

JAN 29 2024

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13 MICHAEL M. CANTRELL, and all others similarly situated

14 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

15 **FOR THE COUNTY OF ORANGE**

16
17 MICHAEL M. CANTRELL, on behalf of
18 himself, all others similarly situated, and as an
19 "aggrieved employee" on behalf of other
"aggrieved employees" under the Labor Code
Private Attorneys General Act of 2004,

20 *Plaintiff(s),*

21 vs.

22 CONCRETE PLACEMENT, INC., a
23 California corporation; COLLIN FLEMING,
24 and DOES 2-50, inclusive,

25 *Defendant(s).*

Case No.: 30-2021-01225534-CU-OE-CXC

**AMENDED ~~PROPOSED~~ FINAL
ORDER AND JUDGMENT APPROVING
CLASS SETTLEMENT**

Hearing Information

Action filed: 10/7/2021
Hearing Date: 01/05/24
Hearing Time: 9:00 a.m.
Hearing Dept: CX101, Hon. William
D. Cluster



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1 This matter came on for hearing on January 5, 2024, at 9:00 a.m. in Department
2 CX101 of the above-captioned court on Plaintiff's Motion for Final Approval of a Class
3 Action Settlement pursuant to California Rules of Court, Rule 3.769, as set forth in the First
4 Amended Class Action and PAGA Settlement Agreement and Class Notice (the "Settlement")
5 filed herewith which provides for a Gross Settlement Amount ("GSA") of \$1,045,340.63 in
6 compromise of all disputed claims on behalf of all persons employed by Defendants in
7 California and classified as hourly, non-exempt who worked for Defendants during the Class
8 Period. All capitalized terms used herein shall have the same meaning as defined in the
9 Settlement.

9 In accordance with the Court's prior ruling granting Preliminary Approval of Class
10 Action Settlement, Class Members have been given notice of the terms of the Settlement and
11 the opportunity to request exclusion, comment upon or object to it or to any of its terms.
12 Having received and considered the Settlement, the supporting papers filed by the Parties, and
13 the evidence and argument received by the Court in conjunction with the motions for
14 preliminary and final approval of the Settlement, the Court grants final approval of the
15 Settlement and HEREBY ORDERS, ADJUDGES, DECREES AND MAKES THE
16 FOLLOWING DETERMINATIONS:

16 1. The Court has jurisdiction over the subject matter of the Action and over all
17 Parties to the Action, including all Class Members who did not request to be excluded from
18 the Settlement. Pursuant to this Court's ruling granting the Motion for Preliminary Approval
19 of Class Action Settlement of July 07, 2023, the Notice Packet was sent to each Class Member
20 by First Class U.S. mail. The Notice Packet informed Class Members of the terms of the
21 Settlement, their right to receive their proportional share of the Settlement, their right to
22 request exclusion, their right to comment upon or object to the Settlement, and their right to
23 appear in person or by counsel at the final approval hearing and be heard regarding final
24 approval of the Settlement. Adequate periods of time were provided by each of these
25 procedures. No member of the Class presented written objections to the proposed Settlement
26 as part of this notice process, stated an intention to appear, or actually appeared at the final
27 approval hearing.

26 2. For purposes of this Settlement, the "Class" means all persons employed by
27 Defendants in California and classified as hourly, non-exempt who worked for Defendants

1 during the Class Period. Settlement, § 1.5. The “Class Period” means the period of time from
2 October 08, 2017, through July 07, 2023. Settlement, § 1.12.

3 3. The Court finds and determines that the notice procedure afforded adequate
4 protections to Class Members and provides the basis for the Court to make an informed
5 decision regarding final approval of the Settlement based on the responses of Class Members.
6 The Court finds and determines that the notice provided in this case was the best notice
7 practicable, which satisfied the requirements of law and due process as to all persons entitled
8 to such notice.

