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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

JEFFREY ANDERSON, as an individual
and on behalf of all others similarly
situated, and as a private attorney general,

Plaintiff,

vs.

NATIONAL READY MIXED
CONCRETE CO., a California
corporation; and DOES 1 through 50,
inclusive,

Defendants.

Case No. 2:23-cv-06111-HDV-E

**FIRST AMENDED CLASS AND
REPRESENTATIVE ACTION
COMPLAINT**

- (1) Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512);**
- (2) Failure to Provide Rest Periods
(Lab. Code § 226.7);**
- (3) Inaccurate Itemized Wage
Statements
(Lab. Code § 226(a));**
- (4) Unfair or Unlawful Business
Practices
(Bus. & Prof. Code §§ 17200 et seq.);
and**
- (5) Violations of the California Labor
Code
(Lab. Code §§ 2698 et seq.)**

DEMAND OVER \$25,000.00

1 On behalf of himself and other similarly situated current and former employees of
 2 Defendants, and as a proxy for the State of California, Plaintiff, Jeffrey Anderson,
 3 submits this First Amended Class and Representative Action Complaint (the
 4 “Complaint”) against Defendant, National Ready Mixed Concrete Co., and Does 1
 5 through 50 (collectively, “Defendants”).

6 INTRODUCTION

7 1. This class and representative action challenges systemic employment
 8 practices resulting in violations of the California Labor Code against individuals who
 9 worked for Defendants. Plaintiff is informed and believes that Defendants have jointly
 10 and severally acted intentionally and with deliberate indifference and conscious disregard
 11 to the rights of employees by failing to pay an additional hour of regular rate wages for
 12 missed, late, or interrupted meal periods and rest periods, failing to timely pay all wages
 13 during employment or upon termination of employment, and by failing to provide
 14 complete and accurate itemized wage statements. The Complaint seeks damages,
 15 penalties, and other relief pursuant to, among other provisions, Labor Code sections 201-
 16 204, 210, 218.5, 218.6, 226, 226.3, 226.7, 512, 558, 1198, and 2698 et seq. and the
 17 Unfair Competition Law, codified at Business and Professions Code sections 17200 et
 18 seq. (the “UCL”).¹

19 2. Plaintiff and other non-exempt employees regularly work shifts of at least
 20 3.5 hours requiring rest periods and shifts of more than 5.0 hours requiring meal periods.
 21 Plaintiff and other non-exempt employees also earn non-base hourly wages or other non-
 22 hourly, non-discretionary remuneration, including for example hourly “PTO” shift
 23 differentials. Defendants fail to consider such earnings when Plaintiff and other non-
 24 exempt employees’ meal periods and rest periods are missed, late, or interrupted.
 25 Specifically, rather than pay an additional hour of regular rate wages for a missed, late,
 26 or interrupted meal period or rest period, Defendants routinely underpay the additional
 27

28 ¹ Except as otherwise noted, all “Section” references are to the Labor Code.

1 hour of wages to Plaintiff and other non-exempt employees at their base hourly rates of
2 pay.

3 3. Because Plaintiff and other non-exempt employees are not paid an
4 additional hour of wages at their regular rates, Defendants routinely fail to timely pay
5 Plaintiff and other non-exempt employees all wages during employment or upon
6 separation of employment. Moreover, Defendants also routinely fail to furnish wage
7 statements that accurately show and itemize all applicable hourly rates in effect during
8 the pay period, gross wages earned, and net wages earned.

9 4. Plaintiff is informed and believes that Defendants have engaged in, among
10 other things, a system of willful violations of the Labor Code by creating and
11 maintaining policies, practices, and customs that knowingly deny its employees the
12 above stated rights and benefits.

13 5. The policies, practices, and customs of Defendants result in unjust
14 enrichment of Defendants and an unfair business advantage over businesses that comply
15 with the Labor Code.

16 JURISDICTION AND VENUE

17 6. Pursuant to the notice of removal filed by Defendants, this Court has
18 jurisdiction under 28 U.S.C. §§ 1332. Venue is proper in this Court pursuant to 28 U.S.C.
19 § 1391(b) as a substantial part of the events or omissions giving rise to the claim
20 occurred in this judicial district, and pursuant to 28 U.S.C. § 84(b) as Defendants
21 conducted business in the County of Los Angeles.

