

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

EDWARD GRAHAM, individually and on
behalf of all others similarly situated,

Plaintiff,

vs.

ROBERTSON'S READY MIX, INC., a
California Corporation; ROBERTSON'S
READY MIX, LTD, a California Limited
Partnership; and DOES 1 through 50, inclusive,

Defendants.

Case No. CIVSB 2128578

**PLAINTIFF'S FIRST AMENDED
CLASS ACTION COMPLAINT FOR
DAMAGES FOR:**

- (1) VIOLATION OF LABOR CODE § 226.7;
- (2) VIOLATION OF LABOR CODE § 226;
- (3) VIOLATION OF BUS. & PROF. CODE § 17200, *ET SEQ.*; AND
- (4) VIOLATION OF LABOR CODE § 2698, *ET SEQ.*

DEMAND OVER \$25,000

1 Plaintiff Edward Graham (“Plaintiff”), hereby submits this First Amended Class Action
2 Complaint against Defendants Robertson’s Ready Mix, LTD (collectively, “Defendants”), and Does 1-
3 50 (hereinafter collectively referred to as “Defendants”), as an individual and on behalf of the Class of
4 all other similarly situated current and former employees of Defendants for penalties and/or damages
5 for failure to provide off-duty meal breaks, failure to pay all wages due upon termination of
6 employment, and failing to accurately list all gross and net wages earned as follows:

7 **INTRODUCTION**

8 1. This class action is within the Court’s jurisdiction under California Labor Code §§ 201-
9 203, 226, and 226.7 and the Unfair Competition Law (the “UCL”), Business & Professions Code §
10 17200, *et seq.*.

11 2. This Complaint challenges systemic illegal employment practices resulting in violations
12 of the California Labor Code, IWC Wage Orders, and the UCL against employees of Defendants.

13 3. Plaintiff is informed and believes and based thereon alleges that Defendants jointly and
14 severally have acted intentionally and with deliberate indifference and conscious disregard to the rights
15 of all employees by failing to provide off-duty meal breaks, pay all wages due upon termination of
16 employment, and failing to accurately list all gross and net wages earned to Plaintiff and the Class.

17 4. Plaintiff is informed and believes and based thereon alleges that Defendants have
18 engaged in, among other things a system of willful violations of the California Labor Code by creating
19 and maintaining policies, practices and customs that knowingly deny employees the above stated rights
20 and benefits.

21 5. The policies, practices and customs of defendants described above and below have
22 resulted in unjust enrichment of Defendants that routinely adhere to the strictures of the California
23 Labor Code.

24 **JURISDICTION AND VENUE**

25 6. The Court has jurisdiction over the violations of the California Labor Code §§ 201-203,
26 226, 226.7, and 2698, *et seq.* the IWC Wage Orders, the UCL.

27 7. Venue is proper in San Bernardino County because Plaintiff worked for Defendants in
28 this County.

PARTIES

8. On or about June 16, 2021, Plaintiff began working for Defendants as an hourly, non-exempt Driver. On or about September 1, 2021, Plaintiff's employment ended. Plaintiff was and is the victim of the policies, practices, and customs of Defendants complained of in this action in ways that have deprived Plaintiff of the rights guaranteed by California Labor Code §§ 201-203, 226, 226.7, and 2698, *et seq.*, the IWC Wage Orders, and the UCL.

9. Plaintiff is informed and believes and based thereon alleges that Defendants are California Corporation and Partnership doing business in the State of California selling concrete.

10. Plaintiff is informed and believes and based thereon alleges that at all times herein mentioned Defendants and DOES 1 through 50 are and were business entities, individuals, and partnerships, licensed to do business and actually doing business in the State of California.

11. As such, and based upon all the facts and circumstances incident to Defendants' business in California, Defendants are subject to California Labor Code §§ 201-203, 226, 226.7, and 2698, *et seq.* the IWC Wage Orders, and the UCL.

12. Plaintiff does not know the true names or capacities, whether individual, partner or corporate, of the Defendants sued herein as DOES 1 through 50, inclusive, and for that reason, said Defendants are sued under such fictitious names, and Plaintiff prays for leave to amend this complaint when the true names and capacities are known. Plaintiff is informed and believes and based thereon alleges that each of said fictitious Defendants were responsible in some way for the matters alleged herein and proximately caused Plaintiff and members of the general public and class to be subject to the illegal employment practices, wrongs and injuries complained of herein.

13. At all times herein mentioned, each of said Defendants participated in the doing of the acts hereinafter alleged to have been done by the named Defendants; and furthermore, the Defendants, and each of them, were the agents, servants and employees of each of the other Defendants, as well as the agents of all Defendants, and at all times herein mentioned, were acting within the course and scope of said agency and employment.

