

Case Management Conference  
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Attorneys for Plaintiff WALTER L. RAINES,  
on behalf of himself and current and former aggrieved employees,

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

WALTER L. RAINES, on behalf of himself and  
current and former aggrieved employees,

Plaintiff,

vs.

LEHIGH HANSON SERVICES, LLC;  
CALAVERAS MATERIALS, INC.; MARTIN  
MARIETTA MATERIALS, INC.;  
HEIDELBERG CEMENT GROUP; and DOES  
1 to 100, inclusive,

Defendants.

Case No.: STK-CV-UOE-2023-0008803

**PAGA ACTION**

**PLAINTIFF WALTER L. RAINES'  
COMPLAINT FOR:**

- CIVIL PENALTIES PURSUANT  
TO THE PRIVATE ATTORNEYS  
GENERAL ACT OF 2004  
("PAGA"), LABOR CODE  
SECTIONS 2698, ET SEQ.**

**COMES NOW** Plaintiff WALTER L. RAINES ("Plaintiff"), who alleges and complains  
against Defendants LEHIGH HANSON SERVICES, LLC; CALAVERAS MATERIALS, INC.;  
MARTIN MARIETTA MATERIALS, INC.; HEIDELBERG CEMENT GROUP; and DOES 1 to  
100, inclusive (collectively "Defendants") as follows:

**I. INTRODUCTION**

- This is a Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*

1 (“PAGA”) representative action brought by Plaintiff on behalf of the State of California, himself  
2 and other current and former aggrieved employees of Defendants who worked as hourly non-  
3 exempt employees in California during the relevant time period seeking civil penalties associated  
4 with Defendants’ violation of the Labor Code based on Defendants’ failure to pay wages for all  
5 hours worked at the employees’ minimum wage rate, failure to pay reporting time pay, failure to  
6 permit or provide all legally required and/or legally compliant meal periods and/or pay meal  
7 period premium wages, failure to timely pay earned wages during employment, failure to provide  
8 complete and accurate wage statements, and failure to timely pay all unpaid wages following  
9 separation of employment. Plaintiff seeks on a representative basis, following notice to the Labor  
10 and Workforce Development Agency, civil penalties, reasonable attorneys’ fees pursuant to Labor  
11 Code section 2699(g)(1) and costs brought on behalf of Plaintiff, the State of California, and  
12 others aggrieved.

## 13 **II. JURISDICTION AND VENUE**

14 2. This Court has jurisdiction over the claims of Plaintiff and all other current and  
15 former aggrieved California-based hourly non-exempt employees because Plaintiff’s lawsuit seeks  
16 civil penalties on behalf of himself, all other current and former aggrieved California-based hourly  
17 non-exempt employees, and the State of California in excess of twenty-five thousand dollars  
18 (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-  
19 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former  
20 aggrieved California-based hourly non-exempt employees occurred in locations throughout  
21 California, including but not limited to San Joaquin County at 1945 Lathrop Rd, Manteca, CA  
22 95336.

23 3. In response to the COVID-19 pandemic, the Judicial Council of California enacted  
24 Emergency Rule 9 to the California Rules of Court, which provided that, notwithstanding any  
25 other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are  
26 tolled from April 6, 2020, until October 1, 2020.

## 27 **III. PARTIES**

28 4. Plaintiff brings this action as a representative of the Labor and Workforce

1 Development Agency on behalf of himself and other current and former employees subject to  
2 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is  
3 filed include current, former and/or future employees of Defendants who work, worked, or will  
4 work for Defendants as direct employees as well as temporary employees employed through temp  
5 agencies as hourly non-exempt employees in California. At all times mentioned herein, the  
6 currently named Plaintiff is and was domiciled and a resident and citizen of California and was  
7 employed by Defendants in an hourly position at Defendants' location in Manteca from  
8 approximately July 2018, until on or about June 30, 2022.

