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8 Attorneys for Plaintiff,
MICHAEL CANTRELL and all others similarly situated
9 (Additional attorney for Plaintiff on the following page)

10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11
12 **FOR THE COUNTY OF ORANGE**
13 **(UNLIMITED JURISDICTION)**

14 MICHAEL CANTRELL, on behalf of
15 himself, all others similarly situated, and as an
16 “aggrieved employee” on behalf of other
“aggrieved employees” under the Labor Code
Private Attorneys General Act of 2004,

17 *Plaintiff(s),*

18 vs.

19 CONCRETE PLACEMENT, INC., a
20 California corporation; and DOES 1–50,
21 inclusive,

22 *Defendants.*
23
24
25
26
27
28

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

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Failure to Provide Rest Periods (Lab. Code §§ 226.7 and 1198);
2. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512 and 1198);
3. Failure to Reimburse for Expenses (Lab. Code §§1198 and 2802);
4. Wage Statement Penalties (Lab. Code § 226);
5. Waiting Time Penalties (Lab. Code §§ 201, 202, and 203);
6. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.); and
7. Civil Penalties (Lab. Code §§ 2698, et seq.).

JURY TRIAL DEMANDED



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ADDITIONAL ATTORNEY FOR PLAINTIFF

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1
2 Plaintiff, MICHAEL CANTRELL (hereafter “Plaintiff”), on behalf of himself and all
3 others similarly situated, complains and alleges as follows:

4 **INTRODUCTION**

5 1. Plaintiff brings this class and representative action against Defendant CONCRETE
6 PLACEMENT, INC., a California corporation; and DOES 1–50, inclusive (collectively
7 “Defendants”) for alleged violations of the California Labor Code, Industrial Welfare
8 Commission Order No. 16–2001 (hereafter “the Wage Order”), and the Business and Professions
9 Code.

10 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
11 him and other similarly situated current and former employees in California for unpaid wages and
12 other related relief. These claims are based on Defendants’ failures to: (1) Provide all rest periods;
13 (2) Provide all meal periods; (3) Failure to reimburse for expenses; (4) Issue accurate and
14 complete itemized written wage statements; (5) Timely pay all wages upon termination of
15 employment; and (6) Fairly compete. Accordingly, Plaintiff now seeks to recover unpaid wages,
16 statutory penalties, interest, and related relief through this class action.

17 **JURISDICTION AND VENUE**

18 3. This court has subject matter jurisdiction because the aggregate claims of
19 Plaintiff, inclusive of all relief, place more than \$25,000 in controversy.

20 4. There is no basis for federal question subject matter jurisdiction in this case.
21 Specifically, Plaintiff asserts claims that solely arise under California law, rather than federal
22 law.

23 5. There is also no basis for federal diversity jurisdiction in this case.

24 6. Venue is proper in Orange County pursuant to California Code of Civil
25 Procedure § 395(a) and § 395.5 in that liability arose in Orange County because at least some
26 of the transactions that are the subject matter of this Complaint occurred therein and/or because
27 each defendant is found, maintains offices, transacts business, and/or has an agent therein.

28 **PARTIES**

7. Plaintiff MICHAEL CANTRELL is a resident of California. At all relevant times,



1 Plaintiff was an “employee” within the meaning of Title 8 California Code of Regulations Section
2 11160 and an “aggrieved employee” within the meaning of Labor Code Section 2699(c).

3 8. Defendant CONCRETE PLACEMENT, INC., is a corporation organized and
4 existing under the laws of California and also a citizen of California based on Plaintiff’s
5 information and belief.

6 9. Plaintiff is ignorant of the true names, capacities, relationships, and extents of
7 participation in the conduct alleged herein of the Defendants sued as DOES 1–50, inclusive, but
8 is informed and believes and thereon alleges that said Defendants are legally responsible for the
9 wrongful conduct alleged herein and therefore sues these Defendants by such fictitious names.
10 Plaintiff will amend the Complaint to allege the true names and capacities of the DOE Defendants
11 when ascertained.

12 10. Plaintiff is informed and believes and thereon alleges that, at all relevant times
13 herein, all Defendants were the agents, employees, servants, masters, and/or employers of the
14 remaining Defendants, and, in doing the things hereinafter alleged, were acting within the course
15 and scope of such agency or employment and with the approval and ratification of each of the
16 other Defendants.

17 11. At all relevant times, in perpetrating the acts and omissions alleged herein,
18 Defendants and each of them acted pursuant to and in furtherance of a policy and/or practice, or
19 lack thereof, which resulted in Defendants not paying Plaintiff and other members of the below-
20 described class in accordance with applicable laws as alleged herein.

21 12. Plaintiff is informed and believes and thereon alleges that each and every one of
22 the acts and omissions alleged herein was performed by, and/or attributable to, all Defendants,
23 each acting as agents and/or employees, and/or under the direction and control of each of the other
24 Defendants, and that said acts and failures to act were within the course and scope of said agency,
25 employment, and/or direction and control.

26 **CLASS ALLEGATIONS**

27 13. This action has been brought and may be maintained as a class action pursuant to
28 California Code of Civil Procedure § 382 because there is a well-defined community of interest



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among the persons who comprise the readily ascertainable class defined below and because Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class action.

14. **Class Definition:** The Class is defined as follows: All individuals currently and formerly employed in California as non-exempt, hourly employees including, but not limited to heavy equipment operators, field workers, machine operators, construction workers, and persons in similar positions., individuals performing work comparable to the aforementioned, and individuals in similar positions at any time during the period beginning four years prior to the filing of this action and ending on the date that final judgment is entered in this action (“Class” or “Class Members”).

15. **Reservation of Rights:** Pursuant to Rule of Court 3.765(b), Plaintiff reserves the right to amend or modify the class definition with greater specificity, by further division into subclasses and/or by limitation to particular issues.

16. **Numerosity:** The Class Members are so numerous that the individual joinder of each individual Class Member is impractical. While Plaintiff does not currently know the exact number of Class Members, Plaintiff is informed and believes that the actual number exceeds the minimum required for numerosity under California laws.

17. **Commonality and Predominance:** Common questions of law and fact exist as to all Class Members and predominate over any questions which affect only individual Class Members. These questions include, but are not limited to:

A. Whether Defendants failed to provide the Class Members with all meal and rest periods in compliance with California law;

B. Whether Defendants failed to reimburse the Class Members for necessary business expenses;

C. Whether Defendants knowingly and intentionally failed to provide the Class Members with accurate and complete written wage statements;

D. Whether Defendants willfully failed to provide the Class Members with timely final wages upon termination of employment;



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1 E. Whether Defendants engaged in unfair competition within the meaning of
2 Business and Professions Code §§ 17200, et seq., with respect to the Class Members; and

3 F. Whether the Class Members are entitled to restitution of money or property
4 that Defendants may have acquired from them through alleged Labor Code violations.

5 18. **Typicality:** Plaintiff's claims are typical of the other Class Members' claims.
6 Plaintiff is informed and believes and thereon alleges that Defendants have a policy and/or
7 practice, or lack thereof, which resulted in Defendants failing to comply with the California Labor
8 Code, the Wage Order, and the Business and Professions Code.

9 19. **Adequacy of Class Representative:** Plaintiff is an adequate class representative
10 in that he has no interests that are adverse to, or otherwise in conflict with, the interests of absent
11 Class Members. Plaintiff is dedicated to vigorously prosecuting this action on behalf of Class
12 Members. Plaintiff will fairly and adequately represent and protect the interests of Class
13 Members.

14 20. **Adequacy of Class Counsel:** Plaintiff's counsel are adequate class counsel in that
15 they have no known conflicts of interest with Plaintiff or absent Class Members, are experienced
16 in class action litigation, and are dedicated to vigorously prosecuting this action on behalf of
17 Plaintiff and absent Class Members.

