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SUMMONS ISSUED

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Per local Rule, This case is assigned to
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

IN AND FOR THE COUNTY OF CONTRA COSTA

JOSE SANTILLAN and JESUS NEVARRO,
on behalf of the State of California in Plaintiffs'
representative capacity as a private attorney
general,

Plaintiffs,

v.

NUMBER ONE CONCRETE READY MIX,
INC., a California corporation; A CUT ABOVE
SERVICES, INC., a California corporation; and
DOES 1-50, Inclusive,

Defendants.

Case No: C25-01406

REPRESENTATIVE ACTION
COMPLAINT FOR:

1) VIOLATIONS OF THE PRIVATE
ATTORNEYS GENERAL ACT [LABOR
CODE §§ 2698 ET SEQ.]

1 PLAINTIFFS JOSE SANTILLAN and JESUS NAVARRO ("PLAINTIFFS"), individuals,
2 in PLAINTIFFS' representative capacity and on behalf of Plaintiffs, the people of the State of
3 California, and as an "aggrieved employee" acting as a private attorney general under the Labor
4 Code Private Attorney General Act of 2004, Section 2699, *et seq.* ("PAGA") only, alleges on
5 information and belief, except for PLAINTIFFS' own acts and knowledge which are based on
6 personal knowledge, the following:

7 **INTRODUCTION**

8 1. PLAINTIFFS bring this action against Defendant NUMBER ONE CONCRETE
9 READY MIX, INC. ("Defendant Number One Concrete") and Defendant A CUT ABOVE
10 SERVICES, INC. ("Defendant A Cut Above") (collectively, "DEFENDANTS") seeking only to
11 recover PAGA civil penalties on behalf of all current and former aggrieved employees who worked
12 for DEFENDANTS. PLAINTIFFS do **not seek to recover anything other than penalties as**
13 **permitted by California Labor Code Section 2699.** To the extent that statutory violations are
14 mentioned for wage violations, PLAINTIFFS do not seek underlying general and/or special
15 damages for those violations, but simply the civil penalties permitted by California Labor Code
16 Section 2699.

17 2. California has enacted the PAGA which permits PLAINTIFFS to bring an action on
18 behalf of PLAINTIFFS and on behalf of others for PAGA penalties *only*, which is the precise and
19 sole nature of this action.

20 3. Accordingly, PLAINTIFFS seek to obtain all applicable relief for DEFENDANTS'
21 violations under PAGA and solely for the relief as permitted by PAGA that is, penalties and any
22 other relief the Court deems proper pursuant to PAGA. Nothing in this complaint should be
23 constructed as attempting to obtain any relief that would not be available in a PAGA- only action.

24 4. PLAINTIFFS bring this representative action pursuant to PAGA on behalf of the
25 Labor and Workforce Development Agency ("LWDA") and other current and former aggrieved
26 employees of DEFENDANTS for engaging in a pattern and practice of wage and hour violations
27 under the California Labor Code.

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5. PLAINTIFFS are informed and believe, and thereon allege, that DEFENDANTS decreased their employment-related costs by systematically violating California wage and hour laws.

6. DEFENDANTS' systematic pattern of wage and hour and Industrial Welfare Commission ("IWC") Wage Order violations toward PLAINTIFFS and other aggrieved employees in California include, *inter alia*:

- a. Failure to provide compliant meal and rest periods;
- b. Failure to allow employees to take duty-free meal and rest periods;
- c. Failure to pay all minimum, sick pay, regular and overtime wages;
- d. Failure to correctly calculate the regular rate of pay;
- e. Failure to pay within seven (7) days of the close of payroll;
- f. Failure to pay for all hours worked;
- g. Failure to maintain true and accurate records;
- h. Failure to reimburse for required business expenses;
- i. Failure to provide accurate itemized wage statements; and
- j. Failure to timely pay wages due during, and upon termination of employment.

7. PLAINTIFFS reserve the right to name additional representatives throughout the State of California.

THE PARTIES

8. Defendant NUMBER ONE CONCRETE READY MIX, INC. (“Defendant Number One Concrete”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

9. Defendant A CUT ABOVE SERVICES, INC. (“Defendant A Cut Above”) is a California corporation that at all relevant times mentioned herein conducted and continues to conduct substantial and regular business throughout California.

10. DEFENDANTS were the employer of PLAINTIFFS as evidenced by the documents issued to PLAINTIFFS and by the company for which PLAINTIFFS performed work.

/ / /

1 11. Defendant Number One Concrete and Defendant A Cut Above were the joint
2 employers of PLAINTIFFS and the AGGRIEVED EMPLOYEES as evidenced by the documents
3 issued to PLAINTIFFS and the AGGRIEVED EMPLOYEES, by the company PLAINTIFFS and
4 the AGGRIEVED EMPLOYEES performed work for respectively, and as these entities each
5 exerted control over the hours, wages and/or working conditions of PLAINTIFFS and the
6 AGGRIEVED EMPLOYEES. Therefore, Defendant Number One Concrete and Defendant A Cut
7 Above are therefore jointly responsible as employers for the conduct alleged herein as
8 “DEFENDANTS.”

9 12. DEFENDANTS own and operate a concrete and landscaping business in California,
10 including in the County of Contra Costa.

11 13. PLAINTIFF Jose Santillan was employed by DEFENDANTS in California from
12 April 2024 to October 2024, as a non-exempt employee, paid on an hourly basis, and entitled to the
13 legally required meal and rest periods and payment of minimum and overtime wages due for all
14 time worked.

15 14. PLAINTIFF Jesus Navarro was employed by DEFENDANTS in California from
16 June 2022 to October 2024, as a non-exempt employee, paid on an hourly basis, and entitled to the
17 legally required meal and rest periods and payment of minimum and overtime wages due for all
18 time worked.

19 15. PLAINTIFFS, and such persons who may be added from time to time who satisfy
20 the requirements and exhaust the administrative procedures under the PAGA, bring this
21 Representative Action on behalf of the State of California with respect to PLAINTIFFS and all
22 individuals who are or previously were employed by Defendant Number One Concrete and/or
23 Defendant A Cut Above in California and classified as non-exempt employees (“AGGRIEVED
24 EMPLOYEES”) during the time period of March 13, 2024, and the present (“PAGA PERIOD”).

25 16. PLAINTIFFS are “AGGRIEVED EMPLOYEES” within the meaning of Labor
26 Code Section 2699(c) because PLAINTIFFS were employed by DEFENDANTS and personally
27 suffered each of the alleged Labor Code violations committed by DEFENDANTS.

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17. PLAINTIFFS and all other AGGRIEVED EMPLOYEES are, and at all relevant times were, employees of DEFENDANTS, within the meanings set forth in the California Labor Code and the applicable IWC Wage Order.

18. Each of the fictitiously named defendants participated in the acts alleged in this Complaint. The true names and capacities of the Defendants named as DOES 1 THROUGH 50, inclusive, are presently unknown to PLAINTIFFS. PLAINTIFFS will amend this Complaint, setting forth the true names and capacities of these fictitiously named Defendants when their true names are ascertained. PLAINTIFFS are informed and believes, and on that basis alleges, that each of the fictitious Defendants have participated in the acts alleged in this Complaint.

19. DEFENDANTS, including DOES 1 THROUGH 50 (hereinafter collectively “DEFENDANTS”), were PLAINTIFFS’ employers or persons acting on behalf of PLAINTIFFS’ employer, within the meaning of California Labor Code Section 558, who violated or caused to be violated, a section of Part 2, Chapter 1 of the California Labor Code or any provision regulating hours and days of work in any order of the IWC and, as such, are subject to civil penalties for each underpaid employee, as set forth in Labor Code Section 558, at all relevant times.

20. DEFENDANTS were PLAINTIFFS' employer or persons acting on behalf of PLAINTIFFS' employer either individually or as an officer, agent, or employee of another person, within the meaning of California Labor Code Section 1197.1, who paid or caused to be paid to any employee a wage less than the minimum fixed by California state law, and as such, are subject to civil penalties for each underpaid employee.

