

Joseph Lavi, Esq. (SBN 209776)
Vincent C. Granberry, Esq. (SBN 276483)
Pooja V. Patel, Esq. (SBN 317891)
Courtney M. Miller, Esq. (SBN 327850)
LAVI & EBRAHIMIAN, LLP
8889 W. Olympic Boulevard, Suite 200
Beverly Hills, California 90211
Telephone: (310) 432-0000
Facsimile: (310) 432-0001
Email: jlavi@lelawfirm.com
vgranberry@lelawfirm.com
ppatel@lelawfirm.com
cmiller@lelawfirm.com
WHT1@lelawfirm.com

Sahag Majarian II, Esq. (SBN 146621)
Email: sahagii@aol.com
Garen Majarian, Esq. (SBN 334104)
Email: garen@majarianlawgroup.com
Majarian Law Group, APC
18250 Ventura Boulevard
Tarzana, California 91356
Telephone: (818)609-0807
Facsimile: (818) 609-0892

Attorneys for Plaintiff JUAN MANUEL TEJEDA,
on behalf of himself and current and former aggrieved employees

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY SONOMA

JUAN MANUEL TEJEDA, on behalf of
himself and other aggrieved employees,

Plaintiff,

vs.

VULCAN MATERIALS COMPANY;
CALMAT COMPANY; and DOES 1 to 100,
inclusive,

Defendants.

Case No.: SCV-272624

PAGA ACTION

**PLAINTIFF JUAN MANUEL
TEJEDA'S COMPLAINT FOR:**

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

COMES NOW Plaintiff JUAN MANUEL TEJEDA ("Plaintiff"), who alleges and
complains against Defendants VULCAN MATERIALS COMPANY; CALMAT COMPANY;
and DOES 1 to 100, inclusive (collectively "Defendants") as follows:

1 **I. INTRODUCTION**

2 1. This is a Private Attorneys General Act of 2004, Labor Code §§ 2698, *et seq.*
3 (“PAGA”) representative action brought by Plaintiff on behalf of the State of California, himself
4 and other current and former aggrieved employees of Defendants who worked as hourly non-
5 exempt employees in California during the relevant time period seeking civil penalties associated
6 with Defendants’ violation of the Labor Code based on Defendants’ failure to pay wages for all
7 hours worked at minimum wage; failure to authorize or permit all legally required and/or
8 compliant meal periods or pay meal period premium wages; failure to authorize or permit all
9 legally required and/or compliant rest periods or pay rest period premium wages; statutory
10 penalties for failure to timely pay earned wages during employment; statutory penalties for failure
11 to provide accurate wage statements; statutory waiting time penalties in the form of continuation
12 wages for failure to timely pay employees all wages due upon separation of employment. Plaintiff
13 seeks on a representative basis, following notice to the Labor and Workforce Development
14 Agency, civil penalties, reasonable attorneys’ fees pursuant to Labor Code section 2699(g)(1) and
15 costs brought on behalf of Plaintiff, the State of California, and others aggrieved.

16 **II. JURISDICTION AND VENUE**

17 2. This Court has jurisdiction over the claims of Plaintiff and all other current and
18 former aggrieved California-based hourly non-exempt employees because Plaintiff’s lawsuit seeks
19 civil penalties on behalf of herself, all other current and former aggrieved California-based hourly
20 non-exempt employees, and the State of California in excess of twenty-five thousand dollars
21 (\$25,000); Defendants employed Plaintiff and all other current and former aggrieved California-
22 based hourly non-exempt employees; and the injuries to Plaintiff and all other current and former
23 aggrieved California-based hourly non-exempt employees occurred in locations throughout
24 California, including but not limited to Sonoma County, at 400 Hooper Street, Petaluma,
25 California 94952.

26 3. In response to the COVID-19 pandemic, the Judicial Council of California enacted
27 Emergency Rule 9 to the California Rules of Court, which provided that, notwithstanding any
28 other law, the statutes of limitations and repose for civil causes of action that exceed 180 days are

1 tolled from April 6, 2020, until October 1, 2020.