18 21. **Superiority:** A class action is vastly superior to other available means for fair and
19 efficient adjudication of Class Members' claims and would be beneficial to the parties and the
20 Court. Class action treatment will allow a number of similarly situated persons to simultaneously
21 and efficiently prosecute their common claims in a single forum without the unnecessary
22 duplication of effort and expense that numerous individual actions would entail. In addition, the
23 monetary amounts due to many individual Class Members are likely to be relatively small and
24 would thus make it difficult, if not impossible, for individual Class Members to both seek and
25 obtain relief. Moreover, a class action will serve an important public interest by permitting Class
26 Members to effectively pursue the recovery of monies owed to them. Further, a class action will
27 prevent the potential for inconsistent or contradictory judgments inherent in individual litigation.

28 **STATEMENT OF FACTS**



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1 22. On approximately May 15, 2014, Plaintiff began working for Defendants as a
2 heavy equipment operator in the city of Santa Ana. Defendants continuously employed him in
3 that capacity until on or about March 15, 2021, when Plaintiff's employment ended.

4 23. At all relevant times, Defendants issued wages to Plaintiff and the other Class
5 Members on a weekly basis and paid them at an hourly rate of pay. At all relevant times,
6 Defendants classified Plaintiff and the Class Members as non-exempt employees entitled to the
7 protections of both the Labor Code and the Wage Order.

8 24. At all relevant times, Defendants failed to provide Plaintiff and the Class
9 Members with all timely meal periods. Defendants failed to provide timely 30-minute, off-duty
10 meal periods to Plaintiff and the Class Members by requiring them to work in excess of 12 hours
11 in a day and preventing them from taking and clocking out for either of the two meal periods
12 they were entitled to take. Furthermore, Defendants also required Plaintiff and the Class
13 Members to continuously monitor the concrete. This monitoring policy interrupted the few
14 occasions Plaintiff and the Class Members attempted to take their 30-minute meal periods.

15 25. Moreover, Defendants failed to authorize and permit rest periods to Plaintiff and
16 the Class Members in violation of California law. Defendants required Plaintiff and the Class
17 Members to continuously monitor concrete and failed to authorize and permit Plaintiff and the
18 Class Members to take ten-minute, paid, duty-free rest periods every four hours worked or major
19 fraction thereof. Defendants often required Plaintiff and the Class Members to work in excess of
20 12 hours in a day, but failed to provide 3 duty-free, 10-minute rest periods. Defendants did not
21 seek an exemption from the rest period protections of the Wage Order from the California
22 Divisions of Labor Standards Enforcement.

23 26. Defendants failed to pay premium wages for days on which they failed to provide
24 Plaintiff and the other Class Members with timely meal periods. Defendants also failed to pay
25 premium wages for days on which they failed to provide Plaintiff and the other Class Members
26 with timely rest periods.

27 27. At all relevant times, Defendants required Plaintiff and the Class Members to
28 incur certain business expenses in the course of performing their duties. Defendants required



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1 Plaintiff and the Class Members to supply mobile phones to perform their job duties, but
2 Defendants did not provide these items or reimburse Plaintiff and the Class Members for these
3 items. Defendant also required Plaintiff and the Class Members to use these personal mobile
4 phones to communicate with their managers and other individuals. Defendants failed to provide
5 these phones or reimburse Plaintiff and the Class Members for phone usage.

6 28. Defendants failed to maintain accurate employee records of Plaintiff and the Class
7 Members. Defendants failed to maintain accurate and complete records of Plaintiff's and the
8 Class Members' meal periods and rest periods, as well as the premium wages they earned for
9 missed meal and rest periods.

10 29. Defendant failed to timely pay Plaintiff and the Class Members all earned wages
11 during and at the conclusion of employment.

12 30. Defendants failed to issue to Plaintiff and the Class Members complete and
13 accurate wage statements that state all hours worked at the correct rates of pay, and all wages
14 earned. Defendants knowingly and intentionally failed to state on the wage statements they issued
15 to Plaintiff and the Class Members all meal period premium wages earned and all rest break
16 premium wages earned. Defendants also failed to timely pay Plaintiff and the Class Members all
17 earned wages described above at the conclusion of employment.

18 **FIRST CAUSE OF ACTION**

19 **FAILURE TO PROVIDE REST PERIODS**

20 **(Lab. Code §§ 226.7 and 1198)**

21 **(By Plaintiff and the Class against all Defendants)**

22 31. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

23 32. At all relevant times during the applicable limitations period, Plaintiff and the
24 Class Members have been employees of Defendants and entitled to the benefits and protections
25 of California Labor Code §§ 226.7, 1198, and the Wage Order.

26 33. In relevant part, California Labor Code § 1198 states:
27 The maximum hours of work and the standard conditions of labor fixed by the
28 commission shall be the maximum hours of work and the standard conditions of
labor for employees. The employment of any employee for longer hours than those
fixed by the order or under conditions of labor prohibited by the order is unlawful.



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1 34. In relevant part, § 12 of the Wage Order states:
2 ///

3 **Rest Periods**

4 (A) “Every employer shall authorize and permit all employees to take rest
5 periods, which insofar as practicable shall be in the middle of each work period.
6 The authorized rest period time shall be based on the total hours worked daily at
7 the rate of ten (10) minutes net rest time per four (4) hours or major fraction
8 thereof. However, a rest period need not be authorized for employees whose total
9 daily work time is less than three and one-half (3 1/2) hours. Authorized rest period
10 time shall be counted as hours worked for which there shall be no deduction from
11 wages.”

12 (B) If an employer fails to provide an employee a rest period in accordance
13 with the applicable provisions of this Order, the employer shall pay the employee
14 one (1) hour of pay at the employee’s regular rate of compensation for each work
15 day that the rest period is not provided.”

16 35. In relevant part, California Labor Code § 226.7 states:

17 (b) An employer shall not require an employee to work during a meal or rest
18 period mandated pursuant to an applicable statute, or applicable regulation,
19 standard, or order of the Industrial Welfare Commission, the Occupational Safety
20 and Health Standards Board, or the Division of Occupational Safety and Health.

21 (c) If an employer fails to provide an employee a meal period or rest period in
22 accordance with a state law, including, but not limited to, an applicable statute or
23 applicable regulation, standard, or order of the Industrial Welfare Commission, the
24 Occupational Safety and Health Standards Board, or the Division of Occupational
25 Safety and Health, the employer shall pay the employee one additional hour of pay
26 at the employee’s regular rate of compensation for each work day that the meal or
27 rest period is not provided.

28 36. Pursuant to the Wage Order, Plaintiff and the Class Members were entitled to be
provided with net rest breaks of at least ten minutes for each four-hour period of work, or major
fraction thereof.

37. Defendants intentionally failed to provide Plaintiff and the Class Members with
all required 10-minute rest periods free from any work duties in accordance with the Wage Order.

38. At all relevant times, Defendants failed to authorize and permit Plaintiff and the
Class Members to take 10-minute rest breaks every four hours worked or major fraction thereof
as required by the Wage Order. Furthermore, Defendants failed to pay premium wages for days
on which they failed to provide Plaintiff and the Class Members with timely rest periods.

39. Plaintiff is informed and believes and thereon alleges that, at all relevant times
within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy



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1 which resulted in Defendants not providing the Class with all off-duty rest breaks required by
2 California law.

3 40. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members
4 have suffered damages in an amount, subject to proof, to the extent they were not paid additional
5 wages owed for all meal periods and rest breaks not provided to them.

6 41. By reason of the above, pursuant to California Labor Code § 226.7, Plaintiff and
7 the Class Members are entitled to premium wages for workdays in which one or more rest breaks
8 were not provided to them.

9 **SECOND CAUSE OF ACTION**

10 **FAILURE TO PROVIDE MEAL PERIODS**

11 **(Lab. Code §§ 226.7, 512, and 1198)**

12 **(By Plaintiff and the Class against all Defendants)**

13 42. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

14 43. At all relevant times during the applicable limitations period, Plaintiff and the
15 Class Members have been employees of Defendants and entitled to the benefits and protections
16 of California Labor Code §§ 226.7, 512, 1198, and the Wage Order.

