

PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698 ET SEQ.)
SETTLEMENT AGREEMENT

Harold Walters v. Associated Ready Mixed Concrete, Inc.

(Los Angeles County Superior Court Case No. 21STCV05326)

IT IS HEREBY STIPULATED AND AGREED by and among the undersigned parties, subject to the approval of the Court, that the settlement of the Litigation (as defined below) shall be effectuated upon, and subject to, the terms and conditions in this Private Attorneys General Act, California Labor Code sections 2698, *et seq.* (“PAGA”), settlement agreement (the “Agreement”). Capitalized terms used herein shall have the meanings set forth in Article I or elsewhere in this Agreement.

This Agreement is made by and between defendant Associated Ready Mixed Concrete, Inc. (“Defendant”) and plaintiff Harold Walters (“Plaintiff”) for himself and on behalf of the State of California and the Aggrieved Employees (as defined below), and is approved by the law firms defined below as “Plaintiff’s Counsel” and “Defense Counsel.” Defendant and Plaintiff are sometimes collectively referred to as the “Parties” and individually as a “Party.” This Agreement shall be binding on the Parties on the last date on which it is signed by one of the Parties.

The Parties agree that the Litigation shall be, and hereby is, ended, settled, resolved, and concluded by agreement of Defendant to pay the total sum of Ninety Thousand Dollars (\$90,000) (hereinafter referred to as the “Maximum Settlement Amount”) for settlement of the Litigation, which shall be inclusive of Plaintiff’s Counsel’s attorneys’ fees and costs, an enhancement award to Plaintiff, the payments to the California Labor and Workforce Development Agency (“LWDA”) and the Aggrieved Employees, and the settlement administrator’s charges.

Article I.

Section 1.01 Definitions.

Unless otherwise defined herein, the following terms used in this Agreement shall have the meanings ascribed to them as set forth below:

- (a) “Action” means the court complaint filed by Plaintiff on February 10, 2021 in the action entitled, “*Harold Walters v. Associated Ready Mixed Concrete, Inc.*,” Los Angeles County Superior Court Case No. 21STCV05326. The Action also is referred to as the “Complaint” and the “Litigation.”
- (b) “Aggrieved Employees” means all current and former non-exempt employees of Defendant in the job position of mixer driver in the State of California during any portion of the Covered Time Frame.

- (c) “Court” means the Superior Court for the State of California, County of Los Angeles.
- (d) “Covered Time Frame” means the period from February 11, 2020 through the Effective Date.

- (e) “Defense Counsel” or “Counsel for Defendant” are:

Stephen L. Berry, Esq.
Paul Hastings LLP
695 Town Center Drive, 17th Floor
Costa Mesa, CA 92626

- (f) “Effective Date” means the date the Court enters the order approving the settlement described in this Agreement and dismissing the Action with prejudice.

- (g) “Plaintiff’s Counsel” or “Counsel for Plaintiff” are:

Fletcher W. Schmidt, Esq.
Haines Law Group, APC
2155 Campus Drive, Suite 180
El Segundo, CA 90245

- (h) “Released Claims” means any and all claims for civil penalties under the PAGA within the scope of or arising from the allegations of the Complaint, and specifically, all PAGA civil penalty claims for: (a) failure to provide meal and/or rest periods in accordance with applicable law, including payments for non-compliant meal and/or rest periods and alleged non-payment of wages for meal periods worked and not taken; (b) failure to reimburse business expenses; (c) failure to provide accurate itemized wage statements; and (d) failure to maintain records (“Aggrieved Employees’ Released Claims”), arising during the Covered Time Frame. The Aggrieved Employees’ Released Claims specifically include claims meeting the above definitions under the following statutes: California Labor Code §§ 210, 226, 226.3, 226.7, 512, 516, 558, 1174, 1197.1, 2802, and 2804; and California Civil Procedure Code § 1021.5. The approval of this Settlement by the Court bars all Aggrieved Employees from bringing any of the Released Claims in any future proceeding and from participating in any proceeding seeking penalties under PAGA.
- (i) “Released Parties” means Defendant and all of its former and present parents, subsidiaries, and affiliates, and its current and former officers, directors, employees, partners, shareholders and agents, and the predecessors and successors, assigns, and legal representatives of all such entities and individuals.

Article II.

Section 2.01 Background.

