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11 CONSTRUCTION MATERIALS
12 PACIFIC, LLC and CEMEX, INC.

13 **UNITED STATES DISTRICT COURT**
14 **CENTRAL DISTRICT OF CALIFORNIA, WESTERN DIVISION**

15 KAREN GRIGORYAN, individually
16 and on behalf of all others similarly
17 situated,

18 Plaintiff,

19 v.

20 CEMEX CONSTRUCTION
21 MATERIALS PACIFIC, LLC, a
22 Delaware Limited Liability Company;
23 CEMEX, INC., a Louisiana
24 Corporation, MAX PINA, an
25 individual, and DOES 1-50, inclusive,

26 Defendants.

Case No. 2:18-CV-06302

**DEFENDANTS' NOTICE OF
REMOVAL**

**28 U.S.C. §§ 1332(d), 1441(a), 1446
(Class Action Fairness Act of 2005)**

(San Bernardino County Superior Court
Case No. CIVDS 1723753)

27 TO THE UNITED STATES DISTRICT COURT FOR THE CENTRAL
28 DISTRICT OF CALIFORNIA AND TO PLAINTIFF KAREN GRIGORYAN
AND HIS COUNSEL OF RECORD:

PLEASE TAKE NOTICE THAT DEFENDANTS CEMEX
CONSTRUCTION MATERIALS PACIFIC, LLC, CEMEX, INC. AND MAX
PINA (collectively, "Defendants") file this Notice of Removal under 28 U.S.C.

1 §§ 1332(d), 1441 and 1446.

2 **I. STATEMENT OF JURISDICTION**

3 1. This Court has original jurisdiction over this action pursuant to the
4 Class Action Fairness Act of 2005 (“CAFA”), which vests the United States District
5 Courts with original jurisdiction of any civil action: (a) that is a class action with a
6 putative class of more than one hundred members; (b) in which any member of a
7 class of plaintiffs is a citizen of a State different from any defendant; and (c) in
8 which the matter in controversy exceeds the sum or value of \$5,000,000, exclusive
9 of interest and costs. *See* 28 U.S.C. § 1332(d). CAFA authorizes removal of such
10 actions in accordance with United States Code, title 28, section 1446. As set forth
11 below, this case meets all of CAFA’s requirements for removal and is timely and
12 properly removed by the filing of this Notice.

13 **II. PROCEDURAL BACKGROUND**

14 2. On December 1, 2017, Plaintiff Karen Grigoryan, individually and on
15 behalf of all others similarly situated, filed a purported Class Action Complaint
16 against Defendants in the Superior Court of the State of California, County of San
17 Bernardino, Case No. CIVDS 1723753. (Ex. A.)

18 3. On February 5, 2018, Plaintiff, individually and on behalf of all others
19 similarly situated, filed a purported First Amended Class Action Complaint against
20 Defendants. (Ex. C.)

21 4. On February 6, 2018, Plaintiff served Defendants CEMEX
22 Construction Materials Pacific, LLC and CEMEX, Inc. with the Summons, Class
23 Action Complaint, and First Amended Class Action Complaint. On or about March
24 15, 2018, Plaintiff served Defendant Max Pina with the Summons, Class Action
25 Complaint, and First Amended Class Action Complaint. (Exs. A, C, D, G.)

26 5. On March 26, 2018, the San Bernardino County Superior Court granted
27 Plaintiff leave to file a Second Amended Complaint, pursuant to stipulation. (Exs. I,
28 J.)

1 6. Plaintiff’s Second Amended Class Action Complaint alleges claims of
2 (1) failure to provide meal periods, (2) failure to authorize and permit rest periods,
3 (3) failure to provide accurate itemized wage statements, (4) unfair competition, and
4 (5) penalties under the Private Attorneys General Act of 2004 (PAGA). (Ex. S.)

5 7. On May 3, 2018, Defendants timely filed a demurrer and motion to
6 strike, which was heard on June 19, 2018, and which sought in part to strike class
7 allegations. (*See Exs. M, T.*) The demurrer was overruled in part and the motion to
8 strike was denied. (*See Ex. T.*)

9 8. On or about June 21, 2018, Plaintiff served Defendants with Plaintiff’s
10 Notice of Intent Not to Amend His Second Amended Complaint, which included
11 notice of the trial court’s rulings on the demurrer and motion to strike. (Ex. T.)

12 9. On July 3, 2018, Defendants timely filed an Answer to the Second
13 Amended Complaint. (Ex. U.)

14 10. Pursuant to 28 U.S.C. § 1446(a), the documents in attached Exhibits A
15 through V include all process, pleadings, and orders served on Defendants in this
16 action.

17 11. Defendants have not previously removed this case under the CAFA.

18 **III. TIMELINESS OF REMOVAL**

19 12. This Notice of Removal is timely filed under CAFA because neither the
20 original Complaint, First Amended Complaint nor Second Amended Complaint
21 “reveal[ed] on its face that...there was sufficient amount in controversy to support
22 jurisdiction under CAFA.” *See Roth v. CHA Hollywood Med. Ctr., L.P.*, 720 F.3d
23 1121, 1125 (9th Cir. 2013). The original Complaint and First Amended Complaint
24 did not state or indicate any amount in controversy in the complaints or in the Prayer
25 for Relief. (Exs. A, C.) The Second Amended Complaint does not state an amount
26 in controversy for the First through Fourth Causes of Action (the causes of action
27 subject to the CAFA threshold), except to state in its Prayer for Relief for the Fourth
28 Cause of Action that Plaintiff seeks “an amount according to proof, ***but not less***

1 *than \$3,000,000.*” (Ex. S, Second Amended Compl. (SAC), Prayer for Relief, at
2 p. 16, line 11 (emphasis added).) The pleading therefore did not reveal on its face
3 that the amount in controversy met CAFA’s threshold.

4 13. Accordingly, neither of the two 30-day periods under 28 U.S.C.
5 §§1446(b)(1) and (b)(3) was triggered. *Roth*, 720 F.3d at 1126 (“A CAFA case may
6 be removed at any time, provided that neither of the two thirty-day periods under
7 1446(b)(1) and (b)(3) has been triggered”); *see also Rea v. Michaels Stores Inc.*, 742
8 F.3d 1234, 1238 (9th Cir. 2014) (“We also recently held in *Roth v. CHA Hollywood*
9 *Medical Center, L.P.*, that the two 30-day periods are not the exclusive periods for
10 removal.... In other words, as long as the complaint or ‘an amended pleading,
11 motion, order or other paper’ does not reveal that the case is removable, the 30-day
12 time period never starts to run and the defendant may remove at any time.”); *Taylor*
13 *v. Cox Commc’ns California, LLC*, 673 Fed.Appx. 734, 735 (9th Cir. Dec. 23, 2016)
14 (“We also hold that Defendants’ second Notice of Removal was timely. ‘A CAFA
15 case may be removed at any time, provided that neither the two thirty-day periods
16 under § 1446(b)(1) and (b)(3) has been triggered.”).

17 **IV. CAFA JURISDICTION**

18 14. This Court has original jurisdiction of this action under CAFA, codified
19 in pertinent part at 28 U.S.C. § 1332(d)(2). Pursuant to CAFA, district courts have
20 jurisdiction over class actions in which the amount in controversy exceeds
21 \$5 million in the aggregate and any one member of the putative class is diverse from
22 any defendant. 28 U.S.C. § 1332(d)(2). As set forth below, this action is removable
23 under 28 U.S.C. § 1441(a) in that it is a civil action wherein (a) there is diversity
24 between at least one class member (Plaintiff) and at least one defendant (here, there
25 is diversity as to both Defendants CEMEX Construction Materials Pacific, LLC and
26 CEMEX, Inc.), (b) Defendants are not state, state official, or other governmental
27 entities, (c) the proposed class contains at least one hundred members; and (d) based
28 on the allegations as pled, the total amount in controversy for all class members

1 exceeds \$5,000,000. *See* 28 U.S.C. § 1332(d)(5)(B).