17 44. In relevant part, California Labor Code § 1198 states:
18 The maximum hours of work and the standard conditions of labor fixed by the
19 commission shall be the maximum hours of work and the standard conditions of
labor for employees. The employment of any employee for longer hours than those
fixed by the order or under conditions of labor prohibited by the order is unlawful.

20 45. In relevant part, California Labor Code § 512 states:

21 An employer shall not employ an employee for a work period of more than five
22 hours per day without providing the employee with a meal period of not less than
23 30 minutes, except that if the total work period per day of the employee is no more
24 than six hours, the meal period may be waived by mutual consent of both the
employer and employee.

25 An employer shall not employ an employee for a work period of more than 10
26 hours per day without providing the employee with a second meal period of not
less than 30 minutes, except that if the total hours worked is no more than 12 hours,
27 the second meal period may be waived by mutual consent of the employer and the
employee only if the first meal period was not waived.

28 46. In relevant part, § 11 of the Wage Order states:

Meal Periods



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1 (A) "No employer shall employ any person for a work period of more than five
2 (5) hours without a meal period of not less than 30 minutes, except that when a
3 work period of not more than six (6) hours will complete the day's work the meal
4 period may be waived by mutual consent of the employee and the employee.
5 Unless the employee is relieved of all duty during a 30-minute meal period, the
6 meal period shall be considered an 'on duty' meal period and counted as time
7 worked. An 'on duty' meal period shall be permitted only when the nature of the
8 work prevents an employee from being relieved of all duty and when by written
9 agreement between the parties an on-the-job paid meal period is agreed to. The
10 written agreement shall state that the employee may, in writing, revoke the
11 agreement at any time."

12 (B) If an employer fails to provide an employee a meal period in accordance
13 with the applicable provisions of this Order, the employer shall pay the employee
14 one (1) hour of pay at the employee's regular rate of compensation for each work
15 day that the meal period is not provided."

16 47. In relevant part, California Labor Code § 226.7 states:

17 (b) An employer shall not require an employee to work during a meal or rest
18 period mandated pursuant to an applicable statute, or applicable regulation,
19 standard, or order of the Industrial Welfare Commission, the Occupational Safety
20 and Health Standards Board, or the Division of Occupational Safety and Health.

21 (c) If an employer fails to provide an employee a meal period or rest period in
22 accordance with a state law, including, but not limited to, an applicable statute or
23 applicable regulation, standard, or order of the Industrial Welfare Commission, the
24 Occupational Safety and Health Standards Board, or the Division of Occupational
25 Safety and Health, the employer shall pay the employee one additional hour of pay
26 at the employee's regular rate of compensation for each work day that the meal or
27 rest period is not provided.

28 48. Pursuant to California Labor Code § 512 and the Wage Order, Plaintiff and the
Class Members were entitled to uninterrupted meal periods of at least 30 minutes for each day
they worked five or more hours. Pursuant to California Labor Code § 512, they were also entitled
to a second 30-minute meal period when they worked more than 10 hours in a workday.

49. Defendants intentionally failed to provide Plaintiff and the Class Members with
all required 30-minute duty-free meal periods.

50. At all relevant times, Defendants failed to provide Plaintiff and the Class
Members with all timely 30-minute duty-free meal periods within the first five hours of work.
Furthermore, Defendants failed to pay premium wages for days on which they failed to provide
Plaintiff and the Class Members with timely meal periods.

51. Plaintiff is informed and believes and thereon alleges that, at all relevant times



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1 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
2 which resulted in Defendants not providing the Class with all off-duty meal periods and rest
3 breaks required by California law.

4 52. As a result of Defendants' unlawful conduct, Plaintiff and the Class Members
5 have suffered damages in an amount, subject to proof, to the extent they were not paid additional
6 wages owed for all meal periods not provided to them.

7 53. By reason of the above, pursuant to California Labor Code § 226.7, Plaintiff and
8 the Class Members are entitled to premium wages for workdays in which one or more off-duty
9 meal periods were not provided to them.

10 **THIRD CAUSE OF ACTION**

11 **FAILURE TO REIMBURSE FOR EXPENSES**

12 **(Lab. Code §§ 1198 and 2802)**

13 **(By Plaintiff and the Class against Defendants)**

14 54. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

15 55. At all relevant times, Plaintiff and the other Class Members have been non-exempt
16 employees of Defendants and entitled to the benefits and protections of California Labor Code
17 §§ 1198 and 2802 and the Wage Order.

18 56. In pertinent part, California Labor Code § 2802(a) states, "[a]n employer shall
19 indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct
20 consequence of the discharge of his or her duties."

21 57. California Labor Code § 1198 prohibits employers from employing their
22 employees under conditions prohibited by the Wage Order.

23 58. At all relevant times during the applicable limitations period, Defendants required
24 Plaintiff and the Class Members to supply mobile phones to perform their job duties, but
25 Defendants did not provide these items or reimburse Plaintiff and the Class Members for these
26 items. Defendant also required Plaintiff and the Class Members to use these personal mobile
27 phones to communicate with their managers and other individuals. Defendants failed to provide
28 these phones or reimburse Plaintiff and the Class Members for phone usage



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59. Plaintiff is informed and believes and thereon alleges that, at all relevant times, Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants' failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred during the course of performing their duties.

60. Therefore, pursuant to California Labor Code § 2802(b), Plaintiff and the Class Members are entitled to reimbursement for all necessary expenditures and losses and interest thereon, due and owing to them within four years of the date of the filing of the Complaint until the entry of judgment.

61. Accordingly, with respect to this cause of action, on behalf of himself and the Class Members, Plaintiff prays for the above stated relief, costs, and all reasonable attorneys' fees pursuant to Labor Code § 2802(c) and as otherwise permitted by law.

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS

(Lab. Code § 226)

(By Plaintiff and the Class against all Defendants)

62. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

63. At all relevant times during the applicable limitations period, Plaintiff and the other Class Members have been employees of Defendants and entitled to the benefits and protections of California Labor Code § 226.

64. Pursuant to California Labor Code § 226(a), Plaintiff and the other Class Members were entitled to receive, bi-weekly or at the time of each payment of wages, an accurate and complete itemized statement showing:

- (1) Gross wages earned,
- (2) Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of § 515 or any applicable order of the Industrial Welfare Commission,
- (3) The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis,



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(4) All deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item,

(5) Net wages earned,

(6) The inclusive dates of the period for which the employee is paid,

(7) The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement,

(8) The name and address of the legal entity that is the employer, and

(9) All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

65. Pursuant to California Labor Code § 226(e), an employee suffering injury as a result of a knowing and intentional failure by an employer to comply with subdivision (a) is entitled to recover the greater of all actual damages or fifty dollars (\$50) for the initial pay period in which a violation occurs and one hundred dollars (\$100) per employee for each violation in a subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000), and is entitled to an award of costs and reasonable attorneys' fees.

66. Pursuant to California Labor Code § 226(e), an employee is deemed to suffer injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer injury if the employer fails to provide accurate and complete information as required by California Labor Code § 226(a) and the employee cannot "promptly and easily determine" from the wage statement alone one or more of the following:

A. The amount of the gross wages or net wages paid to the employee during the pay period or any of the other information required to be provided on the itemized wage statement pursuant to California Labor Code § 226(a);

B. Which deductions the employer made from gross wages to determine the net wages paid to the employee during the pay period;

C. The name and address of the employer and, if the employer is a farm labor



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1 contractor, as defined in subdivision (b) of § 1682 of the California Labor Code, the name and
2 address of the legal entity that secured the services of the employer during the pay period; and

3 D. The name of the employee and only the last four digits of his or her social
4 security number or an employee identification number other than a social security number.