- (a) The Complaint was initially filed as a proposed class action, but was amended on August 23, 2021 to assert a single cause of action for civil penalties under PAGA on behalf of the State of California and the alleged Aggrieved Employees.
- (b) In connection with the Litigation, the Parties engaged in significant informal discovery, including electronic time records. The Parties reached this Settlement only after informal discovery and an investigation by Plaintiff's Counsel was performed.
- (c) This settlement contemplates the (a) entry of an order by the Court approving the payment allocated for settlement of the PAGA penalties; (b) dismissal of the Litigation with prejudice; and (c) all Parties bearing their respective fees and costs, except as expressly provided in this Agreement.

Article III.

Approval and Implementation of Settlement.

Section 3.01 Cooperation.

The Parties will cooperate in obtaining through an unopposed motion or written stipulation an Order from the Court approving the payment of PAGA penalties as described in this Agreement. Plaintiff's Counsel shall request, and if approved by the Court, to be paid \$30,000.00 for attorneys' fees, which is one-third of the Maximum Settlement Amount, and an amount not to exceed \$6,000 for reimbursement of documented Litigation costs, both of which amounts will be deducted from the Maximum Settlement Amount, and Defendant will not oppose these requests. Plaintiff shall request, and if approved by the Court, be paid \$1,000 as an enhancement payment, which amount will be deducted from the Maximum Settlement Amount, and Defendant will not oppose this request. The Parties agree to fully cooperate in the drafting and/or filing of any documents or papers reasonably necessary to be prepared or filed, shall take all steps that may be requested by the Court relating to, or that are otherwise necessary to the approval and implementation of the settlement and payment of PAGA penalties as described in this Agreement. Plaintiff's Counsel shall provide a copy of the proposed order granting approval of this Agreement and the settlement, and dismissing the action with prejudice, to Defendant's Counsel for review and approval before submitting it to the Court, and shall submit the mutually agreed-upon proposed order in compliance with section 2699(1)(3) of the California Labor Code. If Plaintiff fails to satisfy this condition in strict compliance with section 2699(1)(3) of the California Labor Code, this Agreement and the settlement shall be voidable at Defendant's option.

Section 3.02 Representation as to Number of Pay Periods.

Defendant represents that as of October 4, 2022, there are approximately 10,702 pay periods worked by Aggrieved Employees for Defendant in California during the Covered Time Frame (“Affected Pay Periods”). If the actual number of Affected Pay Periods at the time of approval is more than 10% greater than this number (i.e., if there are 11,773 or more Affected Pay Periods), Defendant shall increase the Maximum Settlement Amount in proportion to the increase in Affected Pay Periods above the 10% ceiling (e.g., if there is a 12% increase in Affected Pay Periods, Defendant shall increase the Maximum Settlement Amount by 2%).

Section 3.03 Court Approval.

The Parties will seek to obtain the Court’s approval of the payment of PAGA penalties as described in this Agreement by way of an unopposed motion or stipulation to be filed by Plaintiff’s Counsel. This Agreement will be provided to the Court for its approval. The Court’s approval of the payment of PAGA penalties as described in this Agreement shall be embodied in a written order.

Section 3.04 Notice to Aggrieved Employees.

(a) Notice.

Notice shall be provided to the Aggrieved Employees in the following manner:

- (1) No later than twenty-one (21) calendar days after the Effective Date, Defendant shall provide the settlement administrator with a list of all Aggrieved Employees (“Aggrieved Employees List”) together with the Maximum Settlement Amount (as provided below). The Aggrieved Employees List shall state the first name and last name for each Aggrieved Employee, the last known home address for each Aggrieved Employee, each Aggrieved Employee’s social security number, and the number of workweeks during which each Aggrieved Employee was employed by Defendant during the Covered Time Frame.
- (2) No later than fourteen (14) calendar days after receiving the Aggrieved Employee List and the Maximum Settlement Amount from Defendant, the settlement administrator shall mail the Notice of PAGA Settlement (attached hereto as Exhibit “A”) to all Aggrieved Employees, together with their settlement checks by first-class United States mail, postage prepaid, to the last known address of each recipient with directions to the Postmaster to forward the Notice of PAGA Settlement and return all undeliverable Notices to the settlement administrator. For each Notice of PAGA Settlement that is returned as undeliverable, the settlement administrator shall promptly attempt to locate the Aggrieved Employee by using an address refresher database. Concurrently, the settlement administrator shall mail the required payment to the LWDA.
- (3) All costs incurred by the settlement administrator in connection with the current settlement, including mailing of the Notice of PAGA Settlement described herein,

whether foreseen or not, shall be paid out of the Maximum Settlement Amount. These costs shall be \$5,250.00, unless the Parties agree or the Court approves any additional amount. To the extent such approved costs exceed the foregoing amount, they shall be paid from the Net Settlement Proceeds (as defined herein); to the extent they fall below the foregoing amount, the difference shall be added to the Net Settlement Proceeds distributed to the Aggrieved Employees and the LWDA.