9         5. Plaintiff is informed and believes and thereon alleges that Defendant LEHIGH  
10 HANSON SERVICES, LLC is authorized to do business within the State of California and is  
11 doing business in the State of California and/or that Defendants DOES 1-25 are, and at all times  
12 relevant hereto were persons acting on behalf of Defendant LEHIGH HANSON SERVICES, LLC  
13 in the establishment of, or ratification of, the aforementioned illegal wage and hour practices or  
14 policies. Defendant LEHIGH HANSON SERVICES, LLC operates in San Joaquin County and  
15 employed Plaintiff and aggrieved employees in San Joaquin County, including but not limited to,  
16 at 1945 Lathrop Rd, Manteca, CA 95336.

17         6. Plaintiff is informed and believes and thereon alleges that Defendant  
18 CALAVERAS MATERIALS, INC. is authorized to do business within the State of California and  
19 is doing business in the State of California and/or that Defendants DOES 26-50 are, and at all  
20 times relevant hereto were persons acting on behalf of Defendant CALAVERAS MATERIALS,  
21 INC. in the establishment of, or ratification of, the aforementioned illegal wage and hour practices  
22 or policies. Defendant CALAVERAS MATERIALS, INC. operates in San Joaquin County and  
23 employed Plaintiff and aggrieved employees in San Joaquin County, including but not limited to,  
24 at 1945 Lathrop Rd, Manteca, CA 95336.

25         7. Plaintiff is informed and believes and thereon alleges that Defendant MARTIN  
26 MARIETTA MATERIALS, INC. is authorized to do business within the State of California and  
27 is doing business in the State of California and/or that Defendants DOES 51-70 are, and at all  
28 times relevant hereto were persons acting on behalf of Defendant MARTIN MARIETTA

1 MATERIALS, INC. in the establishment of, or ratification of, the aforementioned illegal wage  
2 and hour practices or policies. Defendant MARTIN MARIETTA MATERIALS, INC. operates in  
3 San Joaquin County and employed Plaintiff and aggrieved employees in San Joaquin County,  
4 including but not limited to, at 1945 Lathrop Rd, Manteca, CA 95336.

5 8. Plaintiff is informed and believes and thereon alleges that Defendant  
6 HEIDELBERG CEMENT GROUP is authorized to do business within the State of California and  
7 is doing business in the State of California and/or that Defendants DOES 71-100 are, and at all  
8 times relevant hereto were persons acting on behalf of Defendant HEIDELBERG CEMENT  
9 GROUP in the establishment of, or ratification of, the aforementioned illegal wage and hour  
10 practices or policies. Defendant HEIDELBERG CEMENT GROUP operates in San Joaquin  
11 County and employed Plaintiff and aggrieved employees in San Joaquin County, including but not  
12 limited to, at 1945 Lathrop Rd, Manteca, CA 95336.

13 9. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1  
14 through 50 are corporations, or are other business entities or organizations of a nature unknown to  
15 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted  
16 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and  
17 working conditions of employment of Plaintiff and aggrieved employees.

18 10. Plaintiff is informed and believes and thereon alleges that Defendants DOES 51  
19 through 100 are individuals unknown to Plaintiff. Each of the individual defendants is sued  
20 individually and in his or her capacity as an agent, shareholder, owner, representative, manager,  
21 supervisor, independent contractor and/or employee of each defendant who violated or caused to  
22 be violated the minimum wage and overtime provisions of the Labor Code and/or any provision of  
23 the Industrial Welfare Commission's wage orders regulating hours and days of work.

24 11. Plaintiff is unaware of the true names of Defendants DOES 1 through 100. Plaintiff  
25 sues said defendants by said fictitious names, and will amend this complaint when the true names  
26 and capacities are ascertained or when such facts pertaining to liability are ascertained, or as  
27 permitted by law or by the Court. Plaintiff is informed and believes that each of the fictitiously  
28 named defendants is in some manner responsible for the events and allegations set forth in this

1 complaint.

2 12. Plaintiff makes the allegations in this complaint without any admission that, as to  
3 any particular allegation, Plaintiff bears the burden of pleading, proving, or persuading and  
4 Plaintiff reserves all of Plaintiff's right to plead in the alternative.

5 **FIRST CAUSE OF ACTION**

6 **CIVIL PENALTIES PURSUANT TO THE PRIVATE ATTORNEYS GENERAL ACT OF**  
7 **2004, LABOR CODE SECTIONS 2698, ET SEQ.**

8 **(Against all Defendants by Plaintiff)**

9 13. Plaintiff incorporates all paragraphs above as though fully set forth herein.