2 **A. There is Diversity Between At Least One Class Member And At Least**
3 **One Defendant.**

4 15. CAFA’s minimal diversity requirement is satisfied when “any member
5 of a class of plaintiffs is a citizen of a State different from any defendant.” *See* 28
6 U.S.C. §§ 1332(d)(2)(A); 1453(b). Minimal diversity of citizenship exists here
7 because at least one class member is a citizen of a different state than at least one
8 defendant, in that Plaintiff is a citizen of a different state than two of the Defendants.

9 16. **Plaintiff’s Citizenship.** Plaintiff alleges that he was at all times
10 relevant a resident of Los Angeles, California. (SAC, ¶ 6.)

11 17. **Defendants CEMEX, Inc. and CEMEX Construction Materials**
12 **Pacific, LLC’s Citizenship.**

13 (a) Under 28 U.S.C. § 1332(c)(1), “a corporation shall be deemed to be
14 a citizen of any State in which it has been incorporated, and of the State where it has
15 its principal place of business.”

16 (b) At the time of the filing of this Notice of Removal, Defendant
17 CEMEX, Inc. was, and still is, a corporation organized under the laws of the State of
18 Louisiana, with its principal place of business in West Palm Beach, Florida. (Decl.
19 of Charles O’Reilly (“Decl. O’Reilly”), ¶ 2.)

20 (c) At the time of the filing of this Notice of Removal, Defendant
21 CEMEX Construction Materials Pacific, LLC was, and still is, a company organized
22 under the laws of Delaware, with its principal place of business in West Palm
23 Beach, Florida. (Decl. O’Reilly, ¶ 2.)

24 18. **Defendant Max Pina.** The Second Amended Complaint alleges that
25 individually named defendant Max Pina is a resident of California. (SAC, ¶ 10).

26 19. **Doe Defendants.** Under 28 U.S.C. § 1441(a), the residence of
27 fictitious and unknown defendants should be disregarded for purposes of
28 establishing removal jurisdiction under 28 U.S.C. § 1332. *Fristoe v. Reynolds*

1 *Metals Co.*, 615 F.2d 1209, 1213 (9th Cir. 1980) (unnamed defendants are not
2 required to join in a removal petition). The existence of Doe defendants one
3 through fifty, inclusive, does not deprive this Court of jurisdiction and the presence
4 of Doe defendants in this case has no bearing on diversity with respect to removal.
5 No other party has been named or served as of the date of this Notice of Removal.

6 20. Thus, minimal diversity under CAFA exists where, as here, Plaintiff,
7 who is a citizen of California, is diverse from both Defendant CEMEX, Inc. and
8 Defendant CEMEX Construction Materials Pacific, LLC, which are organized under
9 the laws of Louisiana and Delaware, respectively, and whose principal places of
10 business are in Florida. *See* 28 U.S.C. §§ 1332(d)(2), 1453.

11 **B. Defendants Are Not Governmental Entities.**

12 21. Under 28 U.S.C. section 1332(d)(5)(B), CAFA does not apply to class
13 actions where “primary defendants are States, State officials, or other governmental
14 entities against whom the district court may be foreclosed from ordering relief.” *See*
15 28 U.S.C. § 1332(d)(5)(B).

16 22. CEMEX produces, distributes and sells cement, ready-mix concrete,
17 aggregates, and related building materials. (Decl. O’Reilly, ¶ 3.) Defendants are
18 not a state, state official, or other government entity exempt from the CAFA. (*See*
19 *id.*)

20 **C. The Proposed Class Contains At Least One Hundred Members.**

21 23. 28 U.S.C. section 1332(d)(5)(B) states that the provisions of CAFA do
22 not apply to any class action where “the number of members of all proposed
23 plaintiff classes in the aggregate is less than 100.” 28 U.S.C. § 1332(d)(5)(B).

24 24. CAFA’s requirement that the class contain at least 100 members is met
25 in this case. Plaintiff seeks to certify a class of “[a]ny and all persons who are or
26 were employed in non-exempt driver positions, however titled, by Defendants in the
27 state of California during the Class Period (hereinafter collectively referred to as the
28 ‘Class’ or ‘Class Members.’” (SAC, ¶ 19.) Plaintiff alleges a class period from

1 December 1, 2013 through the date of final disposition of the lawsuit. (SAC, ¶ 18.)
2 Plaintiff specifically alleges that “the Class is estimated to be greater than one
3 hundred (100) individuals.” (SAC, ¶ 23(a).)

4 25. For purposes of this Notice of Removal only, Defendants assume
5 *arguendo* a class size based on the number of active, hourly, non-exempt drivers
6 employed at CEMEX’s ready-mix plants in California. **Defendants do not concede**
7 **that class treatment is appropriate in this action and reserve the right to oppose**
8 **and contest class certification, on any ground, of any class or any subclass of**
9 **employees in California.**

10 26. A review of CEMEX’s employment records indicates that there are an
11 estimated 725 hourly, non-exempt drivers employed as active employees at
12 CEMEX’s ready-mix plants in California. (Decl. O’Reilly, ¶ 5.) The CAFA
13 threshold is met.

14 **D. The Amount In Controversy Exceeds \$5,000,000 Based On The Allegations**
15 **As Pled.**

16 27. Under CAFA, the claims of the individual members in a class action
17 are aggregated to determine if the amount in controversy exceeds the sum or value
18 of \$5,000,000. 28 U.S.C. § 1332(d)(6).

19 28. Congressional intent in establishing CAFA was to create federal
20 jurisdiction where the “value of the matter in litigation exceeds \$5,000,000 either
21 from the viewpoint of the plaintiff or the viewpoint of the defendant, and regardless
22 of the type of relief sought (*e.g.*, damages, injunctive relief, or declaratory relief).”
23 Senate Judiciary Committee Report, S. REP. 109-14, at 49. As the Senate Judiciary
24 Committee’s Report on CAFA makes clear, any doubts regarding whether interstate
25 class action lawsuits should be maintained in state or federal court should be
26 resolved in favor of federal jurisdiction. S. REP. 109-14, at 49 (“[I]f a federal court
27 is uncertain about whether ‘all matters in controversy’ in a purported class action
28 ‘do not in aggregate exceed the sum or value of \$5,000,000,’ the court should err in

1 favor of exercising jurisdiction over the case . . . Overall, new section 1332(d) is
2 intended to expand substantially federal court jurisdiction over class actions. Its
3 provisions should be read broadly, with a strong preference that interstate class
4 actions should be heard in a federal court if properly removed by any defendant.”).

5 29. That the Complaint does not specify the amount in controversy,
6 including damages or other monetary relief, does not deprive this Court of
7 jurisdiction. *See White v. J.C. Penny Life Ins. Co.*, 861 F. Supp. 25, 26 (S.D.W.Va.
8 1994) (defendant may remove case notwithstanding plaintiff’s failure to plead a
9 specific dollar amount in controversy).

10 30. Where “it is unclear or ambiguous from the face of a state-court
11 complaint whether the requisite amount in controversy is pled,” the party seeking
12 removal must only show, by a preponderance of evidence, that CAFA’s
13 jurisdictional amount is met. *Guglielmino v. McKee Foods Corp.*, 506 F.3d 696,
14 699-700 (9th Cir. 2007). Here, Plaintiff does not allege the amount in controversy
15 in the Second Amended Complaint. Thus, a preponderance-of-evidence standard
16 applies to CAFA’s amount in controversy requirement.