9 4. **Release by Plaintiff and Class Members.** Effective on the date when
10 Defendants fully fund the entire Gross Settlement Amount and fund all employer payroll taxes
11 owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and
12 Class Counsel will release claims against all Released Parties ^{per the terms of the} as follows: Plaintiff's Release.
13 ~~Plaintiff and his respective former and present spouses, representatives, agents, attorneys,~~
14 ~~heirs, administrators, successors, and assigns generally, release and discharge Released Parties~~
15 ~~from any and all claims, transactions, or occurrences he has or may have against them at this~~
16 ~~time, including, but not limited to: (a) all claims that were, or reasonably could have been,~~
17 ~~alleged, based on the facts contained, in the Operative Complaint (b) all PAGA claims that~~
18 ~~were, or reasonably could have been, alleged based on facts contained in the Operative~~
19 ~~Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released under 6.2,~~
20 ~~below; and (c) and all claims known and unknown, without exception, except as may be~~
21 ~~prohibited by law. (“Plaintiff's Release.”) Plaintiff's Release does not extend to any claims or~~
22 ~~actions to enforce this Agreement, or to any claims for vested benefits, unemployment~~
23 ~~benefits, disability benefits, social security benefits, workers' compensation benefits that arose~~
24 ~~at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that~~
25 ~~Plaintiff may discover facts or law different from, or in addition to, the facts or law that~~
26 ~~Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall~~
27 ~~be and remain effective in all respects, notwithstanding such different or additional facts or~~
~~Plaintiff's discovery of them. Plaintiff's Waiver of Rights Under California Civil Code Section~~
~~1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the~~
~~provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which~~
~~reads: A general release does not extend to claims that the creditor or releasing party does not~~

NDC

1 know or suspect to exist in his or her favor at the time of executing the release, and that if
2 known by him or her would have materially affected his or her settlement with the debtor or
3 Released Party. Release by Participating Class Members: All Participating Class Members, on
4 behalf of themselves and their respective former and present representatives, agents, attorneys,
5 heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that
6 were alleged, or reasonably could have been alleged, based on the Class Period facts stated in
7 the Operative Complaint and ascertained in the course of the Action including but not limited
8 to: failure to pay overtime wages (Cal. Lab. Code §§ 204, 510, 1194, 1197 and 1198), failure
9 to pay minimum wage (Cal. Lab. Code §§ 558, 1194, 1197, 1197.1, and 1198), failure to
10 provide meal periods (Lab. Code §§ 226.7, 512 and 1198) failure to authorize and permit rest
11 periods (Lab. Code §§ 226.7 and 1198) failure to indemnify for work expenses (Lab. Code
12 §§1198 and 2802) failure to furnish accurate wage statements (Cal. Labor Code § 226) failure
13 to timely pay wages upon termination of employment and waiting time penalties (Cal. Lab.
14 Code §§ 201, 202, 203), and all claims for unfair competition (Cal. Bus. & Prof. Code §§
15 17200, et seq.). Except as set forth in Section 6.3 of this Agreement, Participating Class
16 Members do not release any other claims, including claims for vested benefits, wrongful
17 termination, violation of the Fair Employment and Housing Act, unemployment insurance,
18 disability, social security, workers' compensation, or claims based on facts occurring outside
19 the Class Period. Release by Aggrieved Employees: All Aggrieved Employees are deemed to
20 release, on behalf of themselves and their respective former and present representatives,
21 agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all
22 claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on
23 the PAGA Period facts stated in the Operative Complaint and the PAGA Notice and
24 ascertained in the course of the Action including but not limited to claims for civil penalties
25 for violations of Labor Code 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1174, 1194, 1197,
26 1197.1, 1198, and 2802, and applicable Wage Orders of the Industrial Welfare Commission.
27 Settlement, § 6.

5. The Court further finds and determines that the terms of the Settlement are fair,
reasonable and adequate, that the Settlement is ordered finally approved, and that all terms and
provisions of the Settlement, including the release of claims contained therein, should be and
hereby are ordered to be consummated, and directs the Parties to effectuate the Settlement

1 according to its terms. As of the Effective Date of Settlement, and for the duration of the Class
2 Period, all Class Members are hereby deemed to have waived and released all Released
3 Claims and are forever barred and enjoined from prosecuting the Released Claims against the
4 Releasees as fully set forth in the Settlement. No objections were received by the Parties or the
5 Court through the date of this Final Order and Judgment. The Court finds that one Class
6 Member — (Elizabeth Delgado) submitted a request for exclusion from the Settlement as
determined by the Administrator and therefore is not in the Settlement Class.

7 6. The Court finds and determines that (a) the Individual Class Payment to be paid
8 to Participating Class Members and (b) the \$3,000.00 payment to the LWDA for the PAGA
9 penalty under the California Labor Code Private Attorneys General Act of 2004, as amended,
10 California Labor Code sections 2699 et seq., as provided for by the Settlement are fair and
11 reasonable. The Court hereby grants final approval to, and orders the payment of, those
12 amounts be made to the Participating Class Members and to the California Labor &
Workforce Development Agency, in accordance with the terms of the Settlement.

