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7 Attorneys for Plaintiff(s),
8 MICHAEL M. CANTRELL, and all others similarly situated
(Additional attorneys for Plaintiff(s) on following page)

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

**SUPPLEMENTAL DECLARATION
OF DAVID SPIVAK IN SUPPORT OF
PLAINTIFF MICHAEL M.
CANTRELL’S 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. Claster

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



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1 **SUPPLEMENTAL DECLARATION OF DAVID G. SPIVAK IN SUPPORT OF**
2 **MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

3 I, DAVID SPIVAK, declare as follows:

4 1. I am an attorney duly licensed to practice law in the State of California and am an
5 attorney of record for Plaintiff Michael M. Cantrell, and all others similarly situated (“Plaintiff”)
6 in his lawsuit against Defendants Concrete Placement, Inc. and Collin Fleming (collectively
7 “Defendants”). Plaintiff and Defendants are collectively referred to as the “Parties.”

8 2. Except as otherwise indicated, I have personal knowledge of all matters set forth
9 herein and, if called as a witness, could and would competently testify thereto under oath.

10 3. A true and correct copy of the Court’s Minute Order dated February 24, 2023 is
11 attached as **Exhibit 1** to this declaration.

12 4. A true and correct copy of the Class Action and PAGA Settlement Agreement and
13 Class Notice dated is attached as **Exhibit 2** to this declaration.

14 5. A true and correct copy of notice of settlement is attached sub. Exhibit A to the
15 Class Action and PAGA Settlement Agreement and Class Notice dated April 11, 2023. (Exhibit
16 2).

17 6. A true and correct copy of the First Amended Class Action and PAGA Settlement
18 Agreement And Class Notice dated April 11, 2023 is attached as **Exhibit 3** to this declaration. It
19 includes a true and correct copy of the proposed Election Not To Participate in Settlement (Opt
20 Out) form as Exhibit 3.b. It also includes a true and correct copy of the proposed Workweeks
21 Dispute form as Exhibit 3.c. I have revised the notice to refer to the opt out and dispute forms.

22 7. A true and correct copy of the redline comparison between the Class Action and
23 PAGA Settlement Agreement and Class Notice dated and the First Amended Class Action and
24 PAGA Settlement Agreement And Class Notice dated April 11, 2023 is attached as **Exhibit 4** to
25 this declaration.

26 8. A true and correct copy of the parties’ proposed notice of class action settlement
27 is attached as sub. Exhibit A to the First Amended Class Action and PAGA Settlement Agreement
28 And Class Notice dated April 11, 2023 (Exhibit 3).

 9. A true and correct copy of the redline comparison of the changes made to the
parties’ proposed notice of class action settlement and the original notice of settlement is attached



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1 as sub. Exhibit A to the redline First Amended Class Action and PAGA Settlement Agreement
2 And Class Notice dated April 20, 2023 (Exhibit 4).

3 10. A true and correct copy of the preliminary approval order proposed for the Class
4 Action and PAGA Settlement Agreement and Class Notice dated January 6, 2023 is attached as
5 **Exhibit 5** to this declaration.

6 11. A true and correct copy of the preliminary approval order proposed for the First
7 Amended Class Action and PAGA Settlement Agreement And Class Notice dated April 11, 2023
8 is attached as **Exhibit 6** to this declaration.

9 12. A true and correct copy of the redline comparison of the changes made to the
10 original proposed preliminary approval order for the Class Action and PAGA Settlement
11 Agreement and Class Notice dated April 11, 2023 and the proposed preliminary approval order
12 for the First Amended Class Action and PAGA Settlement Agreement And Class Notice dated
13 April 11, 2023 is attached as **Exhibit 7** to this declaration.

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

19 14. Furthermore, the Parties have agreed to the following:

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

15. I believe that the risk of a *Pick Up Stix* campaign is realistic because Defendant
employs are largely unsophisticated workforce of low wage workers. As Exhibit 10 to my original



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1 declaration in support of the preliminary approval motion shows, more than 50% of the putative
2 class consists of current employees who would likely agree to a modest individual settlement
3 payout simply to avoid flagging themselves as disgruntled employees. If just the current
4 employees accepted individual settlement payments, Plaintiff's maximum recoverable award
5 would drop from \$12,606,838.81 to \$6,653,509.37 ([57 current employees / 108 Putative Class
Members] x \$12,606,838.81 maximum estimated recovery = \$6,653,509.37.

6 16. Defendant Concrete Placement, Inc. operated in California throughout the unfair
7 competition period of October 8, 2017 through October 8, 2018 that is not actionable under the
8 Labor Code due to its three-year limitations period of Code Civ.Proc. § 338. There are 1,710 days
9 between October 8, 2017 and the mediation date of June 14, 2022. There are only 1,345 days
10 between October 8, 2018 and the mediation date. So, only 78% of the actionable time period is
11 actionable without the UCL claim (1,345 days / 1,710 days = 78%). With this in mind, the Plaintiff
12 estimates that the UCL claim increases the maximum potential gross settlement amount by
13 \$903,122.75 (\$4,231,068.23 maximum recoverable restitution estimate x [1,345/1,710 = 78.65%]
= \$3,327,945.48; \$4,231,068.23 - \$3,327,945.48 = \$903,122.75)

14 17. I mistakenly stated in the motion for preliminary approval that Michael Young is
15 a retired judge. He is not. Neither the Settlement Agreement nor the Class Notice identifies him
16 as a former judge.

17 18. Pursuant to Lab. Code § 2699(l)(2), Plaintiff Michael Cantrell submitted a copy of
18 the First Amended Class Action and PAGA Settlement Agreement and Class Notice with the
19 Labor and Workforce Development Agency ("LWDA") at the same time Plaintiff's supplemental
20 briefing is being filed with the Court. A true and correct copy of Plaintiff's submission to the
LWDA and a confirmation email is attached as **Exhibit 8**.

21 I declare under the penalty of perjury of the laws of the State of California that the
22 foregoing is true and correct to the best of my knowledge.

23 Executed on Thursday, April 20, 2023 at Los Angeles, California.

24 

25 DAVID SPIVAK,
26 Declarant



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EXHIBIT 1

**SUPERIOR COURT OF CALIFORNIA,
COUNTY OF ORANGE
CIVIL COMPLEX CENTER**

MINUTE ORDER

DATE: 02/24/2023

TIME: 09:00:00 AM

DEPT: CX104

JUDICIAL OFFICER PRESIDING: William Claster

CLERK: G. Hernandez

REPORTER/ERM: None

BAILIFF/COURT ATTENDANT: B. Allen, None

CASE NO: **30-2021-01225534-CU-OE-CXC** CASE INIT.DATE: 10/07/2021

CASE TITLE: **Cantrell vs. Concrete Placement, Inc.**

CASE CATEGORY: Civil - Unlimited CASE TYPE: Other employment

EVENT ID/DOCUMENT ID: 73918762

EVENT TYPE: Motion for Approval of Class Settlement

MOVING PARTY: Michael Cantrell

CAUSAL DOCUMENT/DATE FILED: Motion - Other For Preliminary Approval of Class Action Settlement, 01/06/2023

APPEARANCES

There are no appearances by any party.

Tentative Ruling posted on the Internet .

The Court rules as follows:

Plaintiff's motion for preliminary approval of the class action settlement is CONTINUED to April 7, 2023 at 9:00 a.m. in Department CX104 to permit the parties to respond to the following items of concern. Any supplemental briefing shall be filed on or before March 27, 2023. If a revised settlement agreement and/or class notice is submitted, a redline showing all changes, deletions and additions must be submitted as well. In addition, Plaintiff must provide proof of service of any revised settlement agreement and supporting papers on the LWDA.

As to the Settlement:

1. What remedies does the class have if Defendants miss an installment payment?
2. How realistic was the risk that Defendants would engage in a *Pick Up Stix* campaign? Did Defendants threaten to do so?
3. Does the UCL claim have any independent value, or does it simply extend the limitations period?
4. At final approval, please submit contemporaneously made billing records for attorney's fees and costs. The Court will not be inclined to award an amount of fees and costs greater than the amount stated in the notice.

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

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

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

As to the Notice:

1. Please include opt-out and dispute forms.
2. Page 4 of the notice says the mediator "is a retired judge." Is Michael Young a retired judge?
3. On page 5 of the notice, the instructions for a dispute should refer to the dispute form.
4. Does notice need to be given in any languages other than English and Spanish?
5. If any changes are made to the settlement agreement, please make corresponding changes to the notice.
6. The font size in the actual notice may not be smaller than the font size in the proposed notice provided to the Court.

Court orders clerk to give notice.

EXHIBIT 2

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8 MICHAEL M. CANTRELL, and all others similarly situated
(Additional attorneys for parties on following page)

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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 and all others similarly situated, and as
an “aggrieved employee” on behalf of other
15 “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 *Defendants.*
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Case No. 30-2021-01225534-CU-OE-CXC

**CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT AND
CLASS NOTICE**

Action filed: October 07, 2021
Dept: CX104, The Honorable
William D. Claster

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ADDITIONAL ATTORNEYS FOR PLAINTIFF(S)

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Attorneys for Plaintiff(s),
MICHAEL M. CANTRELL, and all others similarly situated

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Attorneys for Defendants,
CONCRETE PLACEMENT, INC. and COLLIN FLEMING

1 This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and
2 between plaintiff Michael M. Cantrell (“Plaintiff”) and defendants Concrete Placement, Inc. and
3 Collin Fleming (“Defendants”). The Agreement refers to Plaintiff and Defendants collectively as
4 “Parties,” or individually as “Party.”

5 **1. DEFINITIONS.**

6 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against
7 Concrete Placement, Inc. and Collin Fleming captioned “Michael M. Cantrell, on behalf of
8 himself, and all others similarly situated, and as an ‘aggrieved employee’ on behalf of other
9 ‘aggrieved employees’ under the Labor Code Private Attorneys General Act of 2004, *Plaintiff(s)*,
10 vs. Concrete Placement, Inc., a California corporation; Collin Fleming, an individual; and DOES
11 2 through 50, inclusive, *Defendants*,” Case No. 30-2021-01225534-CU-OE-CXC initiated on
12 October 07, 2021. Plaintiff added Collin Fleming as a Defendant on October 25, 2022. On
13 _____, Plaintiff filed a Second Amended Complaint, adding a Third Cause of Action
14 for “Failure to Pay All Wages Earned for All Hours Worked at the correct Rates of Pay (Lab.
15 Code §§ 204, 510, 558, 1194, 1197, 1197.1, and 1198) on behalf of Plaintiff and the Class and
16 adding Labor Code § 558.1 to Plaintiff’s First, Third, Fifth and Sixth Causes of Action. The
17 Action has at all times been pending in Superior Court of the State of California, County of
18 Orange.

19 1.2. “Administrator” means ILYM Group, Inc., the neutral entity the Parties have
20 agreed to appoint to administer the Settlement.

21 1.3. “Administration Expenses Payment” means the amount the Administrator will be
22 paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in
23 accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection
24 with Preliminary Approval of the Settlement.

25 1.4. “Aggrieved Employee” means a person employed by Defendants in California and
26 classified as hourly and non-exempt who worked for Defendants during the PAGA Period.

27 1.5. “Class” means all persons employed by Defendants in California and classified as
28 hourly, non-exempt who worked for Defendants during the Class Period.

1.6. “Class Counsel” means David G. Spivak of The Spivak Law Firm and Walter L.
Haines of United Employees Law Group.

1 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment”
2 mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and
3 expenses, respectively, incurred to prosecute the Action.

4 1.8. “Class Data” means Class Member identifying information in Defendants’
5 possession including the Class Member’s name, last-known mailing address, Social Security
6 number, and number of Class Period Workweeks and PAGA Pay Periods.

7 1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as
8 either a Participating Class Member or Non-Participating Class Member (including a Non-
9 Participating Class Member who qualifies as an Aggrieved Employee).

10 1.10. “Class Member Address Search” means the Administrator’s investigation and
11 search for current Class Member mailing addresses using all reasonably available sources,
12 methods and means including, but not limited to, the National Change of Address database, skip
13 traces, and direct contact by the Administrator with Class Members.

14 1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION
15 SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to
16 Class Members in English with a Spanish translation in the form, without material variation,
17 attached as Exhibit A and incorporated by reference into this Agreement.

18 1.12. “Class Period” means the period from October 08, 2017 to the date of the court
19 order granting preliminary approval of the Settlement.

20 1.13. “Class Representative” means the named Plaintiff in the operative complaint in the
21 Action seeking Court approval to serve as a Class Representative.

22 1.14. “Class Representative Service Payment” means the payment to the Class
23 Representative for initiating the Action and providing services in support of the Action.

24 1.15. “Court” means the Superior Court of California, County of Orange.

25 1.16. “Defendants” means named Defendants Concrete Placement, Inc. and Collin
26 Fleming.

27 1.17. “Defense Counsel” means Katherine C. Den Bleyker and Samuel P. Knecht of
28 Lewis Brisbois Bisgaard & Smith LLP.

1.18. “Effective Date” means the date by when both of the following have occurred: (a)
the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the
Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no

1 Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if
2 one or more Participating Class Members objects to the Settlement, the day after the deadline for
3 filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the
4 day after the appellate court affirms the Judgment and issues a remittitur.

5 1.19. “Final Approval” means the Court’s order granting final approval of the
6 Settlement.

7 1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final
8 Approval of the Settlement.

9 1.21. “Final Judgment” means the Judgment Entered by the Court upon Granting Final
10 Approval of the Settlement.

11 1.22. “Gross Settlement Amount” means the sum of \$1,000,000.00, to be paid by
12 Defendants in full resolution of all Released Class Claims, Released PAGA Claims, and the
13 Action, which is inclusive of the Individual Class Payments, the Individual PAGA Payments, the
14 LWDA PAGA Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
15 Payment, the Class Representative Service Payment, and the Administrator’s Expenses.
16 Defendants will pay the Gross Settlement Amount in installment payments, outlined further in
17 Paragraph 4.3 of this Agreement.

18 1.23. “Individual Class Payment” means the Participating Class Member’s pro rata
19 share of the Net Settlement Amount calculated according to the number of workweeks worked
20 during the Class Period.

21 1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of
22 25% of the PAGA Penalties calculated according to the number of Pay Periods worked during the
23 PAGA Period.

24 1.25. “Judgment” means the judgment entered by the Court based upon the Final
25 Approval.

26 1.26. “LWDA” means the California Labor and Workforce Development Agency, the
27 agency entitled, under Labor Code section 2699, subd. (i).

28 1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the
LWDA under Labor Code section 2699, subd. (i).

1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following
payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA

1 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel
2 Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be
3 paid to Participating Class Members as Individual Class Payments.

4 1.29. “Non-Participating Class Member” means any Class Member who opts out of the
5 Settlement by sending the Administrator a valid and timely Request for Exclusion.

6 1.30. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee
7 worked for Defendants for at least one day during the PAGA Period.

8 1.31. “PAGA Period” means the period from August 18, 2020 to the date of the court
9 order granting preliminary approval of the Settlement.

10 1.32. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

11 1.33. “PAGA Notice” means Plaintiff’s August 18, 2021 letter to Defendants and the
12 LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

13 1.34. “PAGA Penalties” means the sum of \$4,000, which is the total amount of PAGA
14 civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved
15 Employees (\$1,000.00) and the 75% to LWDA (\$3,000.00) in settlement of PAGA claims.

16 1.35. “Participating Class Member” means a Class Member who does not submit a valid
17 and timely Request for Exclusion from the Settlement.

18 1.36. “Plaintiff” means Michael M. Cantrell, the named plaintiff in the Action.

19 1.37. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval
20 of the Settlement.

21 1.38. “Preliminary Approval Order” means the proposed Order Granting Preliminary
22 Approval and Approval of PAGA Settlement.

23 1.39. “Released Class Claims” means the claims being released as described in
24 Paragraph 6.2 below.

25 1.40. “Released PAGA Claims” means the claims being released as described in
26 Paragraph 6.2 below.

27 1.41. “Released Parties” means: Defendants and each of Defendant Concrete Placement,
28 Inc.’s parent companies, subsidiaries, related companies, affiliates, dbas, current and former
management companies, shareholders, members, agents (including any investment bankers,
accountants, insurers, reinsurers, attorneys and any past, present or future officers, directors and
employees) predecessors, successors, and assigns.

1.42. “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.

1.43. “Response Deadline” means 60 days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.

1.44. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

1.45. “Workweek” means any week during which a Class Member worked for Defendants for at least one day, during the Class Period.

2. RECITALS.

2.1. On October 07, 2021, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendants for unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for work expenses, and related claims. On October 22, 2021, Plaintiff filed a First Amended Complaint alleging causes of action against Defendants for failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for work expenses, and related allegations.

2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendants and the LWDA by sending the PAGA Notice.

2.3. On June 14, 2022, the Parties participated in an all-day mediation presided over by Mr. Michael Young, Esq. The matter did not settle at mediation, but post-mediation, arms’-length settlement discussions facilitated by Mr. Young led to this Agreement to settle the Action.

2.4. Prior to mediation, Plaintiff obtained, through informal discovery, the number of comparable employees, the number of workweeks, the number of pay periods, average rates of pay, sample time records, sample payroll records, sample schedules, written policies, financial records, and related information. Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and

1 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).

2 2.5. At mediation, Plaintiff alleged Additional Representative Causes of Action,
3 which were not pled in the First Amended Complaint, for: failure to pay overtime wages (Cal.
4 Lab. Code §§ 204, 510, 1194, 1197 and 1198), and failure to pay minimum wage (Cal. Lab. Code
5 §§ 558, 1194, 1197, 1197.1, and 1198). The Parties included the Additional Representative
6 Causes of Action in their arms’ length settlement discussions and this Agreement is intended to
7 resolve the Additional Representative Causes of Action as part of the Settlement. As part of the
8 Settlement, the Parties stipulate to the filing of Second Amended Complaint which adds the
9 Additional Representative Causes of Action. The Second Amended Complaint shall be the
10 operative complaint in the Action (the “Operative Complaint.”) Defendants deny the allegations
11 in the Operative Complaint, deny any failure to comply with the laws identified in in the Operative
12 Complaint, and deny any and all liability for the causes of action alleged.

13 2.6. The Court has not granted class certification.

14 2.7. The Parties, Class Counsel and Defense Counsel represent that they are not aware
15 of any other pending matter or action asserting claims that will be extinguished or affected by the
16 Settlement.

17 **3. MONETARY TERMS.**

18 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below,
19 Defendants promise to pay \$1,000,000.00 and no more as the Gross Settlement Amount and to
20 separately pay any and all employer-side payroll taxes owed on the Wage Portions of the
21 Individual Class Payments. Defendants have no obligation to pay the Gross Settlement Amount
22 (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The
23 Administrator will disburse the entire Gross Settlement Amount without asking or requiring
24 Participating Class Members or Aggrieved Employees to submit any claim as a condition of
25 payment. None of the Gross Settlement Amount will revert to Defendants.

26 3.2. Payments from the Gross Settlement Amount. The Administrator will make and
27 deduct the following payments from the Gross Settlement Amount, in the amounts specified by
28 the Court in the Final Approval:

 3.2.1. To Plaintiff: Class Representative Service Payment to the Class
Representative of not more than \$20,000.00 (in addition to any Individual Class Payment and any

1 Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class
2 Member). Defendants will not oppose Plaintiff's request for a Class Representative Service
3 Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment
4 and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class
5 Representative Service Payments no later than 16 court days prior to the Final Approval Hearing.
6 If the Court approves a Class Representative Service Payment less than the amount requested, the
7 Administrator will retain the remainder in the Net Settlement Amount. The Administrator will
8 pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full
responsibility and liability for employee taxes owed on the Class Representative Service Payment.

9 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than
10 33.33%, which is currently estimated to be \$333,333.00 and a Class Counsel Litigation Expenses
11 Payment of not more than \$12,500.00. Defendants will not oppose requests for these payments
12 provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for
13 Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days
14 prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or
15 a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator
16 will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability
17 to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class
18 Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator
19 will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more
20 IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the
21 Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds
22 Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any
23 division or sharing of any of these Payments.

24 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed
25 \$5,000.00 except for a showing of good cause and as approved by the Court. To the extent the
26 Administration Expenses are less or the Court approves payment less than \$5,000.00, the
27 Administrator will retain the remainder in the Net Settlement Amount.

28 3.2.4. To Each Participating Class Member: An Individual Class Payment
calculated by (a) dividing the Net Settlement Amount by the total number of workweeks worked
by all Participating Class Members during the Class Period and (b) multiplying the result by each

1 Participating Class Member's workweeks.

2 3.2.4.1. Tax Allocation of Individual Class Payments. 33.33% of
3 each Participating Class Member's Individual Class Payment will be allocated to settlement of
4 wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be
5 reported on an IRS W-2 Form. The 66.67% of each Participating Class Member's Individual
6 Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage
7 Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on
8 IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any
employee taxes owed on their Individual Class Payment.

9 3.2.4.2. Effect of Non-Participating Class Members on Calculation
10 of Individual Class Payments. Non-Participating Class Members will not receive any Individual
11 Class Payments. The Administrator will retain amounts equal to their Individual Class Payments
in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

12 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the
13 amount of \$4,000.00 to be paid from the Gross Settlement Amount, with 75% (\$3,000.00)
14 allocated to the LWDA PAGA Payment and 25% (\$1,000.00) allocated to the Individual PAGA
15 Payments.

16 3.2.5.1. The Administrator will calculate each Individual PAGA Payment
17 by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties \$1,000.00
18 by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the
19 PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay
20 Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their
Individual PAGA Payment.

21 3.2.5.2. If the Court approves PAGA Penalties of less than the amount
22 requested, the Administrator will allocate the remainder to the Net Settlement Amount. The
23 Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

24 **4. SETTLEMENT FUNDING AND PAYMENTS.**

25 4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of
26 its records to date, Defendants estimate there are 111 Class Members who collectively worked a
27 total of 11,332 workweeks, and 72 Aggrieved Employees who worked a total of 4,839 PAGA

1 Pay Periods.

2 4.2. Class Data. Not later than 21 days after the Court grants Preliminary Approval
3 of the Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in
4 the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the
5 Administrator must maintain the Class Data in confidence, use the Class Data only for purposes
6 of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator
7 employees who need access to the Class Data to effect and perform under this Agreement.
8 Defendants have a continuing duty to immediately notify Class Counsel if they discover that the
9 Class Data omitted class member identifying information and to provide corrected or updated
10 Class Data as soon as reasonably feasible. Without any extension of the deadline by which
11 Defendants must send the Class Data to the Administrator, the Parties and their counsel will
12 expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related
13 to missing or omitted Class Data.

14 4.3. Funding of Gross Settlement Amount. Defendants shall fully fund the Gross
15 Settlement Amount, and also fund the amounts necessary to fully pay Defendants' share of payroll
16 taxes by transmitting the funds to the Administrator in three installment payments as follows:

17 4.3.1. The First Payment, in the amount of \$400,000, shall be paid no later than
18 30 days after entry of the order granting final approval, if no objection to the settlement is made.
19 If an objection is made but no appeal filed, the First Payment shall be paid no later than 30 days
20 after the running of the appeal period. If an appeal is filed, the First Payment shall be paid no later
21 than 30 days after the final judgment becomes final and is no longer subject to appeal;

22 4.3.2. The Second Payment, in the amount of \$300,000, shall be paid no later
23 than 180 days after the First Payment is due; and

24 4.3.3. The Third Payment, in the amount of \$300,000, shall be paid no later than
25 365 days after the First Payment is due.

26 4.4. Distributions from the Installment Payments toward the Gross Settlement
27 Amount. The Administrator shall distribute each of the installment payments pro rata within 15
28 days of the payment, including *pro rata* portions of the Individual Class Payments, Individual
PAGA Payments, LWDA PAGA payment, Class Representative Service Payments, the Class
Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Administrator's
expenses.

1 4.4.1. Disbursements of the pro rata portions of the Class Counsel Fees Payment,
2 the Class Counsel Litigation Expenses Payment and the Class Representative Service Payments
3 shall not precede disbursement of pro rata portions of the Individual Class Payments and
4 Individual PAGA payments.

5 4.4.2. The Administrator will issue checks for the Individual Class Payments
6 and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail,
7 postage prepaid. The face of each check shall prominently state the date (not less than 180 days
8 after the date of mailing) when the check will be voided. The Administrator will cancel all checks
9 not cashed by the void date. The Administrator will send checks for Individual Settlement
10 Payments to all Participating Class Members (including those for whom Class Notice was
11 returned undelivered). The Administrator will send checks for Individual PAGA Payments to all
12 Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved
13 Employees (including those for whom Class Notice was returned undelivered). The
14 Administrator may send Participating Class Members a single check combining the Individual
15 Class Payment and the Individual PAGA Payment. Before mailing any checks, the Administrator
16 must update the recipients' mailing addresses using the National Change of Address Database.

17 4.4.3. The Administrator must conduct a Class Member Address Search for all
18 other Class Members whose checks are returned undelivered without USPS forwarding address.
19 Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS
20 forwarding address provided or to an address ascertained through the Class Member Address
21 Search. The Administrator need not take further steps to deliver checks to Class Members whose
22 re-mailed checks are returned as undelivered. The Administrator shall promptly send a
23 replacement check to any Class Member whose original check was lost or misplaced, requested
24 by the Class Member prior to the void date.

25 4.4.4. For any Class Member whose Individual Class Payment check or
26 Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator
27 shall transmit the funds represented by such checks to the California Controller's Unclaimed
28 Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to
the requirements of California Code of Civil Procedure Section 384, subd. (b).

 4.4.5. The payment of Individual Class Payments and Individual PAGA
Payments shall not obligate Defendants to confer any additional benefits or make any additional

1 payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in
2 this Agreement.

3 **5. [OMITTED]**

4 **6. RELEASES OF CLAIMS.** Effective on the date when Defendants fully fund the entire
5 Gross Settlement Amount and fund all employer payroll taxes owed on the Wage Portion of the
6 Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims
against all Released Parties as follows:

7 6.1 Plaintiff's Release. Plaintiff and his respective former and present spouses,
8 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release
9 and discharge Released Parties from any and all claims, transactions, or occurrences he has or
10 may have against them at this time, including, but not limited to: (a) all claims that were, or
11 reasonably could have been, alleged, based on the facts contained, in the Operative Complaint (b)
12 all PAGA claims that were, or reasonably could have been, alleged based on facts contained in
the Operative Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released
13 under 6.2, below; and (c) and all claims known and unknown, without exception, except as may
14 be prohibited by law. ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims
15 or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits,
16 disability benefits, social security benefits, workers' compensation benefits that arose at any time,
17 or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may
18 discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or
19 believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective
in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

20 6.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For
21 purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights,
22 and benefits, if any, of section 1542 of the California Civil Code, which reads:

23 **A general release does not extend to claims that the creditor or releasing party does**
24 **not know or suspect to exist in his or her favor at the time of executing the release,**
25 **and that if known by him or her would have materially affected his or her settlement**
26 **with the debtor or Released Party.**

6.2 Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint and ascertained in the course of the Action including but not limited to: failure to pay overtime wages (Cal. Lab. Code §§ 204, 510, 1194, 1197 and 1198), failure to pay minimum wage (Cal. Lab. Code §§ 558, 1194, 1197, 1197.1, and 1198), failure to provide meal periods (Lab. Code §§ 226.7, 512 and 1198), failure to authorize and permit rest periods (Lab. Code §§ 226.7 and 1198), failure to indemnify for work expenses (Lab. Code §§ 1198 and 2802), failure to furnish accurate wage statements (Cal. Lab. Code § 226), failure to timely pay wages upon termination of employment and waiting time penalties (Cal. Lab. Code §§ 201, 202, 203), and all claims for unfair competition (Cal. Bus. & Prof. Code §§ 17200, *et seq.*). Except as set forth in Section 6.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

6.3 Release by Aggrieved Employees: All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice and ascertained in the course of the Action including but not limited to claims for civil penalties for violations of Labor Code 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, and 2802, and applicable Wage Orders of the Industrial Welfare Commission.

7. MOTION FOR PRELIMINARY APPROVAL. The Parties agree to jointly prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with the Court’s current checklist for Preliminary Approvals.