22 PARTIES

23 7. In September of 2013, Plaintiff began working for Defendants as a driver.
24 Until his employment ended in August of 2022, Plaintiff was paid on an hourly basis as a
25 non-exempt employee and earned non-base hourly wages or other non-hourly, non-
26 discretionary remuneration, including for example hourly “PTO” shift differentials.
27 When Plaintiff worked 3.5 hours in a workday, he regularly was not provided lawful rest
28 periods. Likewise, when Plaintiff worked more than 5.0 hours in a workday, he regularly

1 was not provided lawful meal periods. Plaintiff also was regularly not provided an
2 additional hour of regular rate wages for a missed, late, or interrupted meal period or rest
3 period but instead paid an additional hour of wages at his base hourly rate of pay.
4 Plaintiff was not timely paid all due wages during employment or upon separation of
5 employment and also was not provided with accurate itemized wage statements. Plaintiff
6 thus is a victim of the policies, practices, and customs of Defendants complained of in
7 this action in ways that have deprived him of the rights guaranteed by the Labor Code
8 and the UCL.

9 8. Plaintiff is informed and believes that National Ready Mixed Concrete Co.
10 was and is a California corporation. Plaintiff is informed and believes that at all times
11 herein mentioned named defendants and Does 1 through 50, were and are corporations,
12 business entities, individuals, or partnerships that are and were licensed to do business
13 and actually doing business in the State of California. Based upon all the facts and
14 circumstances incident to Defendants' business, Defendants are subject to Sections 201-
15 204, 226, 226.7, and 512, and the UCL.

16 9. Plaintiff does not know the true names or capacities of the defendants sued
17 herein as Does 1 through 50, whether individual, partner, or corporate, and for that
18 reason, said defendants are sued under such fictitious names. Plaintiff prays for leave to
19 amend this Complaint when the true names and capacities are known. Plaintiff is
20 informed and believes that each of said fictitious defendants was responsible in some
21 way for the matters alleged herein and proximately caused the illegal employment
22 practices, wrongs, and injuries complained of herein.

23 10. At all times mentioned herein, each of said Defendants participated in the
24 doing of the acts alleged herein. Defendants, and each of them, were the agents, servants,
25 or employees of each of the other Defendants, as well as the agents of all Defendants,
26 and were acting within the course and scope of said agency and employment.

27 11. Plaintiff is informed and believes that at all times material hereto, each of
28 said Defendants was the agent, employee, alter ego, or joint venturer of, or was working

1 in concert with, each of the other Defendants and was acting within the course and scope
 2 of such agency, employment, joint venture, or concerted activity. To the extent said acts,
 3 conduct, or omissions were perpetrated by certain Defendants, each of the remaining
 4 Defendants confirmed and ratified said acts, conduct, or omissions of the acting
 5 Defendants.

6 12. Plaintiff is informed and believes that at all times material hereto each of the
 7 Defendants (i) aided and abetted the acts and omissions of each of the other Defendants
 8 in proximately causing the alleged harms, or (ii) were members of, engaged in, and
 9 acting within the course and scope of, and in pursuance of, a joint venture, partnership,
 10 or common enterprise.

11 CLASS ACTION ALLEGATIONS

12 13. **Definition:** Pursuant to Code of Civil Procedure section 382, Plaintiff seeks
 13 class certification of the following classes: (i) all current and former non-exempt
 14 employees of Defendants in the State of California who have been paid an additional
 15 hour of pay for missed, late, or interrupted meal periods and rest periods in a workweek
 16 since June 15, 2019, in which they also earned non-base hourly wages or other non-
 17 hourly, non-discretionary remuneration, including for example hourly “PTO” shift
 18 differentials (the “Additional Hour Class”) and (ii) all current and former non-exempt
 19 employees of Defendants in the State of California who have been paid an additional
 20 hour of pay for missed, late, or interrupted meal periods and rest periods in a workweek
 21 since June 15, 2022, in which they also earned non-base hourly wages or other non-
 22 hourly, non-discretionary remuneration, including for example hourly “PTO” shift
 23 differentials (the “Wage Statement Class”). The Additional Hour Class and Wage
 24 Statement Class are collectively referred to as the “Class.”

25 14. **Numerosity and Ascertainability:** The members of the Class are so
 26 numerous that joinder of all members would be impractical, if not impossible. The
 27 identities of the members of the Class are readily ascertainable by review of Defendants’
 28 records, including payroll records. Plaintiff is informed and believes that Defendants

1 violated Sections 201-204, 226, 226.7, and 512, and the UCL against Plaintiff and the
2 Class by failing to pay an additional hour of regular rate wages for a missed, late, or
3 interrupted meal period or rest period, failing to timely pay all wages during employment
4 or upon separation of employment, and failing to provide complete and accurate itemized
5 wage statements.