14. Plaintiff is informed and believes and based thereon alleges that at all times material hereto, each of the Defendants named herein was the agent, employee, alter ego and/or joint venturer of, or working in concert with each of the other co-defendants and was acting within the course and

1 scope of such agency, employment, joint venture, or concerted activity. To the extent said acts,
2 conduct, and omissions were perpetrated by certain Defendants, each of the remaining Defendants
3 confirmed and ratified said acts, conduct, and omissions of the acting Defendants.

4 15. At all times herein mentioned, Defendants, and each of them, were members of, and
5 engaged in, a joint venture, partnership and common enterprise, and acting within the course and scope
6 of, and in pursuance of, said joint venture, partnership and common enterprise.

7 16. At all times herein mentioned, the acts and omissions of various Defendants, and each of
8 them, concurred and contributed to the various acts and omissions of each and all of the other
9 Defendants in proximately causing the injuries and damages as herein alleged. At all times herein
10 mentioned, Defendants, and each of them, ratified each and every act or omission complained of
11 herein. At all times herein mentioned, the Defendants, and each of them, aided and abetted the acts
12 and omissions of each and all of the other Defendants in proximately causing the damages as herein
13 alleged.

14 CLASS ACTION ALLEGATIONS

15 17. **Definition:** The named individual Plaintiff seeks class certification, pursuant to
16 California Code of Civil Procedure § 382, of a class of all current and former non-exempt employees
17 who worked for Defendants at any time during the period of time from October 5, 2017, through the
18 present, in the State of California (the "Class").

19 18. **Numerosity and Ascertainability:** The members of the Class are so numerous that
20 joinder of all members would be impractical, if not impossible. The identity of the members of the
21 Class is readily ascertainable by review of Defendants records, including payroll records. Plaintiff
22 alleges that Defendants: (a) failed to provide off-duty meal breaks in violation of Labor Code § 226.7,
23 the IWC Wage Orders, and the UCL; (b) failed to pay all wages due upon termination of employment
24 in violation of Labor Code §§ 201-203; and (c) failed to provide accurate, itemized wage statements in
25 violation of Labor Code § 226.

26 19. **Adequacy of Representation:** The named Plaintiff is fully prepared to take all
27 necessary steps to represent fairly and adequately the interests of the class defined above. Plaintiff's
28 attorneys are ready, willing and able to fully and adequately represent the class and individual Plaintiff.
Plaintiff's attorneys have prosecuted and settled wage-and-hour class actions in the past and currently

1 have a number of wage-and-hour class actions pending in California courts.

2 20. Defendants uniformly administered a corporate policy, practice of: (a) failing to provide
3 off-duty meal breaks in violation of Labor Code § 226.7, and the IWC Wage Orders; (b) failing to pay
4 all wages due upon termination of employment in violation of Labor Code §§ 201-203; and (c) failing
5 to provide accurate, itemized wage statements in violation of Labor Code § 226.

6 21. **Common Question of Law and Fact:** There are predominant common questions of law
7 and fact and a community of interest amongst Plaintiff and the claims of the Class concerning
8 Defendants: (a) failing to provide off-duty meal breaks in violation of Labor Code § 226.7, and the
9 IWC Wage Orders; (b) failing to pay all wages due upon termination of employment in violation of
10 Labor Code §§ 201-203; and (c) failing to provide accurate, itemized wage statements in violation of
11 Labor Code § 226.

12 22. **Typicality:** The claims of Plaintiff are typical of the claims of all members of the Class
13 in that Plaintiff has suffered the harm alleged in this Complaint in a similar and typical manner as the
14 Class members. Plaintiff and the Class was not provided off-duty meal breaks as well as premium pay
15 for failure to provide off-duty meal breaks. As a result, Defendants violated Labor Code §§201-203 by
16 failing to pay all wages due upon termination of employment. Additionally, Plaintiff and the Class
17 was not provided proper and accurate itemized wage statements identifying all gross and net wages
18 earned. As such, Plaintiff is a member of the Class and has suffered the alleged violations of
19 California Labor Code §§ 226.7, 201-203, and 226, the IWC Wage Orders, and the UCL.

20 23. The California Labor Code and upon which Plaintiff bases these claims is broadly
21 remedial in nature. These laws and labor standards serve an important public interest in establishing
22 minimum working conditions and standards in California. These laws and labor standards protect the
23 average working employee from exploitation by employers who may seek to take advantage of
24 superior economic and bargaining power in setting onerous terms and conditions of employment.