5 67. “Promptly and easily determine,” as stated in California Labor Code § 226(e),
6 means a reasonable person would be able to readily ascertain the information without reference
7 to other documents or information.

8 68. As alleged herein, Defendants failed to provide Plaintiff and the other Class
9 Members with all meal and rest periods in compliance with California law. Defendants also failed
10 to provide Plaintiff and the other Class Members with premium wages on the workdays
11 Defendants failed to provide them with one or more meal and/or rest periods in compliance with
12 California law. Defendants also failed to reimburse Plaintiff and the other Class Members for all
13 necessary business expenses that they incurred on Defendants’ behalf. As a result, Defendants
14 have failed to properly itemize Plaintiff and the other Class Members’ gross and net wages earned
15 and other requirements of California Labor Code § 226. As a result, Defendants have violated
16 California Labor Code § 226.

17 69. Defendants’ failure to provide Plaintiff and the other Class Members with accurate
18 and complete wage statements was knowing and intentional. Defendants had the ability to provide
19 Plaintiff and the other Class Members with accurate wage statements but intentionally provided
20 wage statements that Defendants knew were not accurate.

21 70. As a result of being provided with inaccurate wage statements by Defendants,
22 Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate
23 wage statements were violated and they were misled about the amount of wages they had actually
24 earned and were owed. In addition, the absence of accurate information on their wage statements
25 prevented immediate challenges to Defendants’ unlawful pay practices, has required discovery
26 and mathematical computations to determine the amounts of wages owed, has caused difficulty
27 and expense in attempting to reconstruct time and pay records and/or has led to the submission of
28 inaccurate information about wages to state and federal government agencies. Further, Plaintiff



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1 and the other Class Members were not able to ascertain from the wage statements whether
2 Defendants complied with their obligations under California Labor Code § 226(a).

3 71. Pursuant to California Labor Code § 226(e), Plaintiff and the other Class Members
4 are entitled to recover the greater of actual damages, or penalties of fifty dollars (\$50) for the
5 initial pay period in which a violation of California Labor Code § 226(a) occurred and one
6 hundred dollars for each violation of California Labor Code § 226(a) in a subsequent pay period,
7 not to exceed an aggregate penalty of four thousand dollars (\$4,000) per Class Member, and are
8 also entitled to an award of costs and reasonable attorneys' fees.

9 72. Accordingly, with respect to this cause of action, on behalf of himself and the other
10 Class, Plaintiff prays for the herein stated relief and for an award of all reasonable costs and
11 attorneys' fees, including interest thereon, as permitted by law, all in amounts subject to proof.

12 **FIFTH CAUSE OF ACTION**

13 **WAITING TIME PENALTIES**

14 **(Lab. Code §§ 201, 202, and 203)**

15 **(By Plaintiff and the Class against all Defendants)**

16 73. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

17 74. At all relevant times during the applicable limitations period, Plaintiff and the
18 Class have been non-exempt employees of Defendants and entitled to the benefits and
19 protections of California Labor Code §§ 201–203, and the Wage Order.

20 75. Labor Code § 201 provides that all earned and unpaid wages of an employee who
21 is discharged are due and payable immediately at the time of discharge.

22 76. Labor Code § 202 provides that all earned and unpaid wages of an employee who
23 quits after providing at least 72-hours notice before quitting are due and payable at the time of
24 quitting and that all earned and unpaid wages of an employee who quits without providing at
25 least 72-hours notice before quitting are due and payable within 72 hours.

26 77. By failing to pay earned minimum and premium wages to Plaintiff and the Class,
27 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code
28 § 201 or § 202.



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78. Plaintiff is informed and believes that Defendants' failures to timely pay all final wages to him and the Class Members have been willful in that Defendants have the ability to pay final wages in accordance with Labor Code §§ 201, and 202 but have intentionally adopted policies or practice that are incompatible with those requirements.

79. Labor Code § 203 provides that the wages of an employee continue on a daily basis as a penalty for up to 30 days where an employer willfully fails to timely pay earned and unpaid wages to the employee in accordance with Labor Code § 201, or § 202.

80. Defendants failed to pay Plaintiff and the Class Members whose employment ended all of the earned, but unpaid wages described above by the conclusion of their employment. In addition, Defendants failed to issue to Plaintiff and the Class Members whose employment ended their final paychecks until the next regular pay day following the termination.

81. Plaintiff is informed and believes that Defendants' failures to weekly and timely pay Plaintiff and the Class all of their earned and unpaid wages have been willful in that, at all relevant times, Defendants have deliberately maintained policies and practices that violate the requirements of the Labor Code and the Wage Order, even though at all relevant times, they have had the ability to comply with those legal requirements.

82. Pursuant to Labor Code § 203, Plaintiff seeks waiting time penalties on behalf of himself and the Class, in amounts subject to proof not to exceed 30 days of waiting time penalties for each Class Member.

SIXTH CAUSE OF ACTION

UNFAIR COMPETITION

(Bus. & Prof. Code §§ 17200, et seq.)

(By Plaintiff and the Class against all Defendants)

83. Plaintiff incorporates all paragraphs of the Complaint as if fully alleged herein.

84. At all relevant times during the applicable limitations period, Plaintiff and the other Class Members have been employees of Defendants and entitled to the benefits and protections of the Business and Professions Code §§ 17200, et seq.

85. The unlawful conduct of Defendants alleged herein amounts to and constitutes



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1 unfair competition within the meaning of California Business & Professions Code §§ 17200, et
2 seq. Due to their unfair and unlawful business practices as alleged herein, Defendants have
3 unfairly gained a competitive advantage over other comparable companies doing business in
4 California that comply with their legal obligations to, among other things, pay their employees
5 premium wages for workdays in which they did not provide employees with one or more meal
6 and rest periods, and pay them all earned wages for all regular and overtime hours worked.
7 Defendants' unfair competitive advantage also includes the financial gains that resulted from
8 deducting at least 30 minutes from the work time Plaintiff and the Class Members had worked
9 per day.

10 86. As a result of Defendants' unfair competition as herein alleged, Plaintiff and the
11 other Class Members have suffered injuries in fact and lost money or property. Defendants
12 deprived Plaintiff and the other Class Members of minimum, overtime, off-the-clock, and
13 premium wages that Plaintiff and the other Class Members incurred during the course of
14 performing their duties. Defendants also failed to reimburse Plaintiff and the other Class Members
15 for necessary business expenses, such as, but not limited to personal cell phone usage and mobile
16 phones.

17 87. Pursuant to California Business & Professions Code § 17203, Plaintiff and the
18 other Class Members are entitled to restitution of all monies rightfully belonging to them that
19 Defendants did not pay them, or that Defendants otherwise retained by means of their unlawful
20 and unfair business practices.

21 88. Plaintiff and the other Class Members are entitled to reasonable attorneys' fees in
22 connection with their unfair competition claims pursuant to California Code of Civil Procedure
23 § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

24 **SEVENTH CAUSE OF ACTION**

25 **CIVIL PENALTIES**

26 **(Lab Code §§2698, et seq.)**

27 **(By Plaintiff and the Class against all Defendants)**

28 89. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.



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1 90. The “Aggrieved Employees” are all members of the Class defined above who
2 Defendants employed during the period beginning January 10, 2020, and ending on the date that
3 final judgment is entered in this action.

4 91. Labor Code § 204 states

5 (a) All wages, other than those mentioned in Section 201, 201.3, 202, 204.1,
6 or 204.2, earned by any person in any employment are due and payable twice
7 during each calendar month, on days designated in advance by the employer as the
8 regular paydays. Labor performed between the 1st and 15th days, inclusive, of any
9 calendar month shall be paid for between the 16th and the 26th day of the month
10 during which the labor was performed, and labor performed between the 16th and
11 the last day, inclusive, of any calendar month, shall be paid for between the 1st
12 and 10th day of the following month. ...

