labor Code identified in Paragraph 16 (a)-(e). Now that sixty-five days have passed from Plaintiff’s notifying Defendants of these violations, Plaintiff has exhausted his administrative requirements for bringing a claim under the PAGA with respect to these violations.

18. Plaintiff was compelled to retain the services of counsel to file this court action to protect his interests and the interests of other aggrieved employees, and to assess and collect the civil penalties owed by Defendants. Plaintiff has thereby incurred attorneys’ fees and costs, which he is entitled to receive under California Labor Code § 2699(g).

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1 **PRAYER**

2 WHEREFORE, Plaintiff prays for judgment for himself and for all others on whose behalf
3 this suit is brought against Defendants, as follows:

4 1. Upon the First Cause of Action, for civil penalties due to Plaintiff, other aggrieved
5 employees, and the State of California according to proof pursuant to Labor Code § 2699,
6 including, but not limited to: (1) \$100.00 for each initial violation for each failure to pay each
7 employee and \$200.00 for each subsequent violation or willful or intentional violation pursuant
8 to Labor Code § 210 for each failure to pay each employee, plus 25% of the amount unlawfully
9 withheld; (2) \$100.00 for each initial violation and \$250.00 for each subsequent violation
10 pursuant to Labor Code § 1197.1 per employee per pay period; (3) \$250.00 for each initial
11 violation and \$1,000.00 for each subsequent violation pursuant to Labor Code § 226.3 per
12 employee per pay period; and/or (4) \$100.00 for each initial violation and \$200.00 for each
13 subsequent violation per employee per pay period for those violations of the Labor Code for which
14 no civil penalty is specifically provided;

15 2. On all causes of action, for attorneys' fees and costs as provided by Labor Code §
16 2699(g) and Code of Civil Procedure § 1021.5; and

17 3. For such other and further relief the Court may deem just and proper.
18
19

20 Dated: August 16, 2021

Respectfully submitted,
HAINES LAW GROUP, APC

21
22 By:



Paul K. Haines
Attorneys for Plaintiff

PROOF OF SERVICE

Harold Walters v. Associated Ready Mixed Concrete, Inc.
Los Angeles County Superior Court Case No. 21STCV05326

STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

I am employed in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is [X] 2155 Campus Drive, Suite 180, El Segundo, California 90245.

On August 23, 2021, I served the foregoing document(s) described as:

FIRST AMENDED REPRESENTATIVE ACTION COMPLAINT

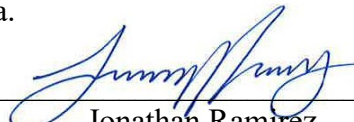
on the interested party(ies) in this action as follows:

Stephen L. Berry, Esq.
Email: stephenberry@paulhastings.com
PAUL HASTINGS LLP
695 Town Center Drive, Seventeenth Floor
Costa Mesa, CA 92626
Attorneys for Defendant ASSOCIATED READY MIXED CONCRETE, INC.

[X] (VIA ELECTRONIC MAIL) I caused a true and correct copy of the document(s) described above to be electronically served on counsel of record at the electronic service addresses listed above by transmission to CASE ANYWHERE

[X] (STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

Executed on August 23, 2021, at El Segundo, California.



Jonathan Ramirez