7.1 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis

1 of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under
2 Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval
3 and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration
4 from the Administrator attaching its “not to exceed” bid for administering the Settlement and
5 attesting to its willingness to serve; competency; operative procedures for protecting the security
6 of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other
7 misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members;
8 and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense
9 Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve
10 and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members,
11 and/or the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its
12 competency to represent the Class Members; its timely transmission to the LWDA of all necessary
13 PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative
14 Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699,
15 subd. (l)(2)); (vi) a redlined version of the parties’ Agreement showing all modifications made to
16 the Model Agreement ready for filing with the Court; and (vii) all facts relevant to any actual or
17 potential conflict of interest with Class Members, and/or the Administrator. In their Declarations,
18 Plaintiff and Class Counsel Declaration shall aver that they are not aware of any other pending
19 matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

17 7.2 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly
18 responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later
19 than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the
20 Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion
21 for Preliminary Approval. Class Counsel is responsible for delivering the Court’s Preliminary
22 Approval to the Administrator.

23 7.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion
24 for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
25 Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person
26 or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant
27 Preliminary Approval or conditions Preliminary Approval on any material change to this
28 Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of

the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

8. SETTLEMENT ADMINISTRATION.

8.1 Selection of Administrator. The Parties have jointly selected ILYM Group, Inc. to serve as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc. agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

8.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

8.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation section 468B-1.

8.4 Notice to Class Members.

8.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, Class workweeks, and PAGA Pay Periods in the Class Data.

8.4.2 Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice with Spanish translation, substantially in the form attached to this Agreement as **Exhibit A**. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member, and the number of workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.

8.4.3 Not later than 3 business days after the Administrator's receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice

1 using any forwarding address provided by the USPS. If the USPS does not provide a forwarding
2 address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class
3 Notice to the most current address obtained. The Administrator has no obligation to make further
4 attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the
USPS a second time.

5 8.4.4 The deadlines for Class Members' written objections, Challenges to Class
6 Pay Periods and/or PAGA Pay Periods, and Requests for Exclusion will be extended an additional
7 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose
8 notice is re-mailed. The Administrator will inform the Class Member of the extended deadline
9 with the re-mailed Class Notice.

10 8.4.5 If the Administrator, Defendants or Class Counsel is contacted by or
11 otherwise discovers any persons who believe they should have been included in the Class Data
12 and should have received Class Notice, the Parties will expeditiously meet and confer in person
13 or by telephone, and in good faith, in an effort to agree on whether to include them as Class
14 Members. If the Parties agree, such persons will be Class Members entitled to the same rights as
15 other Class Members, and the Administrator will send, via email or overnight delivery, a Class
16 Notice requiring them to exercise options under this Agreement not later than 14 days after receipt
of Class Notice, or the deadline dates in the Class Notice, which ever are later.

17 8.5 Requests for Exclusion (Opt-Outs).

18 8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class
19 Settlement must send the Administrator, by fax, email, or mail, a signed written Request for
20 Exclusion not later than 60 days after the Administrator mails the Class Notice (plus an additional
21 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter
22 from a Class Member or his/her representative that reasonably communicates the Class Member's
23 election to be excluded from the Settlement and includes the Class Member's name, address and
email address or telephone number. To be valid, a Request for Exclusion must be timely faxed,
emailed, or postmarked by the Response Deadline.

24 8.5.2 The Administrator may not reject a Request for Exclusion as invalid
25 because it fails to contain all the information specified in the Class Notice. The Administrator
26 shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the
27 identity of the person as a Class Member and the Class Member's desire to be excluded. The

1 Administrator's determination shall be final and not appealable or otherwise susceptible to
2 challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion,
3 the Administrator may demand additional proof of the Class Member's identity. The
4 Administrator's determination of authenticity shall be final and not appealable or otherwise
susceptible to challenge.

5 8.5.3 Every Class Member who does not submit a timely and valid Request for
6 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all
7 benefits and bound by all terms and conditions of the Settlement, including the Participating Class
8 Members' Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless whether the
9 Participating Class Member actually receives the Class Notice or objects to the Settlement.

10 8.5.4 Every Class Member who submits a valid and timely Request for
11 Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment
12 or have the right to object to the class action components of the Settlement. Because future PAGA
13 claims are subject to claim preclusion upon entry of the Judgment, all Aggrieved Employees are
14 bound to the PAGA Settlement regardless of whether or not they submit a valid and timely Request
15 for Exclusion, and are deemed to release the claims identified in Paragraph 6.3 of this Agreement
and are eligible for an Individual PAGA Payment.

16 8.6 Challenges to Calculation of Workweeks and/or Pay Periods. Each Class
17 Member shall have 60 days after the Administrator mails the Class Notice (plus an additional 14
18 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class
19 workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice.
20 The Class Member may challenge the allocation by communicating with the Administrator via
21 fax, email or mail. The Administrator must encourage the challenging Class Member to submit
22 supporting documentation. In the absence of any contrary documentation, the Administrator is
23 entitled to presume that the Class workweeks and PAGA Pay Periods contained in the Class
24 Notice are correct so long as they are consistent with the Class Data. The Administrator's
25 determination of each Class Member's allocation of Class workweeks and/or PAGA Pay Periods
26 shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall
27 promptly provide copies of all challenges to calculation of Class workweeks and/or PAGA Pay
Periods to Defense Counsel and Class Counsel and the Administrator's determination the
challenges.

1 8.7 Objections to Settlement.

2 8.7.1 Only Participating Class Members may object to the class action
3 components of the Settlement and/or this Agreement, including contesting the fairness of the
4 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel
5 Litigation Expenses Payment and/or Class Representative Service Payment.

6 8.7.2 Participating Class Members may send written objections to the
7 Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear
8 in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval
9 Hearing. A Participating Class Member who elects to send a written objection to the
10 Administrator must do so not later than 60 days after the Administrator's mailing of the Class
11 Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

12 8.7.3 Non-Participating Class Members have no right to object to any of the class
13 action components of the Settlement.

14 8.8 Administrator Duties. The Administrator has a duty to perform or observe all
15 tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

16 8.8.1 Website, Email Address and Toll-Free Number. The Administrator will
17 establish and maintain and use an internet website to post information of interest to Class
18 Members including the date, time and location for the Final Approval Hearing and copies of the
19 Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class
20 Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class
21 Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final
22 Approval and the Judgment. The Administrator will also maintain and monitor an email address
23 and a toll-free telephone number to receive Class Member calls, faxes and emails.

24 8.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator
25 will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not
26 later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the
27 Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names
28 and other identifying information of Class Members who have timely submitted valid Requests
for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class
Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for
Exclusion from Settlement submitted (whether valid or invalid).

1 8.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide
2 written reports to Class Counsel and Defense Counsel that, among other things, tally the number
3 of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for
4 Exclusion (whether valid or invalid) received, objections received, challenges to Class Pay
5 Periods and/or PAGA Pay Periods received and/or resolved, and checks mailed for Individual
6 Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must
7 include provide the Administrator’s assessment of the validity of Requests for Exclusion and
8 attach copies of all Requests for Exclusion and objections received.

9 8.8.4 Workweek and/or Pay Period Challenges. The Administrator has the
10 authority to address and make final decisions consistent with the terms of this Agreement on all
11 Class Member challenges over the calculation of Class workweeks and/or PAGA Pay Periods.
12 The Administrator’s decision shall be final and not appealable or otherwise susceptible to
13 challenge.

14 8.8.5 Administrator’s Declaration. Not later than 14 days before the date by
15 which Plaintiff is required to file the Motion for Final Approval of the Settlement, the
16 Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable
17 for filing in Court attesting to its due diligence and compliance with all of its obligations under
18 this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices
19 returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the
20 total number of Requests for Exclusion from Settlement it received (both valid or invalid), the
21 number of written objections and attach the Exclusion List. The Administrator will supplement
22 its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible
23 for filing the Administrator’s declaration(s) in Court.

24 8.8.6 Final Report by Administrator. Within 10 days after the Administrator
25 disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel
26 and Defense Counsel with a final report detailing its disbursements by employee identification
27 number only of all payments made under this Agreement. At least 15 days before any deadline
28 set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense
Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all
payments required under this Agreement. Class Counsel is responsible for filing the
Administrator’s declaration in Court.

1
2 **9. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE.** Based on its records,
3 Defendants estimate that, as of the date of this Settlement Agreement, (1) there are 111 Class
4 Members and 11,332 Total workweeks during the Class period. This Settlement is based on
5 Defendants' belief that there are approximately 11,332 workweeks at issue. If the number of
6 workweeks is 10% or 1,134 workweeks higher than 11,332, then Defendants shall pay a pro-rata
7 increase in the Gross Settlement Amount equal to the percentage increase in workweeks above
8 11,332. For example, if the number of workweeks increases by 12%, then Plaintiff shall request
9 a 2% increase to the Gross Settlement amount. The Defendants and the Settlement Administrator
10 will disclose the number of workweeks following issuance of the preliminary approval order and
11 before the Administrator sends notice of the Settlement to the Class Members.

12 **10. DEFENDANTS' RIGHT TO WITHDRAW.** If the number of valid Requests for
13 Exclusion identified in the Exclusion List exceeds 10.00% of the total of all Class Members,
14 Defendants may, but are not obligated to, elect to withdraw from the Settlement. The Parties
15 agree that, if Defendants withdraw, the Settlement shall be void ab initio, have no force or effect
16 whatsoever, and that neither Party will have any further obligation to perform under this
17 Agreement; provided, however, Defendants will remain responsible for paying all Settlement
18 Administration Expenses incurred to that point. Defendants must notify Class Counsel and the
19 Court of its election to withdraw not later than 7 days after the Administrator sends the final
20 Exclusion List to Defense Counsel; late elections will have no effect.

21 **11. MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared
22 Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement
23 that includes a request for approval of the PAGA settlement under Labor Code section 2699,
24 subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively "Motion for
25 Final Approval"). Plaintiff shall provide drafts of these documents to Defense Counsel not later
26 than 7 days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel
27 will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any
28 disagreements concerning the Motion for Final Approval.

11.1 Response to Objections. Each Party retains the right to respond to any objection

1 raised by a Participating Class Member, including the right to file responsive documents in Court
2 no later than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted
3 by the Court.

4 11.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
5 Approval on any material change to the Settlement (including, but not limited to, the scope of
6 release to be granted by Class Members), the Parties will expeditiously work together in good
7 faith to address the Court's concerns by revising the Agreement as necessary to obtain Final
8 Approval. The Court's decision to award less than the amounts requested for the Class
9 Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation
10 Expenses Payment and/or Administrator Expenses Payment shall not constitute a material
11 modification to the Agreement within the meaning of this paragraph.

12 11.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of
13 Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for
14 purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement
15 administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

16 11.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms
17 and conditions of this Agreement, specifically including the Class Counsel Fees Payment and
18 Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their
19 respective counsel, and all Participating Class Members who did not object to the Settlement as
20 provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to
21 post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions
22 for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver
23 of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the
24 Parties' obligations to perform under this Agreement will be suspended until such time as the
25 appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect
26 the amount of the Net Settlement Amount.

27 11.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If
28 the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a
material modification of this Agreement (including, but not limited to, the scope of release to be
granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless
expeditiously work together in good faith to address the appellate court's concerns and to obtain

1 Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration
2 Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify
3 the Court's award of the Class Representative Service Payment or any payments to Class Counsel
4 shall not constitute a material modification of the Judgment within the meaning of this paragraph,
5 as long as the Gross Settlement Amount remains unchanged.

6 **12. AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil
7 Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed
8 amended judgment.

9
10 **13. ADDITIONAL PROVISIONS.**

11 13.1 No Admission of Liability, Class Certification or Representative Manageability
12 for Other Purposes. This Agreement represents a compromise and settlement of highly disputed
13 claims. Nothing in this Agreement is intended or should be construed as an admission by
14 Defendants that any of the allegations in the Operative Complaint have merit or that Defendants
15 have any liability for any claims asserted; nor should it be intended or construed as an admission
16 by Plaintiff that Defendants' defenses in the Action have merit. The Parties agree that class
17 certification and representative treatment is for purposes of this Settlement only. If, for any reason
18 the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendants
19 reserve the right to contest certification of any class for any reasons, and Defendants reserve all
20 available defenses to the claims in the Action, and Plaintiff reserves the right to move for class
21 certification on any grounds available and to contest Defendants' defenses. The Settlement, this
22 Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be
23 admissible in connection with, any litigation (except for proceedings to enforce or effectuate the
24 Settlement and this Agreement).

25 13.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel,
26 Defendants and Defense Counsel separately agree that, until the Motion for Preliminary Approval
27 of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or
28 cause or permit another person to disclose, disseminate or publicize, any of the terms of the
Agreement directly or indirectly, specifically or generally, to any person, corporation, association,
government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses,

1 all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter;
2 (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a
3 court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal
4 government agency.

5 Each Party agrees to immediately notify each other Party of any judicial or agency
6 order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendants and
7 Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other
8 communication, before the filing of the Motion for Preliminary Approval, any with third party
9 regarding this Agreement or the matters giving rise to this Agreement except to respond only that
10 “the matter was resolved,” or words to that effect. This paragraph does not restrict Class Counsel’s
11 communications with Class Members in accordance with Class Counsel’s ethical obligations
12 owed to Class Members.

13 13.3 No Solicitation. The Parties separately agree that they and their respective
14 counsel and employees will not solicit any Class Member to opt out of or object to the Settlement,
15 or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class
16 Counsel’s ability to communicate with Class Members in accordance with Class Counsel’s ethical
17 obligations owed to Class Members.

18 13.4 Integrated Agreement. Upon execution by all Parties and their counsel, this
19 Agreement together with its attached exhibits shall constitute the entire agreement between the
20 Parties relating to the Settlement, superseding any and all oral representations, warranties,
21 covenants, or inducements made to or by any Party.

22 13.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant
23 and represent that they are authorized by Plaintiff and Defendants, respectively, to take all
24 appropriate action required or permitted to be taken by such Parties pursuant to this Agreement
25 to effectuate its terms, and to execute any other documents reasonably required to effectuate the
26 terms of this Agreement including any amendments to this Agreement.

27 13.6 Cooperation. The Parties and their counsel will cooperate with each other and
28 use their best efforts, in good faith, to implement the Settlement by, among other things,
modifying the Settlement Agreement, submitting supplemental evidence and supplementing
points and authorities as requested by the Court. In the event the Parties are unable to agree upon
the form or content of any document necessary to implement the Settlement, or on any

1 modification of the Agreement that may become necessary to implement the Settlement, the
2 Parties will seek the assistance of a mediator and/or the Court for resolution.

3 13.7 No Prior Assignments. The Parties separately represent and warrant that they
4 have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer,
5 or encumber to any person or entity and portion of any liability, claim, demand, action, cause of
6 action, or right released and discharged by the Party in this Settlement.

7 13.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendants nor Defense
8 Counsel are providing any advice regarding taxes or taxability, nor shall anything in this
9 Settlement be relied upon as such within the meaning of United States Treasury Department
10 Circular 230 (31 CFR Part 10, as amended) or otherwise.

11 13.9 Modification of Agreement. This Agreement, and all parts of it, may be
12 amended, modified, changed, or waived only by an express written instrument signed by all
13 Parties or their representatives, and approved by the Court.

14 13.10 Agreement Binding on Successors. This Agreement will be binding upon, and
15 inure to the benefit of, the successors of each of the Parties.

16 13.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will
17 be governed by and interpreted according to the internal laws of the state of California, without
18 regard to conflict of law principles.

19 13.12 Cooperation in Drafting. The Parties have cooperated in the drafting and
20 preparation of this Agreement. This Agreement will not be construed against any Party on the
21 basis that the Party was the drafter or participated in the drafting.

22 13.13 Confidentiality. To the extent permitted by law, all agreements made, and orders
23 entered during Action and in this Agreement relating to the confidentiality of information shall
24 survive the execution of this Agreement.

25 13.14 Use and Return of Class Data. Information provided to Class Counsel pursuant
26 to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class
27 Counsel by Defendants in connection with the mediation, other settlement negotiations, or in
28 connection with the Settlement, may be used only with respect to this Settlement, and no other
purpose, and may not be used in any way that violates any existing contractual agreement, statute,
or rule of court. Not later than 90 days after the date when the Court discharges the
Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement

1 funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from
2 Defendants unless, prior to the Court's discharge of the Administrator's obligation, Defendants
3 makes a written request to Class Counsel for the return, rather than the destructions, of Class
4 Data.

5 13.15 Headings. The descriptive heading of any section or paragraph of this Agreement
6 is inserted for convenience of reference only and does not constitute a part of this Agreement.

7 13.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement
8 shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
9 weekend or federal legal holiday, such date or deadline shall be on the first business day
10 thereafter.

11 13.17 Notice. All notices, demands or other communications between the Parties in
12 connection with this Agreement will be in writing and deemed to have been duly given as of the
13 third business day after mailing by United States mail, or the day sent by email or messenger,
14 addressed as follows:

15 To Plaintiff:
16 David G. Spivak, Esq.
17 The Spivak Law Firm
18 8605 Santa Monica Bl
19 PMB 4,2554
20 West Hollywood, CA 90069
21 david@spivaklaw.com

22 To Defendants:
23 Samuel P. Knecht, Esq.
24 Lewis Brisbois Bisgaard & Smith LLP
25 633 W 5th St
26 Ste 4000
27 Los Angeles, CA 90071
28 Samuel.Knecht@lewisbrisbois.com

23 13.18 Execution in Counterparts. This Agreement may be executed in one or more
24 counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this
25 Agreement shall be accepted as an original. All executed counterparts and each of them will be
26 deemed to be one and the same instrument if counsel for the Parties will exchange between
27 themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove

1 the existence and contents of this Agreement.

2 13.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement
3 the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
4 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the
5 date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
6 process.

7
8 Dated: 11 / 07 / 2022

By: 
MICHAEL M. CANTRELL

9
10 Dated:

By:
COLLIN FLEMING

11
12 Dated:

By:
MARLA FLEMING
Chief Executive Officer for
CONCRETE PLACEMENT, INC.

13
14
15
16
17 THE SPIVAK LAW FIRM

18 Dated:

By:
DAVID G. SPIVAK and
CHRISTINA J. PREJEAN, Attorneys
for Plaintiff, MICHAEL M.
CANTRELL, and all others similarly
situated

19
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21
22
23 UNITED EMPLOYEES LAW GROUP

24
25 Dated:

By:
WALTER L. HAINES, Attorney for
Plaintiff, MICHAEL M. CANTRELL,
and all others similarly situated

1 the existence and contents of this Agreement.

2 13.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement
3 the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
4 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the
5 date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
6 process.

7
8 Dated:

By:

MICHAEL M. CANTRELL

9
10 Dated:

By:

COLLIN FLEMING

11
12 Dated:

By:

MARLA FLEMING
Chief Executive Officer for
CONCRETE PLACEMENT, INC.

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17 THE SPIVAK LAW FIRM

18 Dated: 11 / 01 / 2022

By:


DAVID G. SPIVAK and
CHRISTINA J. PREJEAN, Attorneys
for Plaintiff, MICHAEL M.
CANTRELL, and all others similarly
situated

19
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21
22
23 UNITED EMPLOYEES LAW GROUP

24
25 Dated:

By:

26 WALTER L. HAINES, Attorney for
27 Plaintiff, MICHAEL M. CANTRELL,
and all others similarly situated

1 the existence and contents of this Agreement.

2 13.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement
3 the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
4 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the
5 date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
6 process.

7
8 Dated:

By:

MICHAEL M. CANTRELL

9
10 Dated: November 7, 2022

By:

COLLIN FLEMING

11
12 Dated: November 7, 2022

By:

MARLA FLEMING
Chief Executive Officer for
CONCRETE PLACEMENT, INC.

13
14
15
16
17 THE SPIVAK LAW FIRM

18 Dated:

By:

DAVID G. SPIVAK and
CHRISTINA J. PREJEAN, Attorneys
for Plaintiff, MICHAEL M.
CANTRELL, and all others similarly
situated

19
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22
23 UNITED EMPLOYEES LAW GROUP

24
25 Dated: November 7, 2022

By:

WALTER L. HAINES, Attorney for
Plaintiff, MICHAEL M. CANTRELL,
and all others similarly situated

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LEWIS BRISBOIS BISGAARD & SMITH LLP

Dated: November 7, 2022

By:



KATHERINE DEN BLEYKER and
SAMUEL P. KNECHT, Attorneys for
Defendants, CONCRETE
PLACEMENT, INC. and COLLIN
FLEMING

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EXHIBIT A

1 **COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING**
2 **DATE FOR FINAL COURT APPROVAL**

3 (case name: *Michael M. Cantrell v. Concrete Placement, Inc.* et al. and number 30-2021-
4 01225534-CU-OE-CXC)

5 ***The Superior Court for the State of California authorized this Notice. Read it carefully!***
6 ***It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

7 **You may be eligible to receive money** from an employee class action lawsuit ("Action")
8 against Concrete Placement, Inc. and Collin Fleming (abbreviate name; "Defendants" is used
9 herein as a placeholder) for alleged wage and hour violations. The Action was filed by one of
10 Defendants' employees Michael M. Cantrell ("Plaintiff") and seeks payment of (1) wages and
11 other relief for a class of hourly, non-exempt employees ("Class Members") who worked for
12 Defendants in California during the Class Period (October 08, 2017 to the date of the court order
13 granting preliminary approval of the Settlement); and (2) penalties under the California Private
14 Attorney General Act ("PAGA") for all hourly, non-exempt employees who worked for
15 Defendants in California during the PAGA Period (August 18, 2020 to the date of the court order
16 granting preliminary approval of the Settlement) ("Aggrieved Employees").

17 The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendants
18 to fund Individual Class Payments, and (2) a PAGA Settlement requiring Defendants to fund
19 Individual PAGA Payments and pay penalties to the California Labor and Workforce
20 Development Agency ("LWDA").

21 Based on Defendants' records, and the Parties' current assumptions, **your Individual**
22 **Class Payment is estimated to be \$___ (less withholding) and your Individual PAGA**
23 **Payment is estimated to be \$___**. The actual amount you may receive likely will be different
24 and will depend on a number of factors. (If no amount is stated for your Individual PAGA
25 Payment, then according to Defendants' records you are not eligible for an Individual PAGA
26 Payment under the Settlement because you didn't work during the PAGA Period.)

27 The above estimates are based on Defendants' records showing that **you worked**
28 **___Class Workweeks** during the Class Period and **you worked ___ PAGA Pay Periods** during
the PAGA Period. If you believe that you worked more Pay Periods during either period, you can
submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this
Notice. The Court has not yet decided whether to grant final approval. Your legal rights are
affected whether you act or not act. Read this Notice carefully. You will be deemed to have
carefully read and understood it. At the Final Approval Hearing, the Court will decide whether
to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and
Plaintiff's attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment
that requires Defendants to make payments under the Settlement and requires Class Members and
Aggrieved Employees to give up their rights to assert certain claims against Defendants.

If you worked for Defendants during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

(1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against Defendants.

(2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against Defendants, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

Defendants will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Defendants that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is —	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendants must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by —	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.

You Can Participate in the ____ Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on _____. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Pay Period / Pay Periods Written Challenges Must be Submitted by _____	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many Pay Periods you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period Pay Periods and number of PAGA Period Pay Periods you worked according to Defendants’ records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former employee of Defendants. The Action accuses Defendants of violating California labor laws by failure to pay overtime wages, failure to pay minimum wage, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for work expenses, and related violations of the Labor Code. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 26S98, et seq.) (“PAGA”). Plaintiff is represented by attorneys in the Action: David G. Spivak of The Spivak Law Firm and Walter L. Haines of United Employees Law Group (“Class Counsel.”)

Defendants strongly deny violating any laws or failing to pay any wages, contend they complied with all applicable laws, and have entered into the Settlement solely for purposes of resolving this dispute.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Defendants or Plaintiff is correct on the merits. In the meantime, Plaintiff and Defendants hired an experienced, neutral mediator who is a retired judge in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Defendants have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendants do not admit any violations or concede the merit of any claims.

1 Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they
2 believe that: (1) Defendants have agreed to pay a fair, reasonable and adequate amount
3 considering the strength of the claims and the risks and uncertainties of continued litigation; and
4 (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court
preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this
Notice, and scheduled a hearing to determine Final Approval.

5 **3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?**

6 1. Defendants Will Pay \$1,000,000.00 as the Gross Settlement Amount (Gross
7 Settlement). Defendants have agreed to deposit the Gross Settlement into an account controlled
8 by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay
9 the Individual Class Payments, Individual PAGA Payments, Class Representative Service
Payment, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and
penalties to be paid to the California Labor and Workforce Development Agency ("LWDA").

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

12 A. The First Payment, in the amount of \$400,000, shall be paid no later than
13 30 days after entry of the order granting final approval, if no objection to the settlement is made.
14 If an objection is made but no appeal filed, the First Payment shall be paid no later than 30 days
15 after the running of the appeal period. If an appeal is filed, the First Payment shall be paid no later
than 30 days after the final judgment becomes final and is no longer subject to appeal;

16 B. The Second Payment, in the amount of \$300,000, shall be paid no later
17 than 180 days after the First Payment is due; and

18 C. The Third Payment, in the amount of \$300,000, shall be paid no later than
19 365 days after the First Payment is due.

20 3. The Administrator shall distribute each of the installment payments pro rata within
21 15 days of the payment, including *pro rata* portions of the Individual Class Payments, Individual
22 PAGA Payments, LWDA PAGA payment, Class Representative Service Payments, the Class
Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Administrator's
expenses.

23 4. Disbursements of the pro rata portions of the Class Counsel Fees Payment, the
24 Class Counsel Litigation Expenses Payment and the Class Representative Service Payments shall
25 not precede disbursement of pro rata portions of the Individual Class Payments and Individual
PAGA payments.

26 5. Court Approved Deductions from Gross Settlement. At the Final Approval
27 Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions
28 from the Gross Settlement, the amounts of which will be decided by the Court at the Final

1 Approval Hearing:

2 A. Up to \$333,333.00 (33.33% of the Gross Settlement to Class Counsel for
3 attorneys' fees and up to \$12,500.00 for their litigation expenses. To date, Class Counsel have
4 worked and incurred expenses on the Action without payment.

5 B. Up to \$20,000.00 as a Class Representative Award for filing the Action,
6 working with Class Counsel and representing the Class. A Class Representative Award will be
7 the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any
8 Individual PAGA Payment.

9 C. Up to \$5,000.00 to the Administrator for services administering the
10 Settlement.

11 D. Up to \$4,000.00 for PAGA Penalties, allocated 75% to the LWDA PAGA
12 Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their
13 PAGA Period Pay Periods.

14 Participating Class Members have the right to object to any of these deductions. The Court
15 will consider all objections.

16 This Settlement is based on Defendants' belief that there are approximately 11,332
17 workweeks at issue. If the number of workweeks is 10% or 1,134 workweeks higher than 11,332,
18 then Defendants shall pay a pro-rata increase in the Gross Settlement Amount equal to the
19 percentage increase in workweeks above 11,332. For example, if the number of workweeks
20 increases by 12%, then Plaintiff shall request a 2% increase to the Gross Settlement amount. The
21 Defendants and the Settlement Administrator will disclose the number of workweeks following
22 issuance of the preliminary approval order and before the Administrator sends notice of the
23 Settlement to the Class Members.

24 6. Net Settlement Distributed to Class Members. After making the above deductions
25 in amounts approved by the Court, the Administrator will distribute the rest of the Gross
26 Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class
27 Members based on their Class Period workweeks.

28 7. Taxes Owed on Payments to Class Members. Plaintiff and Defendants are asking
the Court to approve an allocation of 33.33% of each Individual Class Payment to taxable wages
("Wage Portion") and 66.67% to interest and penalties ("Non-Wage Portion."). The Wage Portion
is subject to withholdings and will be reported on IRS W-2 Forms. Defendants will separately
pay employer payroll they owe on the Wage Portion. The Individual PAGA Payments are counted
as penalties rather than wages for tax purposes. The Administrator will report the Individual
PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099
Forms.

Although Plaintiff and Defendants have agreed to these allocations, neither side is giving
you any advice on whether your Payments are taxable or how much you might owe in taxes. You

1 are responsible for paying all taxes (including penalties and interest on back taxes) on any
2 Payments received from the proposed Settlement. You should consult a tax advisor if you have
any questions about the tax consequences of the proposed Settlement.