13 (b) (1) Notwithstanding any other provision of this section, all wages
14 earned for labor in excess of the normal work period shall be paid no later than the
15 payday for the next regular payroll period.

16 (2) An employer is in compliance with the requirements of subdivision (a) of
17 Section 226 relating to total hours worked by the employee, if hours worked in
18 excess of the normal work period during the current pay period are itemized as
19 corrections on the paystub for the next regular pay period. Any corrections set out
20 in a subsequently issued paystub shall state the inclusive dates of the pay period
21 for which the employer is correcting its initial report of hours worked.

22 (c) However, when employees are covered by a collective bargaining
23 agreement that provides different pay arrangements, those arrangements shall
24 apply to the covered employees.

25 (d) The requirements of this section shall be deemed satisfied by the payment
26 of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not
27 more than seven calendar days following the close of the payroll period.

28 92. Defendants paid wages to employees on regular intervals. Defendants, however,
failed to pay Plaintiff on such intervals for all wages earned and all hours worked. On information
and belief, Plaintiff alleges that Defendants also failed to pay the Aggrieved Employees on such
intervals for all wages earned and all hours worked.

 93. During the applicable time period, Defendants violated California Labor Code §§
201, 202, 203, 204, 226, 226.7, 512, 1198, and 2802.

 94. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
behalf of themselves and other current or former employees, to bring a civil action to recover civil
penalties pursuant to the procedures specified in California Labor Code § 2699.3.

 95. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are



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1 entitled to recover civil penalties for each of the Defendants' violations of California Labor Code
2 §§ 201, 202, 203, 204, 226, 226.7, 512, 1198 and 2802 during the applicable limitations period in
3 the following amounts:

4 A. For violations of California Labor Code § 204, one hundred dollars
5 (\$100.00) for each Aggrieved Employee for each initial violation and two hundred dollars
6 (\$200.00) for each Aggrieved Employee for each subsequent, willful or intentional violation
7 (penalty amounts established by California Labor Code § 210).

8 B. For violations of California Labor Code § 226(a), two hundred fifty dollars
9 (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00)
10 for each Aggrieved Employee for each subsequent violation (penalty amounts established by
11 California Labor Code § 226.3).

12 C. For violations of California Labor Code § 512, fifty dollars (\$50.00) for
13 each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for each
14 Aggrieved Employee for each subsequent violation, per pay period (penalty amounts established
15 by California Labor Code § 558).

16 D. For violations of California Labor Code §§ 201, 202, 203, 226.7, 1198, and
17 2802 one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for each initial
18 violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay period for
19 each subsequent violation (penalty amounts established by California Labor Code § 2699(f)(2)).

20 96. Plaintiff has complied with the procedures for bringing suit specified in California
21 Labor Code § 2699.3. By letter dated August 18, 2021, Plaintiff filed written notice online with
22 the Labor and Workforce Development Agency ("LWDA") and gave written notice by certified
23 mail to Defendants of the specific provisions of the California Labor Code alleged to have been
24 violated, including the facts and theories to support the alleged violations. A true and correct copy
25 of the notice to the LWDA dated August 18, 2021, is attached as **Exhibit A**. Plaintiff accompanied
26 his LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to take action in
27 response within 65 calendar days of the date of Plaintiff's notice, but Plaintiff anticipates that the
28 LWDA will provide written notice to Plaintiff informing him that it does not intend to investigate



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1 these allegations.

2 97. Pursuant to California Labor Code § 2699(g), Plaintiff and the Aggrieved
3 Employees are entitled to an award of civil penalties, reasonable attorney's fees and costs in
4 connection with their claims for civil penalties.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff, on behalf of himself and all others similarly situated, prays for
7 relief and judgment against Defendants as follows:

- 8 A. An order that the action be certified as a class action;
9 B. An order that Plaintiff be appointed class representative;
10 C. An order that counsel for Plaintiff be appointed class counsel;
11 D. Unpaid Wages;
12 E. Actual Damages;
13 F. Statutory Damages;
14 G. Civil Penalties;
15 H. Restitution;
16 I. Declaratory and injunctive relief;
17 J. Equitable relief;
18 K. Pre-judgment interest;
19 L. Statutory penalties;
20 M. Costs of suit;
21 N. Interest;
22 O. Reasonable attorneys' fees; and
23 P. Such other relief as the Court deems just and proper.

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DEMAND FOR JURY TRIAL

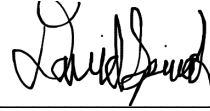
Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: October 22, 2021

By



DAVID SPIVAK,
MARALLE MESSRELIAN,
SARA BROWN
Attorneys for Plaintiff, MICHAEL
CANTRELL, and all others similarly situated



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EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

August 18, 2021

Attn: PAGA Administrator
Labor and Workforce Development Agency
Attn: PAGA Administrator
<http://dir.tflaforms.net>
Via Electronic Submission

Re: Michael M. Cantrell / Concrete Placement, Inc.

To Whom It May Concern:

Pursuant to the Labor Code Private Attorneys General Act of 2004, Labor Code sections 2698, *et seq.*, Michael M. Cantrell (hereafter “Cantrell” or “Complainant”) provides notice that Concrete Placement, Inc., a California corporation, and related entities (collectively “the Concrete Placement Employers” or “the Employers”) violated his rights and those of all other individuals the Concrete Placement Employers have employed or otherwise contracted with in California as heavy equipment operators, operators, field workers, individuals performing work comparable to the aforementioned, and individuals in similar positions (hereafter the “Aggrieved Employees”) under Labor Code sections 201, 202, 203, 204, 226, 226.7, 512, 1174, 1198, 2802. On behalf of himself and all other Aggrieved Employees, Cantrell hereby provides this notice to the Labor & Workforce Development Agency and the Concrete Placement Employers and their agents and representatives.

At all relevant times, the Concrete Placement Employers have employed persons, conducted business, and engaged in illegal payroll practices and policies, throughout California. Cantrell and all of the other Aggrieved Employees are “employees” within the meaning of Industrial Welfare Commission Order No. 16-2001 (hereafter “the Wage Order”) section 2, subdivision (H) and “Aggrieved Employees” within the meaning of Labor Code section 2699(c).

Statement of Facts

On approximately May 15, 2014, the Concrete Placement Employers began to employ Cantrell in Santa Ana, County of Orange in the position of hourly, non-exempt, heavy equipment operator. The Concrete Placement Employers continuously employed him in that capacity until on or about March 15, 2021 when his employment ended.

At all relevant times, the Concrete Placement Employers issued wages to Cantrell and all of the other Aggrieved Employees on a weekly (52 paychecks/year) basis and paid them by the hour. At all relevant times, the Concrete Placement Employers classified Cantrell and all of the other Aggrieved Employees as non-exempt employees entitled to the protections of the Labor Code and the Wage Order.

At all relevant times, the Concrete Placement Employers failed to provide Cantrell and all of the other Aggrieved Employees with all timely 30-minute, off-duty meal periods. The Concrete Placement Employers failed to provide timely, 30-minute, off-duty meal periods to Cantrell and the Aggrieved Employees by often requiring them to work in excess of 12 hours in a day and preventing them from taking and clocking out for the meal periods either of the two meal periods they were entitled to. The Concrete Placement Employers required Cantrell and the Aggrieved Employees to monitor the concrete at all times. The Concrete Placement Employers also failed to pay premium wages for days on which it failed to provide Cantrell and all of the other Aggrieved Employees with meal periods as required by law.

At all relevant times, the Concrete Placement Employers failed to authorize and permit Cantrell and all of the other Aggrieved Employees to take ten-minute, off-duty, paid rest breaks every four hours worked or major portion thereof. The Concrete Placement Employers failed to authorize and/or permit Cantrell and the Aggrieved Employees to take a duty-free, ten-minute rest period every four hours worked or major portion thereof by often requiring them to work in excess of 12 hours in a day. The Concrete Placement Employers required Cantrell and the Aggrieved Employees to monitor the concrete at all times. The Concrete

Placement Employers also failed to pay premium wages for days on which it failed to authorize and permit Cantrell and all of the other Aggrieved Employees to take rest breaks as required by law.