JURISDICTION AND VENUE

21. This Court has jurisdiction over this Action pursuant to California Code of Civil Procedure, Section 410.10 and California Business and Professions Code, Section 17203. This Court has jurisdiction over AGGRIEVED EMPLOYEES' claims for civil penalties under the Private Attorney General Act of 2004, California Labor Code Section 2698, *et seq.*

22. Venue is proper in this Court pursuant to California Code of Civil Procedure, Sections 395 and 395.5, because DEFENDANTS (i) currently maintain and at all relevant times maintained offices and facilities in this County and/or conduct substantial business in this County,

1 and (ii) committed the wrongful conduct herein alleged in this County against AGGRIEVED
2 EMPLOYEES.

3 **THE CONDUCT**

4 23. In violation of the applicable sections of the California Labor Code and the
5 requirements of the IWC Wage Order, DEFENDANTS as a matter of company policy, practice,
6 and procedure, intentionally, knowingly, and systematically failed to provide legally compliant
7 meal and rest periods, failed to accurately compensate PLAINTIFFS and AGGRIEVED
8 EMPLOYEES for missed meal and rest periods, failed to pay PLAINTIFFS and AGGRIEVED
9 EMPLOYEES for all time worked, failed to compensate PLAINTIFFS and AGGRIEVED
10 EMPLOYEES for off-the-clock work, failed to pay PLAINTIFFS and AGGRIEVED
11 EMPLOYEES overtime at the correct regular rate of pay, failed to compensate PLAINTIFFS and
12 AGGRIEVED EMPLOYEES meal rest premiums at the regular rate, failed to reimburse
13 PLAINTIFFS and other AGGRIEVED EMPLOYEES for business expenses, and knowingly and
14 intentionally failed to issue to PLAINTIFFS and AGGRIEVED EMPLOYEES accurate itemized
15 wage statements showing, among other things, all applicable hourly rates in effect during the pay
16 periods and the corresponding amount of time worked at each hourly rate. DEFENDANTS'
17 uniform policies and practices are intended to purposefully avoid the accurate and full payment for
18 all time worked as required by California law which allows DEFENDANTS to illegally profit and
19 gain an unfair advantage over competitors who comply with the law. To the extent equitable tolling
20 operates to toll claims by the AGGRIEVED EMPLOYEES against DEFENDANTS, the PAGA
21 PERIOD should be adjusted accordingly.

22 **A. Meal Period Violations**

23 24. Pursuant to the IWC Wage Orders, DEFENDANTS were required to pay
24 PLAINTIFFS and AGGRIEVED EMPLOYEES for all their time worked, meaning the time during
25 which an employee is subject to the control of an employer, including all the time the employee is
26 suffered or permitted to work. From time to time during the PAGA PERIOD, DEFENDANTS
27 required PLAINTIFFS and AGGRIEVED EMPLOYEES to work without paying them for all the
28 time they were under DEFENDANTS' control. Specifically, DEFENDANTS required

1 PLAINTIFFS to work while clocked out during what was supposed to be PLAINTIFFS' off-duty
2 meal break. Indeed, there were many days where PLAINTIFFS did not even receive a partial lunch.
3 As a result, the PLAINTIFFS and other AGGRIEVED EMPLOYEES forfeited minimum wage and
4 overtime compensation by regularly working without their time being accurately recorded and
5 without compensation at the applicable minimum wage and overtime rates. DEFENDANTS'
6 uniform policy and practice not to pay PLAINTIFFS and other AGGRIEVED EMPLOYEES for
7 all time worked is evidenced by DEFENDANTS' business records.

8 25. During the PAGA PERIOD, as a result of their rigorous work schedules and
9 DEFENDANTS' inadequate staffing practices, PLAINTIFFS and other AGGRIEVED
10 EMPLOYEES were from time to time unable to take thirty (30) minute off-duty meal breaks and
11 were not fully relieved of duty for their meal periods. PLAINTIFFS and other AGGRIEVED
12 EMPLOYEES were from time to time required to perform work as ordered by DEFENDANTS for
13 more than five (5) hours during some shifts without receiving a meal break. Further, from time to
14 time DEFENDANTS failed to provide PLAINTIFFS and AGGRIEVED EMPLOYEES with a
15 second off-duty meal period for some workdays in which DEFENDANTS require these employees
16 to work ten (10) hours of work. The nature of the work performed by PLAINTIFFS and other
17 AGGRIEVED EMPLOYEES does not qualify for the limited and narrowly construed "on-duty"
18 meal period exception. When they were provided with meal periods, PLAINTIFFS and other
19 AGGRIEVED EMPLOYEES were, from time to time, required to remain on premises, on duty and
20 on call. DEFENDANTS' failure to provide PLAINTIFFS and the AGGRIEVED EMPLOYEES
21 with legally required meal breaks is evidenced by DEFENDANTS' business records. PLAINTIFFS
22 and AGGRIEVED EMPLOYEES therefore forfeit meal breaks without additional compensation
23 and in accordance with DEFENDANTS' strict corporate policy and practice.

24 **B. Rest Period Violations**

25 26. During the PAGA PERIOD, PLAINTIFFS and other AGGRIEVED EMPLOYEES
26 were from time to time also required to work in excess of four (4) hours without being provided ten
27 (10) minute rest periods as a result of their rigorous work requirements and DEFENDANTS'
28 inadequate staffing. Further, for the same reasons, these employees were from time to time denied

1 their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four
2 (4) hours, denied from time to time a first and second rest period of at least ten (10) minutes for
3 some shifts worked of between six (6) and eight (8) hours, and denied from time to time a first,
4 second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or
5 more. When they were provided with rest breaks, PLAINTIFFS and other AGGRIEVED
6 EMPLOYEES were, from time to time, required to remain on premises, on duty and/or on call.
7 PLAINTIFFS and other AGGRIEVED EMPLOYEES were also not provided with one-hour wages
8 *in lieu* thereof. As a result of their rigorous work schedules and DEFENDANTS' inadequate
9 staffing, PLAINTIFFS and other AGGRIEVED EMPLOYEES were from time to time denied their
10 proper rest periods by DEFENDANTS and DEFENDANTS' managers.

11 **C. Unreimbursed Business Expenses**

12 27. DEFENDANTS as a matter of corporate policy, practice, and procedure,
13 intentionally, knowingly, and systematically failed to reimburse and indemnify the PLAINTIFFS
14 and the other AGGRIEVED EMPLOYEES for required business expenses incurred by the
15 PLAINTIFFS and other AGGRIEVED EMPLOYEES in direct consequence of discharging their
16 duties on behalf of DEFENDANTS. Under California Labor Code Section 2802, employers are
17 required to indemnify employees for all expenses incurred in the course and scope of their
18 employment. California Labor Code Section 2802 expressly states that "an employer shall
19 indemnify his or her employee for all necessary expenditures or losses incurred by the employee in
20 direct consequence of the discharge of his or her duties, or of his or her obedience to the directions
21 of the employer, even though unlawful, unless the employee, at the time of obeying the directions,
22 believed them to be unlawful."

23 28. In the course of their employment, DEFENDANTS required PLAINTIFFS and
24 other AGGRIEVED EMPLOYEES to incur personal expenses as a result of and in furtherance of
25 their job duties for the use of their personal cell phones. Specifically, PLAINTIFFS and other
26 AGGRIEVED EMPLOYEES were required to use their own cell phones in order to perform work
27 related tasks. However, DEFENDANTS unlawfully failed to reimburse PLAINTIFFS and other
28 AGGRIEVED EMPLOYEES for the personal expenses incurred for the use of their personal cell

1 phones. As a result, in the course of their employment with DEFENDANTS, the PLAINTIFFS and
2 other AGGRIEVED EMPLOYEES incurred unreimbursed business expenses that included, but
3 were not limited to, costs related to the use of their personal cell phones all on behalf of and for the
4 benefit of DEFENDANTS.

