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9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF ORANGE**
12 **(UNLIMITED JURISDICTION)**

13 MICHAEL M. CANTRELL, on behalf of
14 himself, all others similarly situated, the general
15 public, and as “aggrieved employees” on behalf
of other “aggrieved employees” under the Labor
Code Private Attorneys General Act of 2004,

16 *Plaintiff(s),*

17 vs.

18 CONCRETE PLACEMENT, INC., a California
19 corporation; COLLIN FLEMING; and DOES 2-
20 50, inclusive,

21 *Defendant(s).*

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

**PLAINTIFF MICHAEL M.
CANTRELL’S SUPPLEMENTAL
BRIEFING IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Hearing Date: 06/02/2023
Hearing Time: 9:00 a.m.
Hearing Dept.: CX104, The Honorable
William D. Cluster

Action filed: October 07, 2021
Trial Date: Not Set

**Submitted Herewith Under Separate
Cover:**

1. Memorandum of Points and Authorities;
2. Declaration(s) of David Spivak; and
3. [Proposed] Order



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1 **SUPPLEMENTAL MEMORANDUM OF POINTS AND AUTHORITIES**

2 Plaintiff MICHAEL M. CANTRELL (“Plaintiff”) submits this supplemental briefing in
3 support of his unopposed motion for preliminary approval of class action settlement. Pursuant to
4 the Court’s Minute Order dated February 24, 2023 (Supplemental Declaration of David G.
5 Spivak (“Suppl. DS”), Ex. 1), the Parties amended the Class Action and PAGA Settlement
6 Agreement and Class Notice dated November 7, 2022 (Suppl. DS, Ex. 2) to address the Court’s
7 concerns. The Parties seek approval of this new settlement agreement, entitled First Amended
8 Class Action and PAGA Settlement Agreement And Class Notice dated April 11, 2023 (“First
9 Amended Settlement”). Suppl. DS, Exs. 3 (clean) and 4 (redline). The Plaintiff also proposes a
10 new preliminary approval order for the First Amended Settlement. Suppl. DS, Exs. 6 (clean) and
11 7 (redline). Each of the Court’s comments in the Minute Order are recited below in bold, followed
12 by a discussion of the Plaintiff’s response to the comment/question.

13 **1. What remedies does the class have if Defendants miss an installment
14 payment?**

15 The Class will not be bound by the Settlement in the event Defendants do not make all
16 payments required under the Settlement. Section 6 of the Settlement Agreement and First
17 Amended Settlement state that Class Members do not release their claims until Defendants fully
18 fund the Settlement. As such, the Class Members may resume their claims as if there is no
19 Settlement in the event Defendants miss their installment payments.

20 Furthermore, the Parties have agreed to the following:

21 In the event Defendants fail to pay any portion of the Gross Settlement Amount, it shall
22 be considered a default. In the event Defendants fail to make any payment on the date it
23 is due, the Settlement Administrator will provide notice to Class Counsel and Defense
24 Counsel within five (5) business days of the missed payment. Thereafter, Defendants will
25 have fifteen (15) days to cure the default and tender payment to the Settlement
26 Administrator. In the event Defendants fail to cure the default within the times set forth
27 herein, Plaintiff may, among other remedies, elect to enter judgment against Defendants,
28 on an ex parte basis, for the balance of the unpaid Gross Settlement Amount to date, and
Plaintiff will be entitled to recover interest at ten percent (10%) per year and reasonable
attorneys’ fees and costs.

First Amended Settlement, ¶ 4.3.4.



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1 **2. How realistic was the risk that Defendants would engage in a Pick Up Stix**
2 **campaign? Did Defendants threaten to do so?**

3 Plaintiff believes that the risk of a *Pick Up Stix* campaign is realistic because Defendant
4 employs are largely unsophisticated workforce of low wage workers. As Exhibit 10 to David
5 Spivak's original declaration in support of the preliminary approval motion shows, more than
6 50% of the putative class consists of current employees who would likely agree to a modest
7 individual settlement payout simply to avoid flagging themselves as disgruntled employees. If
8 just the current employees accepted individual settlement payments, Plaintiff's maximum
9 recoverable award would drop from \$12,606,838.81 to \$6,653,509.37 ([57 current employees /
10 108 Putative Class Members] x \$12,606,838.81 maximum estimated recovery = \$6,653,509.37.
11 Suppl. Spivak. Decl., ¶ 15. It would also jeopardize a showing of numerosity.