17 31. Though Defendants deny liability as to each of Plaintiff’s claims, the
18 alleged amount in controversy as claimed by Plaintiff in this action exceeds the
19 \$5,000,000 jurisdictional minimum, as explained below. **The alleged calculations**
20 **set forth below are for purposes of removal only. Defendants deny that**
21 **Plaintiff or any putative class member is entitled to any relief whatsoever and**
22 **expressly reserve the right to challenge the alleged damages claimed by**
23 **Plaintiff or any putative class member in this action. Defendants contend that**
24 **class and representative treatment are inappropriate and that Plaintiff and the**
25 **putative class are not entitled to recover any of the amount in controversy. The**
26 **analysis set forth herein takes Plaintiff’s allegations as true and assumes the**
27 **claims will survive only for purposes of establishing this Court’s jurisdiction**
28 **under CAFA.**

1 32. **Purported Class Period.** Plaintiff’s Fourth Cause of Action alleges
2 violation of California’s Unfair Competition Law, Business and Professions Code
3 § 17200 et seq. (SAC, ¶¶ 57-63.) Alleging an Unfair Competition Law violation
4 extends the statute of limitations from three to four years for Plaintiff’s First and
5 Second Causes of Action (alleged meal period and rest period claims). *See* Cal.
6 Bus. & Prof. Code § 17208; *Cortez v. Purolater Air Filtration Products Co.*, 23 Cal.
7 4th 163, 178-79 (2000).

8 33. **Putative Class Members.** As explained above, for purposes of this
9 Notice of Removal only, Defendants assume *arguendo* a class size based on the
10 number of active hourly, non-exempt drivers employed at CEMEX’s ready-mix
11 plants in California. (*See* Decl. O’Reilly, ¶ 5.)

12 34. **Plaintiff’s Employment Data.** A review of Plaintiff’s employment
13 records show that his hourly rate of pay as of December 1, 2013 was \$21.45. His
14 employment records also show that he was paid on a weekly basis, including from
15 December 1, 2016 to December 1, 2017. (Decl. O’Reilly, ¶ 6.)

16 35. **Meal Periods.** Plaintiff’s First Cause of Action asserts a claim for
17 failure to provide meal periods, seeking to recover one hour of additional pay for
18 each day in which a meal period was not provided. (SAC, ¶ 45; *see* Cal. Lab. Code
19 § 226.7.) The Second Amended Complaint alleges that “Class Members were
20 *systematically* denied” meal periods and that “Defendants *never* paid Plaintiff, and
21 on information and belief, *never* paid Class Members an extra hour of pay as
22 required by California law....” (SAC, ¶¶ 31, 32 (emphases added).)

23 36. The Second Amended Complaint further alleges that “Plaintiff and
24 Class Members *frequently* worked well over eight (8) hours in a day and forty (40)
25 hours in a work week as Plaintiff and Class Members *typically* worked five days a
26 week working shifts that approximately began at 6 a.m. and concluded at 4 p.m. or
27 later.” (SAC, ¶ 30 (emphasis added).)

28 37. Using Plaintiff’s allegations as pled (namely, that Plaintiff and putative

1 class members were “systematically” denied meal periods, “typically” worked 5
2 days a week, and “frequently” worked over 8 hours a day), and conservatively using
3 the following data: (a) using only 650 active drivers at any given time (rather than
4 725 active drivers), and (b) conservatively using an average of 240 days worked per
5 year (48 weeks x 5 days/week, which allots 4 weeks for vacation, holidays and other
6 time off), results in a conservative estimate of 156,000 shifts worked per year by
7 drivers (240 days x 650 drivers) or 624,000 shifts over a 4-year time period
8 (156,000 shifts x 4 years).

9 38. Further using a conservative pay rate of Plaintiff’s lowest hourly rate
10 for the relevant time period (*i.e.*, his hourly rate of \$21.45 as of December 1, 2013),
11 and conservatively assuming only a “violation” rate of 10% for number of shifts for
12 which meal periods were not provided – even despite Plaintiff’s allegations of Class
13 Members having been systematically denied meal periods – would yield a total of
14 approximately \$1,338,480 (\$21.45 per hour x 62,400 shifts (10% of 624,000 shifts))
15 in purported premium pay claimed in the First Amended Complaint for the meal
16 period claim.

17 39. **Rest Periods.** Plaintiff’s Second Cause of Action asserts a claim for
18 failure to authorize and permit rest periods, seeking to recover one hour of
19 additional pay for each day in which a rest period allegedly was not provided.
20 (SAC, ¶ 51; *see* Cal. Lab. Code § 226.7.) The Second Amended Complaint alleges
21 that “Class Members were *systematically not authorized and permitted* lawful rest
22 breaks,” and further asserts that class treatment is appropriate for the rest period
23 claim because there exists a common question of whether Defendants “fail[ed] to
24 authorize and permit *daily* rest periods to Plaintiff and Class Members for every four
25 hours or major fraction thereof worked.” (SAC, ¶ 33, ¶ 23(f)(i) (emphases added).)
26 The Second Amended Complaint also alleges that class members were “never” paid
27 premium pay for missed rest breaks. (SAC, ¶ 34.)

28 40. The Second Amended Complaint claims that “Plaintiff and Class

1 Members, while on their rest breaks, were required to keep their work issued radios
2 on and on their persons *at all times* and were required to respond to any requests
3 made by Defendants’ dispatch in direct violation of the applicable Labor code and
4 IWC Wage Order.” (SAC, ¶ 49 (emphasis added).)

5 41. The Second Amended Complaint further alleges that “Plaintiff and
6 Class Members *frequently* worked well over eight (8) hours in a day and forty (40)
7 hours in a work week as Plaintiff and Class Members *typically* worked five days a
8 week working shifts that approximately began at 6 a.m. and concluded at 4 p.m. or
9 later.” (SAC, ¶ 30 (emphasis added).)

10 42. Using Plaintiff’s allegations as pled (namely, that Defendants are
11 alleged to have “systematically” denied rest periods; did not authorize or permit
12 “daily” rest periods; and Plaintiff and putative class members “typically” worked 5
13 days a week, “frequently” working over 8 hours a day), and conservatively using the
14 following data: (a) using only 650 active drivers at any given time (rather than 725
15 active drivers), and (b) conservatively using an average of 240 days worked per year
16 (48 weeks x 5 days/week, which allots 4 weeks for vacation, holidays and other time
17 off), results in a conservative estimate of 156,000 shifts worked per year by drivers
18 (240 days x 650 drivers) or 624,000 shifts over a 4-year time period (156,000 shifts
19 x 4 years).

20 43. Further using a conservative pay rate of Plaintiff’s lowest hourly rate
21 for the relevant time period (*i.e.*, his hourly rate of \$21.45 as of December 1, 2013),
22 and conservatively assuming only a “violation” rate of 10% for number of shifts for
23 which rest periods allegedly were not provided – even despite Plaintiff’s claim of a
24 failure to “systematically” provide “daily” rest periods – would yield a total of
25 approximately \$1,338,480 (\$21.45 per hour x 62,400 shifts (10% of 624,000 shifts))
26 in purported premium pay claimed in the First Amended Complaint for the rest
27 period claim.

28

1 44. **Wage Statement Penalties:** Plaintiff’s Third Cause of Action claims
2 penalties under Labor Code Section 226(e), which provides penalties of “fifty
3 dollars (\$50) for the initial pay period in which a violation occurs and one hundred
4 dollars (\$100) per employee for each violation in a subsequent pay period, not to
5 exceed an aggregate penalty of four thousand dollars (\$4,000).” (Cal. Lab. Code
6 § 226(e)(1); SAC, ¶¶ 52-56.)

7 45. The statute of limitations for wage statement penalty claims under
8 Labor Code Section 226(e) is one year; thus, Plaintiff’s wage statement claim
9 reaches back to December 1, 2016. *See* Cal. Code Civ. Proc. § 340(a). During the
10 time period from December 1, 2016 to December 1, 2017, Plaintiff and other ready-
11 mix drivers have been paid their wages on a weekly basis. (Decl. O’Reilly, ¶¶ 6, 7.)
12 During the time period from December 1, 2016 to December 1, 2017, there have
13 been an estimated 52 pay periods. (Decl. O’Reilly, ¶¶ 6, 7.)