5 **D. Wage Statement Violations**

6 29. California Labor Code Section 226 requires an employer to furnish its employees an
7 accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours
8 worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions,
9 (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the
10 name of the employee and only the last four digits of the employee's social security number or an
11 employee identification number other than a social security number, (8) the name and address of
12 the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay
13 period and the corresponding number of hours worked at each hourly rate by the employee.

14 30. From time to time during the PAGA PERIOD, when PLAINTIFFS and other
15 AGGRIEVED EMPLOYEES missed meal and rest breaks, or were paid inaccurately for missed
16 meal and rest period premiums, or were not paid for all hours worked, DEFENDANTS also failed
17 to provide PLAINTIFFS and other AGGRIEVED EMPLOYEES with complete and accurate wage
18 statements which failed to show, among other things, all deductions, the total hours worked and all
19 applicable hourly rates in effect during the pay period, and the corresponding amount of time
20 worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest
21 periods.

22 31. Further, DEFENDANTS from time to time failed to provide PLAINTIFFS and other
23 AGGRIEVED EMPLOYEES with wage statements that accurately provided the name and address
24 of the legal entity that is the employer, in violation of California Labor Code section 226(a)(8).

25 32. In addition to the foregoing, DEFENDANTS, from time to time, failed to provide
26 PLAINTIFFS and the AGGRIEVED EMPLOYEES with wage statements that comply with
27 California Labor Code Section 226(a)(1)-(9).

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33. As a result, DEFENDANTS issued PLAINTIFFS and AGGRIEVED EMPLOYEES with wage statements that violate California Labor Code Section 226. Further, DEFENDANTS' violations are knowing and intentional; they were not isolated due to an unintentional payroll error due to clerical or inadvertent mistake.

E. Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations

34. During the PAGA PERIOD, from time to time DEFENDANTS failed and continues to fail to accurately pay PLAINTIFFS and AGGRIEVED EMPLOYEES for all hours worked.

35. During the PAGA PERIOD, from time to time DEFENDANTS required PLAINTIFFS and AGGRIEVED EMPLOYEES to perform pre-shift or post-shift work. This resulted in PLAINTIFFS and AGGRIEVED EMPLOYEES having to work while off-the-clock.

36. DEFENDANTS directed and directly benefited from the undercompensated off-the-clock work performed by PLAINTIFFS and the other AGGRIEVED EMPLOYEES.

37. DEFENDANTS controlled the work schedules, duties, protocols, applications, assignments, and employment conditions of PLAINTIFFS and AGGRIEVED EMPLOYEES.

38. DEFENDANTS were able to track the amount of time PLAINTIFFS and AGGRIEVED EMPLOYEES spent working; however, DEFENDANTS failed to document, track, or pay PLAINTIFFS and AGGRIEVED EMPLOYEES all wages earned and owed for all the work they performed.

39. PLAINTIFFS and AGGRIEVED EMPLOYEES were non-exempt employees, subject to the requirements of the California Labor Code.

40. DEFENDANTS' policies and practices deprived PLAINTIFFS and the other AGGRIEVED EMPLOYEES of all minimum regular, overtime, and double time wages owed for the off-the-clock work activities. Because PLAINTIFFS and AGGRIEVED EMPLOYEES typically worked over forty (40) hours in a workweek, and more than eight (8) hours per day, DEFENDANTS' policies and practices also deprived them of overtime pay.

41. DEFENDANTS knew or should have known that PLAINTIFFS and AGGRIEVED EMPLOYEES' off-the-clock work was compensable under the law.

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1 42. As a result, PLAINTIFFS and AGGRIEVED EMPLOYEES forfeited wages due to
2 them for all hours worked at DEFENDANTS' direction, control, and benefit for the time spent
3 working while off-the-clock. DEFENDANTS' uniform policy and practice to not pay
4 PLAINTIFFS and AGGRIEVED EMPLOYEES wages for all hours worked in accordance with
5 applicable law is evidenced by DEFENDANTS' business records.

6 **F. Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and**
7 **Redeemed Sick Pay**

8 43. From time to time during the PAGA PERIOD, DEFENDANTS failed and continues
9 to fail to accurately calculate and pay PLAINTIFFS and the other AGGRIEVED EMPLOYEES for
10 their overtime and double time hours worked, meal and rest period premiums, and redeemed sick
11 pay. As a result, PLAINTIFFS and the other AGGRIEVED EMPLOYEES forfeited wages due to
12 them for working overtime without compensation at the correct overtime and double time rates,
13 meal and rest period premiums, and redeemed sick pay rates. DEFENDANTS' uniform policy and
14 practice not to pay PLAINTIFFS and the AGGRIEVED EMPLOYEES at the correct rate for all
15 overtime and double time worked, meal and rest period premiums, and redeemed sick pay in
16 accordance with applicable law is evidenced by DEFENDANTS' business records.

17 44. State law provides that employees must be paid overtime at one-and-one-half times
18 their "regular rate of pay." (Cal. Lab. Code § 510.) PLAINTIFFS and other AGGRIEVED
19 EMPLOYEES were compensated at an hourly rate plus incentive pay that was tied to specific
20 elements of an employee's performance.

21 45. The second component of PLAINTIFFS' and other AGGRIEVED EMPLOYEES'
22 compensation was DEFENDANTS' non-discretionary incentive program that paid PLAINTIFFS
23 and other AGGRIEVED EMPLOYEES' incentive wages based on their performance for
24 DEFENDANTS. The non-discretionary bonus program provided all employees paid on an hourly
25 basis with bonus compensation when the employees met the various performance goals set by
26 DEFENDANTS.

27 46. From time to time, when calculating the regular rate of pay, in those pay periods
28 where PLAINTIFFS and other AGGRIEVED EMPLOYEES worked overtime, double time, paid

1 meal and rest period premium payments, and/or redeemed sick pay, and earned non-discretionary
2 bonus, DEFENDANTS failed to accurately include the non-discretionary bonus compensation as
3 part of the employees' "regular rate of pay" and/or calculated all hours worked rather than just all
4 non-overtime hours worked. Management and supervisors described the incentive/bonus program
5 to potential and new employees as part of the compensation package. As a matter of law, the
6 incentive compensation received by PLAINTIFFS and other AGGRIEVED EMPLOYEES must be
7 included in the "regular rate of pay." The failure to do so has resulted in a systematic underpayment
8 of overtime and double time compensation, meal and rest period premiums, and redeemed sick pay
9 to PLAINTIFFS and other AGGRIEVED EMPLOYEES by DEFENDANTS. Specifically,
10 California Labor Code Section 246 mandates that paid sick time for non-exempt employees shall
11 be calculated in the same manner as the regular rate of pay for the workweek in which the non-
12 exempt employee uses paid sick time, whether or not the employee actually works overtime in that
13 workweek. DEFENDANTS' conduct, as articulated herein, by failing to include the incentive
14 compensation as part of the "regular rate of pay" for purposes of sick pay compensation was in
15 violation of California Labor Code Section 246 the underpayment of which is recoverable under
16 California Labor Code Sections 201, 202, 203 and/or 204.

17 47. In violation of the applicable sections of the California Labor Code and the
18 requirements of the IWC Wage Order, DEFENDANTS as a matter of company policy, practice,
19 and procedure, intentionally and knowingly failed to compensate PLAINTIFFS and AGGRIEVED
20 EMPLOYEES at the correct rate of pay for all overtime and double time worked, meal and rest
21 period premiums, and sick pay. This uniform policy and practice of DEFENDANTS is intended to
22 purposefully avoid the payment of the correct overtime and double time compensation, meal and
23 rest period premiums, and sick pay as required by California law which allowed DEFENDANTS
24 to illegally profit and gain an unfair advantage over competitors who complied with the law. To
25 the extent equitable tolling operates to toll claims by the AGGRIEVED EMPLOYEES against
26 DEFENDANTS, the PAGA PERIOD should be adjusted accordingly.