2 **III. PARTIES**

3 4. Plaintiff brings this action as a representative of the Labor and Workforce
4 Development Agency on behalf of himself and other current and former employees subject to
5 violations of the Labor Code. The named Plaintiff and the persons on whose behalf this action is
6 filed include current, former and/or future employees of Defendants who work, worked, or will
7 work for Defendants as direct employees as well as temporary employees employed through temp
8 agencies as hourly non-exempt employees in California. At all times mentioned herein, the
9 currently named Plaintiff is and was domiciled and a resident and citizen of California and was
10 employed by Defendants in an hourly position at Defendants' location in Sonoma from in or
11 around January 30, 2022, until on or about May 12, 2022.

12 5. Plaintiff is informed and believes and thereon alleges that Defendant VULCAN
13 MATERIALS COMPANY is authorized to do business within the State of California and is doing
14 business in the State of California and/or that Defendants DOES 1-25 are, and at all times relevant
15 hereto were persons acting on behalf of Defendant VULCAN MATERIALS COMPANY in the
16 establishment of, or ratification of, the aforementioned illegal wage and hour practices or policies.
17 Defendant VULCAN MATERIALS COMPANY operates in Sonoma County and employed
18 Plaintiff and aggrieved employees in Sonoma County, including but not limited to, at 400 Hooper
19 Street, Petaluma, California 94952.

20 6. Plaintiff is informed and believes and thereon alleges that Defendant CALMAT
21 COMPANY is authorized to do business within the State of California and is doing business in the
22 State of California and/or that Defendants DOES 1-25 are, and at all times relevant hereto were
23 persons acting on behalf of Defendant CALMAT COMPANY in the establishment of, or
24 ratification of, the aforementioned illegal wage and hour practices or policies. Defendant
25 CALMAT COMPANY operates in Sonoma County and employed Plaintiff and aggrieved
26 employees in Sonoma County, including but not limited to, at 400 Hooper Street, Petaluma,
27 California 94952.

28 7. Plaintiff is informed and believes and thereon alleges that Defendants DOES 1

1 through 50 are corporations, or are other business entities or organizations of a nature unknown to
2 Plaintiff that employed Plaintiff and aggrieved California non-exempt employees, permitted
3 Plaintiff and aggrieved employees to work, and exercised control over the wages, hours and
4 working conditions of employment of Plaintiff and aggrieved employees.

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

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

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

20 **FIRST CAUSE OF ACTION**

21 **CIVIL PENALTIES AND WAGES PURSUANT TO THE PRIVATE ATTORNEYS**

22 **GENERAL ACT OF 2004, LABOR CODE SECTIONS 2698, ET SEQ.**

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

24 11. Plaintiff incorporates all paragraphs above as though fully set forth herein.

25 12. During the period beginning one (1) year preceding Plaintiff sending the initial
26 PAGA Claim Notice to the LWDA to the present, Defendants violated Labor Code sections 201,
27 202, 203, 204, 226, 226.7, 512, 1194, 1197 and Sections 14 and 15 of the applicable Wage Orders.

28 13. Specifically, Defendants have committed the following violations of California

1 Labor Code:

2 14. **Failure to pay wages for all hours worked at the legal minimum wage:**
3 Defendants employed many of their employees, including Plaintiff, as hourly non-exempt
4 employees. In California, an employer is required to pay hourly employees for all “hours worked,”
5 which includes all time that an employee is under control of the employer and all time the
6 employee is suffered and permitted to work. This includes the time an employee spends, either
7 directly or indirectly, performing services which inure to the benefit of the employer.

8 15. Labor Code sections 1194 and 1197 require an employer to compensate employees
9 for all “hours worked” at least at a minimum wage rate of pay as established by the IWC and the
10 Wage Orders.

11 16. In this case, Plaintiff and other current and former aggrieved California-based
12 hourly non-exempt employees worked more minutes per shift than Defendants credited them with
13 having worked. Specifically, Defendants failed to pay Plaintiff and other current and former
14 aggrieved California-based hourly non-exempt employees all wages at the applicable minimum
15 wage for all hours worked due to Defendants’ policies, practices, and/or procedures including, but
16 not limited to:

17 (a) From February 12, 2022, to the present, “rounding” down or “shaving” Plaintiff
18 and other current and former aggrieved California-based hourly non-exempt employees total daily
19 hours at the time of their clock-in and clock-out to the nearest quarter of an hour, including at the
20 time of their clock-in and clock-out for meal breaks, to the benefit of Defendants.