14 46. Plaintiff’s Third Cause of Action is predicated in part on Plaintiff’s
15 meal and rest period claims (*i.e.*, the alleged failure “to properly identify premium
16 payments made pursuant to Labor Code 226.7”). (SAC, ¶ 54.) As analyzed above,
17 Plaintiff’s meal and rest period claims are premised on an alleged failure to provide
18 “daily” rest periods and “systematically” deny meal and rest periods where Plaintiff
19 and putative class members “typically” worked 5 days a week, “frequently” working
20 over 8 hours per day; and allegedly “never” paid Plaintiff and putative class
21 members premium pay for missed meal and rest periods. (SAC, ¶¶ 23(f)(i), 29, 30-
22 34, 54.)

23 47. Based on the allegations as pled, the purported penalties claimed under
24 Labor Code Section 226(e) would total \$5,150 per employee (1 pay period x \$50) +
25 (51 pay periods x \$100) for the 1-year time period covered by the statute of
26 limitations. Because recoverable penalties under Section 226(e) are capped at a
27 maximum of \$4,000 per employee, the purported penalties claimed for alleged wage
28 statement violations would total approximately \$2,600,000 (650 putative subclass

1 members x \$4,000), based on the allegations as pled and using a conservative
2 estimate of only 650 active drivers (rather than 725 active drivers).

3 48. Based on the allegations as pled in the Second Amended Complaint,
4 and for purposes of this Notice of Removal only, the amount in controversy totals
5 approximately \$5,276,960.

6 49. **Defendants deny any and all liability to Plaintiff and to the putative**
7 **class he seeks to represent. Defendants provide the foregoing calculations for**
8 **purposes of this Notice of Removal only, to demonstrate that the amount in**
9 **controversy (based on the allegations as pled in Plaintiff's Second Amended**
10 **Complaint and based on Plaintiff's purported claims) exceeds the amount in**
11 **controversy required under CAFA. Defendants make no admission of any**
12 **liability or damages with respect to any aspect of this case, contend that class**
13 **treatment is inappropriate, and do not concede that the proffered methodology**
14 **for such calculations is appropriate for any other purpose in this litigation.**

15 50. Here, where diversity of citizenship exists (Plaintiff is a citizen of the
16 State of California, and Defendants CEMEX, Inc. and CEMEX Construction
17 Materials Pacific, LLC are organized under the laws of Louisiana and Delaware,
18 respectively, with their principal places of business in Florida), and where the
19 amount in controversy exceeds \$5,000,000, this Court has jurisdiction of this action
20 under 28 U.S.C. § 1332(d)(2). This action is therefore proper for removal to this
21 Court under 28 U.S.C. § 1441(a).

22 V. VENUE AND INTRADISTRICT ASSIGNMENT

23 51. In accordance with the guidelines specified in the Civil Cover Sheet for
24 the Central District of California, venue lies in the Western Division of this Court.

25 VI. NOTICE OF REMOVAL

26 52. This Notice of Removal will simultaneously be served on Plaintiff and
27 promptly filed with the clerk of the Superior Court of the State of California in and
28 for the County of San Bernardino.

VII. STATE COURT DOCUMENTS

53. Pursuant to 28 U.S.C. § 1446(a), Defendants attach herewith, and incorporate by reference, the following documents, which include all process, pleadings, and orders served on Defendants prior to this Notice of the Removal:

A	Summons, Class Action Complaint; Civil Case Coversheet; Certificate of Assignment; Notice of Case Assignment for All Purposes Notice of Case Management Conference; Guidelines for the Complex Litigation Program	12/01/17
B	Clerk's Notice of Continuance	12/28/17
C	First Amended Class Action Complaint	02/05/18
D	Plaintiff's Proof of Service of Class Action Complaint, etc.	02/13/18
E	Court Notice of Continuation of Case Management Conference and Proof of Service	03/01/18
F	Notice of Continued Case Management Conference	03/02/18
G	Plaintiff's Proof of Service of Summons	03/21/18
H	Court Notice of Return of Documents – Proof of Service returned by court for duplicate filing previously filed on 3/21/18	03/22/18
I	Joint Stipulation And Order Permitting Plaintiff to Leave to File Second Amended Complaint	03/26/18
J	Notice of Entry of Order Granting Plaintiff Leave to File Second Amended Complaint	04/03/18
K	Proof of Service of Second Amended Complaint and Joint Stipulation and Order Permitting Plaintiff Leave to File Second Amended Complaint on Defendant Max Pina	04/04/18
L	Joint Statement and Joint Request for Continuance Of Initial Case Management Conference	04/18/18
M	Defendants' Notice of Demurrer and Demurrer; Memorandum of Points and Authorities in Support of Defendants Demurrer and Motion to Strike Plaintiff's Second Amended Complaint; Declaration of Dorothy Liu re Meet-And-Confer in Support of Demurrer and Motion to Strike Second Amended Complaint; Defendants' Request for Judicial Notice in Support of Defendants' Demurrer to Second Amended Complaint; [Proposed] Order Sustaining Demurrer to Plaintiff's Second Amended Complaint; Defendants' Notice of Motion and Motion to Strike; Proposed Order Granting Defendants' Motion to Strike Portions of Plaintiff's Second Amended Complaint; Proof of Service	05/03/18
N	Plaintiff's Opposition to Defendants' Demurrer and Motion to Strike Plaintiff's Second Amended Complaint; Request for Judicial Notice In Support of Plaintiff's Opposition to Defendants' Demurrer to Second Amended Complaint; Plaintiff's Objection to Defendants Request for Judicial Notice	05/21/18
O	Reply Memorandum of Points and Authorities in Support of Defendants' Demurrer and Motion to Strike Plaintiff's Second Amended Complaint; Defendants' Supplemental Request for Judicial Notice in Support of Defendants'	5/25/18

1		Demurrer to Second Amended Complaint; Defendants' Response to Plaintiff's Objection to Defendants' Request for Judicial Notice; Notice of Related Case and Proof of Service	
2			
3	P	Defendants' Notice of Meet and Confer	05/30/18
4	Q	Plaintiff's Objections to Defendants' Supplemental Request for Judicial Notice in Support of Defendants' Demurrer in the Complaint; New Issues Raised for the First Time in Defendants' Reply in Support of Defendants' Demurrer to the Complaint and Defendants' Notice of Related Case	05/30/18
5			
6			
7	R	Defendants' Response to Plaintiff's Objections to Defendants' Supplemental Request for Judicial Notice; Defendants' Reply; Defendants Notice of Related Cases	06/06/18
8	S	Second Amended Class Action Complaint; Proof of Service	06/05/18
9	T	Notice of Intent Not to Amend His Second Amended Complaint and Proof of Service	06/21/18
10	U	Defendant Cemex Construction Materials Pacific, LLC, Cemex, Inc. and Max Pina's Answer to Second Amended Complaint	07/03/18
11			
12	V	Stipulation Re: Electronic Service; Order	07/05/18

13 WHEREFORE Defendants respectfully request that this action now proceed
14 in this Court as an action properly removed.

15 DATED: July 19, 2018

HANSON BRIDGETT LLP

16
17 By: /s/ Dorothy S. Liu

DOROTHY S. LIU

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Attorneys for CEMEX CONSTRUCTION
MATERIALS PACIFIC, LLC and
CEMEX, INC.

EXHIBIT A



ORIGINAL

SUM-100

**SUMMONS
(CITACION JUDICIAL)**

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

CEMEX CONSTRUCTION MATERIALS PACIFIC, LLC, a Delaware Limited Liability Company; CEMEX, INC., a Louisiana Corporation, MAX PINA, an individual, and DOES 1-50, inclusive.