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1 **G. Sick Pay Violations**

2 48. California Labor Code Section 246 (a)(1) mandates that “An employee who, on or
3 after July 1, 2015, works in California for the same employer for 30 or more days within a year
4 from the commencement of employment is entitled to paid sick days as specified in this section.”
5 Further, California Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements.
6 From time to time, DEFENDANTS failed to have a policy or practice in place that provided
7 PLAINTIFFS and AGGRIEVED EMPLOYEES with sick days and/or paid sick leave. As of
8 January 1, 2024, DEFENDANTS failed to adhere to the law in that they failed to provide and allow
9 employees to use at least forty hours or five days of paid sick leave per year.

10 49. California Labor Code Section 246(i) requires an employer to furnish its employees
11 with written wage statements setting forth the amount of paid sick leave available. From time to
12 time, DEFENDANTS violated California Labor Code Section 246 by failing to furnish
13 PLAINTIFFS and AGGRIEVED EMPLOYEES with wage statements setting forth the amount of
14 paid sick leave available.

15 **H. Violations for Untimely Payment of Wages**

16 50. Pursuant to California Labor Code section 204, PLAINTIFFS and the AGGRIEVED
17 EMPLOYEES were entitled to timely payment of wages during their employment. PLAINTIFFS
18 and the AGGRIEVED EMPLOYEES, from time to time, did not receive payment of all wages,
19 including, but not limited to, overtime wages, minimum wages, meal period premium wages, and
20 rest period premium wages within the permissible time period.

21 51. Pursuant to California Labor Code Section 201, “If an employer discharges an
22 employee, the wages earned and unpaid at the time of discharge are due and payable immediately.”
23 Pursuant to California Labor Code Section 202, if an employee quits his or her employment, “his
24 or her wages shall become due and payable not later than 72 hours thereafter, unless the employee
25 has given 72 hours previous notice of his or her intention to quit, in which case the employee is
26 entitled to his or her wages at the time of quitting.” PLAINTIFFS and the AGGRIEVED
27 EMPLOYEES were, from time to time, not timely provided the wages earned and unpaid at the
28 time of their discharge and/or at the time of quitting, in violation of California Labor Code Sections

201 and 202. Further, DEFENDANTS' violations are willful and intentional; they were not isolated due to an unintentional payroll error due to clerical or inadvertent mistake.

52. As such, PLAINTIFFS demand up to thirty days of pay as penalty for not timely paying all wages due at time of termination for all AGGRIEVED EMPLOYEES whose employment ended during the PAGA PERIOD.

I. Unlawful Deductions

53. DEFENDANTS, from time to time unlawfully deducted wages from PLAINTIFFS and AGGRIEVED EMPLOYEES' pay without explanations and without authorization to do so or notice to PLAINTIFFS and the AGGRIEVED EMPLOYEES. As a result, DEFENDANTS violated Labor Code Section 221.

J. Unlawful Rounding Practices

54. During the PAGA PERIOD, DEFENDANTS did not have in place an immutable timekeeping system to accurately record and pay PLAINTIFFS and other AGGRIEVED EMPLOYEES for the actual time these employees worked each day, including overtime hours. Specifically, DEFENDANTS had in place an unlawful rounding policy and practice that resulted in PLAINTIFFS and AGGRIEVED EMPLOYEES being undercompensated for all of their time worked. As a result, DEFENDANTS were able to and did in fact unlawfully, and unilaterally round the time recorded in DEFENDANTS' timekeeping system for PLAINTIFFS and AGGRIEVED EMPLOYEES in order to avoid paying these employees for all their time worked, including the applicable overtime compensation for overtime worked. As a result, PLAINTIFFS and other AGGRIEVED EMPLOYEES, from time to time, forfeited compensation for their time worked by working without their time being accurately recorded and without compensation at the applicable overtime rates.

55. Further, the mutability of DEFENDANTS' timekeeping system and unlawful rounding policy and practice resulted in PLAINTIFFS and AGGRIEVED EMPLOYEES' time being inaccurately recorded. As a result, from time to time, DEFENDANTS' unlawful rounding policy and practice caused PLAINTIFFS and AGGRIEVED EMPLOYEES to perform work as

1 ordered by DEFENDANTS for more than five (5) hours during a shift without receiving an off-
2 duty meal break.

3 **K. Timekeeping Manipulation**

4 56. During the PAGA PERIOD, DEFENDANTS, from time to time, did not have an
5 immutable timekeeping system to accurately record and pay PLAINTIFFS and AGGRIEVED
6 EMPLOYEES for the actual time PLAINTIFFS and AGGRIEVED EMPLOYEES worked each
7 day, including regular time, overtime hours, sick pay, meal and rest breaks. As a result,
8 DEFENDANTS were able to and did in fact, unlawfully, and unilaterally alter the time recorded in
9 DEFENDANTS' timekeeping system for PLAINTIFFS and AGGRIEVED EMPLOYEES in order
10 to avoid paying these employees for all hours worked, applicable overtime compensation,
11 applicable sick pay, missed meal breaks and missed rest break.

12 57. As a result, PLAINTIFFS and AGGRIEVED EMPLOYEES, from time to time,
13 forfeited time worked by working without their time being accurately recorded and without
14 compensation at the applicable pay rates.

15 58. The mutability of the timekeeping system also allowed DEFENDANTS to alter
16 employee time records by recording fictitious thirty (30) minute meal breaks in DEFENDANTS'
17 timekeeping system so as to create the appearance that PLAINTIFFS and AGGRIEVED
18 EMPLOYEES clocked out for thirty (30) minute meal breaks when in fact the employees were not
19 at all times provided an off-duty meal break. This practice is a direct result of DEFENDANTS'
20 uniform policy and practice of denying employees uninterrupted thirty (30) minute off-duty meal
21 breaks each day or otherwise compensating them for missed meal breaks.

22 59. As a result, PLAINTIFFS and AGGRIEVED EMPLOYEES forfeited wages due to
23 them for all hours worked at DEFENDANTS' direction, control and benefit for the time the
24 timekeeping system was inoperable. DEFENDANTS' uniform policy and practice to not pay
25 PLAINTIFFS and AGGRIEVED EMPLOYEES wages for all hours worked in accordance with
26 applicable law is evidenced by DEFENDANTS' business records.

27 60. Specifically, as to PLAINTIFFS, PLAINTIFFS were from time to time unable to
28 take off-duty meal and rest breaks and was not fully relieved of duty for PLAINTIFFS' rest and

1 meal periods. PLAINTIFFS were required to perform work as ordered by DEFENDANTS for more
2 than five (5) hours during a shift without receiving an off-duty meal break. Further, DEFENDANTS
3 failed to provide PLAINTIFFS with a second off-duty meal period each workday in which
4 DEFENDANTS required PLAINTIFFS to work ten (10) hours of work. When DEFENDANTS
5 provided PLAINTIFFS with a rest break, they required PLAINTIFFS to remain on premises, on-
6 duty and on-call for the rest break. DEFENDANTS' policy caused PLAINTIFFS to remain on
7 premises, on-call and on-duty during what was supposed to be PLAINTIFFS' off-duty meal
8 periods. PLAINTIFFS therefore forfeited meal and rest breaks without additional compensation
9 and in accordance with DEFENDANTS' strict corporate policy and practice. Moreover,
10 DEFENDANTS also provided PLAINTIFFS with paystubs that failed to comply with California
11 Labor Code Section 226. Further, DEFENDANTS also failed to reimburse PLAINTIFFS for
12 required business expenses related to the personal expenses incurred for the use of PLAINTIFFS'
13 personal cell phone on behalf of and in furtherance of PLAINTIFFS' employment with
14 DEFENDANTS. The amount in controversy for PLAINTIFFS individually does not exceed the
15 sum or value of \$75,000.

16 **FIRST CAUSE OF ACTION**

17 **VIOLATION OF THE PRIVATE ATTORNEYS GENERAL ACT**

18 **(Cal. Lab. Code §§2698 *et seq.*)**

19 **(Alleged by PLAINTIFFS against all DEFENDANTS)**

20 61. PLAINTIFFS realleges and incorporates by this reference, as though fully set forth
21 herein, the prior paragraphs of this Complaint.