13 7. The Court further grants final approval to and orders that the following
14 payments be made in accordance with the terms of the Settlement:

15 a. A Class Counsel Fees Payment in the amount of \$333,333.00 for
16 attorney's fees and a Class Counsel Litigation Expenses Payment in the amount of \$11,068.20
to Class Counsel;

17 b. \$7,500.00 as a Class Representative Service Payment payable to
18 Plaintiff Michael M. Cantrell for his service as the class representative;

19 c. \$5,000.00 in an Administration Expenses Payment payable to ILYM
20 Group, Inc. for its services as the Administrator;

21 d. Payment of \$3,000.00 (75% of the \$4,000.00 PAGA penalty) to the
22 LWDA; and

23 e. Employer-side payroll taxes (to be paid in addition to the Gross
Settlement Amount by Defendant.

24 8. The settlement administration shall proceed as directed in the Settlement, and
25 no payments pursuant to the Settlement shall be distributed until after the Effective Date.
26 Without affecting the finality of this Final Order and Judgment in any way, the Court retains
27 jurisdiction of all matters relating to the interpretation, administration, implementation,

1 effectuation and enforcement of this Final Order and Judgment and the Settlement pursuant to
2 California Rule of Court 3.769(h).

3 9. Defendants shall fully fund the Gross Settlement Amount, and also fund the
4 amounts necessary to fully pay Defendants' share of payroll taxes by transmitting the funds to
5 the Administrator in three installment payments as follows:

6 A. The First Payment, in the amount of \$418,136.25, shall be paid no later
7 than 30 days after entry of this order. If an appeal is filed, the First Payment shall be paid no
8 later than 30 days after the final judgment becomes final and is no longer subject to appeal;

9 B. The Second Payment, in the amount of \$313,602.19, shall be paid no
10 later than 180 days after the First Payment is due; and,

11 C. The Third Payment, in the amount of \$313,602.19, shall be paid no later
12 than 365 days after the First Payment is due.

13 10. Defendants' payment of such sums shall be the sole financial obligation of
14 Defendants under the Settlement and shall be in full satisfaction of all claims released herein,
15 including, without limitation, all claims for wages, penalties, interest, attorneys' fees, costs
16 and expenses.

17 11. For any Class Member whose Individual Class Payment check or Individual
18 PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall
19 transmit the funds represented by such checks to the California Controller's Unclaimed
20 Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject
21 to the requirements of California Code of Civil Procedure Section 384, subd. (b).

22 12. The Parties shall file a final accounting report by January 30, 2025.

23 13. Nothing in this Final Order and Judgment shall preclude any action to enforce
24 the Parties' obligations under the Settlement or hereunder, including the requirement that
25 Defendants deposit funds for distribution by the Administrator to participating Class Members
26 in accordance with the Settlement.

27 14. The Court hereby enters final Judgment in this case in accordance with the
terms of the Settlement, Order Granting Motion for Preliminary Approval of Class Action
Settlement, and this Final Order and Judgment.

15. The Parties are hereby ordered to comply with the terms of the Settlement.

16. The Parties shall bear their own costs and attorneys' fees except as otherwise

1 provided by the Settlement and this Final Order and Judgment.

2 17. The Settlement is not an admission by Defendants nor is this Final Order and
3 Judgment a finding of the validity of any claims in the Action or of any wrongdoing by
4 Defendants. Furthermore, the Settlement is not a concession by Defendants and shall not be
5 used as an admission of any fault, omission, or wrongdoing by Defendants. Neither this Final
6 Order and Judgment, Settlement, any document referred to herein, any exhibit to any
7 document referred to herein, any action taken to carry out the Settlement, nor any negotiations
8 or proceedings related to the Settlement are to be construed as, or deemed to be evidence of, or
9 an admission or concession with regard to, the denials or defenses of Defendants, and shall not
10 be offered in evidence in any proceeding against the Parties hereto in any Court,
11 administrative agency, or other tribunal for any purpose whatsoever other than to enforce the
12 provisions of this Final Order and Judgment. This Final Order and Judgment, the Settlement
13 and exhibits thereto, and any other papers and records on file in the Action may be filed in this
14 Court or in any other litigation as evidence of the settlement by Defendants to support a
15 defense of res judicata, collateral estoppel, release, or other theory of claim or issue preclusion
16 or similar defense as to the Release by Participating Class Members and the Release by
17 Aggrieved Employees.

18 18. This document shall constitute a Judgment for purposes of California Rule of
19 Court 3.769(h).

20 **IT IS SO ORDERED, ADJUDGED AND DECREED.**

21 Date: 1-29-24

22 William D. Claster

23 The Honorable William D. Claster
24 Judge of the Superior Court
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