Section 3.05 Settlement Payment Procedures.

(a) Deposit of Maximum Settlement Amount with Settlement Administrator

No later than twenty-one (21) calendar days after the Effective Date, Defendant shall deposit the Maximum Settlement Amount with the settlement administrator.

(b) Payment of PAGA Penalties.

The total sum available for payment of PAGA penalties, *i.e.*, the “Net Settlement Proceeds,” shall be determined by deducting the following amounts from the Maximum Settlement Amount of \$90,000: Plaintiff’s Counsel’s attorneys’ fees (1/3 of the Maximum Settlement Amount, *i.e.*, \$30,000) and Litigation costs (up to \$6,000), Plaintiff’s enhancement payment (\$1,000), and the costs of administration referenced in Section 3.04(a)(3), above (\$5,250.00). The Net Settlement Proceeds are currently estimated to be approximately \$47,750.00.

Seventy-five percent (75%) of the Net Settlement Proceeds shall be paid to the LWDA; the remaining twenty-five percent (25%) of the Net Settlement Proceeds (the “Aggrieved Employee Net Settlement Proceeds”) shall be paid to Aggrieved Employees pro rata based on the following formula:

- (1) “Total Weeks Worked” will be the total number of weeks worked by all Aggrieved Employees during the Covered Time Frame according to Defendant’s records. “Individual Weeks Worked” will be the total number of weeks worked by an individual Aggrieved Employee during the Covered Time Frame according to Defendant’s records; and
- (2) “The Individual Settlement Payment” will be based on a ratio of the Total Weeks Worked to the Individual Weeks Worked, calculated by dividing the Individual Weeks Worked by an Aggrieved Employee by the Total Number of Weeks Worked by all Aggrieved Employees during the Covered Time Frame and multiplying this result by the Aggrieved Employee Net Settlement Proceeds.

100% of the PAGA payments are considered penalties and will not be subject to local, state or federal tax withholdings. All Aggrieved Employees who cash their settlement check may receive an IRS Form 1099-MISC for their portion of the settlement, if deemed required by the settlement administrator (in compliance with IRS guidelines).

The settlement checks issued to Aggrieved Employees shall remain valid for one hundred twenty (120) days. There will be no reversion to Defendant. Amounts represented by uncashed checks more than 120 days after mailing by the settlement administrator will be paid to Inclusion Matters by Shane's Inspiration, a non-profit child advocacy organization, which would be a qualified *cy pres* recipient under California Civil Procedure Code section 384 if this was a class action settlement.

(c) Attorneys' Fees and Costs, and General Release/Enhancement Payment.

Within fourteen (14) calendar days of receipt of Maximum Settlement Amount by the settlement administrator from Defendant, the settlement administrator shall pay the amount allocated to attorneys' fees and costs to Plaintiff's Counsel and the amount allocated to Plaintiff's enhancement payment to Plaintiff.

(d) Settlement Administrator Expenses.

Upon transmission of settlement checks to the Aggrieved Employees and issuance of the other required payments in this Agreement, the settlement administrator shall pay itself the amount for administration fees as provided in Section 3.04(a)(3), above.

Article IV.

Limitations on Use of Agreement.

Section 4.01 No Admission.

This Agreement and compliance with this Agreement shall not be construed as an admission by Defendant of any liability whatsoever, or as admission by Defendant of any violations of Plaintiff's rights or the rights of any of the Aggrieved Employees, violation of any statute, regulation, wage order, common law, duty or contract whatsoever. Defendant specifically disclaims any liability to Plaintiff and any of the other Aggrieved Employees for any alleged violation of his/her rights, or for any alleged violation of any statute, regulation, wage order, common law, duty or contract.

Section 4.02 Not Admissible in Evidence.

Neither this Agreement nor any of its terms shall be offered or used as evidence by any of the Parties, or their respective counsel in the Litigation or in any other action or proceeding; provided, however, this shall not prevent this Agreement from being used, offered, or received in evidence in any proceeding to enforce, construe, or finalize this Agreement.

Section 4.03 Nullification.

- (a) If the Court should for any reason fail to approve this Agreement and settlement, or if Plaintiff's Counsel files a notice of appeal as to any aspect of the Court's order on the motion for approval of this Agreement and settlement except as allowed in Section 6.10,

below, then (a) this Agreement shall be considered null and void, (b) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect, and (c) all Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court.