22 62. PAGA is a mechanism by which the State of California itself can enforce state labor
23 laws through the employee suing under the PAGA who do so as the proxy or agent of the state's
24 labor law enforcement agencies. An action to recover civil penalties under PAGA is fundamentally
25 a law enforcement action designed to protect the public and not to benefit private parties. The
26 purpose of the PAGA is not to recover damages or restitution, but to create a means of "deputizing"
27 citizens as private attorneys general to enforce the Labor Code. In enacting PAGA, the California
28 Legislature specified that "it was ... in the public interest to allow aggrieved employees, acting as

1 private attorneys general to recover civil penalties for Labor Code violations ..." (Stats. 2003, ch.
2 906, § 1.) Accordingly, PAGA claims cannot be subject to arbitration.

3 63. At all relevant times, for the reasons described herein and others, PLAINTIFFS and
4 the AGGRIEVED EMPLOYEES were aggrieved employees of DEFENDANTS within the
5 meaning of Labor Code Section 2699(c).

6 64. Labor Code Sections 2699(a) and (k) authorize an AGGRIEVED EMPLOYEE, like
7 PLAINTIFFS, on behalf of PLAINTIFFS and other current or former employees, to bring a civil
8 action to recover civil penalties pursuant to the procedures specified in Labor Code Section 2699.3

9 65. PLAINTIFFS complied with the procedures for bringing suit specified in Labor
10 Code Section 2699.3. By certified letter, return receipt requested, dated March 13, 2025,
11 PLAINTIFFS gave written notice to the Labor and Workforce Development Agency ("LWDA")
12 and to DEFENDANTS of the specific provisions of the Labor Code alleged to have been violated,
13 including the facts and theories to support the alleged violations. (See Exhibit #1.)

14 66. As of the date of this complaint, more than sixty-five (65) days after serving the
15 LWDA with notice of DEFENDANTS' violations, the LWDA has not provided any notice by
16 certified mail of its intent to investigate the DEFENDANTS' alleged violations as mandated by
17 Labor Code Section 2699.3(a)(2)(A). Accordingly, pursuant to Labor Code Section
18 2699.3(a)(2)(A), PLAINTIFFS may commence and is authorized to pursue this cause of action.

19 67. Pursuant to Labor Code Sections 2699(a) and (f), PLAINTIFFS and the
20 AGGRIEVED EMPLOYEES are entitled to civil penalties for DEFENDANTS' violations of
21 Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7,
22 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802 and
23 2804 in the following amounts:

24 a. For violation of Labor Code Sections 201, 202, 203, and 204, up to (\$200)
25 per AGGRIEVED EMPLOYEE per pay period [penalty per Labor Code
26 Section 2699(f)];

27 b. For violations of Labor Code Section 226(a), a civil penalty in the amount
28 of two hundred fifty dollars (\$250) for each AGGRIEVED EMPLOYEE for

any initial violation and one thousand dollars for each subsequent violation [penalty per Labor Code Section 226.3];

c. For violations of Labor Code Sections 204, a civil penalty in the amount of one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE for any initial violation and two hundred dollars (\$200) for AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 210];

d. For violations of Labor Code Sections 226.7, 510 and 512, a civil penalty in the amount of fifty dollars (\$50) for each underpaid AGGRIEVED EMPLOYEE for the initial violation and one hundred dollars (\$100) for each underpaid AGGRIEVED EMPLOYEE for each subsequent violation [penalty per Labor Code Section 558];

e. For violations of Labor Code Section 1174(d), a civil penalty in the amount of five hundred (\$500) dollars for each AGGRIEVED EMPLOYEE [penalty per Labor Code Section 1174.5].

f. For violations of Labor Code Sections 1194, 1194.2, 1197, 1198 and 1199, a civil penalty in the amount of one hundred dollars (\$100) for each AGGRIEVED EMPLOYEE per pay period for the initial violation and two hundred dollars fifty (\$250) for each AGGRIEVED EMPLOYEE per pay period for each subsequent violation [penalty per Labor Code Section 1197.1].

68. For all provisions of the Labor Code for which civil penalty is not specifically provided, Labor Code Section 2699(f) imposes upon DEFENDANTS a penalty of up to two hundred dollars (\$200) for each AGGRIEVED EMPLOYEE per pay period. PLAINTIFFS and the AGGRIEVED EMPLOYEES are entitled to an award of reasonable attorney's fees and costs in connection with their claims for civil penalties pursuant to Labor Code Section 2699(k)(1).

PRAYER FOR RELIEF

WHEREFORE, PLAINTIFFS pray for judgment against DEFENDANTS as follows:

1. For reasonable attorney's fees and costs of suit to the extent permitted by law, including pursuant to Labor Code Section 2699, *et seq.*;

1 2. For civil penalties to the extent permitted by law pursuant to the Labor Code under
2 the Private Attorneys General Act; and

3 3. For such other relief as the Court deems just and proper.
4

5 DATED: May 19, 2025

JCL LAW FIRM, APC

6 By: 
7 _____

Jean-Claude Lapuyade, Esq.
Attorney for PLAINTIFFS
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EXHIBIT 1

March 13, 2025

Via Online Filing to LWDA and Certified Mail to Defendants

Labor and Workforce Development Agency

Online Filing

NUMBER ONE CONCRETE READY MIX, INC.

c/o Sofia Birelas
870 E Travis Blvd Ste L
Fairfield, CA 94533

A CUT ABOVE SERVICES, INC.

c/o Sofia Birelas
870 E Travis Blvd Ste L
Fairfield, CA 94533

Sent via Certified Mail and Return Receipt No. 9589 0710 5270 2308 6627 03

Re: Notice of Violations of California Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, 2804, and Violation of Applicable Industrial Welfare Commission Wage Order(s), and Pursuant to California Labor Code Section 2699.5

Dear Sir/Madam:

This notice is being sent in compliance with California Labor Code Section 2699.3. Our offices represent Plaintiff JOSE SANTILLAN (“Plaintiff Santillan”) and Plaintiff JESUS NAVARRO (“Plaintiff Navarro”) (hereinafter, collectively, “Defendants”) and other aggrieved employees in a proposed lawsuit against Defendant NUMBER ONE CONCRETE READY MIX, INC (“Defendant Number One Concrete”), and Defendant A CUT ABOVE SERVICES, INC. (“Defendant A Cut Above”) (hereinafter, collectively, “Defendants”). Plaintiff Santillan was employed by Defendants in California from April 2024 to October 2024, as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks. Plaintiff Navarro was employed by Defendants in California from June 2022 through October 2024, as a non-exempt employee, paid on an hourly basis, and entitled to payment of all wages and the legally required meal and rest breaks.

Plaintiffs allege that within the past year, Plaintiffs personally suffered violations of the following Labor Code Sections as a result of Defendants’ failure to pay Plaintiffs for all time worked, provide Plaintiffs with compliant meal periods, provide Plaintiffs with compliant rest periods, provide Plaintiffs with accurate itemized wage statements that facially comply with the requirements

provided for in Labor Code Section 226, furnish wages to Plaintiffs with the frequency as set forth under Labor Code Section 204, and reimburse Plaintiffs for necessary business expenses pursuant to Labor Code Sections 201, 201.3, 202, 203, 204, 210, 218.5, 218.6, 221, 226, 226.2, 226.3, 226.7, 227.3, 246, 510, 512, 558, 1174(d), 1174.5, 1194, 1197, 1197.1, 1197.14, 1198, 1198.5, 1199, 2802, and 2804. These violations are actionable under California Labor Code Section 2699.3.

The information below provides notice to the Labor and Workforce Development Agency of the facts and theories supporting the alleged violations for the agency's reference. If the agency needs any further information, please do not hesitate to ask.