25 24. The nature of this action and the format of laws available to Plaintiff and members of the
26 Class identified herein make the class action format a particularly efficient and appropriate procedure
27 to redress the wrongs alleged herein. If each employee were required to file an individual lawsuit, the
28 corporate Defendants would necessarily gain an unconscionable advantage since it would be able to
exploit and overwhelm the limited resources of each individual Plaintiff with Defendants' vastly

1 superior financial and legal resources. Requiring each Class member to pursue an individual remedy
2 would also discourage the assertion of lawful claims by employees who would be disinclined to file an
3 action against their former and/or current employer for real and justifiable fear of retaliation and
4 permanent damage to their careers at subsequent employment.

5 25. The prosecution of separate actions by the individual class members, even if possible,
6 would create a substantial risk of (a) inconsistent or varying adjudications with respect to individual
7 Class members against the Defendants and which would establish potentially incompatible standards
8 of conduct for the Defendants, and/or (b) adjudications with respect to individual Class members
9 which would, as a practical matter, be dispositive of the interest of the other Class members not parties
10 to the adjudications or which would substantially impair or impede the ability of the Class members to
11 protect their interests. Further, the claims of the individual members of the Class are not sufficiently
12 large to warrant vigorous individual prosecution considering all of the concomitant costs and expenses.

13 26. Such a pattern, practice and uniform administration of corporate policy regarding illegal
14 employee compensation described herein is unlawful and creates an entitlement to recovery by the
15 Plaintiff and the Class identified herein, in a civil action, for unpaid meal period premium pay,
16 applicable penalties, reasonable attorneys' fees, and costs of suit according to the mandate of
17 California Labor Code § 226 and Code of Civil Procedure § 1021.5.

18 27. Proof of a common business practice or factual pattern, which the named PLAINTIFF
19 experienced and is representative of, will establish the right of each of the members of the Class to
20 recovery on the causes of action alleged herein.

21 28. The Class is commonly entitled to a specific fund with respect to the compensation
22 illegally and unfairly retained by Defendants. The Class is commonly entitled to restitution of those
23 funds being improperly withheld by Defendants. This action is brought for the benefit of the entire
24 class and will result in the creation of a common fund.

FIRST CAUSE OF ACTION

VIOLATION OF LABOR CODE §§201-203 and 226.7

(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)

27 29. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though
28 fully set for herein.

1 30. Plaintiff and other members of Class regularly worked shifts in excess of five (5) hours
2 per day and accordingly had a right to take a 30-minute off-duty meal period each shift worked in
3 excess of five (5) hours.

4 31. Defendants failed in their affirmative obligation to provide all of their employees,
5 including Plaintiff and other members of Class, the opportunity to take meal periods in accordance
6 with the mandates of the California Labor Code. Plaintiff and other members of Class were suffered
7 and permitted to work through legally required meal breaks and were denied the opportunity to take
8 their meal breaks. As such, Defendants are responsible for paying premium compensation for missed
9 meal periods pursuant to Labor Code § 226.7.

10 32. As a pattern and practice, Defendants regularly required employees to work through their
11 meal periods without proper compensation and denied Plaintiff and their employees the right to take
12 proper meal periods as required by law.

13 33. Such a pattern, practice and uniform administration of corporate policy as described
14 herein is unlawful and creates an entitlement to recovery by the Plaintiff and other members of Class
15 identified herein, in a civil action, for the unpaid balance of the unpaid premium compensation
16 pursuant to Labor Code § 226.7, including interest thereon, penalties and costs of suit.

17 34. Plaintiff is informed and believes and based thereon alleges that Defendants willfully
18 failed to pay employees who were not provided the opportunity to take meal breaks the premium
19 compensation set out in Labor Code § 226.7 and that Plaintiff and those employees similarly situated
20 are owed wages for the meal period violations set forth above. Plaintiff is informed and believes and
21 based thereon alleges Defendants' willful failure to provide Plaintiff and other members of Class the
22 wages due and owing them upon separation from employment results in a continued payment of wages
23 up to thirty (30) days from the time the wages were due. Therefore, Plaintiff and other members of
24 Class who have separated from employment are entitled to compensation pursuant to Labor Code §§
25 201-203.

26 **SECOND CAUSE OF ACTION**

27 **VIOLATION OF LABOR CODE § 226**

28 **(BY PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

 35. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though

1 fully set for herein.

2 36. Defendants failed in its affirmative obligation to provide accurate itemized wage
3 statements. Defendants, as a matter of policy and practice, did not provide accurate records in
4 violation of Labor Code § 226 by failing to provide accurate payroll records for Plaintiff and the Class.

5 37. Here, based on Defendants' failure to pay for meal break premium pay, the wage
6 statements did not accurately reflect the gross and net wages earned in violation of Labor Code
7 §266(a).

8 38. Such a pattern, practice and uniform administration of corporate policy as described
9 herein is unlawful and creates an entitlement to recovery by the Plaintiff and the Class identified
10 herein, in a civil action, for all damages or penalties pursuant to Labor Code § 226, including interest
11 thereon, attorneys' fees, and costs of suit according to the mandate of California Labor Code § 226.