10 14. During Plaintiff's employment and continuing through the present, Plaintiff alleges  
11 Defendants violated Labor Code sections 201, 202, 203, 204, 226, 226.7, 512, 1194, 1197, 1198,  
12 and the applicable Wage Orders.

13 15. Specifically, Defendants have committed the following violations of California  
14 Labor Code:

15 16. **Failure to pay wages for all hours worked at the legal minimum wage:**  
16 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt  
17 employees. In California, an employer is required to pay hourly employees for all "hours worked,"  
18 which includes all time that an employee is under control of the employer and all time the  
19 employee is suffered and permitted to work. This includes the time an employee spends, either  
20 directly or indirectly, performing services which inure to the benefit of the employer.

21 17. Labor Code sections 1194 and 1197 require an employer to compensate employees  
22 for all "hours worked" at least at a minimum wage rate of pay as established by the IWC and the  
23 Wage Orders.

24 18. In this case, Plaintiff and other current and former aggrieved California-based  
25 hourly non-exempt employees worked more minutes per shift than Defendants credited them with  
26 having worked. Specifically, Defendants failed to pay Plaintiff and other current and former  
27 aggrieved California-based hourly non-exempt employees all wages at the applicable minimum  
28 wage for all hours worked due to Defendants' policies, practices, and/or procedures including, but

1 not limited to:

2 (a) “Rounding” down or “shaving” Plaintiff’s and other current and former aggrieved  
3 California-based hourly non-exempt employees’ daily hours worked at the time of their clock-in  
4 and clock-out, including their clock-in and clock-out for meal breaks, to the nearest one-tenth of  
5 an hour, to the benefit of Defendants; and

6 (b) Requiring Plaintiff and other current and former aggrieved California-based hourly  
7 non-exempt employees to call in prior to the start shift to determine whether or not they were  
8 scheduled to work that day.

9 19. Therefore, Defendants suffered, permitted, and required Plaintiff and other current  
10 and former aggrieved California-based hourly non-exempt employees to be subject to Defendants’  
11 control without paying wages for that time. This resulted in Plaintiff and other current and former  
12 aggrieved California-based hourly non-exempt employees working time for which they were not  
13 compensated any wages, in violation of Labor Code sections 1194 and 1197 and the applicable  
14 Wage Order.

15 20. **Failure to provide reporting time pay:** Labor Code sections 1194, 1197, and  
16 1198, require an employer to pay “reporting time pay” under the applicable Wage Order. Wage  
17 Order 9 requires that when an “employee is required to report for work and does report, but is not  
18 put to work or is furnished less than half said employee's usual or scheduled day's work, the  
19 employee shall be paid for half the usual or scheduled day's work, but in no event for less than two  
20 (2) hours nor more than four (4) hours, at the employee's regular rate of pay, which shall not be  
21 less than the minimum wage.” See Wage Order 9 at § (5)(A).

22 21. Defendants required Plaintiff and all other current and former aggrieved California-  
23 based hourly non-exempt employees to call in prior to their start shift to determine whether they  
24 are scheduled to work that day.

25 22. Therefore, Defendants require Plaintiff and all other current and former aggrieved  
26 California-based hourly non-exempt employees to report for work and be put to work for less than  
27 half of their usual or scheduled day's work, but Defendants did not pay Plaintiff or all other current  
28 and former aggrieved California-based hourly non-exempt employees any reporting time pay.

23. Defendants' practice resulted in Plaintiff and all other current and former aggrieved California-based hourly non-exempt employees not receiving reporting time pay when required to work less than their half their usual schedule or scheduled day's work in compliance with California law.

**24. Failure to pay wages to hourly non-exempt employees for workdays that Defendants failed to provide legally required and compliant meal periods:** Plaintiff and other current and former aggrieved California-based hourly non-exempt employees regularly worked shifts of more than five (5) hours in length and shifts of more than ten (10) hours in length.