At all relevant times, the Concrete Placement Employers required Cantrell and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Concrete Placement Employers required Cantrell and all of the other Aggrieved Employees to supply mobile phones to perform their job duties. However, the Concrete Placement Employers did not provide these items and did not reimburse Cantrell and the other Aggrieved Employees for these items. The Concrete Placement Employers required Cantrell and the Aggrieved Employees to communicate with their managers and others by using their personal mobile phones. The Concrete Placement Employers did not provide phones for this purpose or reimburse Cantrell and the Aggrieved Employees for using their personal mobile phones.

At all relevant times, the Concrete Placement Employers failed to issue to Cantrell and all of the other Aggrieved Employees complete and accurate wage statements that state all hours worked at the correct rates of pay, and all wages earned. The Concrete Placement Employers knowingly and intentionally failed to state on the wage statements they issued to Cantrell and all of the other Aggrieved Employees the unpaid wages discussed above. The wage statements fail to state all meal period premium wages earned, and all rest break premium wages earned.

The Concrete Placement Employers also failed to timely pay Cantrell and all of the other Aggrieved Employees all earned wages as described above during and at the conclusion of employment.

The Concrete Placement Employers failed to provide Cantrell and all of the other Aggrieved Employees with toilet facilities, potable water, soap, or other suitable cleaning agent and single use towels for handwashing at the worksites they sent Cantrell and the Aggrieved Employees to work at.

The Concrete Placement Employers failed to maintain accurate employee records of Cantrell and all of the other Aggrieved Employees. The Concrete Placement Employers failed to maintain accurate and complete records of the meal periods and rest periods of Cantrell and the Aggrieved Employees and the premium wages they earned for missing their meal and rest periods.

For the reasons stated herein, Cantrell alleges the following violations of the Labor Code and the Wage Order on behalf of himself and all of the other Aggrieved Employees:

- (a) The Concrete Placement Employers failed to provide Cantrell and all of the other Aggrieved Employees all meal periods in compliance with California law;
- (b) The Concrete Placement Employers failed to authorize and permit Cantrell and all of the other Aggrieved Employees to take rest breaks in compliance with California law;
- (c) The Concrete Placement Employers failed to compensate Cantrell and all of the other Aggrieved Employees at one hour's pay for each day in which the Concrete Placement Employers failed to provide them with one or more meal periods as required by law;
- (d) The Concrete Placement Employers failed to compensate Cantrell and all of the other Aggrieved Employees at one hour's pay for each day in which the Concrete Placement Employers failed to authorize and permit them to take one or more rest breaks as required by law;
- (e) The Concrete Placement Employers failed to indemnify Cantrell and all of the other Aggrieved Employees for all necessary business expenditures incurred during the discharge of their duties;

- (f) The Concrete Placement Employers knowingly and intentionally failed to provide Cantrell and all of the other Aggrieved Employees with accurate wage statements;
- (g) The Concrete Placement Employers willfully failed to timely pay Cantrell and all of the other Aggrieved Employees all earned and unpaid wages during their employment with the Concrete Placement Employers and when their employment ended;
- (h) The Concrete Placement Employers failed to provide Cantrell and all of the other Aggrieved Employees with toilet facilities, potable water, soap, or other suitable cleaning agent and single use towels for handwashing; and
- (i) The Concrete Placement Employers failed to maintain accurate employment records pertaining to Cantrell and all of the other Aggrieved Employees.

Accordingly, Cantrell now seeks civil penalties on behalf of himself and all of the other Aggrieved Employees based on the Concrete Placement Employers' alleged violations of the Labor Code and the Wage Order.

The Wage Order

The Wage Order applies to

all persons employed in the on-site occupations of construction, including but not limited to alteration, demolition, building, excavating, renovation, remodeling, maintenance, improvement, and repair work, and work for which a contractor's license is required by the California Business and Professions Code, Division 3, Chapter 9, Sections 7025 et seq. drilling, including but not limited to all work required to drill, establish, repair, and rework wells for the exploration or extraction of oil, gas, or water resources; logging work for which a timber operator's license is required pursuant to California Public Resources Code Sections 4571 through

4586; and mining (not covered by Labor Code Section 750 et seq.), including all work required to mine and/or establish pits, quarries, and surface or underground mines for the purposes of exploration or extraction of nonmetallic minerals and ores, coal, and building materials such as stone and gravel, whether paid on a time, piece rate, commission, or other basis.”

Wage Order, § 1. The Wage Order defines "construction occupations" to mean,

all job classifications associated with construction, including but not limited to work involving alteration, demolition, building, excavation, renovation, remodeling, maintenance, improvement, and repair work, by the California Business and Professions Code, Division 3, Chapter 9, Sections 7025 et seq., and any other similar or related occupations or trades. (D) “Division” means the Division of Labor Standards Enforcement of the State of California.

Wage Order, § 2(C).

At all relevant times during the applicable limitations period, the Concrete Placement Employers “Employers, Cantrell, and all of the Aggrieved Employees were covered by the Wage Order because Cantrell and all of the Aggrieved Employees worked for the Concrete Placement Employers in construction occupations. Accordingly, Cantrell and all of the other Aggrieved Employees are entitled to the protections the Wage Order provides.

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Failure to Provide Meal Periods
(Lab. Code §§ 226.7, 512, and 1198)

In relevant part, section 2(J) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states, “The employment of any employee ... under conditions of labor prohibited by the [Wage Order] is unlawful.”

In relevant part, Labor Code section 512 states:

An employer may not employ an employee for a work period of more than five hours per day without providing the employee with a meal period of not less than 30 minutes, except that if the total work period per day of the employee is no more than six hours, the meal period may be waived by mutual consent of both the employer and employee. An employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

In relevant part, section 10 of the Wage Order states:

Meal Periods:

- (A) No employer shall employ any person for a work period of more than five (5) hours without a meal period of not less

than 30 minutes, except that when a work period of not more than six (6) hours will complete the day's work the meal period may be waived by mutual consent of the employer and the employee. (See Labor Code Section 512.)

- (B) An employer may not employ an employee for a work period of more than ten (10) hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived. (See Labor Code Section 512.)
- (C) ...
- (D) Unless the employee is relieved of all duty during a 30 minute meal period, the meal period shall be considered an "on duty" meal period and counted as time worked. An "on duty" meal period shall be permitted only when the nature of the work prevents employee from being relieved of all duty and when by written agreement between the parties an on-the-job paid meal period is agreed to and complies with Labor Code Section 512.
- (E) If an employer fails to provide an employee a meal period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the meal period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an

applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.

- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

At all relevant times, the Concrete Placement Employers failed to provide Cantrell and all of the other Aggrieved Employees with all timely meal periods. The Concrete Placement Employers denied Cantrell and all of the other Aggrieved Employees their 30-minute off-duty meal period within the first five hours of work. The Concrete Placement Employers failed to provide timely, 30-minute, off-duty meal periods to Cantrell and the Aggrieved Employees by often requiring them to work in excess of 12 hours in a day and preventing them from taking and clocking out for the meal periods either of the two meal periods they were entitled to. The Concrete Placement Employers required Cantrell and the Aggrieved Employees to monitor the concrete at all times. Furthermore, the Concrete Placement Employers failed to pay premium wages for days on which they failed to provide Cantrell and all of the other Aggrieved Employees with timely meal periods. Accordingly, Cantrell now seeks civil penalties for these Labor Code violations that the Concrete Placement Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2));

2. \$50 for each aggrieved employee for each initial violation of Labor Code section 512, and \$100 for each aggrieved employee for each subsequent violation, per pay period in addition to an amount sufficient to recover underpaid wages (penalties set by Labor Code section 558); and
3. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Authorize and Permit Rest Periods
(Lab. Code §§ 226.7 & 1198)

Section 2(J) of the Wage Order states,

“Hours worked” means the time during which an employee is subject to the control of an employer, and includes all the time the employee is suffered or permitted to work, whether or not required to do so.