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

KAREN GRIGORYAN, individually and on behalf of all others similarly situatedSa

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO CIVIL DIVISION

DEC 01 2017

BY LiSette HuezO
LISETTE HUEZO, DEPUTY

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pide al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is: San Bernardino Justice Center
(El nombre y dirección de la corte es):

247 W. 3rd Street
San Bernardino, CA 92401

CASE NUMBER:
(Número del Caso):
CIVDS1723753

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):
James Hawkins APLC, 9880 Research Dr., Suite 200, Irvine, CA 92618, Tel: 949-387-7200

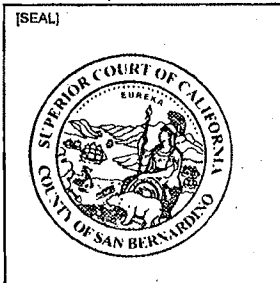
DATE: DEC 01 2017
(Fecha)

Clerk, by LiSette HuezO Deputy
(Secretaria) LiSette HuezO (Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)
(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

NOTICE TO THE PERSON SERVED: You are served

- as an individual defendant.
- as the person sued under the fictitious name of (specify):
- on behalf of (specify):
under: CCP 416.10 (corporation) CCP 416.60 (minor)
 CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
 CCP 416.40 (association or partnership) CCP 416.90 (authorized person)
 other (specify):
- by personal delivery on (date):



FILED

ORIGINAL

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO CIVIL DIVISION

DEC 01 2017

BY *Lisette Huevo*
LISETTE HUEZO, DEPUTY

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN BERNARDINO, JUSTICE CENTER

22 KAREN GRIGORYAN, individually and on
23 behalf of all others similarly situated,

24 Plaintiffs,

25 v.

26 CEMEX CONSTRUCTION MATERIALS
27 PACIFIC, LLC, a Delaware Limited Liability
28 Company; CEMEX, INC., a Louisiana
Corporation, MAX PINA, an individual, and
DOES 1-50, inclusive,

Defendants.

Case No.
Hon. CIVDS1723753
Dept.

**CLASS ACTION COMPLAINT
PURSUANT TO CALIFORNIA CODE
OF CIVIL PROCEDURE §382 FOR:**

- (1) FAILURE TO PAY MINIMUM WAGES;
- (2) FAILURE TO PROVIDE MEAL PERIODS;
- (3) FAILURE TO AUTHORIZE AND PERMIT REST PERIODS;
- (4) FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS; AND
- (5) UNFAIR COMPETITION

DEMAND FOR JURY TRIAL

171201-0678
171201-0679
\$1,435⁰⁰

1 COMES NOW Plaintiff KAREN GRIGORYAN ("Plaintiff"), individually and on behalf
2 of others similarly situated, asserts claims against Defendants CEMEX CONSTRUCTION
3 MATERIALS PACIFIC, LLC, a Delaware Limited Liability Company, CEMEX INC., a
4 Louisiana Corporation, MAX PINA, an individual, and Does 1-50, inclusive (collectively
5 "Defendants") as follows:

6 **JURISDICTION AND VENUE**

7 1. This class action is brought pursuant to California Code of Civil Procedure §382.
8 The monetary damages and restitution sought by Plaintiffs exceed the minimum jurisdiction
9 limits of the California Superior Court and will be established according to proof at trial.

10 2. This Court has jurisdiction over this action pursuant to the California Constitution
11 Article VI §10, which grants the California Superior Court original jurisdiction in all causes
12 except those given by statute to other courts. The statutes under which this action is brought do
13 not give jurisdiction to any other court.

14 3. This Court has jurisdiction over Defendants because, upon information and belief,
15 each Defendant is either a resident of California, has sufficient minimum contacts in California,
16 or otherwise intentionally avails itself of the California market so as to render the exercise of
17 jurisdiction over it by the California Courts consistent with traditional notions of fair play and
18 substantial justice.

19 4. The California Superior Court also has jurisdiction in this matter because there is no
20 federal question at issue, as the issues herein are based solely on California statutes and law,
21 including the Labor Code, IWC Wage Order 1-2001, CCP, California Civil Code ("CC") and
22 B&PC.

23 5. Venue is proper in this Court because upon information and belief, one or more of
24 the Defendants, reside, transact business, or have offices in this County and the acts or omissions
25 alleged herein took place in this County.

26 **PARTIES**

27 6. Plaintiff, KAREN GRIGORYAN is, and at all times relevant to this action, a
28 resident of Los Angeles, California. Plaintiff is currently employed by Defendants. Plaintiff has

1 been employed by Defendants since 2006 as a Non-Exempt Driver. Plaintiff performs duties
2 relating to Defendants' concrete and cement manufacturing and supplier business.

3 7. Defendants, CEMEX CONSTRUCTION MATERIALS PACIFIC, LLC, and
4 CEMEX INC., operate as a manufacturer, distributor, and seller of cement, ready-mix concrete,
5 aggregates, and related building materials across the U.S., including California and within San
6 Bernardino County at 3990 Concours Street, Suite 200, Ontario, CA 91764.

7 8. Defendant, MAX PINA is resident of California, and upon information and belief,
8 an individual, and at relevant times hereinafter mentioned, was the Regional Manager of CEMEX
9 CONSTRUCTION MATERIALS PACIFIC, LLC during the purported liability period.
10 Defendant PINA controlled the hours and working conditions of the region where Plaintiff and
11 Class Members worked and thus, is and was therefore a person, "acting on behalf" of CEMEX
12 CONSTRUCTION MATERIALS, LLC pursuant to Labor Code § 558.1 and therefore may be
13 held liable as the employer for many of the Labor Code violations alleged in the Complaint.

14 9. Plaintiff is informed and believes, and thereon alleges, that at all relevant times
15 mentioned herein, Defendants are organized and existing under the laws of California, and were
16 at all times mentioned herein licensed and qualified to do business in California. On information
17 and belief, Plaintiff alleges that at all relevant times referenced herein Defendants did and
18 continue to transact business throughout California.

19 10. Whenever in this complaint reference is made to any act, deed, or conduct of
20 Defendants, the allegation means that Defendants engaged in the act, deed, or conduct by or
21 through one or more of its officers, directors, agents, employees, or representatives, who was
22 actively engaged in the management, direction, control, or transaction of the ordinary business
23 and affairs of Defendants.

24 11. Plaintiff is ignorant of the true names and capacities, whether individual,
25 corporate, associate, or otherwise, of the Defendants sued herein as Does 1 through 50, inclusive
26 and therefore sues said Defendants (the "Doe Defendants") by such fictitious names. Plaintiff
27 will amend this complaint to insert the true names and capacities of the Doe Defendants at such
28 time as the identities of the Doe Defendants have been ascertained.

1 12. Plaintiff is informed and believes, and thereon alleges, that the Doe Defendants are
2 the partners, agents, or principals and co-conspirators of Defendants, and of each other; that
3 Defendants and the Doe Defendants performed the acts and conduct herein alleged directly, aided
4 and abetted the performance thereof, or knowingly acquiesced in, ratified, and accepted the
5 benefits of such acts and conduct, and therefore each of the Doe Defendants is liable to the extent
6 of the liability of the Defendants as alleged herein.

7 13. Plaintiff is further informed and believes, and thereon alleges, that at all times
8 herein material, each Defendant was completely dominated and controlled by its co-Defendants
9 and each was the alter ego of the other. Whenever and wherever reference is made in this
10 complaint to any conduct by Defendant or Defendants, such allegations and references shall also
11 be deemed to mean the conduct of each of the Defendants, acting individually, jointly, and
12 severally. Whenever and wherever reference is made to individuals who are not named as
13 Defendants in this complaint, but were employees and/or agents of Defendants, such individuals,
14 at all relevant times acted on behalf of Defendants named in this complaint within the scope of
15 their respective employments.

16 **CLASS ACTION ALLEGATIONS**

17 14. Plaintiff brings this action individually as well as on behalf of each and all other
18 persons similarly situated, and thus, seeks class certification under California Code of Civil
19 Procedure §382.

20 15. All claims alleged herein arise under California law for which Plaintiff seeks relief
21 as authorized by California law.

22 16. The proposed class is comprised of and defined as:

23 Any and all persons who are or were employed in non-exempt driver positions,
24 however titled, by Defendants in the state of California within four (4) years prior
25 to the filing of the complaint in this action until resolution of this lawsuit
(hereinafter collectively referred to as the "Class" or "Class Members").

26 17. Plaintiff also seeks to represent the Subclass(es) composed of and defined as
27 follows:

28

1 **Subclass 1:** All Class Members who have been employed by Defendants in
2 non-exempt positions within the State of California at any time between
November 2014 and the present and have separated their employment.