25. California law requires an employer to authorize or permit an employee an uninterrupted meal period of no less than thirty (30) minutes in which the employee is relieved of all duties and the employer relinquishes control over the employee's activities prior to the employee's sixth hour of work. Labor Code sections 226.7, 512; Wage Order 9 at §11; *Brinker Rest. Corp. v. Super Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004. An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second such meal period of not less than thirty (30) minutes prior to the start of the eleventh hour of work. *Id.* If the employee is not relieved of all duty during a meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. A paid "on duty" meal period is only permitted when: (1) the nature of the work prevents an employee from being relieved of all duty; and (2) the parties have a written agreement agreeing to on-duty meal periods.

26. If an employer fails to provide an employee a meal period in accordance with the law, the employer must pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday that a legally required and compliant meal period was not provided. Labor Code section 226.7; Wage Order 9 at §11.

27. In this case, Defendants failed to authorize or permit legally required and compliant meal periods to Plaintiff and other current and former aggrieved California-based hourly non-exempt employees due to Defendants' policies, practices, and/or procedures, including but not limited to:

(a) "Rounding" or "shaving" Plaintiff's and other current and former aggrieved

1 California-based hourly non-exempt employees' total daily hours at the time of their clock-in and  
2 clock-out for their meal breaks to the nearest one-tenth of an hour, to the benefit of Defendants.

3 28. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or  
4 procedure of failing to compensate Plaintiff and other current and former aggrieved California-  
5 based hourly non-exempt employees one (1) hour of pay at their regular rate of pay for each  
6 workday that Plaintiff and other current and former aggrieved California-based hourly non-exempt  
7 employees did not receive legally required and compliant meal periods, in violation of Labor Code  
8 section 226.7.

9 29. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff  
10 and other current and former aggrieved California-based hourly non-exempt employees not  
11 receiving wages to compensate them for workdays during which Defendants did not provide them  
12 with meal periods in compliance with California law.

13 30. **Failure to timely pay earned wages during employment:** In California, wages  
14 must be paid at least twice during each calendar month on days designated in advance by the  
15 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages  
16 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the  
17 16th and the 26th day of that month and wages earned between the 16th and the last day,  
18 inclusive, of any calendar month must be paid between the 1st and 10th day of the following  
19 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be  
20 paid within seven (7) calendar days following the close of the payroll period in which wages were  
21 earned. Labor Code section 204(d).

22 31. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed  
23 to timely pay Plaintiff's and other current and former aggrieved California-based hourly non-  
24 exempt employees' earned wages (including minimum wages, reporting time wages, and/or meal  
25 period premium wages), in violation of Labor Code section 204. Defendants' aforementioned  
26 policies, practices, and/or procedures resulted in their failure to pay Plaintiff's and other current  
27 and former aggrieved California-based hourly non-exempt employees' their earned wages within  
28 the applicable time frames outlined in Labor Code section 204.

1           **32. Failure to provide complete and accurate wage statements:** Labor Code section  
2 226, subdivision (a). Labor Code section 226(a) provides, *inter alia*, that, upon paying an  
3 employee his or her wages, the employer must “furnish each of his or her employees ... an  
4 itemized statement in writing showing (1) gross wages earned, (2) total hours worked by the  
5 employee, except for any employee whose compensation is solely based on a salary and who is  
6 exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of  
7 the Industrial Welfare Commission, (3) the number of piece-rate units earned and any applicable  
8 piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided, that all  
9 deductions made on written orders of the employee may be aggregated and shown as one item, (5)  
10 net wages earned, (6) the inclusive dates of the pay period for which the employee is paid, (7) the  
11 name of the employee and his or her social security number, (8) the name and address of the legal  
12 entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and  
13 the corresponding number of hours worked at each hourly rate by the employee.”

14           **33.** As a derivative of Plaintiff’s allegations above, Defendants’ failure to pay Plaintiff  
15 and other current and former aggrieved California-based hourly non-exempt employees all wages  
16 earned (including minimum wages, reporting time wages, and/or , meal period premium wages)  
17 rendered Plaintiff’s and other current and former aggrieved California-based hourly non-exempt  
18 employees’ wage statements inaccurate, in violation of Labor Code section 226.

19           **34. Failure to pay employees all wages due at time of termination/resignation:** An  
20 employer is required to pay all unpaid wages timely after an employee’s employment ends. The  
21 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)  
22 hours of resignation (Labor Code section 202).