In relevant part, Labor Code section 1198 states, “The employment of any employee . . . under conditions of labor prohibited by the [Wage Order] is unlawful.”

Section 11 of the Wage Order provides, in relevant part:

Rest Periods:

- (A) Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. Nothing in this provision shall prevent an employer from staggering rest periods to avoid interruption in the flow of work and to maintain continuous operations, or from scheduling rest periods to coincide with

breaks in the flow of work that occur in the course of the workday. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time for every four (4) hours worked, or major fraction thereof. Rest periods shall take place at employer designated areas, which may include or be limited to the employees' immediate work area.

- (B) Rest periods need not be authorized in limited circumstances when the disruption of continuous operations would jeopardize the product or process of the work. However, the employer shall make up the missed rest period within the same workday or compensate the employee for the missed ten (10) minutes of rest time at his/her regular rate of pay within the same pay period.
- (C) ...
- (D) If an employer fails to provide an employee a rest period in accordance with the applicable provisions of this order, the employer shall pay the employee one (1) hour of pay at the employee's regular rate of compensation for each workday that the rest period is not provided.

In addition, Labor Code section 226.7 states:

- (b) An employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health.
- (c) If an employer fails to provide an employee a meal or rest or recovery period in accordance with a state law, including, but

not limited to, an applicable statute or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, the employer shall pay the employee one additional hour of pay at the employee's regular rate of compensation for each workday that the meal or rest or recovery period is not provided.

- (d) A rest or recovery period mandated pursuant to a state law, including, but not limited to, an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission, the Occupational Safety and Health Standards Board, or the Division of Occupational Safety and Health, shall be counted as hours worked, for which there shall be no deduction from wages. This subdivision is declaratory of existing law.

The Concrete Placement Employers failed to authorize and permit Cantrell and all of the other Aggrieved Employees to take ten-minute, paid, duty-free rest breaks every four hours worked or major fraction thereof. The Concrete Placement Employers did not seek an exemption from the rest period protections of the Wage Order from the California Division of Labor Standards Enforcement. The Concrete Placement Employers failed to authorize and/or permit Cantrell and the Aggrieved Employees to take a duty-free, ten-minute rest period every four hours worked or major portion thereof by often requiring them to work in excess of 12 hours in a day. The Concrete Placement Employers required Cantrell and the Aggrieved Employees to monitor the concrete at all times. Moreover, the Concrete Placement Employers failed to pay Cantrell and all of the other Aggrieved Employees premium wages on workdays the Concrete Placement Employers failed to provide Cantrell and all of the other Aggrieved Employees with 10-minute rest periods every four hours worked or major fraction thereof. Accordingly, Cantrell now seeks civil penalties for these Labor Code violations that the Concrete Placement Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 226.7, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Reimburse for Expenses
(Lab. Code §§ 1198 and 2802)

In pertinent part, Labor Code § 2802(a) states, “An employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her duties.”

Additionally, the Wage Order states,

- (A) When uniforms are required by the employer to be worn by the employee as a condition of employment, such uniforms shall be provided and maintained by the employer.
...
- (B) When tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer, except that an employee whose wages are at least two (2) times the minimum wage provided herein may be required to provide and maintain hand tools and equipment customarily required by the particular trade or craft in conformity with Labor Code Section 2802.

Wage Order, §§ 9(A) and (B).

Labor Code Section 1198 prohibits an employer from employing any person under conditions that violate the Wage Order.

As described above, the Concrete Placement Employers required Cantrell and all of the other Aggrieved Employees to incur certain business expenses in the course of performing their duties. The Concrete Placement Employers required Cantrell and all of the other Aggrieved Employees to supply mobile phones to perform their job duties. However, the Concrete Placement Employers did not provide these items and did not reimburse Cantrell and the other Aggrieved Employees for these items. The Concrete Placement Employers required Cantrell and the Aggrieved Employees to communicate with their managers and others by using their personal mobile phones. The Concrete Placement Employers did not provide phones for this purpose or reimburse Cantrell and the Aggrieved Employees for using their personal mobile phones. Accordingly, Cantrell seeks civil penalties for these Labor Code violations that the Concrete Placement Employers have committed against him and all of the other Aggrieved Employees as follows:

1. \$100 for each aggrieved employee for each initial violation of Labor Code section 2802, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Failure to Provide Accurate Wage Statements
(Lab. Code § 226)

Labor Code section 226(a) requires an employer to provide an employee, either semi-monthly or at the time of each wage payment, with an accurate and itemized written wage statement that shows:

1. Gross wages earned;
2. Total hours worked by the employee, except for any employee whose compensation is solely based on a salary and who is exempt from payment of overtime under subdivision (a) of Section 515 or any applicable order of the Industrial Welfare Commission;
3. The number of piece rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis;
4. All deductions, provided that all deductions made on written orders of the Employer may be aggregated and shown as one item;
5. Net wages earned;
6. The inclusive dates of the period for which the employee is paid;
7. The name of the employee and his or her social security number, except that by January 1, 2008, only the last four digits of his or her social security number or an employee identification number other than a social security number may be shown on the itemized statement;
8. The name and address of the legal entity that is the employer; and
9. All applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

Similarly, section 6(B) of the Wage Order states

Every employer who has control over wages, hours, or working conditions shall semimonthly or at the time of each payment of wages furnish each employee an itemized statement in writing showing:

- (1) all deductions;
- (2) the inclusive dates of the period for which the employee is paid;
- (3) the name of the employee or the employee's social security number;
and
- (4) the name of the employer, provided all deductions made on written orders of the employee may be aggregated and shown as one item.
(See Labor Code Section 226.)

This information shall be furnished either separately or as a detachable part of the check, draft, or voucher paying the employee's wages.

At all relevant times during the applicable limitations period, the Concrete Placement Employers violated Labor Code section 226 because they did not properly and accurately itemize each Aggrieved Employee's gross wages earned, net wages earned, the total hours worked, the corresponding number of hours worked at each rate by the Aggrieved Employee and other requirements of Labor Code section 226. The Concrete Placement Employers failed to state in the wage statements they issued to Cantrell and all of the other Aggrieved Employees all their hours worked and wages earned, including, but not limited to, regular and overtime wages for work they performed off-the-clock after clocking-out (as described above). The Concrete Placement Employers knowingly and intentionally failed to state on the wage statements they issued to Cantrell and all of the other Aggrieved Employees the earned but unpaid wages described above. The wage statements do not state all meal period premium wages earned, all rest break premium wages earned. Accordingly, Cantrell seeks civil penalties for the Labor Code violations that the Concrete Placement Employers have committed against him and all of the other Aggrieved Employees as follows: \$250 for each aggrieved employee for each initial violation of Labor Code section 226(a), and \$1,000 for each aggrieved employee for each subsequent violation (penalties set by Labor Code section 226.3).

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Failure to Timely Pay Wages During Employment
(Lab. Code § 204)

Labor Code section 204 states all wages (other than those mentioned in Labor Code sections 201 and 202) earned by any person in any employment are due and payable twice during each calendar month, on days designated in advance by the employer as the regular paydays. Labor performed between the 1st and 15th days, inclusive, of any calendar month shall be paid for between the 16th and the 26th day of the month during which the labor was performed, and labor performed between the 16th and the last day, inclusive, of any calendar month, shall be paid for between the 1st and 10th day of the following month. In addition, all wages for work performed in excess of the normal work period must be paid by no later than the following regular payday.