6 **15. Adequacy of Representation:** Plaintiff is fully prepared to take all
7 necessary steps to represent fairly and adequately the interests of the Class defined
8 above. Plaintiff's attorneys are ready, willing, and fully and adequately able to represent
9 Plaintiff and the Class. Plaintiff's attorneys have prosecuted and settled wage-and-hour
10 class actions in the past and continue to litigate numerous wage-and-hour class actions
11 currently pending in California state and federal courts.

12 **16. Common Question of Law and Fact:** There are predominant common
13 questions of law and fact and a community of interest amongst the claims of Plaintiff and
14 of the Class. Plaintiff is informed and believes that Defendants uniformly administer a
15 corporate policy and practice of routinely failing to pay an additional hour of regular rate
16 wages for missed, late, or interrupted meal periods and rest periods, to timely pay all
17 wages during employment or upon separation of employment, or to provide complete
18 and accurate itemized wage statements.

19 **17. Typicality:** The claims of Plaintiff are typical of the claims of all members
20 of the Class in that Plaintiff suffered the alleged harms in a similar and typical manner as
21 other members of the Class suffered. As with other members of the Class, Plaintiff was
22 paid on an hourly basis as a non-exempt employee and also earned non-base hourly
23 wages or other non-hourly, non-discretionary remuneration, including for example
24 hourly "PTO" shift differentials. Plaintiff was regularly not provided an additional hour
25 of regular rate wages for a missed, late, or interrupted meal period or rest period but
26 instead paid an additional hour of wages at his base hourly rate of pay. Plaintiff was not
27 timely paid all due wages during employment or upon separation of employment and
28

1 also was not provided with accurate itemized wage statements. Plaintiff thus is a member
2 of the Class and has suffered the alleged violations of the Labor Code.

3 18. The Labor Code is broadly remedial in nature. Its laws serve an important
4 public interest in establishing minimum working conditions and requirements in
5 California. These labor standards protect employees from onerous terms and conditions
6 of employment or exploitation by employers who have superior economic and
7 bargaining power.

8 19. The nature of this action and the format of laws available to Plaintiff and
9 members of the Class make the class action format a particularly efficient and
10 appropriate procedure to redress the wrongs alleged herein. If each employee were
11 required to file an individual lawsuit, the corporate Defendants would necessarily gain an
12 unconscionable advantage since they would be able to exploit and overwhelm the limited
13 resources of each individual plaintiff with their vastly superior financial and legal
14 resources. Requiring each member of the Class to pursue an individual remedy would
15 also discourage the assertion of lawful claims by employees who would be disinclined to
16 file an action against their former or current employer for real and justifiable fear of
17 retaliation and permanent damage to their careers at their current or subsequent
18 employment.

19 20. The prosecution of separate actions by individual members of the Class,
20 even if possible, would create a substantial risk of (a) inconsistent or varying
21 adjudications with respect to individual members of the Class that would establish
22 potentially incompatible standards of conduct for Defendants, or (b) adjudications with
23 respect to individual members of the Class that would, as a practical matter, be
24 dispositive of, or substantially impair or impede the ability to protect, the interests of
25 other members of the Class not parties to the adjudications. Further, the claims of the
26 individual members of the Class are not sufficiently large to warrant vigorous individual
27 prosecution considering the concomitant costs and expenses.
28

21. Defendants' pattern, practice, and uniform administration of corporate policy in violation of the Labor Code is unlawful. Proof of a common business practice or factual pattern will establish the rights of Plaintiff and the Class under Sections 201-204, 210, 218.5, 218.6, 226, 226.7, 512, and 1198, applicable IWC Wage Orders, the UCL, and Code of Civil Procedure section 1021.5 to recover damages and restitution, including unpaid wages and interest thereon, applicable penalties, reasonable attorneys' fees, and costs of suit.

22. This action is brought for the benefit of the Class, which is commonly entitled to a specific fund with respect to the compensation illegally and unfairly retained by Defendants. The Class is commonly entitled to restitution of those funds being improperly withheld by Defendant.

FIRST CAUSE OF ACTION

Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512)

(By Plaintiff and the Additional Hour Class Against All Defendants)

23. The preceding paragraphs are re-alleged and incorporated by this reference.

24. Because Plaintiff and the Additional Hour Class were non-exempt employees, Defendants were required to comply with Sections 226.7 and 512 and the applicable IWC Wage Order. Section 512(a) generally prohibits employment of an individual for a work period of more than five hours per day without providing the employee with an uninterrupted, duty-free meal period of at least 30 minutes. Section 226.7(b) provides that an employer shall not require an employee to work during a meal period. Section 226.7(c) states that "the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."