Plaintiffs seek to represent a group of aggrieved employees defined as any person currently or formerly employed by Defendant Number One Concrete and/or Defendant A Cut Above, who performed work in California and against whom one or more of the alleged violations listed above were committed during the relevant claim period ("Aggrieved Employees"). Plaintiffs believe this group to be comprised of all current and former non-exempt employees who performed work for Defendant Number One Concrete and/or Defendant A Cut Above in California during the period beginning one year prior to the date of this Notice and continuing through the present.

In violation of the applicable sections of the California Labor Code and the requirements of the Industrial Welfare Commission ("IWC") Wage Order, Defendants as a matter of company policy, practice, and procedure, intentionally, knowingly, and systematically failed to provide legally compliant meal and rest periods, failed to accurately compensate Plaintiffs and other Aggrieved Employees for missed meal and rest periods, failed to pay Plaintiffs and other Aggrieved Employees for all time worked, failed to compensate Plaintiffs and other Aggrieved Employees for off-the-clock work, failed to pay Plaintiffs and other Aggrieved Employees overtime at the correct regular rate of pay, failed to compensate Plaintiffs and other Aggrieved Employees meal and rest premiums at the regular rate of pay, failed to pay Plaintiffs and other Aggrieved Employees redeemed sick pay at the regular rate of pay, failed to reimburse Plaintiffs and other Aggrieved Employees for business expenses, and failed to issue to Plaintiffs and other Aggrieved Employees accurate itemized wage statements showing, among other things, all applicable hourly rates in effect during the pay periods and the corresponding amount of time worked at each hourly rate. Defendants' uniform policies and practices are intended to purposefully avoid the accurate and full payment for all time worked as required by California law which allows Defendants to illegally profit and gain an unfair advantage over competitors who comply with the law.

Meal Period Violations: Pursuant to the Industrial Welfare Commission Wage Orders, Defendants were required to pay Plaintiffs and the Aggrieved Employees for all their time worked, meaning the time during which an employee is subject to the control of an employer, including all the time the employee is suffered or permitted to work. From time to time during the last year, Defendants required Plaintiffs and other Aggrieved Employees to work without paying them for all the time they were under Defendants' control. Specifically, Defendants required Plaintiffs to work while clocked out during what was supposed to be Plaintiffs' off-duty meal break. Indeed, there were many days where Plaintiffs did not even receive a partial lunch. As a result, Plaintiffs and other Aggrieved Employees forfeited minimum wage and overtime compensation by regularly working without their time being accurately recorded and without compensation at the applicable minimum wage and overtime rates. Defendants' uniform policy and practice not to pay Plaintiffs and other Aggrieved Employees for all time worked is evidenced by Defendants' business records.

During the last year, as a result of their rigorous work schedules and Defendants' inadequate staffing practices, Plaintiffs and other Aggrieved Employees were from time to time unable to take thirty (30) minute off duty meal breaks and were not fully relieved of duty for their meal periods. Plaintiffs and other Aggrieved Employees were required to perform work as ordered by Defendants for more than five (5) hours during some shifts without receiving a meal break. Further, Defendants failed to provide Plaintiffs and other Aggrieved Employees with a second off-duty meal period for some workdays in which these employees were required by Defendants to work ten (10) hours of work. The nature of the work performed by Plaintiffs and other Aggrieved Employees does not qualify for the limited and narrowly construed "on-duty" meal period exception. When they were provided with meal periods, Plaintiffs and other Aggrieved Employees were, from time to time, required to remain on duty and on call. Defendants' failure to provide Plaintiffs and other Aggrieved Employees with legally required meal breaks is evidenced by Defendants' business records. As a result of their rigorous work schedules and Defendants' inadequate staffing, Plaintiffs and other Aggrieved Employees therefore forfeited meal breaks without additional compensation and in accordance with Defendants' strict corporate policy and practice.

Rest Period Violations: From time to time during the past year, Plaintiffs and other Aggrieved Employees were also required to work in excess of four (4) hours without being provided ten (10) minute rest periods as a result of their rigorous work requirements and Defendants' inadequate staffing. Further, for the same reasons, these employees were from time to time denied their first rest periods of at least ten (10) minutes for some shifts worked of at least two (2) to four (4) hours, from time to time denied a first and second rest period of at least ten (10) minutes for some shifts worked of between six (6) and eight (8) hours, and from time to time denied and a first, second and third rest period of at least ten (10) minutes for some shifts worked of ten (10) hours or more. When they were provided with rest breaks, Plaintiffs and other Aggrieved Employees were, from time to time, required to remain on premises, on duty and/or on call, and not fully relieved of all duties. Plaintiffs and other Aggrieved Employees were also not provided with one-hour wages in lieu thereof. As a result of their rigorous work schedules and Defendants' inadequate staffing, Plaintiffs and other Aggrieved Employees were from time to time denied their proper rest periods by Defendants and Defendants' managers.

Unreimbursed Business Expenses: Defendants as a matter of corporate policy, practice, and procedure, intentionally, knowingly, and systematically failed to reimburse and indemnify the Plaintiffs and other Aggrieved Employees for required business expenses incurred by the Plaintiffs and other Aggrieved Employees in direct consequence of discharging their duties on behalf of Defendants. Under California Labor Code Section 2802, employers are required to indemnify employees for all expenses incurred in the course and scope of their employment. California Labor Code Section 2802 expressly states that "an employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer, even though unlawful, unless the employee, at the time of obeying the directions, believed them to be unlawful."

Within the last year, in the course of their employment, Defendants required Plaintiffs and other Aggrieved Employees to incur personal expenses as a result of and in furtherance of their job duties for the use of their personal cell phones. Specifically, Plaintiffs and other Aggrieved

Employees were required to incur personal expenses for the use of their personal cell phones in order to communicate with supervisors and use GPS and other navigation tools to complete essential job duties. However, Defendants unlawfully failed to reimburse Plaintiffs and other Aggrieved Employees for the personal expenses incurred for the use of their personal cell phones. As a result, in the course of their employment with Defendants, the Plaintiffs and other Aggrieved Employees incurred unreimbursed business expenses that included, but were not limited to, costs related to the personal expenses incurred for the use of their personal cell phones, all on behalf of and for the benefit of Defendants.

Wage Statement Violations: California Labor Code Section 226 requires an employer to furnish its employees and accurate itemized wage statement in writing showing (1) gross wages earned, (2) total hours worked, (3) the number of piece-rate units earned and any applicable piece-rate, (4) all deductions, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of the employee's social security number or an employee identification number other than a social security number, (8) the name and address of the legal entity that is the employer, and (9) all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee. From time to time during the last year, when Plaintiffs and other Aggrieved Employees missed meal and rest breaks, or were paid inaccurately for missed meal and rest period premiums, or were not paid for all hours worked, Defendants also failed to provide Plaintiffs and other Aggrieved Employees with complete and accurate wage statements which failed to show, among other things, all deductions, the total hours worked and all applicable hourly rates in effect during the pay period, and the corresponding amount of time worked at each hourly rate, correct rates of pay for penalty payments or missed meal and rest periods. Defendants also failed to provide Plaintiffs and other Aggrieved Employees with complete and accurate wage statements that included all required elements listed above. Specifically, Defendants from time to time failed to provide Plaintiff and other Aggrieved Employees with wage statements that accurately provided the name and address of the legal entity that is the employer, in violation of California Labor Code section 226(a)(8). As a result, Defendants issued Plaintiffs and other Aggrieved Employees with wage statements that violate California Labor Code Section 226. Further, Defendants' violations are knowing and intentional; they were not isolated due to an unintentional payroll error due to clerical or inadvertent mistake.

