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8 MICHAEL M. CANTRELL, and all others similarly situated
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9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF ORANGE**
12 **(UNLIMITED JURISDICTION)**

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

17 *Plaintiff(s),*

18 vs.

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

22 *Defendant(s).*

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

**DECLARATION OF DAVID SPIVAK
IN SUPPORT OF PLAINTIFF
MICHAEL M. CANTRELL’S MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT
RESERVATION NO.: 73918762**

Hearing Date: 2/24/2023
Hearing Time: 9:00 a.m.
Hearing Dept.: CX104, The Honorable
William D. Claster

Action filed: October 07, 2021
Trial Date: None set



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1 **DECLARATION OF DAVID G. SPIVAK IN SUPPORT OF MOTION FOR**
2 **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.

5 1. I am an attorney of record for Plaintiff Michael M. Cantrell (“Plaintiff”) in his
6 lawsuit against Defendants Concrete Placement, Inc. and Collin Fleming, one of its managers
7 (collectively “Defendants”). Plaintiff and Defendants are collectively referred to as the “Parties.”
8 Except as otherwise indicated, I have personal knowledge of all matters set forth herein and, if
9 called as a witness, could and would competently testify thereto under oath.

10 2. The Class Action and PAGA Settlement Agreement and Class Notice (the
11 “Settlement”) is attached hereto as **Exhibit 1**.

12 ***Factual and Procedural Background***

13 3. Defendants employed Plaintiff as an hourly, non-exempt heavy equipment
14 operator from about May 15, 2014 until February 19, 2021.

15 4. On August 18, 2021, Plaintiff notified Defendants and the California Labor and
16 Workforce Development Agency (“LWDA”), pursuant to the California Private Attorneys
17 General Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”), of alleged Labor
18 Code violations committed by Defendants. A true and correct copy of the letter to the LWDA
19 dated August 18, 2021 is attached hereto as **Exhibit 2**.

20 5. On October 07, 2021, Plaintiff filed a Class Action Complaint in the Orange
21 County Superior Court, Case No. 30-2021-01225534-CU-OE-CXC, against Defendants on
22 behalf of himself and others similarly situated, alleging causes of action on a class-wide basis
23 for: (1) Failure to Pay All Wages Earned for All Hours Worked (Lab. Code §§ 510, 1194, 1197,
24 and 1198); (2) Failure to Provide Rest Breaks (Lab. Code §§226.7 and 1198); (3) Failure to
25 Provide Meal Periods (Lab. Code §§226.7, 512 and 1198); (4) Failure to Indemnify (Lab. Code
26 §§ 1198 and 2802); (5) Wage Statement Penalties (Lab. Code §§ 226 and 226.2); (6) Waiting
27 Time Penalties (Lab. Code §§ 201, 202, and 203); and (7) Unfair Competition (Bus. & Prof.
28 Code §§ 17200, *et seq.*). On October 22, 2021, Plaintiff filed his First Amended Complaint
adding a claim under the Labor Code Private Attorneys General Act of 2004, Labor Code §§
2698, *et seq.* (“PAGA”). On December 27, 2021, Defendants filed an answer to Plaintiff’s First
Amended Complaint. On October 25, 2022, Plaintiff filed an Amendment to Complaint Re:



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1 Fictitious Names for Defendant Doe 1, adding Collin Fleming as a named Defendant. On
2 November 9, 2022, Plaintiff filed his Second Amended Complaint, adding Collin Fleming as a
3 Defendant, adding a cause of action for Failure to Pay All Wages Earned for All Hours Worked
4 at the Correct Rates of Pay (Lab. Code §§ 204, 510, 558, 1194, 1197, 1197.1 and 1198) on behalf
5 of Plaintiff and the Class, and adding claims against Fleming under Labor Code § 558.1 to
6 Plaintiff's First, Third, Fifth and Sixth Causes of Action. On December 16, 2022, Defendants
7 filed an answer to Plaintiff's Second Amended Complaint. Defendants deny all of Plaintiff's
8 allegations and strongly contend that their wage and hour policies, practices and procedures are
9 fully compliant with all applicable laws. A true and correct copy of the complaint is attached
10 hereto as **Exhibit 3**. A true and correct copy of Plaintiff's First Amended Complaint is attached
11 hereto as **Exhibit 4**. A true and correct copy of Defendants' Answer is attached hereto as **Exhibit**
12 **5**. A true and correct copy of Plaintiff's Amendment to Complaint Re: Fictitious Names for
13 Defendant Doe 1, adding Collin Fleming as a named Defendant is attached hereto as **Exhibit 6**.
14 A true and correct copy of Plaintiff's Second Amended Complaint is attached hereto as **Exhibit**
15 **7**. A true and correct copy of Defendants' answer to Plaintiff's Second Amended Complaint is
16 attached hereto as **Exhibit 8**.

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6. The Parties thereafter engaged in an informal, voluntary exchange of information
in the context of privileged settlement discussions to facilitate an early mediation. My office
contacted 21 putative class members and interviewed Plaintiff and three putative class members
in preparing for mediation. Defendants produced Plaintiff's personnel file, including payroll
records and time records, a random 20% sampling of time records for the putative class, a
corresponding random 20% sample of the employees' itemized wage statements, and all
handbooks and wage and hour policies that were in effect during the class period.