21 17. Therefore, Defendants suffered, permitted, and required Plaintiff and other current
22 and former aggrieved California-based hourly non-exempt employees to be subject to Defendants’
23 control without paying wages for that time. This resulted in Plaintiff and other current and former
24 aggrieved California-based hourly non-exempt employees working time for which they were not
25 compensated any wages, in violation of Labor Code sections 1194 and 1197 and the applicable
26 Wage Order.

27 18. **Failure to pay wages to hourly non-exempt employees for workdays that**
28 **Defendants failed to provide legally required and compliant meal periods:** Plaintiff and other

1 current and former aggrieved California-based hourly non-exempt employees regularly worked
2 shifts of more than five (5) hours in length and shifts of more than ten (10) hours in length.

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

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

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

22 (a) From February 12, 2022, to the present, routinely failing to provide Plaintiff and
23 other current and former aggrieved California-based hourly non-exempt employees timely,
24 uninterrupted, and/or duty-free meal breaks of no less than thirty (30) minutes for every five hours
25 worked; and

26 (b) From February 12, 2022, to the present, on occasions Defendant provided meal
27 breaks, Defendant failed to provide meal breaks of no less than thirty (30) minutes due to its
28 policy, practice, and/or procedure of "rounding" down or "shaving" Plaintiff and other current and

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

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

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

14 24. **Failure to pay wages to hourly non-exempt employees for workdays that**
15 **Defendants failed to provide legally required and compliant rest periods:** Plaintiff and other
16 current and former aggrieved California-based hourly non-exempt employees regularly worked
17 shifts of more than three-and-a-half (3.5) hours.

18 25. California law requires every employer to authorize and permit an employee a rest
19 period of ten (10) net minutes for every four (4) hours worked or major fraction thereof. Labor
20 Code section 226.7; Wage Order 1 at §12. Under California law, "[e]mployees are entitled to 10
21 minutes' rest for shifts from three and one-half to six hours in length, 20 minutes for shifts of more
22 than six hours up to 10 hours, 30 minutes for shifts of more than 10 hours up to 14 hours, and so
23 on." *Brinker Restaurant Corp. v. Sup. Ct. (Hohnbaum)* (2012) 53 Cal.4th 1004, 1029; Labor Code
24 section 226.7; Wage Order 1 at §12. Rest periods, insofar as practicable, shall be in the middle of
25 each work period. Wage Order 1 at §12. Additionally, the rest period requirement "obligates
26 employers to permit – and authorizes employees to take – off-duty rest periods." *Augustus v. ABM*
27 *Security Services, Inc.*, (2016) 5 Cal.5th 257, 269. That is, during rest periods employers must
28 relieve employees of all duties and relinquish control over how employees spend their time. *Id.*

1 26. If the employer fails to authorize or permit a required rest period, the employer
2 must pay the employee one (1) hour of pay at the employee's regular rate of pay for each workday
3 the employer did not authorize or permit a legally required rest period. Labor Code section 226.7;
4 Wage Order 1 at § 12.

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

9 (a) From February 12, 2022, to the present, failing to provide Plaintiff and other
10 current and former aggrieved California-based hourly non-exempt employees an uninterrupted
11 duty-free net ten (10) minute rest breaks for every four hours worked or major fraction thereof.

12 28. Additionally, Plaintiff alleges that Defendants maintained a policy, practice, and/or
13 procedure of failing to compensate Plaintiff and other current and former aggrieved California-
14 based hourly non-exempt employees with one (1) hour of pay at their regular rate of pay for each
15 workday they did not receive legally required and compliant rest periods, in violation of Labor
16 Code section 226.7.

17 29. Defendants' foregoing policies, practices, and/or procedures resulted in Plaintiff
18 and other current and former aggrieved California-based hourly non-exempt employees not
19 receiving wages to compensate them for workdays in which Defendants did not provide them with
20 rest periods in compliance with California law.

21 30. **Failure to timely pay earned wages during employment:** In California, wages
22 must be paid at least twice during each calendar month on days designated in advance by the
23 employer as regular paydays, subject to some exceptions. Labor Code section 204(a). Wages
24 earned between the 1st and 15th days, inclusive, of any calendar month must be paid between the
25 16th and the 26th day of that month and wages earned between the 16th and the last day,
26 inclusive, of any calendar month must be paid between the 1st and 10th day of the following
27 month. *Id.* Other payroll periods such as those that are weekly, biweekly, or semimonthly, must be
28 paid within seven (7) calendar days following the close of the payroll period in which wages were

1 earned. Labor Code section 204(d).