3 8. Need to Promptly Cash Payment Checks. The front of every check issued for
4 Individual Class Payments and Individual PAGA Payments will show the date when the check
5 expires (the void date). If you don't cash it by the void date, your check will be automatically
6 cancelled, and the monies will be deposited with the California Controller's Unclaimed Property
Fund in your name.

7 If the monies represented by your check is sent to the Controller's Unclaimed Property,
8 you should consult the rules of the Fund for instructions on how to retrieve your money.

9 9. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated
10 as a Participating Class Member, participating fully in the Class Settlement, unless you notify the
11 Administrator in writing, not later than ____, that you wish to opt-out. The easiest way to notify
12 the Administrator is to send a written and signed Request for Exclusion by the ____ Response
13 Deadline. The Request for Exclusion should be a letter from a Class Member or his/her
representative setting forth a Class Member's name, present address, telephone number, and a
simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e.,
Non-Participating Class Members) will not receive Individual Class Payments, but will preserve
their rights to personally pursue wage and hour claims against Defendants.

14 You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude
15 themselves from the Class Settlement (Non-Participating Class Members) remain eligible for
16 Individual PAGA Payments and are required to give up their right to assert PAGA claims against
Defendants based on the PAGA Period facts alleged in the Action.

17 10. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is
18 possible the Court will decline to grant Final Approval of the Settlement or decline enter a
19 Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs
and Defendants have agreed that, in either case, the Settlement will be void: Defendants will not
pay any money and Class Members will not release any claims against Defendants.

20 11. Administrator. The Court has appointed a neutral company, ILYM Group, Inc.
21 (the "Administrator") to send this Notice, calculate and make payments, and process Class
22 Members' Requests for Exclusion. The Administrator will also decide Class Member Challenges
over Pay Periods, mail and re- mail settlement checks and tax forms, and perform other tasks
23 necessary to administer the Settlement. The Administrator's contact information is contained in
Section 9 of this Notice.

24 12. Participating Class Members' Release. After the Judgment is final and Defendants
25 have fully funded the Gross Settlement (and separately paid all employer payroll taxes),
26 Participating Class Members will be legally barred from asserting any of the claims released under
the Settlement. This means that unless you opted out by validly excluding yourself from the Class
27 Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or

1 related entities for wages based on the Class Period facts and PAGA penalties based on PAGA
2 Period facts, as alleged in the Action and resolved by this Settlement.

3 The Participating Class Members will be bound by the following release:

4 All Participating Class Members, on behalf of themselves and their respective former and
5 present representatives, agents, attorneys, heirs, administrators, successors, and assigns,
6 release Released Parties, defined as Defendants and each of Concrete Placement, Inc.'s
7 parent companies, subsidiaries, related companies, affiliates, dbas, current and former
8 management companies, shareholders, members, agents (including any investment
9 bankers, accountants, insurers, reinsurers, attorneys and any past, present or future
10 officers, directors and employees) predecessors, successors, and assigns, from (i) all
11 claims that were alleged, or reasonably could have been alleged, based on the Class Period
12 facts stated in the Operative Complaint and ascertained in the course of the Action
13 including but not limited to: failure to pay overtime wages (Cal. Lab. Code §§ 204, 510,
14 1194, 1197 and 1198), failure to pay minimum wage (Cal. Lab. Code §§ 558, 1194, 1197,
15 1197.1, and 1198), failure to provide meal periods (Lab. Code §§ 226.7, 512 and 1198),
16 failure to authorize and permit rest periods (Lab. Code §§ 226.7 and 1198), failure to
indemnify for work expenses (Lab. Code §§1198 and 2802), failure to furnish accurate
wage statements (Cal. Lab. Code § 226), failure to timely pay wages upon termination of
employment and waiting time penalties (Cal. Lab. Code §§ 201, 202, 203), and all claims
for unfair competition (Cal. Bus. & Prof. Code §§ 17200, *et seq.*). Except as set forth in
Section 6.3 of this Agreement, Participating Class Members do not release any other
claims, including claims for vested benefits, wrongful termination, violation of the Fair
Employment and Housing Act, unemployment insurance, disability, social security,
workers' compensation, or claims based on facts occurring outside the Class Period.

17 13. Aggrieved Employees' PAGA Release. After the Court's judgment is final, and
18 Defendants have paid the Gross Settlement (and separately paid the employer-side payroll taxes),
19 all Aggrieved Employees will be barred from asserting PAGA claims against Defendants, whether
20 or not they exclude themselves from the Settlement. This means that all Aggrieved Employees,
21 including those who are Participating Class Members and those who opt-out of the Class
22 Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against
23 Defendants or its related entities based on the PAGA Period facts alleged in the Action and
24 resolved by this Settlement.

25 The Aggrieved Employees' Releases for Participating and Non-Participating Class
26 Members are as follows:

27 All Aggrieved Employees are deemed to release, on behalf of themselves and their
28 respective former and present representatives, agents, attorneys, heirs, administrators, successors,
and assigns, the Released Parties, defined as Defendants and each of their parent companies,
subsidiaries, related companies, affiliates, dbas, current and former management companies,
shareholders, members, agents (including any investment bankers, accountants, insurers,
reinsurers, attorneys and any past, present or future officers, directors and employees)
predecessors, successors, and assigns, from all claims for PAGA penalties that were alleged, or

1 reasonably could have been alleged, based on the PAGA Period facts stated in the Operative
2 Complaint and the PAGA Notice and ascertained in the course of the Action including but not
3 limited to claims for civil penalties for violations of Labor Code 201, 202, 203, 204, 226, 226.7,
4 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, and 2802, and applicable Wage Orders of the
5 Industrial Welfare Commission.

6 **4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?**

7 1. Individual Class Payments. The Administrator will calculate Individual Class
8 Payments by (a) dividing the Net Settlement Amount by the total number of Pay Periods worked
9 by all Participating Class Members, and (b) multiplying the result by the number of Pay Periods
10 worked by each individual Participating Class Member.

11 2. Individual PAGA Payments. The Administrator will calculate Individual PAGA
12 Payments by (a) dividing \$1,000.00 by the total number of PAGA Pay Periods worked by all
13 Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods
14 worked by each individual Aggrieved Employee.

15 3. Workweek/Pay Period Challenges. The number of Class Pay Periods you worked
16 during the Class Period and the number of PAGA Pay Periods you worked during the PAGA
17 Period, as recorded in Defendants' records, are stated in the first page of this Notice. You have
18 until ___ to challenge the number of Class Pay Periods and/or PAGA Pay Periods credited to you.
19 You can submit your challenge by signing and sending a letter to the Administrator via mail,
20 email or fax. Section 9 of this Notice has the Administrator's contact information.

21 You need to support your challenge by sending copies of pay stubs or other records. The
22 Administrator will accept Defendants' calculation of Class Pay Periods and/or PAGA Pay Periods
23 based on Defendants' records as accurate unless you send copies of records containing contrary
24 information. You should send copies rather than originals because the documents will not be
25 returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based
26 on your submission and on input from Class Counsel (who will advocate on behalf of
27 Participating Class Members) and Defendants' Counsel. The Administrator's decision is final.
28 You can't appeal or otherwise challenge its final decision.

29 **5. HOW WILL I GET PAID?**

30 1. Participating Class Members. The Administrator will send, by U.S. mail, a single
31 check to every Participating Class Member (i.e., every Class Member who doesn't opt-out)
32 including those who also qualify as Aggrieved Employees. The single check will combine the
33 Individual Class Payment and the Individual PAGA Payment.

34 2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a
35 single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class
36 Settlement (i.e., every Non-Participating Class Member).

1 **Your check will be sent to the same address as this Notice. If you change your**
2 **address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has**
3 **the Administrator’s contact information.**

4
5
6 **6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?**

7 Submit a written and signed letter with your name, present address, telephone number,
8 and a simple statement that you do not want to participate in the Settlement. The Administrator
9 will exclude you based on any writing communicating your request be excluded. Be sure to
10 personally sign your request, identify the Action as *Michael M. Cantrell vs. Concrete Placement,*
11 *Inc.*, Case No. 30-2021-01225534-CU-OE-CXC, and include your identifying information (full
12 name, address, telephone number, approximate dates of employment, and social security number
13 for verification purposes). You must make the request yourself. If someone else makes the
14 request for you, it will not be valid. **The Administrator must be sent your request to be**
15 **excluded by ___, or it will be invalid.** Section 9 of the Notice has the Administrator’s contact
16 information.

17
18 **7. HOW DO I OBJECT TO THE SETTLEMENT?**

19 Only Participating Class Members have the right to object to the Settlement. Before deciding
20 whether to object, you may wish to see what Plaintiff and Defendants are asking the Court to
21 approve. At least ___ days before the ___ Final Approval Hearing, Class Counsel and/or Plaintiff
22 will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons
23 why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service
24 Award stating (i) the amount Class Counsel is requesting for attorneys’ fees and litigation
25 expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award.
26 Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice)
27 will send you copies of these documents at no cost to you. You can also view them on the
28 Administrator’s Website ([url](#)) or the Court’s website ([url](#)).

1 A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for
2 Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to
3 object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class
4 Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the**
5 **Administrator is ___.** Be sure to tell the Administrator what you object to, why you object, and
6 any facts that support your objection. Make sure you identify the Action, *Michael M. Cantrell vs.*
7 *Concrete Placement, Inc.*, case no. 30-2021-01225534-CU-OE-CXC, and include your name,
8 current address, telephone number, and approximate dates of employment for Defendants and sign
9 the objection. Section 9 of this Notice has the Administrator’s contact information.

10 Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at
11 your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready
12 to tell the Court what you object to, why you object, and any facts that support your objection.
13 See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval
14 Hearing.

1 **8. CAN I ATTEND THE FINAL APPROVAL HEARING?**

2 You can, but don't have to, attend the Final Approval Hearing on ____ at (time) in Department
3 CX104 of the Orange Superior Court, located at Civil Complex Center, 751 W Santa Ana Blvd.,
4 Santa Ana, CA 92701. At the Hearing, the judge will decide whether to grant Final Approval of
5 the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff,
6 and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense
7 Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally
8 or virtually via ____ (https://www. ____). Check the Court's website for the most current
9 information.

10 It's possible the Court will reschedule the Final Approval Hearing. You should check the
11 Administrator's website ____ beforehand or contact Class Counsel to verify the date and time of
12 the Final Approval Hearing.

13 **9. HOW CAN I GET MORE INFORMATION?**

14 The Agreement sets forth everything Defendants and Plaintiff have promised to do under the
15 proposed Settlement. The easiest way to read the Agreement, the Judgment or any other
16 Settlement documents is to go to (specify entity)'s website at (url). You can also telephone or send
17 an email to Class Counsel or the Administrator using the contact information listed below, or
18 consult the Superior Court website by going to (http://www. ____ .aspx) and entering the Case
19 Number for the Action, Case No. 30-2021-01225534-CU-OE-CXC. You can also make an
20 appointment to personally review court documents in the Clerk's Office at the Civil Complex
21 Center by calling ____.

22 **DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION
23 ABOUT THE SETTLEMENT.**

24 Class Counsel:

25 Name of Attorney: David G. Spivak
26 Email Address: david@spivaklaw.com
27 Name of Firm: The Spivak Law Firm
28 Mailing Address: 8605 Santa Monica Bl
 PMB 4,2554
 West Hollywood, CA 90069
29 Telephone: (213) 725-9094

30 Administrator:

31 Name of Company: ILYM Group, Inc.
32 Email Address: ____
33 Mailing Address: ____
34 Telephone: ____
35 Fax Number: ____

1
2 **10. WHAT IF I LOSE MY SETTLEMENT CHECK?**

3 If you lose or misplace your settlement check before cashing it, the Administrator will replace it
4 as long as you request a replacement before the void date on the face of the original check. If
5 your check is already void, you should consult the Unclaimed Property Fund ____ for instructions
6 on how to retrieve the funds.

7 **11. WHAT IF I CHANGE MY ADDRESS?**

8 To receive your check, you should immediately notify the Administrator if you move or otherwise
9 change your mailing address.
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EXHIBIT 3

1 DAVID G. SPIVAK (SBN 179684)
david@spivaklaw.com
2 CHRISTINA J. PREJEAN (SBN 314772)
christina@spivaklaw.com
3 THE SPIVAK LAW FIRM
4 8605 Santa Monica Bl
PMB 42554
5 West Hollywood, CA 90069
Telephone: (213) 725-9094
6 Facsimile: (213) 634-2485

7 Attorneys for Plaintiff(s),
8 MICHAEL M. CANTRELL, and all others similarly situated
(Additional attorneys for parties on following page)

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 and all others similarly situated, and as
an “aggrieved employee” on behalf of other
15 “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 *Defendants.*
22
23
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27

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

**FIRST AMENDED CLASS ACTION
AND PAGA SETTLEMENT
AGREEMENT AND CLASS NOTICE**

Action filed: October 07, 2021
Dept: CX104, The Honorable
William D. Claster

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ADDITIONAL ATTORNEYS FOR PLAINTIFF(S)

WALTER L. HAINES (SBN 71075)
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Facsimile: (562) 256-1006

Attorneys for Plaintiff(s),
MICHAEL M. CANTRELL, and all others similarly situated

ATTORNEYS FOR DEFENDANTS

KATHERINE DEN BLEYKER (SBN 257187)
Katherine.DenBleyker@lewisbrisbois.com;
SAMUEL KNECHT (SBN 314693)
Samuel.Knecht@lewisbrisbois.com
LEWIS BRISBOIS BISGAARD & SMITH LLP
633 West 5th Street, Suite 4000
Los Angeles, CA 90071
Telephone: (213) 250-7900
Facsimile: (213) 250-7900

Attorneys for Defendants,
CONCRETE PLACEMENT, INC. and COLLIN FLEMING

1 This First Amended Class Action and PAGA Settlement Agreement (“Agreement”) is
2 made by and between plaintiff Michael M. Cantrell (“Plaintiff”) and defendants Concrete
3 Placement, Inc. and Collin Fleming (“Defendants”). The Agreement refers to Plaintiff and
4 Defendants collectively as “Parties,” or individually as “Party.”

5 **1. DEFINITIONS.**

6 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against
7 Concrete Placement, Inc. and Collin Fleming captioned “Michael M. Cantrell, on behalf of
8 himself, and all others similarly situated, and as an ‘aggrieved employee’ on behalf of other
9 ‘aggrieved employees’ under the Labor Code Private Attorneys General Act of 2004, *Plaintiff(s)*,
10 vs. Concrete Placement, Inc., a California corporation; Collin Fleming, an individual; and DOES
11 2 through 50, inclusive, *Defendants*,” Case No. 30-2021-01225534-CU-OE-CXC initiated on
12 October 07, 2021. Plaintiff added Collin Fleming as a Defendant on October 25, 2022. On
13 November 2, 2022, Plaintiff filed a Second Amended Complaint, adding a Third Cause of Action
14 for “Failure to Pay All Wages Earned for All Hours Worked at the correct Rates of Pay (Lab.
15 Code §§ 204, 510, 558, 1194, 1197, 1197.1, and 1198) on behalf of Plaintiff and the Class and
16 adding Labor Code § 558.1 to Plaintiff’s First, Third, Fifth and Sixth Causes of Action. The
17 Action has at all times been pending in Superior Court of the State of California, County of
18 Orange.

19 1.2. “Administrator” means ILYM Group, Inc., the neutral entity the Parties have
20 agreed to appoint to administer the Settlement.

21 1.3. “Administration Expenses Payment” means the amount the Administrator will be
22 paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in
23 accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection
24 with Preliminary Approval of the Settlement.

25 1.4. “Aggrieved Employee” means a person employed by Defendants in California and
26 classified as hourly and non-exempt who worked for Defendants during the PAGA Period.

27 1.5. “Class” means all persons employed by Defendants in California and classified as
28 hourly, non-exempt who worked for Defendants during the Class Period.

1.6. “Class Counsel” means David G. Spivak of The Spivak Law Firm and Walter L.
Haines of United Employees Law Group.

1 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment”
2 mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and
3 expenses, respectively, incurred to prosecute the Action.

4 1.8. “Class Data” means Class Member identifying information in Defendants’
5 possession including the Class Member’s name, last-known mailing address, Social Security
6 number, and number of Class Period Workweeks and PAGA Pay Periods.

7 1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as
8 either a Participating Class Member or Non-Participating Class Member (including a Non-
9 Participating Class Member who qualifies as an Aggrieved Employee).

10 1.10. “Class Member Address Search” means the Administrator’s investigation and
11 search for current Class Member mailing addresses using all reasonably available sources,
12 methods and means including, but not limited to, the National Change of Address database, skip
13 traces, and direct contact by the Administrator with Class Members.

14 1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION
15 SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to
16 Class Members in English with a Spanish translation in the form, without material variation,
17 attached as Exhibit A and incorporated by reference into this Agreement.

18 1.12. “Class Period” means the period from October 08, 2017 to the date of the court
19 order granting preliminary approval of the Settlement.

20 1.13. “Class Representative” means the named Plaintiff in the operative complaint in the
21 Action seeking Court approval to serve as a Class Representative.

22 1.14. “Class Representative Service Payment” means the payment to the Class
23 Representative for initiating the Action and providing services in support of the Action.

24 1.15. “Court” means the Superior Court of California, County of Orange.

25 1.16. “Defendants” means named Defendants Concrete Placement, Inc. and Collin
26 Fleming.

27 1.17. “Defense Counsel” means Katherine C. Den Bleyker and Samuel P. Knecht of
28 Lewis Brisbois Bisgaard & Smith LLP.

1.18. “Effective Date” means the date by when both of the following have occurred: (a)
the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the
Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no

1 Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if
2 one or more Participating Class Members objects to the Settlement, the day after the deadline for
3 filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the
4 day after the appellate court affirms the Judgment and issues a remittitur.

5 1.19. “Final Approval” means the Court’s order granting final approval of the
6 Settlement.

7 1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final
8 Approval of the Settlement.

9 1.21. “Final Judgment” means the Judgment Entered by the Court upon Granting Final
10 Approval of the Settlement.

11 1.22. “Gross Settlement Amount” means the sum of \$1,000,000.00, to be paid by
12 Defendants in full resolution of all Released Class Claims, Released PAGA Claims, and the
13 Action, which is inclusive of the Individual Class Payments, the Individual PAGA Payments, the
14 LWDA PAGA Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
15 Payment, the Class Representative Service Payment, and the Administrator’s Expenses.
16 Defendants will pay the Gross Settlement Amount in installment payments, outlined further in
17 Paragraph 4.3 of this Agreement.

18 1.23. “Individual Class Payment” means the Participating Class Member’s pro rata
19 share of the Net Settlement Amount calculated according to the number of workweeks worked
20 during the Class Period.

21 1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of
22 25% of the PAGA Penalties calculated according to the number of Pay Periods worked during the
23 PAGA Period.

24 1.25. “Judgment” means the judgment entered by the Court based upon the Final
25 Approval.

26 1.26. “LWDA” means the California Labor and Workforce Development Agency, the
27 agency entitled, under Labor Code section 2699, subd. (i).

28 1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the
LWDA under Labor Code section 2699, subd. (i).

1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following
payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA

1 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel
2 Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be
3 paid to Participating Class Members as Individual Class Payments.

4 1.29. “Non-Participating Class Member” means any Class Member who opts out of the
5 Settlement by sending the Administrator a valid and timely Request for Exclusion.

6 1.30. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee
7 worked for Defendants for at least one day during the PAGA Period.

8 1.31. “PAGA Period” means the period from August 18, 2020 to the date of the court
9 order granting preliminary approval of the Settlement.

10 1.32. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

11 1.33. “PAGA Notice” means Plaintiff’s August 18, 2021 letter to Defendants and the
12 LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

13 1.34. “PAGA Penalties” means the sum of \$4,000, which is the total amount of PAGA
14 civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved
15 Employees (\$1,000.00) and the 75% to LWDA (\$3,000.00) in settlement of PAGA claims.

16 1.35. “Participating Class Member” means a Class Member who does not submit a valid
17 and timely Request for Exclusion from the Settlement.

18 1.36. “Plaintiff” means Michael M. Cantrell, the named plaintiff in the Action.

19 1.37. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval
20 of the Settlement.

21 1.38. “Preliminary Approval Order” means the proposed Order Granting Preliminary
22 Approval and Approval of PAGA Settlement.

23 1.39. “Released Class Claims” means the claims being released as described in
24 Paragraph 6.2 below.

25 1.40. “Released PAGA Claims” means the claims being released as described in
26 Paragraph 6.2 below.

27 1.41. “Released Parties” means: Defendants and each of Defendant Concrete Placement,
28 Inc.’s parent companies, subsidiaries, related companies, affiliates, dbas, current and former
management companies, shareholders, members, agents (including any investment bankers,
accountants, insurers, reinsurers, attorneys and any past, present or future officers, directors and
employees) predecessors, successors, and assigns.

1 1.42. "Request for Exclusion" means a Class Member's submission of a written request
2 to be excluded from the Class Settlement signed by the Class Member. Class Members may
3 submit the Election Not To Participate In Settlement Form attached as Exhibit B to request
4 exclusion from the Settlement. The mailing of the Class Notice will include this form.

5 1.43. "Response Deadline" means 60 days after the Administrator mails Notice to Class
6 Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a)
7 fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or
8 her Objection to the Settlement. Class Members to whom Notice Packets are resent after having
9 been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond
10 the Response Deadline has expired.

11 1.44. "Settlement" means the disposition of the Action effected by this Agreement and
12 the Judgment.

13 1.45. "Workweek" means any week during which a Class Member worked for
14 Defendants for at least one day, during the Class Period.

15 **2. RECITALS.**

16 2.1. On October 07, 2021, Plaintiff commenced this Action by filing a Complaint
17 alleging causes of action against Defendants for unauthorized and unlawful wage deductions,
18 failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify
19 for work expenses, and related claims. On October 22, 2021, Plaintiff filed a First Amended
20 Complaint alleging causes of action against Defendants for failure to provide meal periods, failure
21 to authorize and permit rest periods, failure to indemnify for work expenses, and related
22 allegations.

23 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written
24 notice to Defendants and the LWDA by sending the PAGA Notice.

25 2.3. On June 14, 2022, the Parties participated in an all-day mediation presided over
26 by Mr. Michael Young, Esq. The matter did not settle at mediation, but post-mediation, arms'-
27 length settlement discussions facilitated by Mr. Young led to this Agreement to settle the Action.

28 2.4. Prior to mediation, Plaintiff obtained, through informal discovery, the number of
comparable employees, the number of workweeks, the number of pay periods, average rates of
pay, sample time records, sample payroll records, sample schedules, written policies, financial

1 records, and related information. Plaintiff's investigation was sufficient to satisfy the criteria for
2 court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and
3 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

4 2.5. At mediation, Plaintiff alleged Additional Representative Causes of Action,
5 which were not pled in the First Amended Complaint, for: failure to pay overtime wages (Cal.
6 Lab. Code §§ 204, 510, 1194, 1197 and 1198), and failure to pay minimum wage (Cal. Lab. Code
7 §§ 558, 1194, 1197, 1197.1, and 1198). The Parties included the Additional Representative
8 Causes of Action in their arms' length settlement discussions and this Agreement is intended to
9 resolve the Additional Representative Causes of Action as part of the Settlement. As part of the
10 Settlement, the Parties stipulate to the filing of Second Amended Complaint which adds the
11 Additional Representative Causes of Action. The Second Amended Complaint shall be the
12 operative complaint in the Action (the "Operative Complaint.") Defendants deny the allegations
13 in the Operative Complaint, deny any failure to comply with the laws identified in in the Operative
14 Complaint, and deny any and all liability for the causes of action alleged.

15 2.6. The Court has not granted class certification.

16 2.7. The Parties, Class Counsel and Defense Counsel represent that they are not aware
17 of any other pending matter or action asserting claims that will be extinguished or affected by the
18 Settlement.

19 **3. MONETARY TERMS.**

20 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below,
21 Defendants promise to pay \$1,000,000.00 and no more as the Gross Settlement Amount and to
22 separately pay any and all employer-side payroll taxes owed on the Wage Portions of the
23 Individual Class Payments. Defendants have no obligation to pay the Gross Settlement Amount
24 (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The
25 Administrator will disburse the entire Gross Settlement Amount without asking or requiring
26 Participating Class Members or Aggrieved Employees to submit any claim as a condition of
27 payment. None of the Gross Settlement Amount will revert to Defendants.

28 3.2. Payments from the Gross Settlement Amount. The Administrator will make and
deduct the following payments from the Gross Settlement Amount, in the amounts specified by
the Court in the Final Approval:

1 3.2.1. To Plaintiff: Class Representative Service Payment to the Class
2 Representative of not more than \$20,000.00 (in addition to any Individual Class Payment and any
3 Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class
4 Member). Defendants will not oppose Plaintiff's request for a Class Representative Service
5 Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment
6 and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class
7 Representative Service Payments no later than 16 court days prior to the Final Approval Hearing.
8 If the Court approves a Class Representative Service Payment less than the amount requested, the
9 Administrator will retain the remainder in the Net Settlement Amount. The Administrator will
10 pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full
responsibility and liability for employee taxes owed on the Class Representative Service Payment.

11 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than
12 33.33%, which is currently estimated to be \$333,333.00 and a Class Counsel Litigation Expenses
13 Payment of not more than \$12,500.00. Defendants will not oppose requests for these payments
14 provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for
15 Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days
16 prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or
17 a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator
18 will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability
19 to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class
20 Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator
21 will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more
22 IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the
23 Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds
24 Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any
25 division or sharing of any of these Payments.

26 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed
27 \$5,000.00 except for a showing of good cause and as approved by the Court. To the extent the
28 Administration Expenses are less or the Court approves payment less than \$5,000.00, the
Administrator will retain the remainder in the Net Settlement Amount.

 3.2.4. To Each Participating Class Member: An Individual Class Payment

1 calculated by (a) dividing the Net Settlement Amount by the total number of workweeks worked
2 by all Participating Class Members during the Class Period and (b) multiplying the result by each
3 Participating Class Member's workweeks.

4 3.2.4.1. Tax Allocation of Individual Class Payments. 33.33% of
5 each Participating Class Member's Individual Class Payment will be allocated to settlement of
6 wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be
7 reported on an IRS W-2 Form. The 66.67% of each Participating Class Member's Individual
8 Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage
9 Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on
10 IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any
11 employee taxes owed on their Individual Class Payment.

12 3.2.4.2. Effect of Non-Participating Class Members on Calculation
13 of Individual Class Payments. Non-Participating Class Members will not receive any Individual
14 Class Payments. The Administrator will retain amounts equal to their Individual Class Payments
15 in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

16 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the
17 amount of \$4,000.00 to be paid from the Gross Settlement Amount, with 75% (\$3,000.00)
18 allocated to the LWDA PAGA Payment and 25% (\$1,000.00) allocated to the Individual PAGA
19 Payments.

20 3.2.5.1. The Administrator will calculate each Individual PAGA Payment
21 by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties \$1,000.00
22 by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the
23 PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay
24 Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their
25 Individual PAGA Payment.

26 3.2.5.2. If the Court approves PAGA Penalties of less than the amount
27 requested, the Administrator will allocate the remainder to the Net Settlement Amount. The
28 Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

29 **4. SETTLEMENT FUNDING AND PAYMENTS.**

30 4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of

1 its records to date, Defendants estimate there are 111 Class Members who collectively worked a
2 total of 11,332 workweeks, and 72 Aggrieved Employees who worked a total of 4,839 PAGA
3 Pay Periods.

4 4.2. Class Data. Not later than 21 days after the Court grants Preliminary Approval
5 of the Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in
6 the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the
7 Administrator must maintain the Class Data in confidence, use the Class Data only for purposes
8 of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator
9 employees who need access to the Class Data to effect and perform under this Agreement.
10 Defendants have a continuing duty to immediately notify Class Counsel if they discover that the
11 Class Data omitted class member identifying information and to provide corrected or updated
12 Class Data as soon as reasonably feasible. Without any extension of the deadline by which
13 Defendants must send the Class Data to the Administrator, the Parties and their counsel will
14 expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related
15 to missing or omitted Class Data.