In the example below, paystubs received by Plaintiff Santillan from Defendant A Cut Above do not contain the employer's complete address, as it fails to include the employer's city:

A CUT ABOVE SERVICES, INC.
1101 Loveridge Road
CA 94565

J GUADALUPE SANTILLAN

Employee Pay Stub		Check number: 647	Pay Period: 05/20/2024 - 05/26/2024	Pay Date: 05/31/2024
Employee		J GUADALUPE SANTILLAN, [REDACTED]	SSN	***-**-****
Earnings and Hours	Qty	Rate	Current	YTD Amount
Hourly	19.45	35.00	681.25	901.25

Additionally, in paystubs received by Plaintiff Santillan from Defendant Number One Concrete, the address does not match the address listed on the California Secretary of State:

NUMBER ONE CONCRETE READY MIX, INC. PO Box 3094 Walnut Creek, CA 94598				Barrett Business Services, Inc. 1760 Creekside Oaks Drive, Suite 150 Sacramento, CA 95833 FEIN: 52-0812977 TELE: 916/256-1000			
Employee	M60390 Jesus Navarro	XXX-XX-XXXX	916800				
Status / Allow	MJ / Ma	Emp Type	Hourly	Check #	0027884277		
Payment Date	01-12-2024	Period	01-01-2024 - 01-05-2024				
Location	Description	Rate	Hours/Units	Amount	HRSWRK	PRJCT	
NUMBER ONE	REGULAR PAY	30.5000	24.00	732.00	24.00		
NUMBER ONE	OVERTIME	45.7500	8.25	377.44	8.25		
NUMBER ONE	DOUBLETIME	61.0000	0.50	30.50	0.50		
				Description	Amount	Y-T-D	Taxable
				FEDERAL TAX	1.69	1.69	1139.94
				MEDICARE	16.53	16.53	1139.94
				SOC SECURITY	70.68	70.68	1139.94
				CA INCOME TAX	11.73	11.73	1139.94
				CA DISABILITY	12.54	12.54	1139.94

NUMBER ONE CONCRETE READY MIX, INC. (4082054)

Request Certificate

Initial Filing Date	11/08/2017
Status	Active
Standing - SOS	Good
Standing - FTB	Good
Standing - Agent	Good
Standing - VCFCF	Good
Formed In	CALIFORNIA
Entity Type	Stock Corporation - CA - General
Principal Address	1101 LOVERIDGE ROAD PITTSBURG, CA 94565
Mailing Address	PO BOX 3095 WALNUT CREEK, CA 94596
Statement of Info Due Date	11/30/2024
Agent	Individual Sofia Birelas 870 E TRAVIS BLVD STE L FAIRFIELD, CA 94533

Off-the-Clock Work Resulting in Minimum Wage and Overtime Violations: During the last year, from time-to-time, Defendants failed and continue to fail to accurately pay Plaintiffs and other Aggrieved Employees for all hours worked. During the last year, from time-to-time Defendants required Plaintiffs and other Aggrieved Employees to perform pre-shift or post-shift work. This resulted in Plaintiffs and other Aggrieved Employees having to work while off-the-clock. Defendants directly benefited from the undercompensated off-the-clock work performed by Plaintiffs and other Aggrieved Employees. Defendants controlled the work schedules, duties, and protocols, applications, assignments, and employment conditions of Plaintiffs and other Aggrieved Employees.

Defendants were able to track the amount of time Plaintiffs and other Aggrieved Employees spent working; however, Defendants failed to document, track, or pay Plaintiffs and other Aggrieved Employees all wages earned and owed for all the work they performed. Plaintiffs and other Aggrieved Employees were non-exempt employees, subject to the requirements of the California Labor Code. Defendants' policies and practices deprived Plaintiffs and other Aggrieved Employees of all minimum regular, overtime, and double time wages owed for the off-the-clock work activities. Because Plaintiffs and other Aggrieved Employees typically worked over forty (40) hours in a workweek, and more than eight (8) hours per day, Defendants' policies and practices also deprived them of overtime pay.

Defendants knew or should have known that Plaintiffs' and other Aggrieved Employees' off-the-clock work was compensable under the law. As a result, Plaintiffs and other Aggrieved Employees forfeited wages due to them for all hours worked at Defendants' direction, control, and benefit for the time spent working while off-the-clock, including but not limited to, undergoing pre-shift and post-shift work. Defendants' uniform policy and practice to not pay Plaintiffs and other Aggrieved Employees wages for all hours worked in accordance with applicable law is evidenced by Defendants' business records.

Regular Rate Violation – Overtime, Double Time, Meal and Rest Period Premiums, and Redeemed Sick Pay: From time to time during the last year, Defendants failed and continue to fail to accurately calculate and pay Plaintiffs and other Aggrieved Employees for their overtime and double time hours worked, meal and rest period premiums, and redeemed sick pay. As a result, Plaintiffs and other Aggrieved Employees forfeited wages due to them for working overtime without compensation at the correct overtime and double time rates, meal and rest period premiums, and redeemed sick pay rates. Defendants' uniform policy and practice not to pay Plaintiffs and other Aggrieved Employees at the correct rate for all overtime and double time worked, meal and rest period premiums, and sick pay in accordance with applicable law is evidenced by Defendants' business records.

In the example below, Plaintiff Santillan worked for approximately 57 hours and 47 minutes during the pay period of May 20, 2024, through May 26, 2024, according to his time records. Under California Law, as this is above 8 hours per day and/or 40 hours per week, the additional time should be compensated at 1.5 times Plaintiff's regular rate of pay. However, he was compensated for these hours in two separate pay stubs under two separate entity names. One paystub was from Defendant Number One Concrete, and compensated Plaintiff Santillan at a rate of \$30 per hour for approximately 38.25 hours. The other paystub was from Defendant A Cut Above, where he was compensated for the remaining 19 hours and 45 minutes at a rate of \$35 per hour. Neither of these

two paystubs include the overtime payment at the correct regular rate of pay. As a result of the foregoing, Defendant also violated California Labor Code section 226(a)(9) by failing to include all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee on his wage statement.

No. 9

Name J. Guadalupe Santillan

Pay Period Ending 5-26-2024

Signature [Signature]

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Day	IN	OUT	Day	IN	OUT
MONDAY Day 1	MAY 20 AM 6:21	MAY 20 PM 12:34	TUESDAY Day 2	MAY 21 AM 6:12	MAY 21 PM 7:57
WEDNESDAY Day 3	MAY 22 AM 6:55	MAY 22 PM 3:48	THURSDAY Day 4	MAY 23 AM 6:24	MAY 23 PM 4:40
FRIDAY Day 5	MAY 24 AM 6:07	MAY 24 PM 5:35	SATURDAY Day 6		
SUNDAY Day 7	MAY 26 AM 6:26	MAY 26 PM 1:30			

THIS SIDE OUT

Tru-Align
E18

NUMBER ONE CONCRETE READY MIX, INC.
PO Box 3094
Walnut Creek, CA 94598

Barrett Business Services, Inc.
1760 Creekside Oaks Drive, Suite 150
Sacramento, CA 95833
FEIN: 52-0812977 TELE: 916/256-1000

Employee L90269 J Guadalupe Santillan
Status / Allow M3 / Ma Emp Type Hourly Check # 0029248591
Payment Date 05-31-2024 Period 05-20-2024 - 05-26-2024

xxx-xx- [Redacted]

916800

Description	Amount	Y-T-D	Taxable
MEDICARE	16.64	103.73	7153.50
SOC SECURITY	71.15	443.52	7153.50
CA INCOME TAX	2.43	44.50	7153.50
CA DISABILITY	12.62	78.70	7153.50

Location	Description	Rate	Hours/ Units	Amount	HRSWRK	PRCT
NUMBER ONE	REGULAR PAY	30.0000	38.25	1147.50	38.25	

A CUT ABOVE SERVICES, INC.
1101 Loveridge Road
CA 94565

J GUADALUPE SANTILLAN

Employee Pay Stub		Check number: 647	Pay Period: 05/20/2024 - 05/26/2024		Pay Date: 05/31/2024
Employee			SSN		
J GUADALUPE SANTILLAN			***-**-****		
Earnings and Hours	Qty	Rate	Current	YTD Amount	
Hourly	19.45	35.00	691.25	901.25	

State law provides that employees must be paid overtime at one-and-one-half times their “regular rate of pay.” Plaintiffs and other Aggrieved Employees were compensated at an hourly rate plus incentive pay that was tied to specific elements of an employee’s performance. The second component of Plaintiffs’ and other Aggrieved Employees’ compensation was Defendants’ non-discretionary incentive program that paid Plaintiffs and other Aggrieved Employees incentive wages based on their performance for Defendants. The non-discretionary bonus program provided all employees paid on an hourly basis with bonus compensation when the employees met the various performance goals set by Defendants. However, from time to time, when calculating the regular rate of pay in those pay periods where Plaintiffs and other Aggrieved Employees worked overtime, double time, paid meal and rest period premium payments, and/or redeemed sick pay, and earned non-discretionary bonuses, Defendants failed to accurately include the non-discretionary bonus compensation as part of the employee’s “regular rate of pay” and/or calculated all hours worked rather than just all non-overtime hours worked. Management and supervisors described the incentive/bonus program to potential and new employees as part of the compensation package. As a matter of law, the incentive compensation received by Plaintiffs and other Aggrieved Employees must be included in the “regular rate of pay.” The failure to do so has resulted in a systematic underpayment of overtime and double time compensation, meal and rest period premium payments, and redeemed sick pay to Plaintiffs and other Aggrieved Employees by Defendants.