2 31. As a derivative of Plaintiff's claims above, Plaintiff alleges that Defendants failed
3 to timely pay Plaintiff's and other current and former aggrieved California-based hourly non-
4 exempt employees' earned wages (including minimum wages, meal period premium wages,
5 and/or rest period premium wages), in violation of Labor Code section 204. Defendants'
6 aforementioned policies, practices, and/or procedures resulted in their failure to pay Plaintiff's and
7 other current and former aggrieved California-based hourly non-exempt employees' their earned
8 wages within the applicable time frames outlined in Labor Code section 204.

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

22 33. Defendants committed direct violations of Labor Code section 226, through their
23 policies, practices, and/or procedures, including, but not limited to:

24 (a) From February 12, 2022, to the present, providing Plaintiff and other current and
25 former aggrieved California-based hourly non-exempt employees with wage statements that failed
26 to accurately reflect the total hours worked.

27 34. As a derivative of Plaintiff's allegations above, Defendants' failure to pay Plaintiff
28 and other current and former aggrieved California-based hourly non-exempt employees all wages

1 earned (including minimum wages, meal period premium wages, and/or rest period premium
2 wages) rendered Plaintiff's and other current and former aggrieved California-based hourly non-
3 exempt employees' wage statements inaccurate, in violation of Labor Code section 226.

4 **35. Failure to pay employees all wages due at time of termination/resignation:** An
5 employer is required to pay all unpaid wages timely after an employee's employment ends. The
6 wages are due immediately upon termination (Labor Code section 201) or within seventy-two (72)
7 hours of resignation (Labor Code section 202).

8 36. As a derivative of Plaintiff's allegations above, because Defendants failed to pay
9 Plaintiff and other current and former aggrieved California-based hourly non-exempt employees
10 all their earned wages (including minimum wages, meal period premium wages, and/or rest period
11 premium wages), Defendants failed to pay those employees timely after each employee's
12 termination and/or resignation, in violation of Labor Code sections 201, 202, and 203.

13 37. Defendants' violations of Wage Order 1 constituted violations of Labor Code
14 section 1198, which prohibits employment under conditions of labor that violate the Wage Orders.

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

19 39. Plaintiff has complied with the procedures for bringing suit specified in Labor
20 Code section 2699.3. On December 7, 2022, Plaintiff filed a PAGA Claim Notice with the LWDA
21 and provided notice to Defendants by certified mail which provided notice of the specific
22 provisions of the Labor Code alleged to have been violated, including the facts and theories to
23 support the violations alleged.

24 40. Pursuant to Labor Code section 2699.3, the LWDA must give written notice by
25 certified mail to the parties that it intends to investigate the alleged violations of the Labor Code
26 within 60 days of the date of the complainant's written notice. The LWDA failed to provide the
27 parties notice within 60 days of the date of Plaintiff's PAGA Claim Notice that the LWDA intends
28 to investigate Plaintiff's claims.

41. Pursuant to Labor Code sections 2699(a) and (f), Plaintiff is entitled to recover civil penalties for Defendants' violations of Labor Code sections 201, 202, 203, 204 226, 226.7, 510, 512, 1194, and 1197 beginning one (1) year preceding Plaintiff sending the initial PAGA Claim Notice to the LWDA to the present, in the following amounts:

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

b. For violations of Labor Code section 226, two hundred fifty dollars (\$250) for each employee for each pay period for the initial violation, and for each subsequent violation, one thousand dollars (\$1000) for each underpaid employee for each pay period [penalty amounts established by Labor Code section 226.3].

c. For violations of Labor Code section 510, fifty dollars (\$50) for each employee for each pay period for the initial violation, and for each subsequent violation, one hundred dollars (\$100) for each underpaid employee for each pay period [penalty amounts established by Labor Code section 558] and any unpaid wages.

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

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

PRAYER FOR RELIEF

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

ON THE FIRST CAUSE OF ACTION:

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

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

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

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

Dated: February 14, 2023

Respectfully submitted,
LAVI & EBRAHIMIAN, LLP
LAW OFFICES OF SAHAG MAJARIAN II

By: 

Joseph Lavi, Esq.
Vincent C. Granberry, Esq.
Pooja V. Patel, Esq.
Courtney M. Miller, Esq.
Sahag Majarian II, Esq.
Attorneys for Plaintiff
JOSE MANUEL TEJEDA,
on behalf of himself and current and former
aggrieved employees