3 **Subclass 2:** All Class Members who have been employed by Defendants in non-
4 exempt positions, within the State of California at any time within one year prior
to the filing of the complaint in this action until resolution of this lawsuit.

5 18. Plaintiff reserves the right under California Rule of Court 3.765(b) and other
6 applicable laws to amend or modify the class definition with respect to issues or in any other
7 ways.

8 19. The term "Class" includes Plaintiff and all members of the Class and each of the
9 subclasses, if applicable. Plaintiff seeks class-wide recovery based on the allegations set forth in
10 this complaint.

11 20. There is a well-defined community of interest in this litigation and the members of
12 the Class are easily ascertainable as set forth below:

13 a. Numerosity: The members of the Class and Subclass are so numerous that
14 joinder of all members of the Class and/or Subclass would be unfeasible and impractical. The
15 membership of the entire Class and/or Subclass is unknown to Plaintiff at this time, however, the
16 Class is estimated to be greater than one hundred (100) individuals, and the identity of such
17 membership is readily ascertainable by inspection of Defendants' employment records.

18 b. Typicality: Plaintiff's claims herein alleged are typical of those claims
19 which could be alleged by any member of the Class and/or Subclass, and the relief sought is
20 typical of the relief which would be sought by each member of the Class and/or Subclass in
21 separate actions. Plaintiff and all members of the Class and or Subclass sustained injuries and
22 damages arising out of and caused by Defendants' common course of conduct in violation of
23 California laws, regulations, and statutes as alleged herein.

24 c. Adequacy: Plaintiff is qualified to, and will fairly and adequately protect
25 the interests of each member of the Class and/or Subclass with whom he has a well defined
26 community of interest and typicality of claims, as demonstrated herein. Plaintiff acknowledges
27 an obligation to make known to the Court any relationships, conflicts, or differences with any
28 member of the Class and/or Subclass. Plaintiff's attorneys and the proposed Counsel for the

1 Class and Subclass are versed in the rules governing class action discovery, certification,
2 litigation, and settlement and experienced in handling such matters. Other former and current
3 employees of Defendants may also serve as representatives of the Class and Subclass if needed.

4 d. Superiority: The nature of this action makes the use of class action
5 adjudication superior to other methods. A class action will achieve economies of time, effort,
6 judicial resources, and expense compared to separate lawsuits. The prosecution of separate
7 actions by individual members of the Class and/or Subclass would create a risk of inconsistent
8 and/or varying adjudications with respect to the individual members of the Class and/or Subclass,
9 establishing incompatible standards of conduct for the Defendants, and resulting in the
10 impairment of the rights of the members of the Class and/or Subclass and the disposition of their
11 interests through actions to which they were not parties.

12 e. Public Policy Considerations: Employers in the state of California violate
13 employment and labor laws everyday. Current employees are often afraid to assert their rights
14 out of fear of direct or indirect retaliation. Former employees are fearful of bringing actions
15 because they believe their former employers may damage their future endeavors through negative
16 references and/or other means. The nature of this action allows for the protection of current and
17 former employees' rights without fear or retaliation or damage.

18 f. Commonality: There are common questions of law and fact as to the Class
19 that predominate over questions affecting only individual members including, but not limited to:

20 i. Whether Defendants failed to pay minimum wage compensation to Plaintiff and
21 Class Members for all hours worked;

22 ii. Whether Defendants violated Labor Code sections 226.7, 512, and applicable IWC
23 Wage Order 1-2001, by failing to authorize and permit daily rest periods to Plaintiff and Class
24 Members for every four hours or major fraction thereof worked and failing to compensate said
25 employees one hours wages in lieu of rest periods;

26 iii. Whether Defendants violated Labor Code sections 226.7, 512 and applicable IWC
27 Wage Orders 1-2001, by failing to provide a meal period to Plaintiff and Class Members on days
28 they worked work periods in excess of six hours and failing to compensate said employees one

1 hour wages in lieu of meal periods;

2 iv. Whether Defendants provided accurate itemized wage statements pursuant to
3 Labor Code section 226;

4 v. Whether Defendants failed to maintain accurate time record including recording
5 Plaintiff and Class Members' meal periods pursuant to Labor Code sections 1174.5 and the
6 applicable IWC Wage Orders 1-2001;

7 vi. Whether Defendants violated section 17200 *et seq.* of the Business and Professions
8 Code by failing to pay minimum wages, failing to authorize and permit rest breaks and failing to
9 provide meal periods without compensating non-exempt employees one hour pay for every day
10 such periods were not provided, failing to reimburse business expenses; and failing to keep
11 accurate records;

12 vii. Whether Defendants violated Business and Professions Code and Labor Code
13 sections 226, 226.7, 512, 558, 1174.5, 1175, 1194, 1197, 2698, *et. seq.*, and applicable IWC
14 Wage Order 1-2001 which violation constitutes a violation of fundamental public policy;

15 viii. Whether Plaintiff and the Members of the Plaintiff Class are entitled to equitable
16 relief pursuant to Business and Professions Code section 17200, *et. seq.*;

17 ix. Whether Plaintiff and the Members of the Plaintiff Class are entitled to relief in the
18 form of back wages, penalties and interest for failure to pay minimum wages pursuant to Labor
19 Code sections 1194 and 1197; and

20 x. Whether Plaintiff and Members of the Plaintiff Class are entitled to penalties
21 pursuant to Labor Code section 226 *et. seq.* for failing to provide accurate itemized wage
22 statements.

23 **FACTUAL ALLEGATIONS**

24 21. At all times set forth herein, Defendants employed Plaintiff and other persons in
25 the capacity of non-exempt positions, however titled, throughout the state of California.

26 22. Defendants employed Plaintiff as a Non-Exempt Driver working as a non-exempt
27 hourly paid employee during the liability period at its Los Angeles location, delivering
28 Defendants' concrete and cement products to various sites in various cities across California.

1 These cities include but are not limited to: Azusa, Compton, Hollywood, Inglewood, Los
2 Angeles, Corona, Fontana, Lytle Creek, Perris, Redlands, Temecula, Irvine, Orange, Simi Valley,
3 Oxnard, and Santa Barbara.

4 23. Defendants continue to employ non-exempt employees, however titled, throughout
5 the state of California.

6 24. Plaintiff is informed and believes, and thereon alleges, that Defendants are and
7 were advised by skilled lawyers and other professionals, employees, and advisors with knowledge
8 of the requirements of California's wage and employment laws.

9 25. On information and belief, and during the relevant time frame, Defendants
10 implemented a uniform set of policies and practices to all non-exempt drivers as all non-exempt
11 drivers are engaged in the generic job duties of delivering Defendants' concrete and cement
12 products.

13 26. During the relevant time frame, Defendants compensated Plaintiff and Class
14 Members based upon an hourly rate.

15 27. On information and belief, during the relevant time frame, Plaintiff and Class
16 Members frequently worked well over eight (8) hours in a day and forty (40) hours in a work
17 week as Plaintiff and Class Members typically worked five days a week working shifts that
18 approximately began at 6 a.m. and concluded at 4 p.m. or later.

19 28. During the relevant time frame, Defendants failed to pay regular wages to Plaintiff
20 and Class Members by failing to pay for all time Plaintiff and Class Members spent on call during
21 their days off. For instance, Defendants required Plaintiff and Class Members to keep their work
22 issued radios on and on their persons from approximately 5 a.m. to 9:30 a.m. during their days
23 off. During this on call window, Plaintiff and Class Members would anticipate being called in to
24 work at a moments notice and had to be prepared to go into work immediately. This resulted in
25 Plaintiff and Class Members being restricted from using this time to engage in any personal tasks
26 as Plaintiff and Class Members were subject to Defendants' direction and control during this four
27 and a half hour window.