23           **35.** Defendants committed direct violations of Labor Code section 203, because they  
24 failed to provide Plaintiff and other current and former aggrieved California-based hourly non-  
25 exempt employees’ their final wages in a timely manner as required by Labor Code section 203.  
26 Defendants did not pay Plaintiff’s and other current and former aggrieved California-based hourly  
27 non-exempt employees’ final wages until the pay period following the date of termination.

28           **36.** As a derivative of Plaintiff’s allegations above, because Defendants failed to pay

1 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees  
2 all their earned wages (including minimum wages, reporting time wages, and/or , meal period  
3 premium wages), Defendants failed to pay those employees timely after each employee's  
4 termination and/or resignation, in violation of Labor Code sections 201, 202, and 203.

5 37. Labor Code sections 2699, subdivisions (a) and (g) authorize an aggrieved  
6 employee, on behalf of himself or herself and other current or former employees, to bring a civil  
7 action to recover civil penalties against all Defendants pursuant to the procedures specified in  
8 Labor Code section 2699.3.

9 38. Plaintiff has complied with the procedures for bringing suit specified in Labor  
10 Code section 2699.3. On June 5, 2023, Plaintiff filed a PAGA Claim Notice with the LWDA and  
11 provided notice to Defendants by certified mail which provided notice of the specific provisions of  
12 the Labor Code alleged to have been violated, including the facts and theories to support the  
13 violations alleged.

14 39. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by  
15 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code  
16 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the  
17 parties notice within 60 days of the date of Plaintiff's PAGA Claim Notice that the LWDA intends  
18 to investigate Plaintiff's claims.

19 40. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil  
20 penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204, 226, 226.7, 512,  
21 1194, 1197, 1198, During Plaintiff's employment and continuing through the present, preceding  
22 Plaintiff sending the initial PAGA Claim Notice to the LWDA to the present, in the following  
23 amounts:

24 a. For violations of Labor Code sections 201, 202, 203, 204, 226.7, 512, and  
25 1198; one hundred dollars (\$100) for each aggrieved employee per pay period for the initial  
26 violation and two hundred dollars (\$200) for each aggrieved employee per pay period for each  
27 subsequent violation [penalty amounts established by Labor Code section 2699(f)(2)].

28 b. For violations of Labor Code section 226, two hundred fifty dollars (\$250)

1 for each employee for each pay period for the initial violation, and for each subsequent violation,  
2 one thousand dollars (\$1000) for each underpaid employee for each pay period [penalty amounts  
3 established by Labor Code section 226.3].

4 c. For violations of Labor Code section 1194 and 1197, one hundred dollars  
5 (\$100) for each underpaid employee for each pay period for the initial violation, and for each  
6 subsequent violation, two hundred fifty dollars (\$250) for each underpaid employee for each pay  
7 period [penalty amounts established by Labor Code section 1197.1].

8 41. Pursuant to Labor Code section 2699(g), Plaintiff is entitled to an award of  
9 reasonable attorneys' fees and costs in connection with his claims for civil penalties.

10 **PRAYER FOR RELIEF**

11 **WHEREFORE, PLAINTIFF, ON BEHALF OF HIMSELF AND ON OTHER**  
12 **AGGRIEVED EMPLOYEES, PRAYS AS FOLLOWS:**

13 **ON THE FIRST CAUSE OF ACTION:**

14 1. That Defendants be found to have violated the provisions of the Labor Code and  
15 the IWC Wages Orders as to the Plaintiff and aggrieved employees;

16 2. For any and all legally applicable penalties during the relevant statute of limitations  
17 subject to any permissible tolling, including but not limited to those recoverable under the  
18 California Labor Code, including but not limited to section 2699(f);

19 3. For attorneys' fees and costs of suit, including but not limited to those recoverable  
20 under California Labor Code section 2699(g); and

21 4. For such and other further relief, in law and/or equity, as the Court deems just or  
22 appropriate

23 Dated: August 15, 2023

Respectfully submitted,  
**LAVI & EBRAHIMIAN, LLP**

24 By:

  
\_\_\_\_\_  
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