The Concrete Placement Employers failed to compensate Cantrell and all of the other Aggrieved Employees for wages earned, including unprovided meal period premium wages, and unprovided rest break premium wages, at the intervals stated above. As a result, the Concrete Placement Employers failed to timely pay all earned wages due during employment within the time periods set by Labor Code section 204. Accordingly, Cantrell now seeks civil penalties for the Labor Code violations that the Concrete Placement Employers have committed against him and all of the other Aggrieved Employees as follows: \$100 for each aggrieved employee for each initial violation of Labor Code section 204, and \$200 for each aggrieved employee for each subsequent violation, plus 25% of the amount unlawfully withheld from each aggrieved employee (penalties set by Labor Code section 210).

Failure to Timely Pay Wages Upon Termination of Employment
(Lab. Code §§ 201-203)

Under Labor Code § 2019, if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately. Under § 202, if an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours previous

notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting. Notwithstanding any other provision of law, an employee who quits without providing a 72-hour notice shall be entitled to receive payment by mail if he or she so requests and designates a mailing address. *Id.* The date of the mailing shall constitute the date of payment for purposes of the requirement to provide payment within 72 hours of the notice of quitting. *Id.*

Under Labor Code § 203, if an employer willfully fails to pay without abatement or reduction, in accordance with §§ 201 and 202, the wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.

The Concrete Placement Employers failed to pay Cantrell and all of the other Aggrieved Employees whose employment ended all of the earned but unpaid wages described above by the conclusion of their employment with Cantrell, including unprovided meal period premium wages, and unprovided rest break premium wages. By failing to pay Cantrell and all of the other Aggrieved Employees as set forth above at the end of employment, the Concrete Placement Employers are liable for violations of Labor Code §§ 201, 202, and 203. Accordingly, on behalf of himself and all of the other Aggrieved Employees, Cantrell seeks civil penalties from the Concrete Placement Employers as follows:

1. For violations of Labor Code § 201, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 201 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 201 occurred (penalties set by Labor Code § 2699(f)(2));
2. For violations of Labor Code § 202, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 202 occurred, and \$200 per aggrieved employee per pay period in which subsequent violations of § 202 occurred (penalties set by Labor Code § 2699(f)(2)); and

3. For violations of Labor Code § 203, \$100 per aggrieved employee for each of the pay periods in which initial violations of § 203 occurred, and \$200 for per aggrieved employee per pay period in which subsequent violations of § 203 occurred (penalties set by Labor Code § 2699(f)(2)).

Failure to Provide Toilet Facilities, Potable Water, Cleansing Agents
(Lab. Code §§ 1198 and 2350)

Labor Code § 2350 states,

Every factory, workshop, mercantile or other establishment in which one or more persons are employed, shall be kept clean and free from the effluvia arising from any drain or other nuisance, and shall be provided, within reasonable access, with a sufficient number of toilet facilities for the use of the employees. When there are five or more employees who are not all of the same gender, a sufficient number of separate toilet facilities shall be provided for the use of each sex, which shall be plainly so designated.

Section 10(C) of the Wage Order states, “in all places of employment the employer shall provide an adequate supply of potable water, soap, or other suitable cleaning agent and single use towels for handwashing.”

Labor Code § 1198 makes it unlawful for an employer to employ an employee under conditions that violate the Wage Order.

Throughout the relevant time period, the Concrete Placement Employers failed to provide any toilet facilities for use by Cantrell and all of the other Aggrieved Employees within reasonable access. Additionally, the Concrete Placement Employers failed to provide potable water, soap, or other suitable cleaning agent and single use towels for handwashing for use by Cantrell and all of the other Aggrieved Employees. Accordingly, on behalf of himself and aggrieved employees, Cantrell demands that the Concrete Placement Employers cure the violations of Labor Code § 2350 and provide sufficient toilets to all aggrieved

employees. If within 33 days of this notice, the Concrete Placement Employers fail to notify my office in writing by certified mail that they have cured the violations of Labor Code § 2350 and the Wage Order mentioned above, Cantrell, on behalf of himself and all of the other Aggrieved Employees, will commence a civil action and seek civil penalties from the Concrete Placement Employers as follows:

1. \$100 for each aggrieved employee for each initial violation of California Labor Code § 1198, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)); and
2. \$100 for each aggrieved employee for each initial violation of California Labor Code § 2350, and \$200 for each aggrieved employee for each subsequent violation, per pay period (penalties set by California Labor Code § 2699(f)(2)).

Failure to Maintain Accurate Employment Records
(Lab. Code §§ 1174 & 1198)

Labor Code section 1174, which also pertains to recordkeeping, states:

Every person employing labor in this state shall:

...

- (c) Keep a record showing the names and addresses of all employees employed and the ages of all minors.
- (d) Keep, at a central location in the state or at the plants or establishments at which employees are employed, payroll records showing the hours worked daily by and the wages paid to, and the number of piece-rate units earned by and any applicable piece rate paid to, employees employed at the respective plants or establishments. These records shall be

kept in accordance with rules established for this purpose by the commission, but in any case shall be kept on file for not less than three years. An employer shall not prohibit an employee from maintaining a personal record of hours worked, or, if paid on a piece-rate basis, piece-rate units earned.

Labor Code section 1174.5 states:

Any person employing labor who willfully fails to maintain the records required by subdivision (c) of Section 1174 or accurate and complete records required by subdivision (d) of Section 1174, or to allow any member of the commission or employees of the division to inspect records pursuant to subdivision (b) of Section 1174, shall be subject to a civil penalty of five hundred dollars (\$500).

Section 6 of Wage Order states,

- (A) Every employer who has control over wages, hours, or working conditions shall keep accurate information with respect to each employee, including the following:
 - (1) The employee's full name, home address, occupation, and social security number. The employee's date of birth, if under 18 years of age, and designation as a minor. Time records showing when the employee begins and ends each work period. Meal periods, split shift intervals, and total daily hours worked shall also be recorded. Meal periods during which operations cease and authorized rest periods need not be recorded.
 - (2) Total wages paid each payroll period, including value of board, lodging, or other compensation actually furnished to the employee.

- (3) Total hours worked during the payroll period and applicable rates of pay. This information shall be made readily available to the employee upon reasonable request. When a piece rate or incentive plan is in operation, piece rates or an explanation of the incentive plan formula shall be provided to employees. An accurate production record shall be maintained by the employer.
- (C) All required records shall be in the English language and in ink or other indelible form, dated properly, showing month, day and year. The employer who has control over wages, hours, or working conditions shall also keep said records on file at the place of employment or at a central location for at least three years. An employee's records shall be available for inspection by the employee upon reasonable request.

Labor Code section 1198 prohibits employers from employing their employees under conditions prohibited by the Wage Order.

The Concrete Placement Employers failed to compensate Cantrell and all of the other Aggrieved Employees for all hours worked at the correct rates of pay, including all meal period premium wages earned, and all rest break premium wages earned. As a result, the Concrete Placement Employers have failed to accurately maintain all records required by section 1174 and the Wage Order, including but not limited to Cantrell and all of the other Aggrieved Employees' total hours worked, total wages paid, and applicable hourly rates during each payroll period. Accordingly, Cantrell seeks civil penalties on behalf of himself and all of the other Aggrieved Employees as follows:

- 1. \$500 for each aggrieved employee for each violation of Labor Code section 1174 (penalties set by Labor Code section 1174.5); and
- 2. \$100 for each aggrieved employee for each initial violation of Labor Code section 1198, and \$200 for each Aggrieved Employee for

each subsequent violation, per pay period (penalties set by Labor Code section 2699(f)(2)).

Conclusion

As noted above, this letter constitutes the required notice under the Labor Code Private Attorneys General Act of 2004. Please be advised that Michael M. Cantrell will seek both reasonable attorneys' fees and costs under Labor Code section 2699(g)(1) in a civil action should the LWDA decline to pursue this matter. This letter also serves as a formal notice under the catalyst theory and Code of Civil Procedure section 1021.5 to resolve this matter before litigation.

Sincerely,



David Spivak, Esq.

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cc: Michael M. Cantrell
Walter L. Haines, Esq.

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