16 4.3. Funding of Gross Settlement Amount. Defendants shall fully fund the Gross
17 Settlement Amount, and also fund the amounts necessary to fully pay Defendants' share of payroll
18 taxes by transmitting the funds to the Administrator in three installment payments as follows:

19 4.3.1. The First Payment, in the amount of \$400,000, shall be paid no later than
20 30 days after entry of the order granting final approval, if no objection to the settlement is made.
21 If an objection is made but no appeal filed, the First Payment shall be paid no later than 30 days
22 after the running of the appeal period. If an appeal is filed, the First Payment shall be paid no later
23 than 30 days after the final judgment becomes final and is no longer subject to appeal;

24 4.3.2. The Second Payment, in the amount of \$300,000 shall be paid no later than
25 180 days after the First Payment is due; and

26 4.3.3. The Third Payment, in the amount of \$300,000 shall be paid no later than
27 365 days after the First Payment is due.

28 4.3.4. In the event Defendants fail to pay any portion of the Gross Settlement
Amount, it shall be considered a default. In the event Defendants fail to make any payment on the
date it is due, the Settlement Administrator will provide notice to Class Counsel and Defense
Counsel within five (5) business days of the missed payment. Thereafter, Defendants will have

1 fifteen (15) days to cure the default and tender payment to the Settlement Administrator. In the
2 event Defendants fail to cure the default within the times set forth herein, Plaintiff may, among
3 other remedies, elect to enter judgment against Defendants, on an ex parte basis, for the balance
4 of the unpaid Gross Settlement Amount to date, and Plaintiff will be entitled to recover interest
5 at ten percent (10%) per year and reasonable attorneys' fees and costs.

6 4.4. Distributions from the Installment Payments toward the Gross Settlement
7 Amount. The Administrator shall distribute each of the installment payments pro rata within 15
8 days of the payment, including *pro rata* portions of the Individual Class Payments, Individual
9 PAGA Payments, LWDA PAGA payment, Class Representative Service Payments, the Class
10 Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Administrator's
11 expenses.

12 4.4.1. Disbursements of the pro rata portions of the Class Counsel Fees Payment,
13 the Class Counsel Litigation Expenses Payment and the Class Representative Service Payments
14 shall not precede disbursement of pro rata portions of the Individual Class Payments and
15 Individual PAGA payments.

16 4.4.2. The Administrator will issue checks for the Individual Class Payments
17 and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail,
18 postage prepaid. The face of each check shall prominently state the date (not less than 180 days
19 after the date of mailing) when the check will be voided. The Administrator will cancel all checks
20 not cashed by the void date. The Administrator will send checks for Individual Settlement
21 Payments to all Participating Class Members (including those for whom Class Notice was
22 returned undelivered). The Administrator will send checks for Individual PAGA Payments to all
23 Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved
24 Employees (including those for whom Class Notice was returned undelivered). The
25 Administrator may send Participating Class Members a single check combining the Individual
26 Class Payment and the Individual PAGA Payment. Before mailing any checks, the Administrator
27 must update the recipients' mailing addresses using the National Change of Address Database.

28 4.4.3. The Administrator must conduct a Class Member Address Search for all
other Class Members whose checks are returned undelivered without USPS forwarding address.
Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS
forwarding address provided or to an address ascertained through the Class Member Address

1 Search. The Administrator need not take further steps to deliver checks to Class Members whose
2 re-mailed checks are returned as undelivered. The Administrator shall promptly send a
3 replacement check to any Class Member whose original check was lost or misplaced, requested
4 by the Class Member prior to the void date.

5 4.4.4. For any Class Member whose Individual Class Payment check or
6 Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator
7 shall transmit the funds represented by such checks to the California Controller's Unclaimed
8 Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to
the requirements of California Code of Civil Procedure Section 384, subd. (b).

9 4.4.5. The payment of Individual Class Payments and Individual PAGA
10 Payments shall not obligate Defendants to confer any additional benefits or make any additional
11 payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in
this Agreement.

12 **5. [OMITTED]**

13 **6. RELEASES OF CLAIMS.** Effective on the date when Defendants fully fund the entire
14 Gross Settlement Amount and fund all employer payroll taxes owed on the Wage Portion of the
15 Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims
16 against all Released Parties as follows:

17 6.1 Plaintiff's Release. Plaintiff and his respective former and present spouses,
18 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release
19 and discharge Released Parties from any and all claims, transactions, or occurrences he has or
20 may have against them at this time, including, but not limited to: (a) all claims that were, or
21 reasonably could have been, alleged, based on the facts contained, in the Operative Complaint (b)
22 all PAGA claims that were, or reasonably could have been, alleged based on facts contained in
the Operative Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released
23 under 6.2, below; and (c) and all claims known and unknown, without exception, except as may
24 be prohibited by law. ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims
25 or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits,
26 disability benefits, social security benefits, workers' compensation benefits that arose at any time,
27 or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may
discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or

believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

6.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party.

6.2 Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint and ascertained in the course of the Action including but not limited to: failure to pay overtime wages (Cal. Lab. Code §§ 204, 510, 1194, 1197 and 1198), failure to pay minimum wage (Cal. Lab. Code §§ 558, 1194, 1197, 1197.1, and 1198), failure to provide meal periods (Lab. Code §§ 226.7, 512 and 1198), failure to authorize and permit rest periods (Lab. Code §§ 226.7 and 1198), failure to indemnify for work expenses (Lab. Code §§ 1198 and 2802), failure to furnish accurate wage statements (Cal. Lab. Code § 226), failure to timely pay wages upon termination of employment and waiting time penalties (Cal. Lab. Code §§ 201, 202, 203), and all claims for unfair competition (Cal. Bus. & Prof. Code §§ 17200, *et seq.*). Except as set forth in Section 6.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

6.3 Release by Aggrieved Employees: All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA

1 Period facts stated in the Operative Complaint and the PAGA Notice and ascertained in the course
2 of the Action including but not limited to claims for civil penalties for violations of Labor Code
3 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, and 2802, and
4 applicable Wage Orders of the Industrial Welfare Commission.

5 **7. MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and
6 file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with
7 the Court’s current checklist for Preliminary Approvals.

8 7.1 Plaintiff’s Responsibilities. Plaintiff will prepare and deliver to Defense Counsel
9 all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice,
10 and memorandum in support, of the Motion for Preliminary Approval that includes an analysis
11 of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under
12 Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval
13 and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration
14 from the Administrator attaching its “not to exceed” bid for administering the Settlement and
15 attesting to its willingness to serve; competency; operative procedures for protecting the security
16 of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other
17 misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members;
18 and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense
19 Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve
20 and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members,
21 and/or the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its
22 competency to represent the Class Members; its timely transmission to the LWDA of all necessary
23 PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative
24 Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699,
25 subd. (l)(2)); (vi) a redlined version of the parties’ Agreement showing all modifications made to
26 the Model Agreement ready for filing with the Court; and (vii) all facts relevant to any actual or
27 potential conflict of interest with Class Members, and/or the Administrator. In their Declarations,
28 Plaintiff and Class Counsel Declaration shall aver that they are not aware of any other pending
matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

7.2 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly

1 responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later
2 than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the
3 Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion
4 for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary
Approval to the Administrator.

5 7.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion
6 for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
7 Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person
8 or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant
9 Preliminary Approval or conditions Preliminary Approval on any material change to this
10 Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of
11 the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and
otherwise satisfy the Court's concerns.

13 **8. SETTLEMENT ADMINISTRATION.**

14 8.1 Selection of Administrator. The Parties have jointly selected ILYM Group, Inc.
15 to serve as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc.
16 agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this
17 Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel
18 represent that they have no interest or relationship, financial or otherwise, with the Administrator
other than a professional relationship arising out of prior experiences administering settlements.

19 8.2 Employer Identification Number. The Administrator shall have and use its own
20 Employer Identification Number for purposes of calculating payroll tax withholdings and
21 providing reports state and federal tax authorities.

22 8.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund
23 that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury
Regulation section 468B-1.

24 8.4 Notice to Class Members.

25 8.4.1 No later than three (3) business days after receipt of the Class Data, the
26 Administrator shall notify Class Counsel that the list has been received and state the number of
27 Class Members, PAGA Members, Class workweeks, and PAGA Pay Periods in the Class Data.

1 8.4.2 Using best efforts to perform as soon as possible, and in no event later than
2 14 days after receiving the Class Data, the Administrator will send to all Class Members identified
3 in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice
4 with Spanish translation, substantially in the form attached to this Agreement as **Exhibit A**. The
5 first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class
6 Payment and/or Individual PAGA Payment payable to the Class Member, and the number of
7 workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing
8 Class Notices, the Administrator shall update Class Member addresses using the National Change
9 of Address database. The notice may not be smaller than the font size in the proposed notice
provided to the Court.

10 8.4.3 Not later than 3 business days after the Administrator’s receipt of any Class
11 Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice
12 using any forwarding address provided by the USPS. If the USPS does not provide a forwarding
13 address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class
14 Notice to the most current address obtained. The Administrator has no obligation to make further
15 attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the
USPS a second time.

16 8.4.4 The deadlines for Class Members’ written objections, Challenges to Class
17 Pay Periods and/or PAGA Pay Periods, and Requests for Exclusion will be extended an additional
18 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose
19 notice is re-mailed. The Administrator will inform the Class Member of the extended deadline
with the re-mailed Class Notice.

20 8.4.5 If the Administrator, Defendants or Class Counsel is contacted by or
21 otherwise discovers any persons who believe they should have been included in the Class Data
22 and should have received Class Notice, the Parties will expeditiously meet and confer in person
23 or by telephone, and in good faith, in an effort to agree on whether to include them as Class
24 Members. If the Parties agree, such persons will be Class Members entitled to the same rights as
25 other Class Members, and the Administrator will send, via email or overnight delivery, a Class
26 Notice requiring them to exercise options under this Agreement not later than 14 days after receipt
of Class Notice, or the deadline dates in the Class Notice, which ever are later.

27 ///

1 8.5 Requests for Exclusion (Opt-Outs).

2 8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class
3 Settlement must send the Administrator, by fax, email, or mail, a signed written Request for
4 Exclusion not later than 60 days after the Administrator mails the Class Notice (plus an additional
5 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter
6 from a Class Member or his/her representative that reasonably communicates the Class Member's
7 election to be excluded from the Settlement and includes the Class Member's name, address and
8 email address or telephone number. To be valid, a Request for Exclusion must be timely faxed,
9 emailed, or postmarked by the Response Deadline.

10 8.5.2 The Administrator may not reject a Request for Exclusion as invalid
11 because it fails to contain all the information specified in the Class Notice. The Administrator
12 shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the
13 identity of the person as a Class Member and the Class Member's desire to be excluded. The
14 Administrator's determination shall be final and not appealable or otherwise susceptible to
15 challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion,
16 the Administrator may demand additional proof of the Class Member's identity. The
17 Administrator's determination of authenticity shall be final and not appealable or otherwise
18 susceptible to challenge.

19 8.5.3 Every Class Member who does not submit a timely and valid Request for
20 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all
21 benefits and bound by all terms and conditions of the Settlement, including the Participating Class
22 Members' Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless whether the
23 Participating Class Member actually receives the Class Notice or objects to the Settlement.

24 8.5.4 Every Class Member who submits a valid and timely Request for
25 Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment
26 or have the right to object to the class action components of the Settlement. Because future PAGA
27 claims are subject to claim preclusion upon entry of the Judgment, all Aggrieved Employees are
28 bound to the PAGA Settlement regardless of whether or not they submit a valid and timely Request
for Exclusion, and are deemed to release the claims identified in Paragraph 6.3 of this Agreement
and are eligible for an Individual PAGA Payment.

8.6 Challenges to Calculation of Workweeks and/or Pay Periods. Each Class

1 Member shall have 60 days after the Administrator mails the Class Notice (plus an additional 14
2 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class
3 workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice.
4 The Class Member may challenge the allocation by communicating with the Administrator via
5 fax, email or mail. The Administrator must encourage the challenging Class Member to submit
6 supporting documentation. In the absence of any contrary documentation, the Administrator is
7 entitled to presume that the Class workweeks and PAGA Pay Periods contained in the Class
8 Notice are correct so long as they are consistent with the Class Data. The Administrator's
9 determination of each Class Member's allocation of Class workweeks and/or PAGA Pay Periods
10 shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall
11 promptly provide copies of all challenges to calculation of Class workweeks and/or PAGA Pay
12 Periods to Defense Counsel and Class Counsel and the Administrator's determination the
13 challenges. Class Members may submit the Work Week Dispute Form attached as Exhibit C to
14 dispute the calculation of the Class workweeks. The mailing of the Class Notice will include this
15 form.

16 8.7 Objections to Settlement.

17 8.7.1 Only Participating Class Members may object to the class action
18 components of the Settlement and/or this Agreement, including contesting the fairness of the
19 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel
20 Litigation Expenses Payment and/or Class Representative Service Payment.

21 8.7.2 Participating Class Members may send written objections to the
22 Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear
23 in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval
24 Hearing. A Participating Class Member who elects to send a written objection to the
25 Administrator must do so not later than 60 days after the Administrator's mailing of the Class
26 Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

27 8.7.3 Non-Participating Class Members have no right to object to any of the class
28 action components of the Settlement.

8.8 Administrator Duties. The Administrator has a duty to perform or observe all
tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8.8.1 Website, Email Address and Toll-Free Number. The Administrator will

1 establish and maintain and use an internet website to post information of interest to Class
2 Members including the date, time and location for the Final Approval Hearing and copies of the
3 Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class
4 Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class
5 Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final
6 Approval and the Judgment. The Administrator will also maintain and monitor an email address
and a toll-free telephone number to receive Class Member calls, faxes and emails.

7 8.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator
8 will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not
9 later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the
10 Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names
11 and other identifying information of Class Members who have timely submitted valid Requests
12 for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class
13 Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for
Exclusion from Settlement submitted (whether valid or invalid).

14 8.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide
15 written reports to Class Counsel and Defense Counsel that, among other things, tally the number
16 of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for
17 Exclusion (whether valid or invalid) received, objections received, challenges to Class Pay
18 Periods and/or PAGA Pay Periods received and/or resolved, and checks mailed for Individual
19 Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must
20 include provide the Administrator’s assessment of the validity of Requests for Exclusion and
attach copies of all Requests for Exclusion and objections received.

21 8.8.4 Workweek and/or Pay Period Challenges. The Administrator has the
22 authority to address and make final decisions consistent with the terms of this Agreement on all
23 Class Member challenges over the calculation of Class workweeks and/or PAGA Pay Periods.
24 The Administrator’s decision shall be final and not appealable or otherwise susceptible to
challenge.

25 8.8.5 Administrator’s Declaration. Not later than 14 days before the date by
26 which Plaintiff is required to file the Motion for Final Approval of the Settlement, the
27 Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable

1 for filing in Court attesting to its due diligence and compliance with all of its obligations under
2 this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices
3 returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the
4 total number of Requests for Exclusion from Settlement it received (both valid or invalid), the
5 number of written objections and attach the Exclusion List. The Administrator will supplement
6 its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible
7 for filing the Administrator's declaration(s) in Court.

8 8.8.6 Final Report by Administrator. Within 10 days after the Administrator
9 disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel
10 and Defense Counsel with a final report detailing its disbursements by employee identification
11 number only of all payments made under this Agreement. At least 15 days before any deadline
12 set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense
13 Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all
14 payments required under this Agreement. Class Counsel is responsible for filing the
15 Administrator's declaration in Court.

16 **9. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE.** Based on its records,
17 Defendants estimate that, as of the date of this Settlement Agreement, (1) there are 111 Class
18 Members and 11,332 Total workweeks during the Class period. This Settlement is based on
19 Defendants' belief that there are approximately 11,332 workweeks at issue. If the number of
20 workweeks is 10% or 1,134 workweeks higher than 11,332, then Defendants shall pay a pro-rata
21 increase in the Gross Settlement Amount equal to the percentage increase in workweeks above
22 11,332. For example, if the number of workweeks increases by 12%, then Plaintiff shall request
23 a 2% increase to the Gross Settlement amount. The Defendants and the Settlement Administrator
24 will disclose the number of workweeks following issuance of the preliminary approval order and
25 before the Administrator sends notice of the Settlement to the Class Members.

26 **10. DEFENDANTS' RIGHT TO WITHDRAW.** If the number of valid Requests for
27 Exclusion identified in the Exclusion List exceeds 10.00% of the total of all Class Members,
28 Defendants may, but are not obligated to, elect to withdraw from the Settlement. The Parties
agree that, if Defendants withdraw, the Settlement shall be void ab initio, have no force or effect

1 whatsoever, and that neither Party will have any further obligation to perform under this
2 Agreement; provided, however, Defendants will remain responsible for paying all Settlement
3 Administration Expenses incurred to that point. Defendants must notify Class Counsel and the
4 Court of its election to withdraw not later than 7 days after the Administrator sends the final
5 Exclusion List to Defense Counsel; late elections will have no effect.

6 **11. MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared
7 Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement
8 that includes a request for approval of the PAGA settlement under Labor Code section 2699,
9 subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively “Motion for
10 Final Approval”). Plaintiff shall provide drafts of these documents to Defense Counsel not later
11 than 7 days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel
12 will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any
disagreements concerning the Motion for Final Approval.

13 11.1 Response to Objections. Each Party retains the right to respond to any objection
14 raised by a Participating Class Member, including the right to file responsive documents in Court
15 no later than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted
16 by the Court.

17 11.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
18 Approval on any material change to the Settlement (including, but not limited to, the scope of
19 release to be granted by Class Members), the Parties will expeditiously work together in good
20 faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final
21 Approval. The Court’s decision to award less than the amounts requested for the Class
22 Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation
Expenses Payment and/or Administrator Expenses Payment shall not constitute a material
modification to the Agreement within the meaning of this paragraph.

23 11.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of
24 Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for
25 purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement
26 administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

27 11.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms

1 and conditions of this Agreement, specifically including the Class Counsel Fees Payment and
2 Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their
3 respective counsel, and all Participating Class Members who did not object to the Settlement as
4 provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to
5 post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions
6 for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver
7 of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the
8 Parties' obligations to perform under this Agreement will be suspended until such time as the
9 appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect
10 the amount of the Net Settlement Amount.

11 11.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If
12 the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a
13 material modification of this Agreement (including, but not limited to, the scope of release to be
14 granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless
15 expeditiously work together in good faith to address the appellate court's concerns and to obtain
16 Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration
17 Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify
18 the Court's award of the Class Representative Service Payment or any payments to Class Counsel
19 shall not constitute a material modification of the Judgment within the meaning of this paragraph,
20 as long as the Gross Settlement Amount remains unchanged.

21 **12. AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil
22 Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed
23 amended judgment.

24 **13. ADDITIONAL PROVISIONS.**

25 13.1 No Admission of Liability, Class Certification or Representative Manageability
26 for Other Purposes. This Agreement represents a compromise and settlement of highly disputed
27 claims. Nothing in this Agreement is intended or should be construed as an admission by
28 Defendants that any of the allegations in the Operative Complaint have merit or that Defendants
have any liability for any claims asserted; nor should it be intended or construed as an admission

1 by Plaintiff that Defendants' defenses in the Action have merit. The Parties agree that class
2 certification and representative treatment is for purposes of this Settlement only. If, for any reason
3 the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendants
4 reserve the right to contest certification of any class for any reasons, and Defendants reserve all
5 available defenses to the claims in the Action, and Plaintiff reserves the right to move for class
6 certification on any grounds available and to contest Defendants' defenses. The Settlement, this
7 Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be
8 admissible in connection with, any litigation (except for proceedings to enforce or effectuate the
9 Settlement and this Agreement).

10 13.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel,
11 Defendants and Defense Counsel separately agree that, until the Motion for Preliminary Approval
12 of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or
13 cause or permit another person to disclose, disseminate or publicize, any of the terms of the
14 Agreement directly or indirectly, specifically or generally, to any person, corporation, association,
15 government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses,
16 all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter;
17 (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a
18 court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal
19 government agency.

20 Each Party agrees to immediately notify each other Party of any judicial or agency
21 order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendants and
22 Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other
23 communication, before the filing of the Motion for Preliminary Approval, any with third party
24 regarding this Agreement or the matters giving rise to this Agreement except to respond only that
25 "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's
26 communications with Class Members in accordance with Class Counsel's ethical obligations
27 owed to Class Members.

28 13.3 No Solicitation. The Parties separately agree that they and their respective
counsel and employees will not solicit any Class Member to opt out of or object to the Settlement,
or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class
Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical

obligations owed to Class Members.

13.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

13.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

13.6 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

13.7 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

13.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendants nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

13.9 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.

13.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

13.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will

1 be governed by and interpreted according to the internal laws of the state of California, without
2 regard to conflict of law principles.

3 13.12 Cooperation in Drafting. The Parties have cooperated in the drafting and
4 preparation of this Agreement. This Agreement will not be construed against any Party on the
5 basis that the Party was the drafter or participated in the drafting.

6 13.13 Confidentiality. To the extent permitted by law, all agreements made, and orders
7 entered during Action and in this Agreement relating to the confidentiality of information shall
8 survive the execution of this Agreement.

9 13.14 Use and Return of Class Data. Information provided to Class Counsel pursuant
10 to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class
11 Counsel by Defendants in connection with the mediation, other settlement negotiations, or in
12 connection with the Settlement, may be used only with respect to this Settlement, and no other
13 purpose, and may not be used in any way that violates any existing contractual agreement, statute,
14 or rule of court. Not later than 90 days after the date when the Court discharges the
15 Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement
16 funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from
17 Defendants unless, prior to the Court's discharge of the Administrator's obligation, Defendants
18 makes a written request to Class Counsel for the return, rather than the destructions, of Class
19 Data.

20 13.15 Headings. The descriptive heading of any section or paragraph of this Agreement
21 is inserted for convenience of reference only and does not constitute a part of this Agreement.

22 13.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement
23 shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
24 weekend or federal legal holiday, such date or deadline shall be on the first business day
25 thereafter.

26 13.17 Notice. All notices, demands or other communications between the Parties in
27 connection with this Agreement will be in writing and deemed to have been duly given as of the
28 third business day after mailing by United States mail, or the day sent by email or messenger,
addressed as follows:

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///

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To Plaintiff:
David G. Spivak, Esq.
The Spivak Law Firm
8605 Santa Monica Bl
PMB 4,2554
West Hollywood, CA 90069
david@spivaklaw.com

To Defendants:
Samuel P. Knecht, Esq.
Lewis Brisbois Bisgaard & Smith LLP
633 W 5th St
Ste 4000
Los Angeles, CA 90071
Samuel.Knecht@lewisbrisbois.com

13.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

13.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

Dated: 04 / 07 / 2023

By:


MICHAEL M. CANTRELL

Dated:

By:


COLLIN FLEMING

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Dated:

By:

Marla A Fleming

MARLA FLEMING
Chief Executive Officer for
CONCRETE PLACEMENT, INC.

THE SPIVAK LAW FIRM

Dated: 04 / 11 / 2023

By:

David Spivak

DAVID G. SPIVAK and
CHRISTINA J. PREJEAN, Attorneys
for Plaintiff, MICHAEL M.
CANTRELL, and all others similarly
situated

UNITED EMPLOYEES LAW GROUP

Dated: April 20, 2023

By:

Walter L Haines

WALTER L. HAINES, Attorney for
Plaintiff, MICHAEL M. CANTRELL,
and all others similarly situated

LEWIS BRISBOIS BISGAARD & SMITH LLP

Dated: April 11, 2023

By:

Samuel P Knecht

KATHERINE DEN BLEYKER and
SAMUEL P. KNECHT, Attorneys for
Defendants, CONCRETE
PLACEMENT, INC. and COLLIN
FLEMING

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EXHIBIT A

1 **COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING**
2 **DATE FOR FINAL COURT APPROVAL**

3 (case name: *Michael M. Cantrell v. Concrete Placement, Inc.* et al. and number 30-2021-
4 01225534-CU-OE-CXC)

5 ***The Superior Court for the State of California authorized this Notice. Read it carefully!***
6 ***It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

7 **You may be eligible to receive money** from an employee class action lawsuit ("Action")
8 against Concrete Placement, Inc. and Collin Fleming (abbreviate name; "Defendants" is used
9 herein as a placeholder) for alleged wage and hour violations. The Action was filed by one of
10 Defendants' employees Michael M. Cantrell ("Plaintiff") and seeks payment of (1) wages and
11 other relief for a class of hourly, non-exempt employees ("Class Members") who worked for
12 Defendants in California during the Class Period (October 08, 2017 to the date of the court order
13 granting preliminary approval of the Settlement); and (2) penalties under the California Private
14 Attorney General Act ("PAGA") for all hourly, non-exempt employees who worked for
15 Defendants in California during the PAGA Period (August 18, 2020 to the date of the court order
16 granting preliminary approval of the Settlement) ("Aggrieved Employees").

17 The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendants
18 to fund Individual Class Payments, and (2) a PAGA Settlement requiring Defendants to fund
19 Individual PAGA Payments and pay penalties to the California Labor and Workforce
20 Development Agency ("LWDA").

21 Based on Defendants' records, and the Parties' current assumptions, **your Individual**
22 **Class Payment is estimated to be \$___ (less withholding) and your Individual PAGA**
23 **Payment is estimated to be \$___**. The actual amount you may receive likely will be different
24 and will depend on a number of factors. (If no amount is stated for your Individual PAGA
25 Payment, then according to Defendants' records you are not eligible for an Individual PAGA
26 Payment under the Settlement because you didn't work during the PAGA Period.)

27 The above estimates are based on Defendants' records showing that **you worked**
28 **___Class Workweeks** during the Class Period and **you worked ___ PAGA Pay Periods** during
the PAGA Period. If you believe that you worked more Pay Periods during either period, you can
submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this
Notice. The Court has not yet decided whether to grant final approval. Your legal rights are
affected whether you act or not act. Read this Notice carefully. You will be deemed to have
carefully read and understood it. At the Final Approval Hearing, the Court will decide whether
to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and
Plaintiff's attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment
that requires Defendants to make payments under the Settlement and requires Class Members and
Aggrieved Employees to give up their rights to assert certain claims against Defendants.

If you worked for Defendants during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

(1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against Defendants.

(2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against Defendants, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

Defendants will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Defendants that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is —	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendants must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by —	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.

You Can Participate in the ____ Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on _____. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Pay Period / Pay Periods Written Challenges Must be Submitted by _____	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many Pay Periods you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period Pay Periods and number of PAGA Period Pay Periods you worked according to Defendants’ records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former employee of Defendants. The Action accuses Defendants of violating California labor laws by failure to pay overtime wages, failure to pay minimum wage, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for work expenses, and related violations of the Labor Code. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 26S98, et seq.) (“PAGA”). Plaintiff is represented by attorneys in the Action: David G. Spivak of The Spivak Law Firm and Walter L. Haines of United Employees Law Group (“Class Counsel.”)

Defendants strongly deny violating any laws or failing to pay any wages, contend they complied with all applicable laws, and have entered into the Settlement solely for purposes of resolving this dispute.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Defendants or Plaintiff is correct on the merits. In the meantime, Plaintiff and Defendants hired an experienced, neutral mediator who is a retired judge in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Defendants have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendants do not admit any violations or concede the merit of any claims.

1 Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they
2 believe that: (1) Defendants have agreed to pay a fair, reasonable and adequate amount
3 considering the strength of the claims and the risks and uncertainties of continued litigation; and
4 (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court
preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this
Notice, and scheduled a hearing to determine Final Approval.

5 **3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?**

6 1. Defendants Will Pay \$1,000,000.00 as the Gross Settlement Amount (Gross
7 Settlement). Defendants have agreed to deposit the Gross Settlement into an account controlled
8 by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay
9 the Individual Class Payments, Individual PAGA Payments, Class Representative Service
Payment, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and
penalties to be paid to the California Labor and Workforce Development Agency ("LWDA").

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

12 A. The First Payment, in the amount of \$400,000, shall be paid no later than
13 30 days after entry of the order granting final approval, if no objection to the settlement is made.
14 If an objection is made but no appeal filed, the First Payment shall be paid no later than 30 days
15 after the running of the appeal period. If an appeal is filed, the First Payment shall be paid no later
than 30 days after the final judgment becomes final and is no longer subject to appeal;

16 B. The Second Payment, in the amount of \$300,000, shall be paid no later
17 than 180 days after the First Payment is due; and

18 C. The Third Payment, in the amount of \$300,000, shall be paid no later than
19 365 days after the First Payment is due.