12 **THIRD CAUSE OF ACTION**

13 **VIOLATION OF BUS. & PROF. CODE § 17200, *ET SEQ.***

14 **(PLAINTIFF AND THE CLASS AGAINST ALL DEFENDANTS)**

15 39. Plaintiffs re-allege and incorporate by reference the preceding paragraphs as though fully
16 set forth herein.

17 40. Defendant has engaged and continue to engage in unfair and unlawful business practices
18 in California by practicing, employing and utilizing the employment practices outlined above, include,
19 to wit, by failing to provide off-duty meal periods in violation of the California Labor Code and
20 applicable IWC Wage Orders.

21 41. Defendant's utilization of such unfair and unlawful business practices constitutes unfair,
22 unlawful competition and provides an unfair advantage over Defendant's competitors.

23 42. Plaintiffs seek individually and on behalf of other members of the Class similarly
24 situated, full restitution of monies, as necessary and according to proof, to restore any and all monies
25 withheld, acquired and/or converted by the Defendants by means of the unfair practices complained of
26 herein.

27 43. Plaintiffs are informed and believe, and based thereon allege, that at all times herein
28 mentioned Defendant has engaged in unlawful, deceptive and unfair business practices, as proscribed
by California Business and Professions Code § 17200, *et seq.*, including those set forth herein above

1 thereby depriving Plaintiffs and other members of the Class the minimum working condition standards
2 and conditions due to them under the California laws and the applicable IWC Wage Orders as
3 specifically described therein.

4 **FOURTH CASE OF ACTION**

5 **VIOLATION OF LABOR CODE § 2698, ET SEQ.**

6 **(BY PLAINTIFF AS PROXY FOR STATE OF CALIFORNIA AGAINST ALL DEFENDANTS)**

7 37. Plaintiff re-alleges and incorporates by reference the preceding paragraphs as though
8 fully set for herein.

9 38. Plaintiff brings this cause of action for violation of PAGA as a proxy for the State of
10 California and in this capacity, will seek penalties on behalf of all Aggrieved Employees from
11 September 29, 2020, through the present, for Defendant's violations of Labor Code sections 201-203,
12 226, and 226.7, arising from Defendant's practice and policy of failing to: (a) provide proper off-duty
13 meal breaks; (b) provide accurate, itemized wage statements; and (c) pay all wage due upon
14 termination.

15 39. On or about September 29, 2021, Plaintiff sent written notice to the California Labor &
16 Workforce Development Agency ("LWDA") of Defendant's violations of Labor Code sections 201-
17 203, 226, and 226.7, pursuant to PAGA. As of the date of the filing of this Complaint, the LWDA has
18 yet to provide notice to Plaintiffs as to whether it intends to investigate the violations provided for in
19 the written notice. In addition to the LWDA, Plaintiffs also sent their written notices to Defendant via
20 certified mail according to Labor Code section 2699.3.

21 40. As such, pursuant to Labor Code section 2699(a), Plaintiffs will seek recovery of any and
22 all applicable civil penalties for Defendant's violation of Labor Code sections 201-203, 226, and 226.7
23 for the time period described above, on behalf of the State of California and other Aggrieved
24 Employees

25 **PRAYER FOR RELIEF**

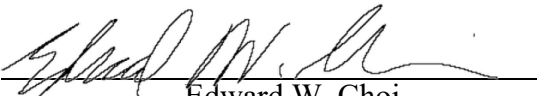
26 WHEREFORE, Plaintiff prays for judgment as an individual and on behalf of all others that
27 this suit is brought against Defendants, jointly and severally, as follows:

- 28 1. For an order certifying the proposed Class;
2. For an order appointing Plaintiff as the representatives of the Class as described herein;

3. For an order appointing counsel for Plaintiff as Class counsel;
4. Upon the First Cause of Action, for damages or penalties pursuant to statute as set forth in California Labor Code §§201-203, 226.7, and for costs;
5. Upon the Second Cause of Action, for damages and/or penalties pursuant to statute as set forth in California Labor Code § 226, and for costs and attorneys' fees;
6. Upon the Third Cause of Action, for restitution in the form of unpaid meal period premium wages and for costs;
7. Upon the Fourth Cause of Action, for civil penalties, costs and attorneys' fees pursuant to Labor Code §§ 226.3 and 2699;
8. On all causes of action, for attorneys' fees and costs as provided by California Labor Code §§ 218.5, 226, 2699 and Code of Civil Procedure § 1021.5; and
9. For such other and further relief as the Court may deem just and proper.

DATED: April 1, 2022

LAW OFFICES OF CHOI & ASSOCIATES

By: 
Edward W. Choi
Attorneys for PLAINTIFF and the CLASS