28 29. During the relevant time frame, Plaintiff, and on information and belief the Class

1 Members were systematically denied meal periods and not authorized and permitted rest breaks
2 or not provided meal periods or authorized and permitted rest periods within the legally required
3 time frames as Defendants' work demands were executed by Plaintiff and Class Members at the
4 expense of their meal periods and rest breaks. Defendants' policies resulted in ultimately
5 discouraging Plaintiff and Class Members from taking meal periods and/or rest breaks as
6 Defendants' demands were high.

7 30. Nevertheless, Defendants never paid Plaintiff, and on information and belief, never
8 paid Class Members an extra hour of pay as required by California law where all meal periods
9 and rest breaks were not provided or authorized and permitted, or were not provided or authorized
10 and permitted within the legally required time frames.

11 31. During the relevant time frame, Plaintiff's and Class Members' wage statements
12 did not comply with the applicable law in that at a minimum they failed to accurately record the
13 total hours worked, total wages per pay period, and failed to accurately identify meal and rest
14 period premiums when owed.

15 32. Plaintiff is informed and believes, and thereon alleges, that at all times herein
16 mentioned, Defendants knew that they had a duty to compensate Plaintiff and Class Members
17 premium wages, and that Defendants had the financial ability to pay such compensation, but
18 willfully, knowingly, recklessly, and/or intentionally failed to do so.

19 33. Plaintiff is informed and believes, and thereon alleges, that Defendants know,
20 should know, knew, and/or should have known that Plaintiff and the other Class Members were
21 entitled to receive accurate wages which include but are not limited to Labor Code § 204, 226.7,
22 512, 558, 1194, 1197 and applicable IWC Wage Order 1-2001 and California Code of
23 Regulations.

24 34. Plaintiff and Class Members they seek to represent are covered by, and Defendants
25 are required to comply with, applicable California Labor Codes, IWC Wage Order 1-2001 and
26 corresponding applicable provisions of California Code of Regulations, Title 8, 11000 et seq.

27 ///

28 ///

1 CLASS ACTION CLAIMS

2 **FIRST CAUSE OF ACTION FAILURE TO PAY MINIMUM WAGES**

3 **By Plaintiff and Class Against All Defendants**

4 35. Plaintiff repeats and incorporates herein by reference each and every allegation set
5 forth above, as though fully set forth herein.

6 36. At all times relevant, the IWC wage order 1-2001 applicable to Plaintiff's and the
7 Class require employers to pay its employees for each hour worked at least minimum wage.
8 "Hours worked" means the time during which an employee is subject to the control of an
9 employer, and includes all the time the employee is suffered or permitted to work, whether or not
10 required to do so, and in the case of an employee who is required to reside on the employment
11 premises, that time spent carrying out assigned duties shall be counted as hours worked.

12 37. At all relevant times, Labor Code §1197 provides that the minimum wage for
13 employees fixed by the IWC is the minimum wage to be paid to employees, and the payment of a
14 lesser wage than the established minimum is unlawful. Further, pursuant to the IWC Wage Order
15 1-2001 and Labor Code, Plaintiff and Class Members are to be paid minimum wage for each hour
16 worked, and cannot be averaged.

17 38. During the relevant time period, Plaintiff and on information and belief the Class,
18 were not paid at least minimum wage for the time spent on-call during their days off, as Plaintiff
19 and Class Members were required to keep on and on their person Defendants' work issued radios
20 for Defendants required Plaintiff and Class Members to be ready to work at a moments notice.
21 This resulted in Plaintiff and Class Members being restricted from using this time to engage in
22 any personal tasks as Plaintiff and Class Members were subject to Defendants' direction and
23 control during this four and a half hour window as discussed herein.

24 39. While Plaintiff and the Class performed the work as described herein, Defendants
25 policies and practices failed to pay wages for all hours worked, as required pursuant to Labor
26 Code §§ 200, 1194, and 1197.

27 40. Thus, Plaintiff and Class Members are entitled to recover the unpaid balance of
28 their minimum wage compensation as well as interest, costs, and attorneys' fees pursuant to Labor

1 Code §§ 1194, 1197 and liquidated damages in an amount equal to the wages unlawfully unpaid
2 and interest thereon pursuant to Labor Code §1194.2.

3 **SECOND CAUSE OF ACTION FOR FAILURE TO PROVIDE MEAL PERIODS**

4 **By Plaintiff and Class Against All Defendants**

5 41. Plaintiff repeats and incorporates herein by reference each and every allegation set
6 forth above, as though fully set forth herein.

7 42. Pursuant to Labor Code §512, no employer shall employ an employee for a work
8 period of more than five (5) hours without providing a meal break of not less than thirty (30)
9 minutes in which the employee is relieved of all of his or her duties. An employer may not
10 employ an employee for a work period of more than ten (10) hours per day without providing the
11 employee with a second meal period of not less than thirty (30) minutes, except that if the total
12 hours worked is no more than twelve (12) hours, the second meal period may be waived by
13 mutual consent of the employer and the employee only if the first meal period was not waived.

14 43. Pursuant to the IWC wage order 1-2001 applicable to Plaintiff's and Class
15 Members' employment by Defendants, in order for an "on duty" meal period to be permissible,
16 the nature of the work of the employee must prevent an employee from being relieved of all
17 duties relating to his or her work for the employer and the employees must consent in writing to
18 the "on duty" meal period.

19 44. However, on information and belief, the nature of the work of Plaintiff and Class
20 Members was not such that Plaintiff and Class Members are prevented from being relieved of all
21 duties. Despite said requirements of the IWC wage orders applicable to Plaintiff's and Class
22 Members' employment by Defendants and Labor Code §512 and §226.7, Plaintiff and Class
23 Members were not provided with duty free meal periods, and/or not provided meal periods within
24 the required time frames, or the legally required length of times.

25 45. For the four (4) years preceding the filing of this lawsuit, Defendants failed to
26 provide Plaintiff and Class Members, in their non-exempt positions, however titled, first and
27 sometimes second meal breaks of not less than thirty (30) minutes and or to provide meal periods
28 within the required time frames pursuant to the IWC wage order 1-2001 applicable to Plaintiff's

1 and Class Members' employment by Defendants, as Defendants' management pressed upon them
2 the need to make timely deliveries at the cost of their meal breaks. Further, if Plaintiff and Class
3 Members attempted to take a meal break, Defendant Pina would reprimand them for attempting to
4 do so. As a result, Plaintiff and Class Members were ultimately discouraged from taking their
5 legally required meal periods due to the demands placed upon them by Defendants.

6 46. As a proximate result of the aforementioned violations, Plaintiff and Class
7 Members have been damaged in an amount according to proof at time of trial.

8 47. Pursuant to Labor Code §226.7, Plaintiff and Class Members are entitled to
9 recover one (1) hour of premium pay for each day in which a meal period was not provided and
10 not provided within the required time frames.

11 **THIRD CAUSE OF ACTION FOR FAILURE TO AUTHORIZE AND PERMIT REST**
12 **PERIODS**

13 **By Plaintiff and Class Against All Defendants**

14 48. Plaintiff repeats and incorporates herein by reference each and every allegation set
15 forth above, as though fully set forth herein.

16 49. Pursuant to the IWC wage orders 1-2001 applicable to Plaintiff's and Class
17 Members' employment by Defendants, "Every employer shall authorize and permit all employees
18 to take rest periods, which insofar as practicable shall be in the middle of each work period....
19 [The] authorized rest period time shall be based on the total hours worked daily at the rate of ten
20 (10) minutes net rest time per four (4) hours worked or major fraction thereof.... Authorized rest
21 period time shall be counted as hours worked, for which there shall be no deduction from wages."
22 Labor Code §226.7(a) prohibits an employer from requiring any employee to work during any
23 rest period mandated by an applicable order of the IWC.

24 50. Defendants were required to authorize and permit employees such as Plaintiff and
25 Class Members to take rest periods, based upon the total hours worked at a rate of ten (10)
26 minutes net rest per four (4) hours, or major fraction thereof, with no deduction from wages.
27 Despite said requirements of the IWC wage order 1-2001 applicable to Plaintiff's and Class
28 Members' employment by Defendants, Defendants failed to permit and authorize Plaintiff and

1 Class Members, in their roles as on-exempt employees, or equivalent positions with similar job
2 duties, however titled, to take ten (10) minute rest periods for every four (4) hours worked, or
3 major fraction thereof.