12 **3. Does the UCL claim have any independent value, or does it simply extend the**
13 **limitations period?**

14 Defendant Concrete Placement, Inc. operated in California throughout the unfair
15 competition period of October 8, 2017 through October 8, 2018 that is not actionable under the
16 Labor Code due to its three-year limitations period of Code Civ.Proc. § 338. There are 1,710
17 days between October 8, 2017 and the mediation date of June 14, 2022. There are only 1,345
18 days between October 8, 2018 and the mediation date. So, only 78% of the actionable time period
19 is actionable without the UCL claim (1,345 days / 1,710 days = 78%). With this in mind, the
20 Plaintiff estimates that the UCL claim increases the maximum potential gross settlement amount
21 by \$903,122.75 (\$4,231,068.23 maximum recoverable restitution estimate x [1,345/1,710 =
22 78.65%] = \$3,327,945.48; \$4,231,068.23 - \$3,327,945.48 = \$903,122.75). Suppl. Spivak Decl.,
23 ¶ 16.

24 **4. At final approval, please submit contemporaneously made billing records for**
25 **attorney's fees and costs. The Court will not be inclined to award an amount of fees and**
26 **costs greater than the amount stated in the notice.**

27 At final approval, Plaintiff will submit contemporaneously made billing records for
28 attorney's fees and costs.



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2 **5. At final approval, please submit billing records for administrative costs. The**
3 **Court will not be inclined to award administrative costs in an amount greater than the**
4 **amount stated in the notice.**

5
6 At final approval, Plaintiff will submit billing records for administrative costs.

7
8 **6. At final approval, Plaintiff is to provide a declaration addressing the**
9 **enhancement factors set forth in *Golba v. Dick's Sporting Goods, Inc.* (2015) 238**
10 **Cal.App.4th 1251 and *Clark v. Am. Residential Servs. LLC* (2009) 175 Cal.App.4th 785,**
11 **including the amount of time and effort spent on the litigation.**

12
13 At final approval, Plaintiff will provide a declaration addressing the enhancement factors
14 set forth in *Golba v. Dick's Sporting Goods, Inc.* (2015) 238 Cal.App.4th 1251 and *Clark v. Am.*
15 *Residential Servs. LLC* (2009) 175 Cal.App.4th 785, including the amount of time and effort
16 spent on the litigation.

17
18 **7. At final approval, the administrator is to provide a high, low, and average**
19 **for individual settlement payments, along with plaintiff's individual payout.**

20
21 Plaintiff will instruct the Administrator that, at final approval, it is to provide the high,
22 low, and average individual settlement payments, along with Plaintiff's individual payout.

23
24 **8. As to the Notice: Please include opt-out and dispute forms.**

25
26 Plaintiff has included opt-out and dispute forms as Exhibits B and C, respectively, of the
27 First Amended Settlement. There are attached to the Supplemental Declaration of David Spivak
28 as Exhibits 3.a and 3.b, respectively. Suppl. Spivak Decl. ¶ 6.

29
30 **9. As to the Notice: Page 4 of the notice says the mediator "is a retired judge."**
31 **Is Michael Young a retired judge?**

32
33 Plaintiff mistakenly stated in the motion for preliminary approval that Michael Young is
34 a retired judge. He is not. Neither the Settlement Agreement nor the Class Notice identifies him
35 as a former judge.

36
37 **10. As to the Notice: On page 5 of the notice, the instructions for a dispute should**
38 **refer to the dispute form.**



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1 Plaintiff has revised the notice to refer to the dispute form. See Suppl. Spivak Decl., ¶ 6,
2 Exhibit 3.

3 **11. As to the Notice: Does notice need to be given in any languages other than**
4 **English and Spanish?**

5 Defendant Concrete Placement, Inc. has confirmed that all of its workforce members
6 speak with English or Spanish or both.

7 **12. If any changes are made to the settlement agreement, please make**
8 **corresponding changes to the notice.**

9 Plaintiff has revised the notice to include corresponding changes to the Settlement
10 Agreement. See Suppl. Spivak Decl., ¶ 6, Exhibit 3.

11 **13. The font size in the actual notice may not be smaller than the font size in the**
12 **proposed notice provided to the Court.**

13 Plaintiff will notify the Administrator that font size in the notice may not be smaller than
14 the font size in the proposed notice provided to the Court.

15
16 Respectfully submitted,

17 THE SPIVAK LAW FIRM

18
19 Dated: April 20, 2023

By:



20 DAVID G. SPIVAK, Attorneys for
21 Plaintiff(s), MICHAEL M.
22 CANTRELL, and all others similarly
23 situated



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