25. As a matter of policy and practice, whenever Defendants pay an additional hour of wages to Plaintiff and the Additional Hour Class for missed, late, or interrupted meal periods, Defendants pay an additional hour of wages at the base hourly rate of pay. As a matter of policy and practice, in workweeks in which Plaintiff and the Additional

1 Hour Class earn non-base hourly wages or other non-hourly, non-discretionary
2 remuneration, including for example hourly “PTO” shift differentials, Defendants fail to
3 consider such wages when calculating the regular rate of pay for purposes of paying the
4 additional hour of wages. As such, Plaintiff and the Additional Hour Class are owed
5 additional wages for missed, late, or interrupted meal periods.

6 26. Moreover, all owing wages must be paid timely. Section 204 provides that
7 wages are generally due and payable no later than seven days after the end of a pay
8 period or at least twice during each calendar month, on days designated in advance as the
9 regular paydays. Section 201 provides that if an employer discharges an employee, the
10 wages earned and unpaid at the time of discharge are due and payable immediately.
11 Section 202 provides that an employee is entitled to receive all unpaid wages no later
12 than 72 hours after an employee quits his or her employment, unless the employee has
13 given seventy-two (72) hours previous notice of his or her intention to quit, in which case
14 the employee is entitled to his or her wages at the time of quitting. Section 203 provides
15 that if an employer willfully fails to pay wages owed in accordance with Sections 201
16 and 202, then the wages of the employee shall continue as a penalty from the due date,
17 and at the same rate until paid, but the wages shall not continue for more than thirty (30)
18 days.

19 27. Based on Defendants’ failure to pay an additional hour of wages to Plaintiff
20 and the Additional Hour Class for missed, late, or interrupted meal periods, and as a
21 matter of policy and practice, Defendants also fail to timely pay Plaintiff and the
22 Additional Hour Class all due wages. On information and belief, Defendants were
23 advised by skilled lawyers and knew, or should have known, of the mandates of the
24 Labor Code as it relates to Plaintiff’s allegations. Because Defendants willfully fail to
25 timely pay Plaintiff and the Additional Hour Class all wages due, Defendants are subject
26 to applicable penalties pursuant to Sections 203 and 210, among other Labor Code
27 provisions.
28

28. Such a pattern, practice, and uniform administration of corporate policy is unlawful and entitles Plaintiff and the Additional Hour Class to recover unpaid wages, including interest thereon, applicable penalties, attorneys' fees, and costs of suit.

SECOND CAUSE OF ACTION

Failure to Provide Rest Periods (Lab. Code § 226.7)

(By Plaintiff and the Additional Hour Class Against All Defendants)

29. The preceding paragraphs are re-alleged and incorporated by this reference.

30. Because Plaintiff and the Additional Hour Class were non-exempt employees, Defendants were required to comply with Section 226.7 and the applicable IWC Wage Order. Section 1198 makes unlawful conditions of labor that are prohibited by the applicable IWC Wage Order. The applicable laws generally require an employer to provide a duty-free, 10-minute rest period for every four hours worked, or major fraction thereof. Section 226.7(b) provides that an employer shall not require an employee to work during a rest period. Section 226.7(c) states that "the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided."

31. As a matter of policy and practice, whenever Defendants pay an additional hour of wages to Plaintiff and the Additional Hour Class for missed, late, or interrupted rest periods, Defendants pay an additional hour of wages at the base hourly rate of pay. As a matter of policy and practice, in workweeks in which Plaintiff and the Additional Hour Class earn non-base hourly wages or other non-hourly, non-discretionary remuneration, including for example hourly "PTO" shift differentials, Defendants fail to consider such wages when calculating the regular rate of pay for purposes of paying the additional hour of wages. As such, Plaintiff and the Additional Hour Class are owed additional wages for missed, late, or interrupted rest periods.

32. Moreover, all owing wages must be paid timely. Based on Defendants' failure to pay an additional hour of wages to Plaintiff and the Additional Hour Class for missed, late, or interrupted rest periods, and as a matter of policy and practice,

Defendants also fail to timely pay Plaintiff and the Additional Hour Class all due wages. On information and belief, Defendants were advised by skilled lawyers and knew, or should have known, of the mandates of the Labor Code as it relates to Plaintiff's allegations. Because Defendants willfully fail to timely pay Plaintiff and the Additional Hour Class all wages due, Defendants are subject to applicable penalties pursuant to Sections 203 and 210, among other Labor Code provisions.