20 3. The Administrator shall distribute each of the installment payments pro rata within
21 15 days of the payment, including *pro rata* portions of the Individual Class Payments, Individual
22 PAGA Payments, LWDA PAGA payment, Class Representative Service Payments, the Class
Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Administrator's
expenses. Class Members may submit the enclosed WORK WEEKS DISPUTE FORM to dispute
the Administrator's calculation of work weeks.

23 4. Disbursements of the pro rata portions of the Class Counsel Fees Payment, the
24 Class Counsel Litigation Expenses Payment and the Class Representative Service Payments shall
25 not precede disbursement of pro rata portions of the Individual Class Payments and Individual
PAGA payments.

26 5. Court Approved Deductions from Gross Settlement. At the Final Approval
27 Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions

1 from the Gross Settlement, the amounts of which will be decided by the Court at the Final
2 Approval Hearing:

3 A. Up to \$333,333.00 (33.33% of the Gross Settlement to Class Counsel for
4 attorneys' fees and up to \$12,500.00 for their litigation expenses. To date, Class Counsel have
worked and incurred expenses on the Action without payment.

5 B. Up to \$20,000.00 as a Class Representative Award for filing the Action,
6 working with Class Counsel and representing the Class. A Class Representative Award will be
7 the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any
Individual PAGA Payment.

8 C. Up to \$5,000.00 to the Administrator for services administering the
9 Settlement.

10 D. Up to \$4,000.00 for PAGA Penalties, allocated 75% to the LWDA PAGA
11 Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their
PAGA Period Pay Periods.

12 Participating Class Members have the right to object to any of these deductions. The Court
13 will consider all objections.

14 This Settlement is based on Defendants' belief that there are approximately 11,332
15 workweeks at issue. If the number of workweeks is 10% or 1,134 workweeks higher than 11,332,
16 then Defendants shall pay a pro-rata increase in the Gross Settlement Amount equal to the
17 percentage increase in workweeks above 11,332. For example, if the number of workweeks
increases by 12%, then Plaintiff shall request a 2% increase to the Gross Settlement amount. The
18 Defendants and the Settlement Administrator will disclose the number of workweeks following
issuance of the preliminary approval order and before the Administrator sends notice of the
Settlement to the Class Members.

19 6. Net Settlement Distributed to Class Members. After making the above deductions
20 in amounts approved by the Court, the Administrator will distribute the rest of the Gross
Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class
21 Members based on their Class Period workweeks.

22 7. Taxes Owed on Payments to Class Members. Plaintiff and Defendants are asking
23 the Court to approve an allocation of 33.33% of each Individual Class Payment to taxable wages
24 ("Wage Portion") and 66.67% to interest and penalties ("Non-Wage Portion."). The Wage Portion
is subject to withholdings and will be reported on IRS W-2 Forms. Defendants will separately
25 pay employer payroll they owe on the Wage Portion. The Individual PAGA Payments are counted
as penalties rather than wages for tax purposes. The Administrator will report the Individual
26 PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099
Forms.

1 Although Plaintiff and Defendants have agreed to these allocations, neither side is giving
2 you any advice on whether your Payments are taxable or how much you might owe in taxes. You
3 are responsible for paying all taxes (including penalties and interest on back taxes) on any
Payments received from the proposed Settlement. You should consult a tax advisor if you have
any questions about the tax consequences of the proposed Settlement.

4 8. Need to Promptly Cash Payment Checks. The front of every check issued for
5 Individual Class Payments and Individual PAGA Payments will show the date when the check
6 expires (the void date). If you don't cash it by the void date, your check will be automatically
7 cancelled, and the monies will be deposited with the California Controller's Unclaimed Property
Fund in your name.

8 If the monies represented by your check is sent to the Controller's Unclaimed Property,
9 you should consult the rules of the Fund for instructions on how to retrieve your money.

10 9. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated
11 as a Participating Class Member, participating fully in the Class Settlement, unless you notify the
12 Administrator in writing, not later than ___, that you wish to opt-out. The easiest way to notify
13 the Administrator is to send a written and signed Request for Exclusion by the ___ Response
14 Deadline. The Request for Exclusion should be a letter from a Class Member or his/her
representative setting forth a Class Member's name, present address, telephone number, and a
simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e.,
Non-Participating Class Members) will not receive Individual Class Payments, but will preserve
their rights to personally pursue wage and hour claims against Defendants.

15 You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude
16 themselves from the Class Settlement (Non-Participating Class Members) remain eligible for
17 Individual PAGA Payments and are required to give up their right to assert PAGA claims against
18 Defendants based on the PAGA Period facts alleged in the Action. Class Members may submit
the enclosed ELECTION NOT TO PARTICIPATE IN SETTLEMENT FORM to opt out of the
Settlement.

19 10. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is
20 possible the Court will decline to grant Final Approval of the Settlement or decline enter a
21 Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs
22 and Defendants have agreed that, in either case, the Settlement will be void: Defendants will not
pay any money and Class Members will not release any claims against Defendants.

23 11. Administrator. The Court has appointed a neutral company, ILYM Group, Inc.
24 (the "Administrator") to send this Notice, calculate and make payments, and process Class
25 Members' Requests for Exclusion. The Administrator will also decide Class Member Challenges
26 over Work Weeks, mail and re- mail settlement checks and tax forms, and perform other tasks
27 necessary to administer the Settlement. The Administrator's contact information is contained in
28 Section 9 of this Notice. Class Members may submit the enclosed WORK WEEKS DISPUTE
FORM to dispute the Administrator's calculation of work weeks.

12. Participating Class Members' Release. After the Judgment is final and Defendants have fully funded the Gross Settlement (and separately paid all employer payroll taxes), Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties, defined as Defendants and each of Concrete Placement, Inc.'s parent companies, subsidiaries, related companies, affiliates, dbas, current and former management companies, shareholders, members, agents (including any investment bankers, accountants, insurers, reinsurers, attorneys and any past, present or future officers, directors and employees) predecessors, successors, and assigns, from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint and ascertained in the course of the Action including but not limited to: failure to pay overtime wages (Cal. Lab. Code §§ 204, 510, 1194, 1197 and 1198), failure to pay minimum wage (Cal. Lab. Code §§ 558, 1194, 1197, 1197.1, and 1198), failure to provide meal periods (Lab. Code §§ 226.7, 512 and 1198), failure to authorize and permit rest periods (Lab. Code §§ 226.7 and 1198), failure to indemnify for work expenses (Lab. Code §§ 1198 and 2802), failure to furnish accurate wage statements (Cal. Lab. Code § 226), failure to timely pay wages upon termination of employment and waiting time penalties (Cal. Lab. Code §§ 201, 202, 203), and all claims for unfair competition (Cal. Bus. & Prof. Code §§ 17200, *et seq.*). Except as set forth in Section 6.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

13. Aggrieved Employees' PAGA Release. After the Court's judgment is final, and Defendants have paid the Gross Settlement (and separately paid the employer-side payroll taxes), all Aggrieved Employees will be barred from asserting PAGA claims against Defendants, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Defendants or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:

1 All Aggrieved Employees are deemed to release, on behalf of themselves and their
2 respective former and present representatives, agents, attorneys, heirs, administrators, successors,
3 and assigns, the Released Parties, defined as Defendants and each of their parent companies,
4 subsidiaries, related companies, affiliates, dbas, current and former management companies,
5 shareholders, members, agents (including any investment bankers, accountants, insurers,
6 reinsurers, attorneys and any past, present or future officers, directors and employees)
7 predecessors, successors, and assigns, from all claims for PAGA penalties that were alleged, or
8 reasonably could have been alleged, based on the PAGA Period facts stated in the Operative
9 Complaint and the PAGA Notice and ascertained in the course of the Action including but not
10 limited to claims for civil penalties for violations of Labor Code 201, 202, 203, 204, 226, 226.7,
11 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, and 2802, and applicable Wage Orders of the
12 Industrial Welfare Commission.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class
Payments by (a) dividing the Net Settlement Amount by the total number of Pay Periods worked
by all Participating Class Members, and (b) multiplying the result by the number of Pay Periods
worked by each individual Participating Class Member.

2. Individual PAGA Payments. The Administrator will calculate Individual PAGA
Payments by (a) dividing \$1,000.00 by the total number of PAGA Pay Periods worked by all
Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods
worked by each individual Aggrieved Employee.

3. Workweek/Pay Period Challenges. The number of Class Pay Periods you worked
during the Class Period and the number of PAGA Pay Periods you worked during the PAGA
Period, as recorded in Defendants' records, are stated in the first page of this Notice. You have
until ___ to challenge the number of Class Pay Periods and/or PAGA Pay Periods credited to you.
You can submit your challenge by signing and sending a letter to the Administrator via mail,
email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The
Administrator will accept Defendants' calculation of Class Pay Periods and/or PAGA Pay Periods
based on Defendants' records as accurate unless you send copies of records containing contrary
information. You should send copies rather than originals because the documents will not be
returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based
on your submission and on input from Class Counsel (who will advocate on behalf of
Participating Class Members) and Defendants' Counsel. The Administrator's decision is final.
You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, by U.S. mail, a single
check to every Participating Class Member (i.e., every Class Member who doesn't opt-out)
including those who also qualify as Aggrieved Employees. The single check will combine the

1 Individual Class Payment and the Individual PAGA Payment.

2 2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a
3 single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class
4 Settlement (i.e., every Non-Participating Class Member).

5 **Your check will be sent to the same address as this Notice. If you change your**
6 **address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has**
7 **the Administrator's contact information.**

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

8 Submit a written and signed letter with your name, present address, telephone number,
9 and a simple statement that you do not want to participate in the Settlement. The Administrator
10 will exclude you based on any writing communicating your request be excluded. Be sure to
11 personally sign your request, identify the Action as *Michael M. Cantrell vs. Concrete Placement,*
12 *Inc.*, Case No. 30-2021-01225534-CU-OE-CXC, and include your identifying information (full
13 name, address, telephone number, approximate dates of employment, and social security number
14 for verification purposes). You must make the request yourself. If someone else makes the
15 request for you, it will not be valid. **The Administrator must be sent your request to be**
16 **excluded by ___, or it will be invalid.** Section 9 of the Notice has the Administrator's contact
17 information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

18 Only Participating Class Members have the right to object to the Settlement. Before deciding
19 whether to object, you may wish to see what Plaintiff and Defendants are asking the Court to
20 approve. At least ___ days before the ___ Final Approval Hearing, Class Counsel and/or Plaintiff
21 will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons
22 why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service
23 Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation
24 expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award.
25 Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice)
26 will send you copies of these documents at no cost to you. You can also view them on the
27 Administrator's Website ([url](#)) or the Court's website ([url](#)).

28 A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for
Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to
object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class
Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the**
Administrator is ____. Be sure to tell the Administrator what you object to, why you object, and
any facts that support your objection. Make sure you identify the Action, *Michael M. Cantrell vs.*
Concrete Placement, Inc., case no. 30-2021-01225534-CU-OE-CXC, and include your name,
current address, telephone number, and approximate dates of employment for Defendants and sign
the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on ____ at (time) in Department CX104 of the Orange Superior Court, located at Civil Complex Center, 751 W Santa Ana Blvd., Santa Ana, CA 92701. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via ____ (https://www. ____). Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website ____ beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendants and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to (specify entity)'s website at (url). You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (http://www. ____ .aspx) and entering the Case Number for the Action, Case No. 30-2021-01225534-CU-OE-CXC. You can also make an appointment to personally review court documents in the Clerk's Office at the Civil Complex Center by calling ____.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

Class Counsel:

Name of Attorney:	David G. Spivak
Email Address:	david@spivaklaw.com
Name of Firm:	The Spivak Law Firm
Mailing Address:	8605 Santa Monica Bl PMB 4,2554 West Hollywood, CA 90069
Telephone:	(213) 725-9094

1 Administrator:

2 Name of Company: ILYM Group, Inc.

3 Email Address: _____

4 Mailing Address: _____

5 Telephone: _____

6 Fax Number: _____

7 **10. WHAT IF I LOSE MY SETTLEMENT CHECK?**

8 If you lose or misplace your settlement check before cashing it, the Administrator will replace it
9 as long as you request a replacement before the void date on the face of the original check. If
10 your check is already void, you should consult the Unclaimed Property Fund ____ for instructions
11 on how to retrieve the funds.

12 **11. WHAT IF I CHANGE MY ADDRESS?**

13 To receive your check, you should immediately notify the Administrator if you move or otherwise
14 change your mailing address.
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EXHIBIT B

Cantrell v. Concrete Placement, Inc.
**Superior Court of the State of California, County of Orange, Case No. 30-2021-01225534-
CU-OE-CXC**

ELECTION NOT TO PARTICIPATE IN SETTLEMENT FORM

**IF YOU WANT TO BE INCLUDED IN THIS CLASS ACTION SETTLEMENT AND BE
ELIGIBLE FOR A SHARE OF THE SETTLEMENT PROCEEDS,
DO NOT FILL OUT THIS FORM.**

**IF YOU DO NOT WANT TO BE INCLUDED IN THE SETTLEMENT, YOU MUST
COMPLETE AND SIGN THIS DOCUMENT AND MAIL IT TO THE ADDRESS
BELOW, POSTMARKED NOT LATER THAN <<RESPONSE DEADLINE>>:**

Cantrell v. Concrete Placement, Inc. Class Action Administrator
c/o ____

I declare as follows: I have received notice of the proposed settlement in this action and I wish to be excluded from the class and ***not*** to participate in the proposed settlement. I understand this means that I will not be bound by the Settlement and also will not share in the settlement proceeds.

(Typed or Printed Name)

(Address)

(City, State, Zip Code)

(Telephone Number, Including Area Code)

(Identification Number)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and was executed on ____.

EXHIBIT C

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WORK WEEK DISPUTE FORM

Superior Court of The State of California
For The County of Orange

Michael M. Cantrell v. Concrete Placement, Inc., Case No. 30-2021-01225534-CU-OE-CXC

Indicate Name/Address Changes, if any:

<<Name>>

<<Address>>

<<City>>, <<State>> <<Zip Code>>

XX – XX - _

TO ALL PERSONS EMPLOYED BY DEFENDANT CONCRETE PLACEMENT, INC. AS HOURLY AND NON-EXEMPT IN THE STATE OF CALIFORNIA FROM OCTOBER 8, 2017 THROUGH [DATE OF PRELIMINARY APPROVAL]:

The amount of your estimated Settlement Award is based upon the number of Work Weeks you worked between October 08, 2017 and [date of preliminary approval] and Work Weeks you worked between August 18, 2020 and [date of preliminary approval]. “Work Weeks” are defined as any Work Week in which you worked at least one (1) day as an hourly, non-exempt employee of Concrete Placement, Inc. in California during the calendar week. The number of Work Weeks applicable to your claim are set forth below.

YOUR ELIGIBLE WORK WEEKS

Defendants’ records indicate that you worked <<number of Work Weeks>> Work Weeks between October 08, 2017 and [date of preliminary approval].

YOUR ESTIMATED SETTLEMENT AWARD AND DISPUTE PROCEDURE

Under the terms of the Class Action Settlement, you are entitled to receive a settlement payment in the approximate estimated amount of <<\$Settlement Share Amount>>, minus all applicable payroll and tax deductions, after the Court approves the Settlement and it goes into effect. This process may take six months or more. You will receive a Form W-2 reflecting the payment to you. Your Settlement Share reflected on this Notice is only an estimate. The exact amount of the payment could vary, up or down.

If you wish to dispute the number of October 08, 2017 credited to you, or anything else about your employment status, you must complete and return this form by indicating what you believe is incorrect on the blank lines below and return it on or before <<RESPONSE DEADLINE>> to the Administrator via U.S. Mail with proof of the submission date (such as a postmark or delivery

93014045.1

Cantrell v. Concrete Placement, Inc., et al.

Class Action and PAGA Settlement
Agreement

service date stamp). You must also send any documents or other information that you contend supports your belief that the information set forth above is incorrect. The Administrator will resolve any dispute based upon Defendants' records and any information you provide. Please be advised that the information on this Work Weeks Dispute Form is presumed to be correct unless the documents you submit are company records from Defendants.

UNLESS YOU ARE FILING A DISPUTE REGARDING THE NUMBER OF WORK WEEKS, RECEIPT OF A DIRECT SETTLEMENT PAYMENT, OR YOUR EMPLOYMENT STATUS, YOU DO NOT NEED TO TAKE ANY ACTION

EXHIBIT 4

1 DAVID G. SPIVAK (SBN 179684)
david@spivaklaw.com
2 CHRISTINA J. PREJEAN (SBN 314772)
christina@spivaklaw.com
3 THE SPIVAK LAW FIRM
4 8605 Santa Monica Bl
PMB 42554
5 West Hollywood, CA 90069
Telephone: (213) 725-9094
6 Facsimile: (213) 634-2485

7 Attorneys for Plaintiff(s),
8 MICHAEL M. CANTRELL, and all others similarly situated
(Additional attorneys for parties on following page)

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 and all others similarly situated, and as
an “aggrieved employee” on behalf of other
15 “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 *Defendants.*
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Case No. 30-2021-01225534-CU-OE-CXC

**FIRST AMENDED CLASS ACTION
AND PAGA SETTLEMENT
AGREEMENT AND CLASS NOTICE**

Action filed: October 07, 2021
Dept: CX104, The Honorable
William D. Claster

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ADDITIONAL ATTORNEYS FOR PLAINTIFF(S)

WALTER L. HAINES (SBN 71075)
walter@uelglaw.com
UNITED EMPLOYEES LAW GROUP
4276 Katella Ave
Suite 301
Los Alamitos, CA 90720
Telephone: (562) 256-1047
Facsimile: (562) 256-1006

Attorneys for Plaintiff(s),
MICHAEL M. CANTRELL, and all others similarly situated

ATTORNEYS FOR DEFENDANTS

KATHERINE DEN BLEYKER (SBN 257187)
Katherine.DenBleyker@lewisbrisbois.com;
SAMUEL KNECHT (SBN 314693)
Samuel.Knecht@lewisbrisbois.com
LEWIS BRISBOIS BISGAARD & SMITH LLP
633 West 5th Street, Suite 4000
Los Angeles, CA 90071
Telephone: (213) 250-7900
Facsimile: (213) 250-7900

Attorneys for Defendants,
CONCRETE PLACEMENT, INC. and COLLIN FLEMING

1 This [First Amended](#) Class Action and PAGA Settlement Agreement (“Agreement”) is
2 made by and between plaintiff Michael M. Cantrell (“Plaintiff”) and defendants Concrete
3 Placement, Inc. and Collin Fleming (“Defendants”). The Agreement refers to Plaintiff and
4 Defendants collectively as “Parties,” or individually as “Party.”

5 **1. DEFINITIONS.**

6 1.1. “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against
7 Concrete Placement, Inc. and Collin Fleming captioned “Michael M. Cantrell, on behalf of
8 himself, and all others similarly situated, and as an ‘aggrieved employee’ on behalf of other
9 ‘aggrieved employees’ under the Labor Code Private Attorneys General Act of 2004, *Plaintiff(s)*,
10 vs. Concrete Placement, Inc., a California corporation; Collin Fleming, an individual; and DOES
11 2 through 50, inclusive, *Defendants*,” Case No. 30-2021-01225534-CU-OE-CXC initiated on
12 October 07, 2021. Plaintiff added Collin Fleming as a Defendant on October 25, 2022. On
13 [November 2, 2022](#), Plaintiff filed a Second Amended Complaint, adding a Third
14 Cause of Action for “Failure to Pay All Wages Earned for All Hours Worked at the correct Rates
15 of Pay (Lab. Code §§ 204, 510, 558, 1194, 1197, 1197.1, and 1198) on behalf of Plaintiff and the
16 Class and adding Labor Code § 558.1 to Plaintiff’s First, Third, Fifth and Sixth Causes of Action.
17 The Action has at all times been pending in Superior Court of the State of California, County of
18 Orange.

19 1.2. “Administrator” means ILYM Group, Inc., the neutral entity the Parties have
20 agreed to appoint to administer the Settlement.

21 1.3. “Administration Expenses Payment” means the amount the Administrator will be
22 paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in
23 accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection
24 with Preliminary Approval of the Settlement.

25 1.4. “Aggrieved Employee” means a person employed by Defendants in California and
26 classified as hourly and non-exempt who worked for Defendants during the PAGA Period.

27 1.5. “Class” means all persons employed by Defendants in California and classified as
28 hourly, non-exempt who worked for Defendants during the Class Period.

1.6. “Class Counsel” means David G. Spivak of The Spivak Law Firm and Walter L.
Haines of United Employees Law Group.

1 1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment”
2 mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and
3 expenses, respectively, incurred to prosecute the Action.

4 1.8. “Class Data” means Class Member identifying information in Defendants’
5 possession including the Class Member’s name, last-known mailing address, Social Security
6 number, and number of Class Period Workweeks and PAGA Pay Periods.

7 1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as
8 either a Participating Class Member or Non-Participating Class Member (including a Non-
9 Participating Class Member who qualifies as an Aggrieved Employee).

10 1.10. “Class Member Address Search” means the Administrator’s investigation and
11 search for current Class Member mailing addresses using all reasonably available sources,
12 methods and means including, but not limited to, the National Change of Address database, skip
13 traces, and direct contact by the Administrator with Class Members.

14 1.11. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION
15 SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to
16 Class Members in English with a Spanish translation in the form, without material variation,
17 attached as Exhibit A and incorporated by reference into this Agreement.

18 1.12. “Class Period” means the period from October 08, 2017 to the date of the court
19 order granting preliminary approval of the Settlement.

20 1.13. “Class Representative” means the named Plaintiff in the operative complaint in the
21 Action seeking Court approval to serve as a Class Representative.

22 1.14. “Class Representative Service Payment” means the payment to the Class
23 Representative for initiating the Action and providing services in support of the Action.

24 1.15. “Court” means the Superior Court of California, County of Orange.

25 1.16. “Defendants” means named Defendants Concrete Placement, Inc. and Collin
26 Fleming.

27 1.17. “Defense Counsel” means Katherine C. Den Bleyker and Samuel P. Knecht of
28 Lewis Brisbois Bisgaard & Smith LLP.

1.18. “Effective Date” means the date by when both of the following have occurred: (a)
the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the
Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no

1 Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if
2 one or more Participating Class Members objects to the Settlement, the day after the deadline for
3 filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the
4 day after the appellate court affirms the Judgment and issues a remittitur.

5 1.19. “Final Approval” means the Court’s order granting final approval of the
6 Settlement.

7 1.20. “Final Approval Hearing” means the Court’s hearing on the Motion for Final
8 Approval of the Settlement.

9 1.21. “Final Judgment” means the Judgment Entered by the Court upon Granting Final
10 Approval of the Settlement.

11 1.22. “Gross Settlement Amount” means the sum of \$1,000,000.00, to be paid by
12 Defendants in full resolution of all Released Class Claims, Released PAGA Claims, and the
13 Action, which is inclusive of the Individual Class Payments, the Individual PAGA Payments, the
14 LWDA PAGA Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses
15 Payment, the Class Representative Service Payment, and the Administrator’s Expenses.
16 Defendants will pay the Gross Settlement Amount in installment payments, outlined further in
17 Paragraph 4.3 of this Agreement.

18 1.23. “Individual Class Payment” means the Participating Class Member’s pro rata
19 share of the Net Settlement Amount calculated according to the number of workweeks worked
20 during the Class Period.

21 1.24. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of
22 25% of the PAGA Penalties calculated according to the number of Pay Periods worked during the
23 PAGA Period.

24 1.25. “Judgment” means the judgment entered by the Court based upon the Final
25 Approval.

26 1.26. “LWDA” means the California Labor and Workforce Development Agency, the
27 agency entitled, under Labor Code section 2699, subd. (i).

28 1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the
LWDA under Labor Code section 2699, subd. (i).

1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following
payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA

1 Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel
2 Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be
3 paid to Participating Class Members as Individual Class Payments.

4 1.29. “Non-Participating Class Member” means any Class Member who opts out of the
5 Settlement by sending the Administrator a valid and timely Request for Exclusion.

6 1.30. “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee
7 worked for Defendants for at least one day during the PAGA Period.

8 1.31. “PAGA Period” means the period from August 18, 2020 to the date of the court
9 order granting preliminary approval of the Settlement.

10 1.32. “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

11 1.33. “PAGA Notice” means Plaintiff’s August 18, 2021 letter to Defendants and the
12 LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

13 1.34. “PAGA Penalties” means the sum of \$4,000, which is the total amount of PAGA
14 civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved
15 Employees (\$1,000.00) and the 75% to LWDA (\$3,000.00) in settlement of PAGA claims.

16 1.35. “Participating Class Member” means a Class Member who does not submit a valid
17 and timely Request for Exclusion from the Settlement.

18 1.36. “Plaintiff” means Michael M. Cantrell, the named plaintiff in the Action.

19 1.37. “Preliminary Approval” means the Court’s Order Granting Preliminary Approval
20 of the Settlement.

21 1.38. “Preliminary Approval Order” means the proposed Order Granting Preliminary
22 Approval and Approval of PAGA Settlement.

23 1.39. “Released Class Claims” means the claims being released as described in
24 Paragraph 6.2 below.

25 1.40. “Released PAGA Claims” means the claims being released as described in
26 Paragraph 6.2 below.

27 1.41. “Released Parties” means: Defendants and each of Defendant Concrete Placement,
28 Inc.’s parent companies, subsidiaries, related companies, affiliates, dbas, current and former
management companies, shareholders, members, agents (including any investment bankers,
accountants, insurers, reinsurers, attorneys and any past, present or future officers, directors and
employees) predecessors, successors, and assigns.

1.42. “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member. [Class Members may submit the Election Not To Participate In Settlement Form attached as Exhibit B to request exclusion from the Settlement. The mailing of the Class Notice will include this form.](#)

1.43. “Response Deadline” means 60 days after the Administrator mails Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.

1.44. “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

1.45. “Workweek” means any week during which a Class Member worked for Defendants for at least one day, during the Class Period.

2. RECITALS.

2.1. On October 07, 2021, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Defendants for unauthorized and unlawful wage deductions, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for work expenses, and related claims. On October 22, 2021, Plaintiff filed a First Amended Complaint alleging causes of action against Defendants for failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for work expenses, and related allegations.

2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Defendants and the LWDA by sending the PAGA Notice.

2.3. On June 14, 2022, the Parties participated in an all-day mediation presided over by Mr. Michael Young, Esq. The matter did not settle at mediation, but post-mediation, arms’-length settlement discussions facilitated by Mr. Young led to this Agreement to settle the Action.

2.4. Prior to mediation, Plaintiff obtained, through informal discovery, the number of comparable employees, the number of workweeks, the number of pay periods, average rates of pay, sample time records, sample payroll records, sample schedules, written policies, financial

1 records, and related information. Plaintiff's investigation was sufficient to satisfy the criteria for
2 court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and
3 *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

4 2.5. At mediation, Plaintiff alleged Additional Representative Causes of Action,
5 which were not pled in the First Amended Complaint, for: failure to pay overtime wages (Cal.
6 Lab. Code §§ 204, 510, 1194, 1197 and 1198), and failure to pay minimum wage (Cal. Lab. Code
7 §§ 558, 1194, 1197, 1197.1, and 1198). The Parties included the Additional Representative
8 Causes of Action in their arms' length settlement discussions and this Agreement is intended to
9 resolve the Additional Representative Causes of Action as part of the Settlement. As part of the
10 Settlement, the Parties stipulate to the filing of Second Amended Complaint which adds the
11 Additional Representative Causes of Action. The Second Amended Complaint shall be the
12 operative complaint in the Action (the "Operative Complaint.") Defendants deny the allegations
13 in the Operative Complaint, deny any failure to comply with the laws identified in in the Operative
14 Complaint, and deny any and all liability for the causes of action alleged.

15 2.6. The Court has not granted class certification.

16 2.7. The Parties, Class Counsel and Defense Counsel represent that they are not aware
17 of any other pending matter or action asserting claims that will be extinguished or affected by the
18 Settlement.