- (b) Invalidation of any material portion of this Agreement shall invalidate this Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

Article V.

Release and Waiver of Claims.

Section 5.01 PAGA Release by Aggrieved Employees.

Upon entry of the Order approving payment of the PAGA penalties as described in this Agreement, Plaintiff, all Aggrieved Employees, and the State of California shall be deemed to have fully, finally, and forever released, relinquished, and discharged each and all of the Released Parties from the Released Claims that arose during the Covered Time Frame.

Article VI.

Miscellaneous Provisions.

Section 6.01 Voluntariness.

This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any of the Parties, or of any other person, firm or other entity.

Section 6.02 No Publicity.

Plaintiff and Plaintiff's Counsel agree that they will not issue any press releases, initiate any contact with the press, respond to any press inquiry or have any communication with the press about this case and/or the fact, amount or terms of the settlement. In addition, Plaintiff's Counsel agree that they will not engage in any advertising or distribute any marketing materials that identify Defendant any information that suggests or reasonably would lead to the conclusion that the settlement involved Defendant, or the case number associated with the Litigation. Any communication about the settlement to Aggrieved Employees prior to the Court-approved mailing will be limited to a statement that a settlement has been reached and the details will be communicated in a forthcoming Court-approved notice. Defendant shall have the right to rescind this Agreement and the settlement, rendering it null and void, if Plaintiff or Plaintiff's Counsel violate the obligations in this section. Nothing herein shall limit Plaintiff's Counsel's right and obligation to communicate with Aggrieved Employees, the Court, and the LWDA about the settlement.

Section 6.03 Amendments.

The terms and provisions of this Agreement may be amended only by a written agreement that is both (a) signed by the Plaintiff, Plaintiff's Counsel, Defendant, and Defense Counsel who executed this Agreement, and (b) approved by the Court. Any waiver of any provision of this Agreement shall not constitute a waiver of any other provision of this Agreement unless expressly so indicated otherwise.

Section 6.04 Assignment.

None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any of the Parties, Aggrieved Employee, Plaintiff's Counsel, or Defense Counsel without the express written consent of each of the other Parties and their respective counsel. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under this Agreement, and shall not be construed to confer any right or to avail any remedy to any other person. Plaintiff expressly warrants that he has not transferred to any person or entity any right or cause of action, or claim released by this Agreement.

Section 6.05 Governing Law.

This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California.

Section 6.06 Entire Agreement.

This Agreement contains the entire understanding of the Parties hereto in respect of the subject matter contained herein. This Agreement supersedes all prior agreements and understandings among the Parties hereto with respect to the settlement of the Litigation, including all matters that were asserted in and/or reasonably arise from or are related to the claims in the letter of Plaintiff's Counsel to the LWDA dated February 11, 2021.

Section 6.07 Waiver of Compliance.

Any failure of any of the Parties, Plaintiff's Counsel, and/or Defense Counsel to comply with any obligation, covenant, agreement, or condition herein may be expressly waived in writing, to the extent permitted under applicable law, by the Parties and their respective counsel entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

Section 6.08 Counterparts.

This Agreement, and any amendments hereto, may be executed in any number of counterparts, and any of the Parties and/or their respective counsel may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. It shall not be

necessary in making proof of this Agreement or any counterpart hereof to produce or account for any of the other counterparts.

Section 6.09 Attorneys' Fees and Costs.

Except as expressly provided herein, Defendant and Plaintiff shall each bear their own attorneys' fees and costs.

Section 6.10 Dispute Resolution.

Should any dispute arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, the Parties agree to submit any such dispute to the Court for resolution. To the extent any of the Parties seeks to enforce any of the terms of this Agreement in Court or before the Court, the prevailing party shall be entitled to recover reasonable attorneys' fees and costs. The Parties agree there is no statutory right for any Aggrieved Employee to object, opt out or otherwise exclude himself or herself from the Settlement. The Parties further agree there is no right or opportunity for any Aggrieved Employee to appeal the approval of this Agreement by the Court, with the exception of Plaintiff. The Parties waive all appeals from an order granting approval of this Agreement and the settlement, unless the Court materially modifies the settlement. A modification of amounts payable in attorneys' fees below one-third of the Maximum Settlement Amount shall not constitute a material modification of the Settlement so long as the amounts payable in attorneys' fees is equal to or greater than 25% of the Maximum Settlement Amount. Defendant's payment obligations under this Agreement will be suspended pending an appeal of an order of the Court approving but materially modifying, or denying, the motion or stipulation for approval of the settlement.