33. Such a pattern, practice, and uniform administration of corporate policy is unlawful and entitles Plaintiff and the Additional Hour Class to recover unpaid wages, including interest thereon, applicable penalties, attorneys' fees, and costs of suit.

THIRD CAUSE OF ACTION

Inaccurate Itemized Wage Statements (Lab. Code § 226(a))

(By Plaintiff and the Wage Statement Class Against All Defendants)

34. The preceding paragraphs are re-alleged and incorporated by this reference.

35. Section 226(a) requires an employer to furnish to its employees itemized wage statements that show accurate information, including without limitation, all applicable hourly rates in effect during the pay period, gross wages earned, and net wages earned.

36. Defendants fail to provide accurate itemized wage statements to Plaintiff and the Wage Statement Class. Because of the above violations and as a matter of policy and practice, Defendants fail to furnish Plaintiff and the Wage Statement Class with wage statements that accurately show the applicable hourly rates in effect during the pay period, gross wages earned, and net wages earned.

37. Such a pattern, practice, and uniform administration of corporate policy is unlawful and entitles Plaintiff and the Wage Statement Class to recover applicable penalties, attorneys' fees, and costs of suit.

FOURTH CAUSE OF ACTION

Unfair or Unlawful Business Practices (Bus. & Prof. Code §§ 17200 et seq.)

(By Plaintiff and the Additional Hour Class Against All Defendants)

38. The preceding paragraphs are re-alleged and incorporated by this reference.

39. Plaintiff is informed and believes that at Defendants have engaged and continue to engage in unfair and unlawful business practices in California by utilizing the employment policies and practices alleged herein, including the failure to pay an additional hour of regular rate wages for missed, late, or interrupted meal periods and rest periods.

40. Defendants' utilization of such unfair and unlawful business practices constitutes unfair and unlawful competition and provides an unfair advantage over Defendants' competitors, as proscribed by the UCL. Defendants have deprived Plaintiff and the Additional Hour Class of the minimum working condition standards and conditions due to them under the Labor Code and applicable IWC Wage Orders.

41. Such a pattern, practice, and uniform administration of corporate policy is unlawful and entitles Plaintiff and the Additional Hour Class to full restitution of all monies withheld, acquired, or converted by means of the unfair practices complained of herein, including interest thereon, attorneys' fees, and costs of suit.

FIFTH CAUSE OF ACTION

Violation of California Labor Code (Lab. Code §§ 2698 et seq.)

(By Plaintiff as a Proxy for the State Against All Defendants)

42. The preceding paragraphs are re-alleged and incorporated by this reference.

43. Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code §§ 2698 et seq. ("PAGA"), Plaintiff brings this cause of action as a proxy for the State of California. In this capacity, Plaintiff seeks penalties for Defendants' violations of Sections 201-204, 226, 226.7, 512, and 1198 committed since June 2, 2022, against all aggrieved employees. Under Section 2699(c), Plaintiff is an "aggrieved employee," as

one or more of the alleged violations was committed against Plaintiff as an employee of Defendants.

44. As stated herein, Defendants fail to (i) pay an additional hour of regular rate wages for missed, late, or interrupted meal periods and rest periods, (ii) timely pay all wages during employment or upon termination of employment, and (iii) provide complete and accurate itemized wage statements.

45. On or about June 2, 2023, Plaintiff sent written notice to the Labor & Workforce Development Agency (“LWDA”) of specific facts and theories for Defendants’ violations of Sections 201-204, 226, 226.7, 512, and 1198. Plaintiff simultaneously sent written notice to Defendants via certified mail. As of the date of the filing of this Complaint, the LWDA has neither responded nor indicated that it intends to investigate the allegations in the written notice.

46. As such, pursuant to Section 2699(a), (f), and (g), Plaintiff seeks recovery of all applicable penalties for Defendants’ violations against all aggrieved employees for the period described above.

PRAYER FOR RELIEF

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

1. For an order certifying the proposed Classes;
2. For an order appointing Plaintiff as the representative of the Classes;
3. For an order appointing Counsel for Plaintiff as Class Counsel;
4. Upon the First Cause of Action for damages, including unpaid wages and interest thereon, penalties, and attorneys’ fees and costs;
5. Upon the Second Cause of Action for damages, including unpaid wages and interest thereon, penalties, and attorneys’ fees and costs;
6. Upon the Third Cause of Action for penalties, actual damages, and attorneys’ fees and costs;