19 **3. MONETARY TERMS.**

20 3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below,
21 Defendants promise to pay \$1,000,000.00 and no more as the Gross Settlement Amount and to
22 separately pay any and all employer-side payroll taxes owed on the Wage Portions of the
23 Individual Class Payments. Defendants have no obligation to pay the Gross Settlement Amount
24 (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The
25 Administrator will disburse the entire Gross Settlement Amount without asking or requiring
26 Participating Class Members or Aggrieved Employees to submit any claim as a condition of
27 payment. None of the Gross Settlement Amount will revert to Defendants.

28 3.2. Payments from the Gross Settlement Amount. The Administrator will make and
deduct the following payments from the Gross Settlement Amount, in the amounts specified by
the Court in the Final Approval:

1 3.2.1. To Plaintiff: Class Representative Service Payment to the Class
2 Representative of not more than \$20,000.00 (in addition to any Individual Class Payment and any
3 Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class
4 Member). Defendants will not oppose Plaintiff's request for a Class Representative Service
5 Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment
6 and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class
7 Representative Service Payments no later than 16 court days prior to the Final Approval Hearing.
8 If the Court approves a Class Representative Service Payment less than the amount requested, the
9 Administrator will retain the remainder in the Net Settlement Amount. The Administrator will
10 pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full
responsibility and liability for employee taxes owed on the Class Representative Service Payment.

11 3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than
12 33.33%, which is currently estimated to be \$333,333.00 and a Class Counsel Litigation Expenses
13 Payment of not more than \$12,500.00. Defendants will not oppose requests for these payments
14 provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for
15 Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days
16 prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or
17 a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator
18 will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability
19 to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class
20 Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator
21 will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more
22 IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the
23 Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds
24 Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any
25 division or sharing of any of these Payments.

26 3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed
27 \$5,000.00 except for a showing of good cause and as approved by the Court. To the extent the
28 Administration Expenses are less or the Court approves payment less than \$5,000.00, the
Administrator will retain the remainder in the Net Settlement Amount.

 3.2.4. To Each Participating Class Member: An Individual Class Payment

1 calculated by (a) dividing the Net Settlement Amount by the total number of workweeks worked
2 by all Participating Class Members during the Class Period and (b) multiplying the result by each
3 Participating Class Member's workweeks.

4 3.2.4.1. Tax Allocation of Individual Class Payments. 33.33% of
5 each Participating Class Member's Individual Class Payment will be allocated to settlement of
6 wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be
7 reported on an IRS W-2 Form. The 66.67% of each Participating Class Member's Individual
8 Class Payment will be allocated to settlement of claims for interest and penalties (the "Non-Wage
9 Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on
10 IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any
11 employee taxes owed on their Individual Class Payment.

12 3.2.4.2. Effect of Non-Participating Class Members on Calculation
13 of Individual Class Payments. Non-Participating Class Members will not receive any Individual
14 Class Payments. The Administrator will retain amounts equal to their Individual Class Payments
15 in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

16 3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the
17 amount of \$4,000.00 to be paid from the Gross Settlement Amount, with 75% (\$3,000.00)
18 allocated to the LWDA PAGA Payment and 25% (\$1,000.00) allocated to the Individual PAGA
19 Payments.

20 3.2.5.1. The Administrator will calculate each Individual PAGA Payment
21 by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties \$1,000.00
22 by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the
23 PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay
24 Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their
25 Individual PAGA Payment.

26 3.2.5.2. If the Court approves PAGA Penalties of less than the amount
27 requested, the Administrator will allocate the remainder to the Net Settlement Amount. The
28 Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

29 **4. SETTLEMENT FUNDING AND PAYMENTS.**

30 4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on a review of

1 its records to date, Defendants estimate there are 111 Class Members who collectively worked a
2 total of 11,332 workweeks, and 72 Aggrieved Employees who worked a total of 4,839 PAGA
3 Pay Periods.

4 4.2. Class Data. Not later than 21 days after the Court grants Preliminary Approval
5 of the Settlement, Defendants will simultaneously deliver the Class Data to the Administrator, in
6 the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the
7 Administrator must maintain the Class Data in confidence, use the Class Data only for purposes
8 of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator
9 employees who need access to the Class Data to effect and perform under this Agreement.
10 Defendants have a continuing duty to immediately notify Class Counsel if they discover that the
11 Class Data omitted class member identifying information and to provide corrected or updated
12 Class Data as soon as reasonably feasible. Without any extension of the deadline by which
13 Defendants must send the Class Data to the Administrator, the Parties and their counsel will
14 expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related
15 to missing or omitted Class Data.

16 4.3. Funding of Gross Settlement Amount. Defendants shall fully fund the Gross
17 Settlement Amount, and also fund the amounts necessary to fully pay Defendants' share of payroll
18 taxes by transmitting the funds to the Administrator in three installment payments as follows:

19 4.3.1. The First Payment, in the amount of \$400,000, shall be paid no later than
20 30 days after entry of the order granting final approval, if no objection to the settlement is made.
21 If an objection is made but no appeal filed, the First Payment shall be paid no later than 30 days
22 after the running of the appeal period. If an appeal is filed, the First Payment shall be paid no later
23 than 30 days after the final judgment becomes final and is no longer subject to appeal;

24 4.3.2. The Second Payment, in the amount of \$300,000, shall be paid no later
25 than 180 days after the First Payment is due; and

26 4.3.3. The Third Payment, in the amount of \$300,000, shall be paid no later than
27 365 days after the First Payment is due.

28 4.3.4. In the event Defendants fail to pay any portion of the Gross Settlement
Amount, it shall be considered a default. In the event Defendants fail to make any payment on the
date it is due, the Settlement Administrator will provide notice to Class Counsel and Defense
Counsel within five (5) business days of the missed payment. Thereafter, Defendants will have

1 fifteen (15) days to cure the default and tender payment to the Settlement Administrator. In the
2 event Defendants fail to cure the default within the times set forth herein, Plaintiff may, among
3 other remedies, elect to enter judgment against Defendants, on an ex parte basis, for the balance
4 of the unpaid Gross Settlement Amount to date, and Plaintiff will be entitled to recover interest
5 at ten percent (10%) per year and reasonable attorneys' fees and costs.

6 4.4. Distributions from the Installment Payments toward the Gross Settlement
7 Amount. The Administrator shall distribute each of the installment payments pro rata within 15
8 days of the payment, including *pro rata* portions of the Individual Class Payments, Individual
9 PAGA Payments, LWDA PAGA payment, Class Representative Service Payments, the Class
10 Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Administrator's
11 expenses.

12 4.4.1. Disbursements of the pro rata portions of the Class Counsel Fees Payment,
13 the Class Counsel Litigation Expenses Payment and the Class Representative Service Payments
14 shall not precede disbursement of pro rata portions of the Individual Class Payments and
15 Individual PAGA payments.

16 4.4.2. The Administrator will issue checks for the Individual Class Payments
17 and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail,
18 postage prepaid. The face of each check shall prominently state the date (not less than 180 days
19 after the date of mailing) when the check will be voided. The Administrator will cancel all checks
20 not cashed by the void date. The Administrator will send checks for Individual Settlement
21 Payments to all Participating Class Members (including those for whom Class Notice was
22 returned undelivered). The Administrator will send checks for Individual PAGA Payments to all
23 Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved
24 Employees (including those for whom Class Notice was returned undelivered). The
25 Administrator may send Participating Class Members a single check combining the Individual
26 Class Payment and the Individual PAGA Payment. Before mailing any checks, the Administrator
27 must update the recipients' mailing addresses using the National Change of Address Database.

28 4.4.3. The Administrator must conduct a Class Member Address Search for all
other Class Members whose checks are returned undelivered without USPS forwarding address.
Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS
forwarding address provided or to an address ascertained through the Class Member Address

1 Search. The Administrator need not take further steps to deliver checks to Class Members whose
2 re-mailed checks are returned as undelivered. The Administrator shall promptly send a
3 replacement check to any Class Member whose original check was lost or misplaced, requested
4 by the Class Member prior to the void date.

5 4.4.4. For any Class Member whose Individual Class Payment check or
6 Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator
7 shall transmit the funds represented by such checks to the California Controller's Unclaimed
8 Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to
the requirements of California Code of Civil Procedure Section 384, subd. (b).

9 4.4.5. The payment of Individual Class Payments and Individual PAGA
10 Payments shall not obligate Defendants to confer any additional benefits or make any additional
11 payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in
this Agreement.

12 **5. [OMITTED]**

13 **6. RELEASES OF CLAIMS.** Effective on the date when Defendants fully fund the entire
14 Gross Settlement Amount and fund all employer payroll taxes owed on the Wage Portion of the
15 Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims
16 against all Released Parties as follows:

17 6.1 Plaintiff's Release. Plaintiff and his respective former and present spouses,
18 representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release
19 and discharge Released Parties from any and all claims, transactions, or occurrences he has or
20 may have against them at this time, including, but not limited to: (a) all claims that were, or
21 reasonably could have been, alleged, based on the facts contained, in the Operative Complaint (b)
22 all PAGA claims that were, or reasonably could have been, alleged based on facts contained in
the Operative Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released
23 under 6.2, below; and (c) and all claims known and unknown, without exception, except as may
24 be prohibited by law. ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims
25 or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits,
26 disability benefits, social security benefits, workers' compensation benefits that arose at any time,
27 or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may
discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or

believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

6.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release, and that if known by him or her would have materially affected his or her settlement with the debtor or Released Party.

6.2 Release by Participating Class Members: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint and ascertained in the course of the Action including but not limited to: failure to pay overtime wages (Cal. Lab. Code §§ 204, 510, 1194, 1197 and 1198), failure to pay minimum wage (Cal. Lab. Code §§ 558, 1194, 1197, 1197.1, and 1198), failure to provide meal periods (Lab. Code §§ 226.7, 512 and 1198), failure to authorize and permit rest periods (Lab. Code §§ 226.7 and 1198), failure to indemnify for work expenses (Lab. Code §§ 1198 and 2802), failure to furnish accurate wage statements (Cal. Lab. Code § 226), failure to timely pay wages upon termination of employment and waiting time penalties (Cal. Lab. Code §§ 201, 202, 203), and all claims for unfair competition (Cal. Bus. & Prof. Code §§ 17200, *et seq.*). Except as set forth in Section 6.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

6.3 Release by Aggrieved Employees: All Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA

1 Period facts stated in the Operative Complaint and the PAGA Notice and ascertained in the course
2 of the Action including but not limited to claims for civil penalties for violations of Labor Code
3 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, and 2802, and
4 applicable Wage Orders of the Industrial Welfare Commission.

5 **7. MOTION FOR PRELIMINARY APPROVAL.** The Parties agree to jointly prepare and
6 file a motion for preliminary approval (“Motion for Preliminary Approval”) that complies with
7 the Court’s current checklist for Preliminary Approvals.

8 7.1 Plaintiff’s Responsibilities. Plaintiff will prepare and deliver to Defense Counsel
9 all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice,
10 and memorandum in support, of the Motion for Preliminary Approval that includes an analysis
11 of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under
12 Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval
13 and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration
14 from the Administrator attaching its “not to exceed” bid for administering the Settlement and
15 attesting to its willingness to serve; competency; operative procedures for protecting the security
16 of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other
17 misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members;
18 and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense
19 Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve
20 and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members,
21 and/or the Administrator; (v) a signed declaration from each Class Counsel firm attesting to its
22 competency to represent the Class Members; its timely transmission to the LWDA of all necessary
23 PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative
24 Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699,
25 subd. (l)(2)); (vi) a redlined version of the parties’ Agreement showing all modifications made to
26 the Model Agreement ready for filing with the Court; and (vii) all facts relevant to any actual or
27 potential conflict of interest with Class Members, and/or the Administrator. In their Declarations,
28 Plaintiff and Class Counsel Declaration shall aver that they are not aware of any other pending
matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

7.2 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly

1 responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later
2 than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the
3 Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion
4 for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary
Approval to the Administrator.

5 7.3 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion
6 for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and
7 Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person
8 or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant
9 Preliminary Approval or conditions Preliminary Approval on any material change to this
10 Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of
11 the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and
otherwise satisfy the Court's concerns.

13 **8. SETTLEMENT ADMINISTRATION.**

14 8.1 Selection of Administrator. The Parties have jointly selected ILYM Group, Inc.
15 to serve as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc.
16 agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this
17 Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel
18 represent that they have no interest or relationship, financial or otherwise, with the Administrator
other than a professional relationship arising out of prior experiences administering settlements.

19 8.2 Employer Identification Number. The Administrator shall have and use its own
20 Employer Identification Number for purposes of calculating payroll tax withholdings and
21 providing reports state and federal tax authorities.

22 8.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund
23 that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury
Regulation section 468B-1.

24 8.4 Notice to Class Members.

25 8.4.1 No later than three (3) business days after receipt of the Class Data, the
26 Administrator shall notify Class Counsel that the list has been received and state the number of
27 Class Members, PAGA Members, Class workweeks, and PAGA Pay Periods in the Class Data.

1 8.4.2 Using best efforts to perform as soon as possible, and in no event later than
2 14 days after receiving the Class Data, the Administrator will send to all Class Members identified
3 in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice
4 with Spanish translation, substantially in the form attached to this Agreement as **Exhibit A**. The
5 first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class
6 Payment and/or Individual PAGA Payment payable to the Class Member, and the number of
7 workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing
8 Class Notices, the Administrator shall update Class Member addresses using the National Change
9 of Address database. The notice may not be smaller than the font size in the proposed notice
provided to the Court.

10 8.4.3 Not later than 3 business days after the Administrator’s receipt of any Class
11 Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice
12 using any forwarding address provided by the USPS. If the USPS does not provide a forwarding
13 address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class
14 Notice to the most current address obtained. The Administrator has no obligation to make further
15 attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the
USPS a second time.

16 8.4.4 The deadlines for Class Members’ written objections, Challenges to Class
17 Pay Periods and/or PAGA Pay Periods, and Requests for Exclusion will be extended an additional
18 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose
19 notice is re-mailed. The Administrator will inform the Class Member of the extended deadline
with the re-mailed Class Notice.

20 8.4.5 If the Administrator, Defendants or Class Counsel is contacted by or
21 otherwise discovers any persons who believe they should have been included in the Class Data
22 and should have received Class Notice, the Parties will expeditiously meet and confer in person
23 or by telephone, and in good faith, in an effort to agree on whether to include them as Class
24 Members. If the Parties agree, such persons will be Class Members entitled to the same rights as
25 other Class Members, and the Administrator will send, via email or overnight delivery, a Class
26 Notice requiring them to exercise options under this Agreement not later than 14 days after receipt
of Class Notice, or the deadline dates in the Class Notice, which ever are later.

27 ///

28 93007421.1

1 8.5 Requests for Exclusion (Opt-Outs).

2 8.5.1 Class Members who wish to exclude themselves (opt-out of) the Class
3 Settlement must send the Administrator, by fax, email, or mail, a signed written Request for
4 Exclusion not later than 60 days after the Administrator mails the Class Notice (plus an additional
5 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter
6 from a Class Member or his/her representative that reasonably communicates the Class Member's
7 election to be excluded from the Settlement and includes the Class Member's name, address and
8 email address or telephone number. To be valid, a Request for Exclusion must be timely faxed,
9 emailed, or postmarked by the Response Deadline.

10 8.5.2 The Administrator may not reject a Request for Exclusion as invalid
11 because it fails to contain all the information specified in the Class Notice. The Administrator
12 shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the
13 identity of the person as a Class Member and the Class Member's desire to be excluded. The
14 Administrator's determination shall be final and not appealable or otherwise susceptible to
15 challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion,
16 the Administrator may demand additional proof of the Class Member's identity. The
17 Administrator's determination of authenticity shall be final and not appealable or otherwise
18 susceptible to challenge.

19 8.5.3 Every Class Member who does not submit a timely and valid Request for
20 Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all
21 benefits and bound by all terms and conditions of the Settlement, including the Participating Class
22 Members' Releases under Paragraphs 6.2 and 6.3 of this Agreement, regardless whether the
23 Participating Class Member actually receives the Class Notice or objects to the Settlement.

24 8.5.4 Every Class Member who submits a valid and timely Request for
25 Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment
26 or have the right to object to the class action components of the Settlement. Because future PAGA
27 claims are subject to claim preclusion upon entry of the Judgment, all Aggrieved Employees are
28 bound to the PAGA Settlement regardless of whether or not they submit a valid and timely Request
for Exclusion, and are deemed to release the claims identified in Paragraph 6.3 of this Agreement
and are eligible for an Individual PAGA Payment.

8.6 Challenges to Calculation of Workweeks and/or Pay Periods. Each Class

1 Member shall have 60 days after the Administrator mails the Class Notice (plus an additional 14
2 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class
3 workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice.
4 The Class Member may challenge the allocation by communicating with the Administrator via
5 fax, email or mail. The Administrator must encourage the challenging Class Member to submit
6 supporting documentation. In the absence of any contrary documentation, the Administrator is
7 entitled to presume that the Class workweeks and PAGA Pay Periods contained in the Class
8 Notice are correct so long as they are consistent with the Class Data. The Administrator's
9 determination of each Class Member's allocation of Class workweeks and/or PAGA Pay Periods
10 shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall
11 promptly provide copies of all challenges to calculation of Class workweeks and/or PAGA Pay
12 Periods to Defense Counsel and Class Counsel and the Administrator's determination the
13 challenges. [Class Members may submit the Work Week Dispute Form attached as Exhibit C to
dispute the calculation of the Class workweeks. The mailing of the Class Notice will include this
form.](#)

14 8.7 Objections to Settlement.

15 8.7.1 Only Participating Class Members may object to the class action
16 components of the Settlement and/or this Agreement, including contesting the fairness of the
17 Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel
18 Litigation Expenses Payment and/or Class Representative Service Payment.

19 8.7.2 Participating Class Members may send written objections to the
20 Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear
21 in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval
22 Hearing. A Participating Class Member who elects to send a written objection to the
23 Administrator must do so not later than 60 days after the Administrator's mailing of the Class
24 Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

25 8.7.3 Non-Participating Class Members have no right to object to any of the class
26 action components of the Settlement.

27 8.8 Administrator Duties. The Administrator has a duty to perform or observe all
28 tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

8.8.1 Website, Email Address and Toll-Free Number. The Administrator will

1 establish and maintain and use an internet website to post information of interest to Class
2 Members including the date, time and location for the Final Approval Hearing and copies of the
3 Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class
4 Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class
5 Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final
6 Approval and the Judgment. The Administrator will also maintain and monitor an email address
and a toll-free telephone number to receive Class Member calls, faxes and emails.

7 8.8.2 Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator
8 will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not
9 later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the
10 Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names
11 and other identifying information of Class Members who have timely submitted valid Requests
12 for Exclusion (“Exclusion List”); (b) the names and other identifying information of Class
13 Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for
Exclusion from Settlement submitted (whether valid or invalid).

14 8.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide
15 written reports to Class Counsel and Defense Counsel that, among other things, tally the number
16 of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for
17 Exclusion (whether valid or invalid) received, objections received, challenges to Class Pay
18 Periods and/or PAGA Pay Periods received and/or resolved, and checks mailed for Individual
19 Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must
20 include provide the Administrator’s assessment of the validity of Requests for Exclusion and
attach copies of all Requests for Exclusion and objections received.

21 8.8.4 Workweek and/or Pay Period Challenges. The Administrator has the
22 authority to address and make final decisions consistent with the terms of this Agreement on all
23 Class Member challenges over the calculation of Class workweeks and/or PAGA Pay Periods.
24 The Administrator’s decision shall be final and not appealable or otherwise susceptible to
challenge.

25 8.8.5 Administrator’s Declaration. Not later than 14 days before the date by
26 which Plaintiff is required to file the Motion for Final Approval of the Settlement, the
27 Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable

1 for filing in Court attesting to its due diligence and compliance with all of its obligations under
2 this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices
3 returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the
4 total number of Requests for Exclusion from Settlement it received (both valid or invalid), the
5 number of written objections and attach the Exclusion List. The Administrator will supplement
6 its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible
7 for filing the Administrator's declaration(s) in Court.

8 8.8.6 Final Report by Administrator. Within 10 days after the Administrator
9 disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel
10 and Defense Counsel with a final report detailing its disbursements by employee identification
11 number only of all payments made under this Agreement. At least 15 days before any deadline
12 set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense
13 Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all
14 payments required under this Agreement. Class Counsel is responsible for filing the
15 Administrator's declaration in Court.

16 **9. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE.** Based on its records,
17 Defendants estimate that, as of the date of this Settlement Agreement, (1) there are 111 Class
18 Members and 11,332 Total workweeks during the Class period. This Settlement is based on
19 Defendants' belief that there are approximately 11,332 workweeks at issue. If the number of
20 workweeks is 10% or 1,134 workweeks higher than 11,332, then Defendants shall pay a pro-rata
21 increase in the Gross Settlement Amount equal to the percentage increase in workweeks above
22 11,332. For example, if the number of workweeks increases by 12%, then Plaintiff shall request
23 a 2% increase to the Gross Settlement amount. The Defendants and the Settlement Administrator
24 will disclose the number of workweeks following issuance of the preliminary approval order and
25 before the Administrator sends notice of the Settlement to the Class Members.

26 **10. DEFENDANTS' RIGHT TO WITHDRAW.** If the number of valid Requests for
27 Exclusion identified in the Exclusion List exceeds 10.00% of the total of all Class Members,
28 Defendants may, but are not obligated to, elect to withdraw from the Settlement. The Parties
agree that, if Defendants withdraw, the Settlement shall be void ab initio, have no force or effect

1 whatsoever, and that neither Party will have any further obligation to perform under this
2 Agreement; provided, however, Defendants will remain responsible for paying all Settlement
3 Administration Expenses incurred to that point. Defendants must notify Class Counsel and the
4 Court of its election to withdraw not later than 7 days after the Administrator sends the final
5 Exclusion List to Defense Counsel; late elections will have no effect.

6 **11. MOTION FOR FINAL APPROVAL.** Not later than 16 court days before the calendared
7 Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement
8 that includes a request for approval of the PAGA settlement under Labor Code section 2699,
9 subd. (l), a Proposed Final Approval Order and a proposed Judgment (collectively “Motion for
10 Final Approval”). Plaintiff shall provide drafts of these documents to Defense Counsel not later
11 than 7 days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel
12 will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any
disagreements concerning the Motion for Final Approval.

13 11.1 Response to Objections. Each Party retains the right to respond to any objection
14 raised by a Participating Class Member, including the right to file responsive documents in Court
15 no later than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted
16 by the Court.

17 11.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
18 Approval on any material change to the Settlement (including, but not limited to, the scope of
19 release to be granted by Class Members), the Parties will expeditiously work together in good
20 faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final
21 Approval. The Court’s decision to award less than the amounts requested for the Class
22 Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation
Expenses Payment and/or Administrator Expenses Payment shall not constitute a material
modification to the Agreement within the meaning of this paragraph.

23 11.3 Continuing Jurisdiction of the Court. The Parties agree that, after entry of
24 Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement solely for
25 purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement
26 administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

27 11.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms

1 and conditions of this Agreement, specifically including the Class Counsel Fees Payment and
2 Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their
3 respective counsel, and all Participating Class Members who did not object to the Settlement as
4 provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to
5 post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions
6 for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver
7 of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the
8 Parties' obligations to perform under this Agreement will be suspended until such time as the
9 appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect
10 the amount of the Net Settlement Amount.

11 11.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If
12 the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a
13 material modification of this Agreement (including, but not limited to, the scope of release to be
14 granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless
15 expeditiously work together in good faith to address the appellate court's concerns and to obtain
16 Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration
17 Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify
18 the Court's award of the Class Representative Service Payment or any payments to Class Counsel
19 shall not constitute a material modification of the Judgment within the meaning of this paragraph,
20 as long as the Gross Settlement Amount remains unchanged.

21 **12. AMENDED JUDGMENT.** If any amended judgment is required under Code of Civil
22 Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed
23 amended judgment.

24 **13. ADDITIONAL PROVISIONS.**

25 13.1 No Admission of Liability, Class Certification or Representative Manageability
26 for Other Purposes. This Agreement represents a compromise and settlement of highly disputed
27 claims. Nothing in this Agreement is intended or should be construed as an admission by
28 Defendants that any of the allegations in the Operative Complaint have merit or that Defendants
have any liability for any claims asserted; nor should it be intended or construed as an admission

1 by Plaintiff that Defendants' defenses in the Action have merit. The Parties agree that class
2 certification and representative treatment is for purposes of this Settlement only. If, for any reason
3 the Court does grant Preliminary Approval, Final Approval or enter Judgment, Defendants
4 reserve the right to contest certification of any class for any reasons, and Defendants reserve all
5 available defenses to the claims in the Action, and Plaintiff reserves the right to move for class
6 certification on any grounds available and to contest Defendants' defenses. The Settlement, this
7 Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be
8 admissible in connection with, any litigation (except for proceedings to enforce or effectuate the
9 Settlement and this Agreement).

10 13.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel,
11 Defendants and Defense Counsel separately agree that, until the Motion for Preliminary Approval
12 of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or
13 cause or permit another person to disclose, disseminate or publicize, any of the terms of the
14 Agreement directly or indirectly, specifically or generally, to any person, corporation, association,
15 government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses,
16 all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter;
17 (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a
18 court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal
19 government agency.

20 Each Party agrees to immediately notify each other Party of any judicial or agency
21 order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendants and
22 Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other
23 communication, before the filing of the Motion for Preliminary Approval, any with third party
24 regarding this Agreement or the matters giving rise to this Agreement except to respond only that
25 "the matter was resolved," or words to that effect. This paragraph does not restrict Class Counsel's
26 communications with Class Members in accordance with Class Counsel's ethical obligations
27 owed to Class Members.

28 13.3 No Solicitation. The Parties separately agree that they and their respective
counsel and employees will not solicit any Class Member to opt out of or object to the Settlement,
or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class
Counsel's ability to communicate with Class Members in accordance with Class Counsel's ethical

obligations owed to Class Members.

13.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

13.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

13.6 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.

13.7 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

13.8 No Tax Advice. Neither Plaintiff, Class Counsel, Defendants nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

13.9 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.

13.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.

13.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will

1 be governed by and interpreted according to the internal laws of the state of California, without
2 regard to conflict of law principles.

3 13.12 Cooperation in Drafting. The Parties have cooperated in the drafting and
4 preparation of this Agreement. This Agreement will not be construed against any Party on the
5 basis that the Party was the drafter or participated in the drafting.

6 13.13 Confidentiality. To the extent permitted by law, all agreements made, and orders
7 entered during Action and in this Agreement relating to the confidentiality of information shall
8 survive the execution of this Agreement.

9 13.14 Use and Return of Class Data. Information provided to Class Counsel pursuant
10 to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class
11 Counsel by Defendants in connection with the mediation, other settlement negotiations, or in
12 connection with the Settlement, may be used only with respect to this Settlement, and no other
13 purpose, and may not be used in any way that violates any existing contractual agreement, statute,
14 or rule of court. Not later than 90 days after the date when the Court discharges the
15 Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement
16 funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from
17 Defendants unless, prior to the Court's discharge of the Administrator's obligation, Defendants
18 makes a written request to Class Counsel for the return, rather than the destructions, of Class
19 Data.

20 13.15 Headings. The descriptive heading of any section or paragraph of this Agreement
21 is inserted for convenience of reference only and does not constitute a part of this Agreement.

22 13.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement
23 shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
24 weekend or federal legal holiday, such date or deadline shall be on the first business day
25 thereafter.

26 13.17 Notice. All notices, demands or other communications between the Parties in
27 connection with this Agreement will be in writing and deemed to have been duly given as of the
28 third business day after mailing by United States mail, or the day sent by email or messenger,
addressed as follows:

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To Plaintiff:
David G. Spivak, Esq.
The Spivak Law Firm
8605 Santa Monica Bl
PMB 4,2554
West Hollywood, CA 90069
david@spivaklaw.com

To Defendants:
Samuel P. Knecht, Esq.
Lewis Brisbois Bisgaard & Smith LLP
633 W 5th St
Ste 4000
Los Angeles, CA 90071
Samuel.Knecht@lewisbrisbois.com

13.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

13.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.