4 51. For the four (4) years preceding the filing of this lawsuit, Defendants failed to
5 authorize and permit Plaintiff and Class Members the required rest periods pursuant to the IWC
6 wage orders applicable to Plaintiff and Class Members' employment by Defendants and Labor
7 Code §226.7 as Plaintiff and Class Members, while on their rest breaks, were required to keep
8 their work issued radios on and on their persons at all times and were required to respond to any
9 requests made by Defendants' dispatch in direct violation of the applicable Labor Code and IWC
10 Wage Order. *See Augustus v. ABM Services, Inc.*, 2 Cal. 5th 257, 260, 273 (2016) (Concluding
11 that state law prohibits on-duty and on-call rest periods. During required rest periods, employers
12 must relieve their employees of all duties and relinquish any control over how employees spend
13 their break time.). Defendants' managers, such as Defendant Pina also discouraged Plaintiff and
14 Class Members from taking their lawfully required rest breaks as Defendants prioritized the
15 delivery of its concrete and cement products at the expense of Plaintiff's and Class Members' rest
16 periods, and if Plaintiff and Class Members attempted to take a rest break, Defendant Pina would
17 reprimand them for attempting to do so.

18 52. As a proximate result of the aforementioned violations, Plaintiffs and Class
19 Members have been damaged in an amount according to proof at time of trial.

20 53. Pursuant to Labor Code §226.7, Plaintiff and Class Members are entitled to
21 recover one (1) hour of premium pay for each day in which a rest period was not provided.

22 **FOURTH CAUSE OF ACTION FOR FAILURE TO PROVIDE ACCRUATE ITEMIZED**
23 **WAGE STATEMENT**

24 **By Plaintiff and Class Against All Defendants**

25 54. Plaintiff repeats and incorporates herein by reference each and every allegation set
26 forth above, as though fully set forth herein.

27 55. Section 226(a) of the California Labor Code requires Defendants to itemize in
28 wage statements all deductions from payment of wages and to accurately report total hours

1 worked by Plaintiff and the Class including applicable hourly rates and reimbursement expenses
2 among other things. Defendants have knowingly and intentionally failed to comply with Labor
3 Code section 226 and 204 on wage statements that have been provided to Plaintiff and the Class.

4 56. IWC Wage Orders require Defendants to maintain time records showing, among
5 others, when the employee begins and ends each work period, meal periods, split shift intervals
6 and total daily hours worked in an itemized wage statement, and must show all deductions and
7 reimbursements from payment of wages, and accurately report total hours worked by Plaintiff and
8 the Class. On information and belief, Defendants have failed to record all or some of the items
9 delineated in Industrial Wage Orders and Labor Code §226.

10 57. Defendants have failed to accurately record all time worked, and wages owed per
11 pay period.

12 58. Defendants have also failed to accurately record and identify the meal and rest
13 period premiums owed per pay period.

14 59. Plaintiff and the Class have been injured as they were unable to determine whether
15 they had been paid correctly for all hours worked per pay period among other things.

16 60. Pursuant to Labor Code § 226, Plaintiff and the Class are entitled up to a
17 maximum of \$4,000 each for record keeping violations.

18 **FIFTH CAUSE OF ACTION FOR UNFAIR COMPETITION**

19 **By Plaintiff and Class Against All Defendants**

20 60. Plaintiff repeats and incorporates herein by reference each and every allegation set
21 forth above, as though fully set forth herein.

22 61. Defendants' conduct, as alleged in this complaint, has been, and continues to be,
23 unfair, unlawful, and harmful to Plaintiff and Class Members, Defendants' competitors, and the
24 general public. Plaintiff seeks to enforce important rights affecting the public interest within the
25 meaning of the California Code of Civil Procedure §1021.5.

26 62. Defendants' policies, activities, and actions as alleged herein, are violations of
27 California law and constitute unlawful business acts and practices in violation of California
28 Business and Professions Code §§17200, et seq.

1 63. A violation of California Business and Professions Code §§17200, et seq., may be
 2 predicated on the violation of any state or federal law. In the instant case, Defendants' policy and
 3 practice of failing to pay wages over the past four (4) years violates, including but not limited to,
 4 Labor Code §§ 204, 1194, 1197. Defendants' policy of failing to provide Plaintiff and the Class
 5 with meal periods and rest breaks or the one (1) hour of premium pay when a meal or rest break
 6 period was not provided or provided outside of the required time frames, violates Labor Code
 7 §512, and §226.7 and applicable IWC Wage Orders and California Code of Regulations.

8 64. Plaintiff and Class Members have been personally aggrieved by Defendants'
 9 unlawful and unfair business acts and practices alleged herein by the loss of money and/or
 10 property.

11 65. As a result of the unfair business practices of Defendants, as alleged herein,
 12 Plaintiff and Class Members are entitled to injunctive relief, disgorgement and restitution in an
 13 amount to be shown according to proof at trial.

14 66. Pursuant to California Business and Professions Code §§17200, et seq., Plaintiff
 15 and Class Members are entitled to restitution of the wages withheld and retained by Defendants
 16 during a period that commences four (4) years prior to the filing of this complaint; an award of
 17 attorneys' fees, interest; and an award of costs.

18 **PRAYER FOR RELIEF**

19 WHEREFORE, Plaintiff prays for judgment against Defendants, as follows:

20 **Class Certification**

- 21 1. That this action be certified as a class action;
 22 2. That Plaintiff be appointed as the representative of the Class;
 23 3. That Plaintiff be appointed as the representative of the Subclass(es); and
 24 4. That counsel for Plaintiff is appointed as counsel for the Class and Subclass(es).

25 **On the First Cause of Action**

- 26 1. For compensatory damages equal to the unpaid balance of minimum wage
 27 compensation owed to Plaintiff and Class members as well as interest and costs;
 28 2. For reasonable attorneys' fees and costs pursuant to Labor Code § 1194;

1 3. For liquidated damages in an amount equal to the wages unlawfully unpaid and
2 interest thereon pursuant to Labor Code § 1194.2;

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

4 On the Second Cause of Action

5 1. For one (1) hour of premium pay for each day in which a required meal period was
6 not provided or not provided in a timely manner; and

7 2. For such other and further relief as the Court deems proper.

8 On the Third Cause of Action

9 1. For one (1) hour of premium pay for each day in which a required rest period was
10 not authorized or permitted; and

11 2. For such other and further relief as the Court deems proper.

12 On the Fourth Cause of Action

13 1. For statutory penalties pursuant to Labor Code §226;

14 2. For interest for wages untimely paid; and

15 3. For such other and further relief as the Court deems proper.

16 On the Fifth Cause of Action

17 1. That Defendants, jointly and/or severally, pay restitution of sums to Plaintiff and
18 Class Members for their past failure to pay all regular wages due over the last four (4) years in an
19 amount according to proof;

20 2. That Defendants, jointly and/or severally, pay restitution of sums to Plaintiff and
21 Class Members for their past failure to pay wages, premium wages for meal and/or rest periods,
22 that were not provided as described herein to Plaintiff and Class Members over the last four (4)
23 years in an amount according to proof;

24 3. For pre-judgment interest on any unpaid wages due from the day that such
25 amounts were due;

26 4. For reasonable attorneys' fees that Plaintiff and Class Members are entitled to
27 recover;

28 5. For costs of suit incurred herein; and

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6. For such other and further relief as the Court deems proper.

DEMAND FOR JURY TRIAL

Plaintiff and members of the Class and Subclass request a jury trial in this matter.

Dated: December 1, 2017

JAMES HAWKINS APLC

By: 

JAMES R. HAWKINS, ESQ.
GREGORY MAURO, ESQ.
Attorneys for Plaintiff KAREN
GRIGORYAN, individually and on behalf of
all others similarly situated.

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Cemex Delivery Driver Sues Over Alleged Wage Violations](#)