Specifically, California Labor Code Section 246 mandates that paid sick time for non-exempt employees shall be calculated in the same manner as the regular rate of pay for the workweek in which the non-exempt employee uses paid sick time, whether or not the employee actually works overtime in that workweek. Defendants’ conduct, as articulated herein, by failing to include the incentive compensation as part of the “regular rate of pay” for purposes of sick pay compensation was in violation of California Labor Code Section 246 the underpayment of which is recoverable under California Labor Code Sections 201, 202, 203, and/or 204.

In violation of the applicable sections of the California Labor Code and the requirements of the

Industrial Welfare Commission (“IWC”) Wage Order, Defendants as a matter of company policy, practice, and procedure, intentionally and knowingly failed to compensate Plaintiffs and other Aggrieved Employees at the correct rate of pay for all overtime and double time worked, meal and rest period premiums, and redeemed sick pay as required by California law which allowed Defendants to illegally profit and gain an unfair advantage over competitors who complied with the law.

Unlawful Deductions: During the last year, Defendants, from time-to-time, unlawfully deducted wages from Plaintiffs and Aggrieved Employees’ pay without explanations and without authorization to do so or notice to Plaintiffs and the Aggrieved Employees. As a result, Defendants violated Labor Code Section 221.

Timekeeping Manipulation: During the last year, Defendants, from time-to-time, did not have an immutable timekeeping system to accurately record and pay Plaintiffs and other Aggrieved Employees for the actual time Plaintiffs and other Aggrieved Employees worked each day, including regular time, overtime hours, sick pay, meal and rest breaks. As a result, Defendants were able to and did in fact, unlawfully, and unilaterally alter the time recorded in Defendants’ timekeeping system for Plaintiffs and other Aggrieved Employees in order to avoid paying these employees for all hours worked, applicable overtime compensation, applicable sick pay, missed meal breaks and missed rest breaks. As a result, Plaintiffs and other Aggrieved Employees, from time-to-time, forfeited time worked by working without their time being accurately recorded and without compensation at the applicable pay rates.

The mutability of the timekeeping system also allowed Defendants to alter employee time records by recording fictitious thirty (30) minute meal breaks in Defendants’ timekeeping system so as to create the appearance that Plaintiffs and other Aggrieved Employees clocked out for thirty (30) minute meal breaks when in fact the employees were not at all times provided an off-duty meal break. This practice is a direct result of Defendants’ uniform policy and practice of denying employees uninterrupted thirty (30) minute off-duty meal breaks each day or otherwise compensating them for missed meal breaks. As a result, Plaintiffs and other Aggrieved Employees forfeited wages due to them for all hours worked at Defendants’ direction, control and benefit for the timekeeping system was inoperable. Defendants’ uniform policy and practice to not pay Plaintiffs and the Aggrieved Employees wages for all hours worked in accordance with applicable law is evidenced by Defendants’ business records.

Unlawful Rounding Practices: During the last year, Defendants did not have in place an immutable timekeeping system to accurately record and pay Plaintiffs and other Aggrieved Employees for the actual time these employees worked each day, including overtime hours. Specifically, Defendants had in place an unlawful rounding policy and practice that resulted in Plaintiffs and the Aggrieved Employees being undercompensated for all of their time worked. As a result, Defendants were able to and did in fact unlawfully and unilaterally round the time recorded in Defendants’ timekeeping system for Plaintiffs and the Aggrieved Employees in order to avoid paying these employees for all their time worked, including the applicable overtime compensation for overtime worked. As a result, Plaintiffs and other Aggrieved Employees, from time to time, forfeited compensation for their time worked by working without their time being accurately recorded and without compensation at the applicable overtime rates.

Further, the mutability of Defendants’ timekeeping system and unlawful rounding policy and

practice resulted in Plaintiffs' and the Aggrieved Employees' time being inaccurately recorded. As a result, from time to time, Defendants' unlawful rounding policy and practice caused Plaintiffs and other Aggrieved Employees to perform work as ordered by Defendants for more than five (5) hours during a shift without receiving an off-duty meal break.

Untimely Payment of Wages: Pursuant to California Labor Code Section 204, Plaintiffs and the Aggrieved Employees were entitled to timely payment of wages during their employment. Plaintiffs and the Aggrieved Employees, from time to time, did not receive payment of all wages, including, but not limited to, overtime wages, minimum wages, meal period premium wages, and rest period premium wages within the permissible time period. Pursuant to California Labor Code Section 201, "If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately." Pursuant to California Labor Code Section 202, if an employee quits his or her employment, "his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting." Plaintiffs and the Aggrieved Employees were, from time to time, not timely provided the wages earned and unpaid at the time of their discharge and/or at the time of quitting, in violation of California Labor Code Sections 201 and 202. To date, Defendants have not fully paid PLAINTIFFS the minimum, overtime and double time compensation still owed to them or any penalty wages owed to them under California Labor Code Section 203.

Sick Pay Violations: California Labor Code Section 246 (a)(1) mandates that "An employee who, on or after July 1, 2015, works in California for the same employer for 30 or more days within a year from the commencement of employment is entitled to paid sick days as specified in this section." Further, California Labor Code Sections 246(b)-(d) provide for the sick day accrual requirements. From time to time, including within the last year, Defendants failed to have a policy or practice in place that provided Plaintiffs and other Aggrieved Employees with sick days and/or paid sick leave. As of January 1, 2024, Defendants failed to adhere to the law in that they failed to provide and allow employees to use at least 40 hours or five days of paid sick leave per year. California Labor Code Section 246(i) requires an employer to furnish its employees with written wage statements setting forth the amount of paid sick leave available. From time to time, including within the last year, Defendants violated California Labor Code Section 246 by failing to furnish Plaintiffs and other Aggrieved Employees with wage statements setting forth the amount of paid sick leave available.

To the extent that entities and/or individuals are named and charged with violations of the Labor Code—making them liable on an individual basis as permitted by numerous Labor Code Sections including, but not limited to 558, 558.1, and 1197.1—Plaintiffs reserve any and all rights to add, substitute, or change the name of employer entities and/or individuals responsible for the violations at issue.

Any further amendments and changes to this notice shall relate back to the date of this notice. Consequently, Defendants are on notice that Plaintiffs continue their investigation, with the full intent to amend and/or change this notice, to add any undiscovered violations of any of the provisions of the California Labor Code—to the extent that are applicable to this case—and to change and/or add the identities of any entities and/or individuals responsible for the violations contained herein.

This notice is provided in compliance with California Labor Code Section 2699.3, *et seq.*

If you have any questions or concerns, please do not hesitate to contact me at the above number and address.

Very truly yours,

JCL LAW FIRM, APC

A handwritten signature in black ink, appearing to read 'JC Lapuyade', with a stylized flourish extending to the right.

Jean-Claude Lapuyade, Esq.