Dated:

By:

MICHAEL M. CANTRELL

Dated:

By:

COLLIN FLEMING

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Dated:

By:

MARLA FLEMING
Chief Executive Officer for
CONCRETE PLACEMENT, INC.

THE SPIVAK LAW FIRM

Dated:

By:

DAVID G. SPIVAK and
CHRISTINA J. PREJEAN, Attorneys
for Plaintiff, MICHAEL M.
CANTRELL, and all others similarly
situated

UNITED EMPLOYEES LAW GROUP

Dated:

By:

WALTER L. HAINES, Attorney for
Plaintiff, MICHAEL M. CANTRELL,
and all others similarly situated

LEWIS BRISBOIS BISGAARD & SMITH LLP

Dated:

By:

KATHERINE DEN BLEYKER and
SAMUEL P. KNECHT, Attorneys for
Defendants, CONCRETE
PLACEMENT, INC. and COLLIN
FLEMING

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EXHIBIT A

1 **COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING**
2 **DATE FOR FINAL COURT APPROVAL**

3 (case name: *Michael M. Cantrell v. Concrete Placement, Inc.* et al. and number 30-2021-
4 01225534-CU-OE-CXC)

5 ***The Superior Court for the State of California authorized this Notice. Read it carefully!***
It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.

6 **You may be eligible to receive money** from an employee class action lawsuit (“Action”) against Concrete Placement, Inc. and Collin Fleming (abbreviate name; “Defendants” is used herein as a placeholder) for alleged wage and hour violations. The Action was filed by one of Defendants’ employees Michael M. Cantrell (“Plaintiff”) and seeks payment of (1) wages and other relief for a class of hourly, non-exempt employees (“Class Members”) who worked for Defendants in California during the Class Period (October 08, 2017 to the date of the court order granting preliminary approval of the Settlement); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all hourly, non-exempt employees who worked for Defendants in California during the PAGA Period (August 18, 2020 to the date of the court order granting preliminary approval of the Settlement) (“Aggrieved Employees”).

12 The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendants to fund Individual Class Payments, and (2) a PAGA Settlement requiring Defendants to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

15 Based on Defendants’ records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$___ (less withholding) and your Individual PAGA Payment is estimated to be \$___**. The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Defendants’ records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.)

19 The above estimates are based on Defendants’ records showing that **you worked ___ Class Workweeks** during the Class Period and **you worked ___ PAGA Pay Periods** during the PAGA Period. If you believe that you worked more Pay Periods during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

22 The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff’s attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Defendants to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendants.

If you worked for Defendants during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

(1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against Defendants.

(2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against Defendants, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

Defendants will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Defendants that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is —	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendants must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by —	All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.

You Can Participate in the ____ Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on _____. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Pay Period / Pay Periods Written Challenges Must be Submitted by _____	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many Pay Periods you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number Class Period Pay Periods and number of PAGA Period Pay Periods you worked according to Defendants’ records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____. See Section 4 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former employee of Defendants. The Action accuses Defendants of violating California labor laws by failure to pay overtime wages, failure to pay minimum wage, failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for work expenses, and related violations of the Labor Code. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 26S98, et seq.) (“PAGA”). Plaintiff is represented by attorneys in the Action: David G. Spivak of The Spivak Law Firm and Walter L. Haines of United Employees Law Group (“Class Counsel.”)

Defendants strongly deny violating any laws or failing to pay any wages, contend they complied with all applicable laws, and have entered into the Settlement solely for purposes of resolving this dispute.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Defendants or Plaintiff is correct on the merits. In the meantime, Plaintiff and Defendants hired an experienced, neutral mediator who is a retired judge in an effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Defendants have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Defendants do not admit any violations or concede the merit of any claims.

1 Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they
2 believe that: (1) Defendants have agreed to pay a fair, reasonable and adequate amount
3 considering the strength of the claims and the risks and uncertainties of continued litigation; and
4 (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court
preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this
Notice, and scheduled a hearing to determine Final Approval.

5 **3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?**

6 1. Defendants Will Pay \$1,000,000.00 as the Gross Settlement Amount (Gross
7 Settlement). Defendants have agreed to deposit the Gross Settlement into an account controlled
8 by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay
9 the Individual Class Payments, Individual PAGA Payments, Class Representative Service
Payment, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and
penalties to be paid to the California Labor and Workforce Development Agency ("LWDA").

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

12 A. The First Payment, in the amount of \$400,000, shall be paid no later than
13 30 days after entry of the order granting final approval, if no objection to the settlement is made.
14 If an objection is made but no appeal filed, the First Payment shall be paid no later than 30 days
15 after the running of the appeal period. If an appeal is filed, the First Payment shall be paid no later
than 30 days after the final judgment becomes final and is no longer subject to appeal;

16 B. The Second Payment, in the amount of \$300,000, shall be paid no later
17 than 180 days after the First Payment is due; and

18 C. The Third Payment, in the amount of \$300,000, shall be paid no later than
19 365 days after the First Payment is due.

20 3. The Administrator shall distribute each of the installment payments pro rata within
21 15 days of the payment, including *pro rata* portions of the Individual Class Payments, Individual
22 PAGA Payments, LWDA PAGA payment, Class Representative Service Payments, the Class
Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Administrator's
expenses. [Class Members may submit the enclosed WORK WEEKS DISPUTE FORM to dispute
the Administrator's calculation of work weeks.](#)

23 4. Disbursements of the pro rata portions of the Class Counsel Fees Payment, the
24 Class Counsel Litigation Expenses Payment and the Class Representative Service Payments shall
25 not precede disbursement of pro rata portions of the Individual Class Payments and Individual
PAGA payments.

26 5. Court Approved Deductions from Gross Settlement. At the Final Approval
27 Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions

1 from the Gross Settlement, the amounts of which will be decided by the Court at the Final
2 Approval Hearing:

3 A. Up to \$333,333.00 (33.33% of the Gross Settlement to Class Counsel for
4 attorneys' fees and up to \$12,500.00 for their litigation expenses. To date, Class Counsel have
worked and incurred expenses on the Action without payment.

5 B. Up to \$20,000.00 as a Class Representative Award for filing the Action,
6 working with Class Counsel and representing the Class. A Class Representative Award will be
7 the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any
Individual PAGA Payment.

8 C. Up to \$5,000.00 to the Administrator for services administering the
9 Settlement.

10 D. Up to \$4,000.00 for PAGA Penalties, allocated 75% to the LWDA PAGA
11 Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their
PAGA Period Pay Periods.

12 Participating Class Members have the right to object to any of these deductions. The Court
13 will consider all objections.

14 This Settlement is based on Defendants' belief that there are approximately 11,332
15 workweeks at issue. If the number of workweeks is 10% or 1,134 workweeks higher than 11,332,
16 then Defendants shall pay a pro-rata increase in the Gross Settlement Amount equal to the
percentage increase in workweeks above 11,332. For example, if the number of workweeks
17 increases by 12%, then Plaintiff shall request a 2% increase to the Gross Settlement amount. The
Defendants and the Settlement Administrator will disclose the number of workweeks following
18 issuance of the preliminary approval order and before the Administrator sends notice of the
Settlement to the Class Members.

19 6. Net Settlement Distributed to Class Members. After making the above deductions
20 in amounts approved by the Court, the Administrator will distribute the rest of the Gross
Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class
21 Members based on their Class Period workweeks.

22 7. Taxes Owed on Payments to Class Members. Plaintiff and Defendants are asking
23 the Court to approve an allocation of 33.33% of each Individual Class Payment to taxable wages
("Wage Portion") and 66.67% to interest and penalties ("Non-Wage Portion."). The Wage Portion
24 is subject to withholdings and will be reported on IRS W-2 Forms. Defendants will separately
pay employer payroll they owe on the Wage Portion. The Individual PAGA Payments are counted
25 as penalties rather than wages for tax purposes. The Administrator will report the Individual
PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099
26 Forms.

1 Although Plaintiff and Defendants have agreed to these allocations, neither side is giving
2 you any advice on whether your Payments are taxable or how much you might owe in taxes. You
3 are responsible for paying all taxes (including penalties and interest on back taxes) on any
4 Payments received from the proposed Settlement. You should consult a tax advisor if you have
5 any questions about the tax consequences of the proposed Settlement.

6 8. Need to Promptly Cash Payment Checks. The front of every check issued for
7 Individual Class Payments and Individual PAGA Payments will show the date when the check
8 expires (the void date). If you don't cash it by the void date, your check will be automatically
9 cancelled, and the monies will be deposited with the California Controller's Unclaimed Property
10 Fund in your name.

11 If the monies represented by your check is sent to the Controller's Unclaimed Property,
12 you should consult the rules of the Fund for instructions on how to retrieve your money.

13 9. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated
14 as a Participating Class Member, participating fully in the Class Settlement, unless you notify the
15 Administrator in writing, not later than ___, that you wish to opt-out. The easiest way to notify
16 the Administrator is to send a written and signed Request for Exclusion by the ___ Response
17 Deadline. The Request for Exclusion should be a letter from a Class Member or his/her
18 representative setting forth a Class Member's name, present address, telephone number, and a
19 simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e.,
20 Non-Participating Class Members) will not receive Individual Class Payments, but will preserve
21 their rights to personally pursue wage and hour claims against Defendants.

22 You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude
23 themselves from the Class Settlement (Non-Participating Class Members) remain eligible for
24 Individual PAGA Payments and are required to give up their right to assert PAGA claims against
25 Defendants based on the PAGA Period facts alleged in the Action. [Class Members may submit
the enclosed ELECTION NOT TO PARTICIPATE IN SETTLEMENT FORM to opt out of the
Settlement.](#)

26 10. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is
27 possible the Court will decline to grant Final Approval of the Settlement or decline enter a
28 Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiffs
and Defendants have agreed that, in either case, the Settlement will be void: Defendants will not
pay any money and Class Members will not release any claims against Defendants.

11. Administrator. The Court has appointed a neutral company, ILYM Group, Inc.
(the "Administrator") to send this Notice, calculate and make payments, and process Class
Members' Requests for Exclusion. The Administrator will also decide Class Member Challenges
over [Pay Periods Work Weeks](#), mail and re- mail settlement checks and tax forms, and perform
other tasks necessary to administer the Settlement. The Administrator's contact information is
contained in Section 9 of this Notice. [Class Members may submit the enclosed WORK WEEKS
DISPUTE FORM to dispute the Administrator's calculation of work weeks.](#)

12. Participating Class Members' Release. After the Judgment is final and Defendants have fully funded the Gross Settlement (and separately paid all employer payroll taxes), Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties, defined as Defendants and each of Concrete Placement, Inc.'s parent companies, subsidiaries, related companies, affiliates, dbas, current and former management companies, shareholders, members, agents (including any investment bankers, accountants, insurers, reinsurers, attorneys and any past, present or future officers, directors and employees) predecessors, successors, and assigns, from (i) all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint and ascertained in the course of the Action including but not limited to: failure to pay overtime wages (Cal. Lab. Code §§ 204, 510, 1194, 1197 and 1198), failure to pay minimum wage (Cal. Lab. Code §§ 558, 1194, 1197, 1197.1, and 1198), failure to provide meal periods (Lab. Code §§ 226.7, 512 and 1198), failure to authorize and permit rest periods (Lab. Code §§ 226.7 and 1198), failure to indemnify for work expenses (Lab. Code §§ 1198 and 2802), failure to furnish accurate wage statements (Cal. Lab. Code § 226), failure to timely pay wages upon termination of employment and waiting time penalties (Cal. Lab. Code §§ 201, 202, 203), and all claims for unfair competition (Cal. Bus. & Prof. Code §§ 17200, *et seq.*). Except as set forth in Section 6.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

13. Aggrieved Employees' PAGA Release. After the Court's judgment is final, and Defendants have paid the Gross Settlement (and separately paid the employer-side payroll taxes), all Aggrieved Employees will be barred from asserting PAGA claims against Defendants, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Defendants or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:

1 All Aggrieved Employees are deemed to release, on behalf of themselves and their
2 respective former and present representatives, agents, attorneys, heirs, administrators, successors,
3 and assigns, the Released Parties, defined as Defendants and each of their parent companies,
4 subsidiaries, related companies, affiliates, dbas, current and former management companies,
5 shareholders, members, agents (including any investment bankers, accountants, insurers,
6 reinsurers, attorneys and any past, present or future officers, directors and employees)
7 predecessors, successors, and assigns, from all claims for PAGA penalties that were alleged, or
8 reasonably could have been alleged, based on the PAGA Period facts stated in the Operative
9 Complaint and the PAGA Notice and ascertained in the course of the Action including but not
10 limited to claims for civil penalties for violations of Labor Code 201, 202, 203, 204, 226, 226.7,
11 510, 512, 558, 1174, 1194, 1197, 1197.1, 1198, and 2802, and applicable Wage Orders of the
12 Industrial Welfare Commission.

13 **4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?**

14 1. Individual Class Payments. The Administrator will calculate Individual Class
15 Payments by (a) dividing the Net Settlement Amount by the total number of Pay Periods worked
16 by all Participating Class Members, and (b) multiplying the result by the number of Pay Periods
17 worked by each individual Participating Class Member.

18 2. Individual PAGA Payments. The Administrator will calculate Individual PAGA
19 Payments by (a) dividing \$1,000.00 by the total number of PAGA Pay Periods worked by all
20 Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay Periods
21 worked by each individual Aggrieved Employee.

22 3. Workweek/Pay Period Challenges. The number of Class Pay Periods you worked
23 during the Class Period and the number of PAGA Pay Periods you worked during the PAGA
24 Period, as recorded in Defendants' records, are stated in the first page of this Notice. You have
25 until ___ to challenge the number of Class Pay Periods and/or PAGA Pay Periods credited to you.
26 You can submit your challenge by signing and sending a letter to the Administrator via mail,
27 email or fax. Section 9 of this Notice has the Administrator's contact information.

28 You need to support your challenge by sending copies of pay stubs or other records. The
Administrator will accept Defendants' calculation of Class Pay Periods and/or PAGA Pay Periods
based on Defendants' records as accurate unless you send copies of records containing contrary
information. You should send copies rather than originals because the documents will not be
returned to you. The Administrator will resolve Workweek and/or Pay Period challenges based
on your submission and on input from Class Counsel (who will advocate on behalf of
Participating Class Members) and Defendants' Counsel. The Administrator's decision is final.
You can't appeal or otherwise challenge its final decision.

29 **5. HOW WILL I GET PAID?**

30 1. Participating Class Members. The Administrator will send, by U.S. mail, a single
31 check to every Participating Class Member (i.e., every Class Member who doesn't opt-out)
32 including those who also qualify as Aggrieved Employees. The single check will combine the

Individual Class Payment and the Individual PAGA Payment.

2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Michael M. Cantrell vs. Concrete Placement, Inc.*, Case No. 30-2021-01225534-CU-OE-CXC, and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by ___, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Defendants are asking the Court to approve. At least ___ days before the ___ Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website ([url](#)) or the Court's website ([url](#)).

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is ___.** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action, *Michael M. Cantrell vs. Concrete Placement, Inc.*, case no. 30-2021-01225534-CU-OE-CXC, and include your name, current address, telephone number, and approximate dates of employment for Defendants and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on ____ at (time) in Department CX104 of the Orange Superior Court, located at Civil Complex Center, 751 W Santa Ana Blvd., Santa Ana, CA 92701. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually via ____ (https://www. ____). Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website ____ beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendants and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to (specify entity)'s website at (url). You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (http://www. ____ .aspx) and entering the Case Number for the Action, Case No. 30-2021-01225534-CU-OE-CXC. You can also make an appointment to personally review court documents in the Clerk's Office at the Civil Complex Center by calling ____.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

Class Counsel:

Name of Attorney:	David G. Spivak
Email Address:	david@spivaklaw.com
Name of Firm:	The Spivak Law Firm
Mailing Address:	8605 Santa Monica Bl PMB 4,2554 West Hollywood, CA 90069
Telephone:	(213) 725-9094

1 Administrator:

2 Name of Company: ILYM Group, Inc.

3 Email Address: _____

4 Mailing Address: _____

5 Telephone: _____

6 Fax Number: _____

7 **10. WHAT IF I LOSE MY SETTLEMENT CHECK?**

8 If you lose or misplace your settlement check before cashing it, the Administrator will replace it
9 as long as you request a replacement before the void date on the face of the original check. If
10 your check is already void, you should consult the Unclaimed Property Fund ____ for instructions
11 on how to retrieve the funds.

12 **11. WHAT IF I CHANGE MY ADDRESS?**

13 To receive your check, you should immediately notify the Administrator if you move or otherwise
14 change your mailing address.
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EXHIBIT 5

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

12 MICHAEL M. CANTRELL, on behalf of
13 himself, all others similarly situated, the general
14 public, and as an “aggrieved employee” on
15 behalf of other “aggrieved employees” under the
16 Labor Code Private Attorneys General Act of
17 2004,

18 *Plaintiff(s),*

19 vs.

20 CONCRETE PLACEMENT, INC., a California
21 corporation; COLLIN FLEMING; and DOES 1–
22 50, inclusive,

23 *Defendant(s).*

Case No. 30-2021-01225534-CU-OE-CXC
Reservation No.: 73918762
[PROPOSED] ORDER
PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT



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SpivakLaw.com

Office:
1801 Century Park East
25th Floor
Los Angeles, CA 90067

23 The Motion of Plaintiff Michael M. Cantrell (hereafter referred to as “Plaintiff”) for
24 Preliminary Approval of a Class Action Settlement (the “Motion”) was considered by the Court,
25 The Honorable William D. Claster presiding. The Court having considered the Motion, the Joint
26 Stipulation of Class Action Settlement and Release of Claims (“Settlement” or “Settlement
27



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Agreement”), and supporting papers, HEREBY ORDERS THE FOLLOWING:

1. The Court grants preliminary approval of the Settlement and the Settlement Class based upon the terms set forth in the Settlement filed as an Exhibit to the Motion for Preliminary Approval. All terms herein shall have the same meaning as defined in the Settlement. The Court has determined there is sufficient evidence to preliminarily determine that (a) the terms of the Settlement appear to be fair, adequate, and reasonable to the Settlement Class and (b) the Settlement falls within the range of reasonableness and appears to be presumptively valid, subject only to any objections that may be raised at the final hearing and final approval by this Court. The Court will make a determination at the hearing on the motion for final approval of class action settlement (the “Final Approval Hearing”) as to whether the Settlement is fair, adequate and reasonable to the Settlement Class.

2. For purposes of this Preliminary Approval Order, the “Settlement Class” means all persons hourly, non-exempt in California (collectively “Class Members”), who worked anytime during the Class Period. The “Class Period” shall mean the period of time from October 8, 2017, through the date of the court order granting preliminary approval of the Settlement. Defendants estimate that as of the date of the court order granting preliminary approval of the Settlement, there were 111 potential Settlement Class Members. Settlement ¶ 4.1. The “Effective Date” means as follows: If no objection to this Settlement or to any of the terms and or conditions of the Settlement are filed by Plaintiff, another member of the Settlement class, or any intervenor to this Lawsuit, the Effective Date shall occur on the day that the Court enters an order of final approval of this Settlement; however, if any objection to this Settlement or to any of the terms and or conditions of the Stipulation is filed by a member of the Settlement class, or any intervenor to this Lawsuit, the Effective Date shall occur upon the expiration of the time for the filing any



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1 appeal of the order of final approval of this Settlement. If an appeal is filed or any writ granted,
2 then the Effective Date shall occur after the appeal has been dismissed or the writ dissolved and
3 when there is no further time to appeal the dismissal of the appeal or the dissolution of the writ.
4 The occurrence of the Effective Date is a prerequisite to any obligation of Defendants to pay any
5 funds into the Settlement Account.

6
7 3. This action is provisionally certified pursuant to section 382 of the California Code
8 of Civil Procedure and Rule 3.760, et seq. of the California Rules of Court as a class action for
9 purposes of settlement only with respect to the proposed Settlement Class.

10 4. The Court hereby preliminarily finds that the Settlement was the product of
11 serious, informed, non-collusive negotiations conducted at arm's length by the Parties. In making
12 this preliminary finding, the Court considered the nature of the claims set forth in the pleadings,
13 the amounts and kinds of benefits which shall be paid pursuant to the Settlement, the allocation
14 of Settlement proceeds to the Settlement Class, and the fact that the Settlement represents a
15 compromise of the Parties' respective positions. The Court further preliminarily finds that the
16 terms of the Settlement have no obvious deficiencies and do not improperly grant preferential
17 treatment to any individual Class Member. Accordingly, the Court preliminarily finds that the
18 Settlement was entered into in good faith.

19
20 5. The Court finds that the dates set forth in the Settlement for mailing and
21 distribution of the Class Notice meet the requirements of due process and provide the best notice
22 practicable under the circumstances, and constitute due and sufficient notice to all persons entitled
23 thereto, and directs the mailing of the Class Notice by first class mail to the Settlement Class as
24 set forth in the Settlement. Accordingly, the Court orders the following implementation schedule
25 for further proceedings:
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1 a. No later than 21 days after the Court grants Preliminary Approval of the
2 Settlement, Defendants shall provide ILYM Group, the appointed Settlement
3 Administrator, with: (a) An electronic database of all Class Members, last
4 known mailing address, Social Security number and Defendants' employee
5 identification number ("Class Members' Data"); and (b) Corresponding to
6 each Class Member's name, Defendants shall provide a figure indicating the
7 total number of Work Weeks during the Class Period in which Defendants
8 employed the Class Member. That number of Work Weeks shall be referred to
9 as that Class Member's "Individual Work Weeks;" (c) If any of the Class
10 Members' Data are unavailable to Defendants, Defendants will so inform
11 Class Counsel and the Parties will make their best efforts to reconstruct or
12 otherwise agree upon the Class Members' Data prior to when it must be
13 submitted to the Settlement Administrator. Class Members' Data will
14 otherwise remain confidential and will not be disclosed to anyone, except as
15 necessary to applicable taxing authorities, or pursuant to Defendants' express
16 written authorization or by order of the Court.

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19 b. **Mailing of Class Notice.** Approximately fourteen (14) days after receiving
20 the Class Members' Data, or as soon thereafter as it can do so, the Settlement
21 Administrator will mail the Class Notice to all identified Class Members via
22 first-class U.S. mail using the mailing address information provided by
23 Defendants, unless modified by any updated address information that the
24 Settlement Administrator obtains in the course of administration of the
25 Settlement.
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1 c. **Returned Class Notice.** If a Class Notice is returned because of an incorrect
2 address, the Settlement Administrator will promptly, and not later than three
3 (3) business days from receipt of the returned Class Notice, search for a more
4 current address for the Class Member and re-mail the Class Notice to the Class
5 Member. The Settlement Administrator will use the Class Members' Data and
6 otherwise work with Defendants' Counsel and Class Counsel to find a more
7 current address. The Settlement Administrator will be responsible for taking
8 reasonable steps, consistent with its agreed-upon job parameters, court orders,
9 and fee, to trace the mailing address of any Class Member for whom a Class
10 Notice is returned as undeliverable by the U.S. Postal Service. These
11 reasonable steps shall include the tracking of all undelivered mail; performing
12 address searches for all mail returned without a forwarding address; and
13 promptly re-mailing to Class Members for whom new addresses are found. If
14 the Class Notice is re-mailed, the Settlement Administrator will note for its
15 own records and notify Class Counsel and Defendants' Counsel of the date and
16 address of each such re-mailing as part of a weekly status report provided to
17 the Parties.

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20 d. **Declaration of Settlement Administrator.** Not later than fourteen (14) days
21 prior to the Final Approval Hearing, the Settlement Administrator will provide
22 the Parties for filing with the Court a declaration of due diligence setting forth
23 its compliance with its obligations under the Settlement. Prior to the Final
24 Approval Hearing, the Settlement Administrator will supplement its
25 declaration of due diligence if any material changes occur from the date of the
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25th Floor
Los Angeles, CA 90067

1 filing of its prior declaration.

2 **e. Requests for Exclusion from Settlement; and Objections to Settlement.**

3 Class Members may submit requests to be excluded from the effect of the
4 Settlement, or objections to the Settlement, pursuant to the following
5 procedures:

- 6
- 7 **i. Request for Exclusion from Settlement.** A Class Member may
8 request to be excluded from the effect of the Settlement, and any
9 payment of amounts under the Settlement, by timely mailing a letter to
10 the Settlement Administrator stating that the Class Member wants to
11 be excluded from this Action. This letter must include the Class
12 Member's name, address, telephone number, and signature. To be valid
13 and timely, the request to be excluded must be postmarked by sixty
14 (60) days after the Administrator mails Notice to Class Members and
15 Aggrieved Employees from the initial mailing of the Class Notice by
16 the Settlement Administrator). A Class Member who properly submits
17 a valid and timely request to be excluded from the Action shall not
18 receive any payment of any kind in connection with the Settlement or
19 this Action, shall not be bound by or receive any benefit of the
20 Settlement, and shall have no standing to object to the Settlement. A
21 request for exclusion must be mailed to the Settlement Administrator
22 at the address provided on the Class Notice. The Settlement
23 Administrator shall transmit the request for exclusion to counsel for the
24 Parties as follows:
- 25
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To Class Counsel:

David G. Spivak
The Spivak Law Firm
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069

To Defense Counsel:

Samuel P. Knecht
Lewis Brisbois Bisgaard & Smith LLP
Mr. Samuel P. Knecht Esq.
633 W 5th St
Ste 4000
Los Angeles, CA 90071

ii. **Objections to Settlement.** The Class Notice will provide that any Class Member who does not request exclusion from the Action and who wishes to object to the Settlement should submit an objection in writing to the Settlement Administrator within sixty (60) days after the Settlement Administrator mails the Class Notice, a written objection to the Settlement which sets forth the grounds for the objection and the other information required by this paragraph. The objection should be mailed to the Settlement Administrator at the address provided on the Class Notice. The Settlement Administrator shall transmit the objections to counsel for the Parties as follows:

To Class Counsel:

David G. Spivak
The Spivak Law Firm
8605 Santa Monica Bl
PMB 42554
West Hollywood, CA 90069

To Defense Counsel:

Samuel P. Knecht
Lewis Brisbois Bisgaard & Smith LLP
Mr. Samuel P. Knecht Esq.
633 W 5th St
Ste 4000
Los Angeles, CA 90071

The written objection should state the objecting Class Member’s full name, address, and the approximate dates of his or her employment



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1 with Defendants. The written objection should state the basis for each
2 specific objection and any legal support in clear and concise terms. The
3 written objection also should state whether the Class Member intends
4 to formally intervene and become a party of record in the action, and
5 upon formally intervening, appear and argue at the Final Approval
6 Hearing. However, the objectors will be provided with the opportunity
7 to speak at the final approval hearing regardless of whether they have
8 filed an appearance or submitted a written opposition beforehand.

9
10 If the objecting Class Member does not formally intervene in the action
11 and/or the Court rejects the Class Member's objection, the Class
12 Member may still be bound by the terms of the Settlement.

13
14 f. **Report.** Not later than five (5) days after the deadline for submission of
15 requests for exclusion, the Settlement Administrator will provide the Parties
16 with a complete and accurate list of all Class Members who sent timely
17 requests to be excluded from the Action and all Class Members who objected
18 to the settlement.

19 6. The Court approves, as to form and content, the Class Notice in substantially the
20 form attached as Exhibit A to the Settlement.

21 7. The Court approves, for settlement purposes only, David Spivak of The Spivak
22 Law Firm and Walter L. Haines of United Employees Law Group as Class Counsel.

23 8. The Court approves, for settlement purposes only, Michael M. Cantrell as the
24 Class Representative.

25 9. The Court approves ILYM Group, Inc. as the Settlement Administrator.



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1 10. The Court preliminarily approves Class Counsel's request for attorneys' fees and
2 costs subject to final review by the Court.

3 11. The Court preliminarily approves the estimated Settlement Administrator costs
4 payable to the Settlement Administrator subject to final review by the Court.

5 12. The Court preliminarily approves Plaintiff's Class Representative Payment subject
6 to final review by the Court.