Section 6.11 Binding.

This Agreement shall bind and inure to the benefit of the Parties hereto and to their respective successors, assigns, legatees, heirs, and personal representatives.

Section 6.11 Continuing Jurisdiction.

The Parties agree that upon the occurrence of the dismissal of the Complaint pursuant to the terms of this Agreement, this Agreement shall be enforceable by the Court pursuant to California Civil Procedure Code section 664.6, and the Court shall retain exclusive and continuing equity jurisdiction over the Litigation and all of the Parties and Aggrieved Employees to interpret and enforce the terms, conditions, and obligations of the Agreement.

[SIGNATURES ON NEXT PAGE]

ACCEPTED AND AGREED:

Dated: October 26, 2022

By H. Walters
Harold Walters (Oct 26, 2022 16:57 PDT)
HAROLD WALTERS

ASSOCIATED READY MIXED CONCRETE,
INC.

Dated: October 28, 2022

By [Signature]

APPROVED AS TO ATTORNEY OBLIGATIONS ONLY:

Dated: October 26, 2022

HAINES LAW GROUP, APC

By F. W. Schmidt
FLETCHER W. SCHMIDT
Attorneys for Plaintiff

Dated: October 28, 2022

PAUL HASTINGS LLP

By Stephen L. Berry
STEPHEN L. BERRY
Attorneys for Defendant

EXHIBIT A

NOTICE OF PAGA SETTLEMENT

Walters v. Associated Ready Mixed Concrete, Inc.
Los Angeles County Superior Court, Case Number 21STCV05326

PLEASE TAKE NOTICE that you have been identified as a person who was employed by Associated Ready Mixed Concrete, Inc. (the “Defendant”) in a non-exempt position in the State of California during all or some portion of the period from February 11, 2020 through **[COURT APPROVAL DATE]** (the “Aggrieved Employees”).

On February 10, 2021, Harold Walters (the “Plaintiff”) commenced a lawsuit seeking an award of civil penalties under the provisions of the California Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”) based on the primary claims that Defendant failed to (1) provide its employees with legally-compliant meal and rest periods, (2) reimburse employees for all necessary business expenses; (3) provide accurate itemized wage statements; and (4) maintain required records.

Defendant has denied the allegations in the lawsuit and maintains that at all material times it has complied with all applicable laws.

The Plaintiff and the Defendant reached a settlement of the lawsuit. The Court approved the settlement on **[COURT APPROVAL DATE]**. The payment, which accompanies this notice, is made to you pursuant to the terms of the Court-approved settlement.

The Court-approved settlement contains the following release of claims, to which you are bound:

Upon entry of the Order approving payment of the PAGA penalties as described in this Agreement, Plaintiff, all Aggrieved Employees, and the State of California shall be deemed to have fully, finally, and forever released, relinquished, and discharged each and all of the Released Parties from the Released Claims that arose during the Covered Time Frame.

“Released Parties” means Defendant and all of its former and present parents, subsidiaries, and affiliates, and its current and former officers, directors, employees, partners, shareholders and agents, and the predecessors and successors, assigns, and legal representatives of all such entities and individuals.

“Covered Time Frame” means from February 11, 2020 through **[COURT APPROVAL DATE]**.

“Released Claims” means any and all claims for civil penalties under the PAGA within the scope of or arising from the allegations of the Complaint, and specifically, all PAGA civil penalty claims for: (a) failure to provide meal and/or rest periods in accordance with applicable law, including payments for non-compliant meal and/or rest periods and alleged non-payment of wages for meal

periods worked and not taken; (b) failure to reimburse business expenses; (c) failure to provide accurate itemized wage statements; and (d) failure to maintain records (“Aggrieved Employees’ Released Claims”), arising during the Covered Time Frame. The Aggrieved Employees’ Released Claims specifically include claims meeting the above definitions under the following statutes: California Labor Code §§ 210, 226, 226.3, 226.7, 512, 516, 558, 1174, 1197.1, 2802, and 2804; and California Civil Procedure Code § 1021.5. The approval of this Settlement by the Court bars all Aggrieved Employees from bringing any of the Released Claims in any future proceeding and from participating in any proceeding seeking penalties under PAGA.

If you have any questions, please contact the Settlement Administrator at **[phone]** or counsel for the Plaintiff at (775) 853-6440.

PLEASE DO NOT CALL OR WRITE THE COURT ABOUT THIS NOTICE