7
8 13. A Final Approval Hearing shall be held on _____ at _____.m. in the
9 Superior Court for the State of California, County of Orange, located at Civil Complex Center,
10 751 W Santa Ana Bl., Santa Ana, CA 92701 to consider the fairness, adequacy and reasonableness
11 of the proposed Settlement preliminarily approved by this Preliminary Approval Order, and to
12 consider the application of Class Counsel for attorneys' fees and costs and the Class
13 Representative Payment to the Class Representative. The notice of motion and all briefs and
14 materials in support of the motion for final approval of class action settlement and motion for
15 attorneys' fees and litigation costs shall be served and filed with this Court on or before
16 _____.
17

18 14. If for any reason the Court does not execute and file a final approval order and
19 judgment, or if the Effective Date, as defined in the Settlement, does not occur for any reason, the
20 proposed Settlement that is the subject of this order, and all evidence and proceedings had in
21 connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the
22 litigation, as more specifically set forth in the Settlement.

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1 15. The Court expressly reserves the right to adjourn or continue the Final Approval
2 Hearing from time to time without further notice to members of the Class. The Plaintiff shall give
3 prompt notice of any continuance to Settlement Class Members who object to the Settlement.
4

5 **IT IS SO ORDERED.**

6 DATED: _____

7 _____
8 **THE HONORABLE WILLIAM D. CLASTER**
9 **JUDGE OF THE SUPERIOR COURT**



21 **SPIVAK LAW**
22 EMPLOYEE RIGHTS

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EXHIBIT 6

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

12 MICHAEL M. CANTRELL, on behalf of
13 himself, all others similarly situated, the general
14 public, and as an “aggrieved employee” on
15 behalf of other “aggrieved employees” under the
16 Labor Code Private Attorneys General Act of
17 2004,

18 *Plaintiff(s),*

19 vs.

20 CONCRETE PLACEMENT, INC., a California
21 corporation; COLLIN FLEMING; and DOES 1–
22 50, inclusive,

23 *Defendant(s).*

Case No. 30-2021-01225534-CU-OE-CXC
Reservation No.: _____
[PROPOSED] ORDER
PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT



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23 The Motion of Plaintiff Michael M. Cantrell (hereafter referred to as “Plaintiff”) for
24 Preliminary Approval of a Class Action Settlement (the “Motion”) was considered by the Court,
25 The Honorable William D. Claster presiding. The Court having considered the Motion, the First
26 Amended Joint Stipulation of Class Action Settlement and Release of Claims (“Settlement” or
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1 “Settlement Agreement”), and supporting papers, HEREBY ORDERS THE FOLLOWING:

2 1. The Court grants preliminary approval of the Settlement and the Settlement Class
3 based upon the terms set forth in the Settlement filed as an Exhibit to the Motion for Preliminary
4 Approval. All terms herein shall have the same meaning as defined in the Settlement. The Court
5 has determined there is sufficient evidence to preliminarily determine that (a) the terms of the
6 Settlement appear to be fair, adequate, and reasonable to the Settlement Class and (b) the
7 Settlement falls within the range of reasonableness and appears to be presumptively valid, subject
8 only to any objections that may be raised at the final hearing and final approval by this Court. The
9 Court will make a determination at the hearing on the motion for final approval of class action
10 settlement (the “Final Approval Hearing”) as to whether the Settlement is fair, adequate and
11 reasonable to the Settlement Class.
12

13 2. For purposes of this Preliminary Approval Order, the “Settlement Class” means
14 all persons hourly, non-exempt in California (collectively “Class Members”), who worked
15 anytime during the Class Period. The “Class Period” shall mean the period of time from October
16 8, 2017, through the date of the court order granting preliminary approval of the Settlement.
17 Defendants estimate that, as of November 7, 2022, there were 111 potential Settlement Class
18 Members. Settlement ¶ 4.1. The “Effective Date” means as follows: If no objection to this
19 Settlement or to any of the terms and or conditions of the Settlement are filed by Plaintiff, another
20 member of the Settlement class, or any intervenor to this Lawsuit, the Effective Date shall occur
21 on the day that the Court enters an order of final approval of this Settlement; however, if any
22 objection to this Settlement or to any of the terms and or conditions of the Stipulation is filed by
23 a member of the Settlement class, or any intervenor to this Lawsuit, the Effective Date shall occur
24 upon the expiration of the time for the filing any appeal of the order of final approval of this
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1 Settlement. If an appeal is filed or any writ granted, then the Effective Date shall occur after the
2 appeal has been dismissed or the writ dissolved and when there is no further time to appeal the
3 dismissal of the appeal or the dissolution of the writ. The occurrence of the Effective Date is a
4 prerequisite to any obligation of Defendants to pay any funds into the Settlement Account.

5 3. This action is provisionally certified pursuant to section 382 of the California Code
6 of Civil Procedure and Rule 3.760, et seq. of the California Rules of Court as a class action for
7 purposes of settlement only with respect to the proposed Settlement Class.

8 4. The Court hereby preliminarily finds that the Settlement was the product of
9 serious, informed, non-collusive negotiations conducted at arm's length by the Parties. In making
10 this preliminary finding, the Court considered the nature of the claims set forth in the pleadings,
11 the amounts and kinds of benefits which shall be paid pursuant to the Settlement, the allocation
12 of Settlement proceeds to the Settlement Class, and the fact that the Settlement represents a
13 compromise of the Parties' respective positions. The Court further preliminarily finds that the
14 terms of the Settlement have no obvious deficiencies and do not improperly grant preferential
15 treatment to any individual Class Member. Accordingly, the Court preliminarily finds that the
16 Settlement was entered into in good faith.

17 5. The Court finds that the dates set forth in the Settlement for mailing and
18 distribution of the Class Notice meet the requirements of due process and provide the best notice
19 practicable under the circumstances, and constitute due and sufficient notice to all persons entitled
20 thereto, and directs the mailing of the Class Notice by first class mail to the Settlement Class as
21 set forth in the Settlement. Accordingly, the Court orders the following implementation schedule
22 for further proceedings:

23 a. No later than 21 days after the Court grants Preliminary Approval of the
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1 Settlement, Defendants shall provide ILYM Group, the appointed Settlement
2 Administrator, with: (a) An electronic database of all Class Members, last
3 known mailing address, Social Security number and Defendants' employee
4 identification number ("Class Members' Data"); and (b) Corresponding to
5 each Class Member's name, Defendants shall provide a figure indicating the
6 total number of Work Weeks during the Class Period in which Defendants
7 employed the Class Member. That number of Work Weeks shall be referred to
8 as that Class Member's "Individual Work Weeks;" (c) If any of the Class
9 Members' Data are unavailable to Defendants, Defendants will so inform
10 Class Counsel and the Parties will make their best efforts to reconstruct or
11 otherwise agree upon the Class Members' Data prior to when it must be
12 submitted to the Settlement Administrator. Class Members' Data will
13 otherwise remain confidential and will not be disclosed to anyone, except as
14 necessary to applicable taxing authorities, or pursuant to Defendants' express
15 written authorization or by order of the Court.

18 b. **Mailing of Class Notice.** Approximately fourteen (14) days after receiving
19 the Class Members' Data, or as soon thereafter as it can do so, the Settlement
20 Administrator will mail the Class Notice to all identified Class Members via
21 first-class U.S. mail using the mailing address information provided by
22 Defendants, unless modified by any updated address information that the
23 Settlement Administrator obtains in the course of administration of the
24 Settlement.

26 c. **Returned Class Notice.** If a Class Notice is returned because of an incorrect
27
28



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Office:
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25th Floor
Los Angeles, CA 90067

1 address, the Settlement Administrator will promptly, and not later than three
2 (3) business days from receipt of the returned Class Notice, search for a more
3 current address for the Class Member and re-mail the Class Notice to the Class
4 Member. The Settlement Administrator will use the Class Members' Data and
5 otherwise work with Defendants' Counsel and Class Counsel to find a more
6 current address. The Settlement Administrator will be responsible for taking
7 reasonable steps, consistent with its agreed-upon job parameters, court orders,
8 and fee, to trace the mailing address of any Class Member for whom a Class
9 Notice is returned as undeliverable by the U.S. Postal Service. These
10 reasonable steps shall include the tracking of all undelivered mail; performing
11 address searches for all mail returned without a forwarding address; and
12 promptly re-mailing to Class Members for whom new addresses are found. If
13 the Class Notice is re-mailed, the Settlement Administrator will note for its
14 own records and notify Class Counsel and Defendants' Counsel of the date and
15 address of each such re-mailing as part of a weekly status report provided to
16 the Parties.

17
18
19 d. **Declaration of Settlement Administrator.** Not later than fourteen (14) days
20 prior to the Final Approval Hearing, the Settlement Administrator will provide
21 the Parties for filing with the Court a declaration of due diligence setting forth
22 its compliance with its obligations under the Settlement. Prior to the Final
23 Approval Hearing, the Settlement Administrator will supplement its
24 declaration of due diligence if any material changes occur from the date of the
25 filing of its prior declaration.
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1 e. **Requests for Exclusion from Settlement; and Objections to Settlement.**

2 Class Members may submit requests to be excluded from the effect of the
3 Settlement, or objections to the Settlement, pursuant to the following
4 procedures:

5 i. **Request for Exclusion from Settlement.** A Class Member may
6 request to be excluded from the effect of the Settlement, and any
7 payment of amounts under the Settlement, by timely mailing a letter to
8 the Settlement Administrator stating that the Class Member wants to
9 be excluded from this Action. This letter must include the Class
10 Member's name, address, telephone number, and signature. To be valid
11 and timely, the request to be excluded must be postmarked by sixty
12 (60) days after the Administrator mails Notice to Class Members and
13 Aggrieved Employees from the initial mailing of the Class Notice by
14 the Settlement Administrator). A Class Member who properly submits
15 a valid and timely request to be excluded from the Action shall not
16 receive any payment of any kind in connection with the Settlement or
17 this Action, shall not be bound by or receive any benefit of the
18 Settlement, and shall have no standing to object to the Settlement. A
19 request for exclusion must be mailed to the Settlement Administrator
20 at the address provided on the Class Notice. The Settlement
21 Administrator shall transmit the request for exclusion to counsel for the
22 Parties as follows:



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31 SpivakLaw.com

32 Office:
33 1801 Century Park East
34 25th Floor
35 Los Angeles, CA 90067

1 *To Class Counsel:*

2 David G. Spivak
3 The Spivak Law Firm
4 8605 Santa Monica Bl
5 PMB 42554
6 West Hollywood, CA 90069

To Defense Counsel:

 Samuel P. Knecht
 Lewis Brisbois Bisgaard & Smith LLP
 Mr. Samuel P. Knecht Esq.
 633 W 5th St
 Ste 4000
 Los Angeles, CA 90071

7 ii. **Objections to Settlement.** The Class Notice will provide that any
8 Class Member who does not request exclusion from the Action and
9 who wishes to object to the Settlement should submit an objection in
10 writing to the Settlement Administrator within sixty (60) days after the
11 Settlement Administrator mails the Class Notice, a written objection to
12 the Settlement which sets forth the grounds for the objection and the
13 other information required by this paragraph. The objection should be
14 mailed to the Settlement Administrator at the address provided on the
15 Class Notice. The Settlement Administrator shall transmit the
16 objections to counsel for the Parties as follows:

19 *To Class Counsel:*

20 David G. Spivak
21 The Spivak Law Firm
22 8605 Santa Monica Bl
23 PMB 42554
24 West Hollywood, CA 90069

To Defense Counsel:

 Samuel P. Knecht
 Lewis Brisbois Bisgaard & Smith LLP
 Mr. Samuel P. Knecht Esq.
 633 W 5th St
 Ste 4000
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25 The written objection should state the objecting Class Member's full
26 name, address, and the approximate dates of his or her employment
27 with Defendants. The written objection should state the basis for each
28



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specific objection and any legal support in clear and concise terms. The written objection also should state whether the Class Member intends to formally intervene and become a party of record in the action, and upon formally intervening, appear and argue at the Final Approval Hearing. However, the objectors will be provided with the opportunity to speak at the final approval hearing regardless of whether they have filed an appearance or submitted a written opposition beforehand.

If the objecting Class Member does not formally intervene in the action and/or the Court rejects the Class Member's objection, the Class Member may still be bound by the terms of the Settlement.

- f. **Report.** Not later than five (5) days after the deadline for submission of requests for exclusion, the Settlement Administrator will provide the Parties with a complete and accurate list of all Class Members who sent timely requests to be excluded from the Action and all Class Members who objected to the settlement.

6. The Court approves, as to form and content, the Class Notice in substantially the form attached as Exhibit A to the Settlement.

7. The Court approves, for settlement purposes only, David Spivak of The Spivak Law Firm and Walter L. Haines of United Employees Law Group as Class Counsel.

8. The Court approves, for settlement purposes only, Michael M. Cantrell as the Class Representative.

9. The Court approves ILYM Group, Inc. as the Settlement Administrator.

10. The Court preliminarily approves Class Counsel's request for attorneys' fees and



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costs subject to final review by the Court.

11. The Court preliminarily approves the estimated Settlement Administrator costs payable to the Settlement Administrator subject to final review by the Court.

12. The Court preliminarily approves Plaintiff's Class Representative Payment subject to final review by the Court.

13. A Final Approval Hearing shall be held on _____ at _____ .m. in the Superior Court for the State of California, County of Orange, located at Civil Complex Center, 751 W Santa Ana Bl., Santa Ana, CA 92701 to consider the fairness, adequacy and reasonableness of the proposed Settlement preliminarily approved by this Preliminary Approval Order, and to consider the application of Class Counsel for attorneys' fees and costs and the Class Representative Payment to the Class Representative. The notice of motion and all briefs and materials in support of the motion for final approval of class action settlement and motion for attorneys' fees and litigation costs shall be served and filed with this Court on or before _____.

14. At final approval, Plaintiff will submit contemporaneously made billing records for attorney's fees and costs, and billing records for administrative costs. Also, Plaintiff will provide a declaration addressing the enhancement factors set forth in *Golba v. Dick's Sporting Goods, Inc.* (2015) 238 Cal.App.4th 1251 and *Clark v. Am. Residential Servs. LLC* (2009) 175 Cal.App.4th 785, including the amount of time and effort spent on the litigation.

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

16. If for any reason the Court does not execute and file a final approval order and judgment, or if the Effective Date, as defined in the Settlement, does not occur for any reason, the



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1 proposed Settlement that is the subject of this order, and all evidence and proceedings had in
2 connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the
3 litigation, as more specifically set forth in the Settlement.

4 17. The Court expressly reserves the right to adjourn or continue the Final Approval
5 Hearing from time to time without further notice to members of the Class. The Plaintiff shall give
6 prompt notice of any continuance to Settlement Class Members who object to the Settlement.
7

8 **IT IS SO ORDERED.**

9
10 DATED: _____

11 **THE HONORABLE WILLIAM D. CLASTER**
12 **JUDGE OF THE SUPERIOR COURT**
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22



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EXHIBIT 7

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

12 MICHAEL M. CANTRELL, on behalf of
13 himself, all others similarly situated, the general
14 public, and as an “aggrieved employee” on
15 behalf of other “aggrieved employees” under the
16 Labor Code Private Attorneys General Act of
17 2004,

18 *Plaintiff(s),*

19 vs.

20 CONCRETE PLACEMENT, INC., a California
21 corporation; COLLIN FLEMING; and DOES 1–
22 50, inclusive,

23 *Defendant(s).*

Case No. 30-2021-01225534-CU-OE-CXC
Reservation No.: 73918762
[PROPOSED] ORDER
PRELIMINARILY APPROVING
CLASS ACTION SETTLEMENT



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23 The Motion of Plaintiff Michael M. Cantrell (hereafter referred to as “Plaintiff”) for
24 Preliminary Approval of a Class Action Settlement (the “Motion”) was considered by the Court,
25 The Honorable William D. Claster presiding. The Court having considered the Motion, the First
26 Amended Joint Stipulation of Class Action Settlement and Release of Claims (“Settlement” or
27



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1 “Settlement Agreement”), and supporting papers, HEREBY ORDERS THE FOLLOWING:

2 1. The Court grants preliminary approval of the Settlement and the Settlement Class
3 based upon the terms set forth in the Settlement filed as an Exhibit to the Motion for Preliminary
4 Approval. All terms herein shall have the same meaning as defined in the Settlement. The Court
5 has determined there is sufficient evidence to preliminarily determine that (a) the terms of the
6 Settlement appear to be fair, adequate, and reasonable to the Settlement Class and (b) the
7 Settlement falls within the range of reasonableness and appears to be presumptively valid, subject
8 only to any objections that may be raised at the final hearing and final approval by this Court. The
9 Court will make a determination at the hearing on the motion for final approval of class action
10 settlement (the “Final Approval Hearing”) as to whether the Settlement is fair, adequate and
11 reasonable to the Settlement Class.
12

13 2. For purposes of this Preliminary Approval Order, the “Settlement Class” means
14 all persons hourly, non-exempt in California (collectively “Class Members”), who worked
15 anytime during the Class Period. The “Class Period” shall mean the period of time from October
16 8, 2017, through the date of the court order granting preliminary approval of the Settlement.
17 Defendants estimate that, as of ~~the date of the court order granting preliminary approval of the~~
18 ~~Settlement~~ November 7, 2022, there were 111 potential Settlement Class Members. Settlement ¶

19
20 4.1. The “Effective Date” means as follows: If no objection to this Settlement or to any of the
21 terms and or conditions of the Settlement are filed by Plaintiff, another member of the Settlement
22 class, or any intervenor to this Lawsuit, the Effective Date shall occur on the day that the Court
23 enters an order of final approval of this Settlement; however, if any objection to this Settlement
24 or to any of the terms and or conditions of the Stipulation is filed by a member of the Settlement
25 class, or any intervenor to this Lawsuit, the Effective Date shall occur upon the expiration of the
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1 time for the filing any appeal of the order of final approval of this Settlement. If an appeal is filed
2 or any writ granted, then the Effective Date shall occur after the appeal has been dismissed or the
3 writ dissolved and when there is no further time to appeal the dismissal of the appeal or the
4 dissolution of the writ. The occurrence of the Effective Date is a prerequisite to any obligation of
5 Defendants to pay any funds into the Settlement Account.

6
7 3. This action is provisionally certified pursuant to section 382 of the California Code
8 of Civil Procedure and Rule 3.760, et seq. of the California Rules of Court as a class action for
9 purposes of settlement only with respect to the proposed Settlement Class.

10 4. The Court hereby preliminarily finds that the Settlement was the product of
11 serious, informed, non-collusive negotiations conducted at arm's length by the Parties. In making
12 this preliminary finding, the Court considered the nature of the claims set forth in the pleadings,
13 the amounts and kinds of benefits which shall be paid pursuant to the Settlement, the allocation
14 of Settlement proceeds to the Settlement Class, and the fact that the Settlement represents a
15 compromise of the Parties' respective positions. The Court further preliminarily finds that the
16 terms of the Settlement have no obvious deficiencies and do not improperly grant preferential
17 treatment to any individual Class Member. Accordingly, the Court preliminarily finds that the
18 Settlement was entered into in good faith.

19
20 5. The Court finds that the dates set forth in the Settlement for mailing and
21 distribution of the Class Notice meet the requirements of due process and provide the best notice
22 practicable under the circumstances, and constitute due and sufficient notice to all persons entitled
23 thereto, and directs the mailing of the Class Notice by first class mail to the Settlement Class as
24 set forth in the Settlement. Accordingly, the Court orders the following implementation schedule
25 for further proceedings:
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28

1 a. No later than 21 days after the Court grants Preliminary Approval of the
2 Settlement, Defendants shall provide ILYM Group, the appointed Settlement
3 Administrator, with: (a) An electronic database of all Class Members, last
4 known mailing address, Social Security number and Defendants' employee
5 identification number ("Class Members' Data"); and (b) Corresponding to
6 each Class Member's name, Defendants shall provide a figure indicating the
7 total number of Work Weeks during the Class Period in which Defendants
8 employed the Class Member. That number of Work Weeks shall be referred to
9 as that Class Member's "Individual Work Weeks;" (c) If any of the Class
10 Members' Data are unavailable to Defendants, Defendants will so inform
11 Class Counsel and the Parties will make their best efforts to reconstruct or
12 otherwise agree upon the Class Members' Data prior to when it must be
13 submitted to the Settlement Administrator. Class Members' Data will
14 otherwise remain confidential and will not be disclosed to anyone, except as
15 necessary to applicable taxing authorities, or pursuant to Defendants' express
16 written authorization or by order of the Court.

17
18
19 b. **Mailing of Class Notice.** Approximately fourteen (14) days after receiving
20 the Class Members' Data, or as soon thereafter as it can do so, the Settlement
21 Administrator will mail the Class Notice to all identified Class Members via
22 first-class U.S. mail using the mailing address information provided by
23 Defendants, unless modified by any updated address information that the
24 Settlement Administrator obtains in the course of administration of the
25 Settlement.
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1 c. **Returned Class Notice.** If a Class Notice is returned because of an incorrect
2 address, the Settlement Administrator will promptly, and not later than three
3 (3) business days from receipt of the returned Class Notice, search for a more
4 current address for the Class Member and re-mail the Class Notice to the Class
5 Member. The Settlement Administrator will use the Class Members' Data and
6 otherwise work with Defendants' Counsel and Class Counsel to find a more
7 current address. The Settlement Administrator will be responsible for taking
8 reasonable steps, consistent with its agreed-upon job parameters, court orders,
9 and fee, to trace the mailing address of any Class Member for whom a Class
10 Notice is returned as undeliverable by the U.S. Postal Service. These
11 reasonable steps shall include the tracking of all undelivered mail; performing
12 address searches for all mail returned without a forwarding address; and
13 promptly re-mailing to Class Members for whom new addresses are found. If
14 the Class Notice is re-mailed, the Settlement Administrator will note for its
15 own records and notify Class Counsel and Defendants' Counsel of the date and
16 address of each such re-mailing as part of a weekly status report provided to
17 the Parties.

18
19
20 d. **Declaration of Settlement Administrator.** Not later than fourteen (14) days
21 prior to the Final Approval Hearing, the Settlement Administrator will provide
22 the Parties for filing with the Court a declaration of due diligence setting forth
23 its compliance with its obligations under the Settlement. Prior to the Final
24 Approval Hearing, the Settlement Administrator will supplement its
25 declaration of due diligence if any material changes occur from the date of the
26
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1 filing of its prior declaration.

2 **e. Requests for Exclusion from Settlement; and Objections to Settlement.**

3 Class Members may submit requests to be excluded from the effect of the
4 Settlement, or objections to the Settlement, pursuant to the following
5 procedures:

- 6
- 7 **i. Request for Exclusion from Settlement.** A Class Member may
8 request to be excluded from the effect of the Settlement, and any
9 payment of amounts under the Settlement, by timely mailing a letter to
10 the Settlement Administrator stating that the Class Member wants to
11 be excluded from this Action. This letter must include the Class
12 Member's name, address, telephone number, and signature. To be valid
13 and timely, the request to be excluded must be postmarked by sixty
14 (60) days after the Administrator mails Notice to Class Members and
15 Aggrieved Employees from the initial mailing of the Class Notice by
16 the Settlement Administrator). A Class Member who properly submits
17 a valid and timely request to be excluded from the Action shall not
18 receive any payment of any kind in connection with the Settlement or
19 this Action, shall not be bound by or receive any benefit of the
20 Settlement, and shall have no standing to object to the Settlement. A
21 request for exclusion must be mailed to the Settlement Administrator
22 at the address provided on the Class Notice. The Settlement
23 Administrator shall transmit the request for exclusion to counsel for the
24 Parties as follows:
- 25
26
27
28



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1
2 *To Class Counsel:*

3 David G. Spivak
4 The Spivak Law Firm
5 8605 Santa Monica Bl
6 PMB 42554
7 West Hollywood, CA 90069

To Defense Counsel:

Samuel P. Knecht
Lewis Brisbois Bisgaard & Smith LLP
Mr. Samuel P. Knecht Esq.
633 W 5th St
Ste 4000
Los Angeles, CA 90071

8 ii. **Objections to Settlement.** The Class Notice will provide that any
9 Class Member who does not request exclusion from the Action and
10 who wishes to object to the Settlement should submit an objection in
11 writing to the Settlement Administrator within sixty (60) days after the
12 Settlement Administrator mails the Class Notice, a written objection to
13 the Settlement which sets forth the grounds for the objection and the
14 other information required by this paragraph. The objection should be
15 mailed to the Settlement Administrator at the address provided on the
16 Class Notice. The Settlement Administrator shall transmit the
17 objections to counsel for the Parties as follows:

18
19
20 *To Class Counsel:*

21 David G. Spivak
22 The Spivak Law Firm
23 8605 Santa Monica Bl
24 PMB 42554
25 West Hollywood, CA 90069

To Defense Counsel:

Samuel P. Knecht
Lewis Brisbois Bisgaard & Smith LLP
Mr. Samuel P. Knecht Esq.
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26 The written objection should state the objecting Class Member's full
27 name, address, and the approximate dates of his or her employment
28



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1 with Defendants. The written objection should state the basis for each
2 specific objection and any legal support in clear and concise terms. The
3 written objection also should state whether the Class Member intends
4 to formally intervene and become a party of record in the action, and
5 upon formally intervening, appear and argue at the Final Approval
6 Hearing. However, the objectors will be provided with the opportunity
7 to speak at the final approval hearing regardless of whether they have
8 filed an appearance or submitted a written opposition beforehand.

9
10 If the objecting Class Member does not formally intervene in the action
11 and/or the Court rejects the Class Member's objection, the Class
12 Member may still be bound by the terms of the Settlement.

13
14 f. **Report.** Not later than five (5) days after the deadline for submission of
15 requests for exclusion, the Settlement Administrator will provide the Parties
16 with a complete and accurate list of all Class Members who sent timely
17 requests to be excluded from the Action and all Class Members who objected
18 to the settlement.

19 6. The Court approves, as to form and content, the Class Notice in substantially the
20 form attached as Exhibit A to the Settlement.

21 7. The Court approves, for settlement purposes only, David Spivak of The Spivak
22 Law Firm and Walter L. Haines of United Employees Law Group as Class Counsel.

23 8. The Court approves, for settlement purposes only, Michael M. Cantrell as the
24 Class Representative.

25 9. The Court approves ILYM Group, Inc. as the Settlement Administrator.
26
27
28



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10. The Court preliminarily approves Class Counsel's request for attorneys' fees and costs subject to final review by the Court.

11. The Court preliminarily approves the estimated Settlement Administrator costs payable to the Settlement Administrator subject to final review by the Court.

12. The Court preliminarily approves Plaintiff's Class Representative Payment subject to final review by the Court.

13. A Final Approval Hearing shall be held on _____ at _____ .m. in the Superior Court for the State of California, County of Orange, located at Civil Complex Center, 751 W Santa Ana Bl., Santa Ana, CA 92701 to consider the fairness, adequacy and reasonableness of the proposed Settlement preliminarily approved by this Preliminary Approval Order, and to consider the application of Class Counsel for attorneys' fees and costs and the Class Representative Payment to the Class Representative. The notice of motion and all briefs and materials in support of the motion for final approval of class action settlement and motion for attorneys' fees and litigation costs shall be served and filed with this Court on or before _____.

14. At final approval, Plaintiff will submit contemporaneously made billing records for attorney's fees and costs, and billing records for administrative costs. Also, Plaintiff will provide a declaration addressing the enhancement factors set forth in *Golba v. Dick's Sporting Goods, Inc.* (2015) 238 Cal.App.4th 1251 and *Clark v. Am. Residential Servs. LLC* (2009) 175 Cal.App.4th 785, including the amount of time and effort spent on the litigation.

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

~~14.16.~~ If for any reason the Court does not execute and file a final approval order and

1 judgment, or if the Effective Date, as defined in the Settlement, does not occur for any reason, the
2 proposed Settlement that is the subject of this order, and all evidence and proceedings had in
3 connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the
4 litigation, as more specifically set forth in the Settlement.

5 ///

6 ///

7 ///

8
9 15-17. The Court expressly reserves the right to adjourn or continue the Final Approval
10 Hearing from time to time without further notice to members of the Class. The Plaintiff shall give
11 prompt notice of any continuance to Settlement Class Members who object to the Settlement.

12 **IT IS SO ORDERED.**

13
14 DATED: _____

15 **THE HONORABLE WILLIAM D. CLASTER**
16 **JUDGE OF THE SUPERIOR COURT**



17
18
19
20
21 **SPIVAK LAW**
22 **EMPLOYEE RIGHTS**

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EXHIBIT 8