7. On June 14, 2022, following much of the foregoing informal discovery and
exchange of information, the Parties participated in a mediation session presided over by
Mediator Michael Young, an experienced class action mediator. During the mediation, the Parties
had a full day of productive negotiations and reached agreement on a class-wide settlement
during the second mediation session. During the mediation sessions, each side, represented by
his/their respective counsel, recognized the risk of an adverse result in the Action. Although the
case did not settle at mediation, the Parties continued to negotiate with the help of Mr. Young



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1 and, after further discovery, agreed to settle the Action and all other matters covered by the
2 Settlement pursuant to the terms and conditions of the Settlement.

3 8. At the mediation, it became clear that that Defendants had insufficient resources
4 to cover the full extent of liability. As part of the settlement negotiations, Defendant Concrete
5 Placement, Inc. disclosed copies of its federal tax returns for 2018, 2019 and 2020, in addition to
6 their balance sheets, cash flow sheets and Profit and Loss information for 2019, 2020 and 2021.
7 Defendant Concrete Placement, Inc. also provided its redacted American Express bank
8 statements for January through December 2021. Plaintiff's Counsel has reviewed the financial
9 records. The information provided was sufficient to demonstrate the financial condition of the
10 company and its owners. Based on such records, Plaintiff, on his own behalf and on behalf of the
11 Class Members, has agreed to settle the lawsuit on the terms set forth in the Settlement. Also
12 based on such records and the financial limitations Defendants have shown to Plaintiff, Plaintiff
13 has agreed to settle the lawsuit in three installment payments.

14 *Ascertainable and Numerous Class*

15 9. A class is ascertainable when it may be readily identified without unreasonable
16 expense or time by reference to official records. Here, Plaintiff maintains that the above-defined
17 Class is ascertainable because its members may be identified by reference to Defendants' records
18 and Defendants have agreed to share the relevant information from their records to facilitate the
19 settlement process. Therefore, the Settlement Class is ascertainable.

20 10. The Settlement Class has sufficiently numerous members to render joinder
21 impractical. No set number is required as a matter of law to maintain a class action. The California
22 Supreme Court has upheld a class of as few as 10 individuals. Defendants estimate that there are
23 approximately 111 Class Members. Plaintiff maintains that it would be impractical and
24 economically inefficient to require each Settlement Class Member to separately maintain an
25 individual action or be joined as a named plaintiff in this action. In light of these considerations,
26 the Settlement Class' membership is sufficiently numerous.

27 *Predominant Common Questions*

28 11. A question of law or fact is common to the members of a class if it may be resolved
through common proof. In this case, there are many predominant common questions. Plaintiff
asserts all class members were subject to the same or similar operations and employment policies,
practices, and procedures. The claims arise from Defendants' alleged policy-driven failure to pay

1 wages, unauthorized and unlawful wage deductions, failure to indemnify for work expenses,
2 failure to provide meal periods, failure to authorize and permit rest periods and related labor law
3 violations, all of which Plaintiff claims constitute unfair business practices and give rise to PAGA
4 penalties. Plaintiff asserts that common questions include, but are not limited to: (1) Whether
5 Defendants failed to pay all wages earned to class members for all hours worked at the correct
6 rates of pay; (2) Whether Defendants failed to provide the class with all meal and rest periods in
7 compliance with California law; (3) Whether Defendants failed to pay the class one additional
8 hour of pay on workdays they failed to provide the class with one or more meal or rest periods
9 in compliance with California law; (4) Whether Defendants failed to indemnify the class for all
10 necessary business expenditures incurred during the discharge of their duties; (5) Whether
11 Defendants knowingly and intentionally failed to provide the class with accurate wage
12 statements; (6) Whether Defendants willfully failed to provide the class with timely final wages;
13 and (7) Whether Defendants engaged in unfair competition within the meaning of Business and
14 Professions Code section 17200, *et seq.*, with respect to the class.

15 **Typicality**

16 **12.** Plaintiff contends that his claims are typical for the purposes of certifying the
17 Settlement Class. Plaintiff asserts that he, like absent Class Members was subject to the same
18 relevant policies and procedures governing his compensation, hours of work, expense
19 reimbursement, and meal and rest periods. Because Plaintiff contends that he was subject to the
20 same general course of conduct as absent Class Members, resolving the common questions as
21 they apply to Plaintiff will determine Defendants' *prima facie* liability to all Class Members.
22 Moreover, Plaintiff's claims could potentially be subject to the same primary affirmative
23 defenses as those of absent Class Members. Accordingly, Plaintiff's claims are typical of the
24 Class.

25 **Adequacy**

26 **13.** The adequacy requirement is met where the plaintiff is represented by counsel
27 qualified to conduct the litigation and the plaintiff's interest in the litigation is not antagonistic to
28 the class' interests. In other words, where the plaintiff has adequate counsel, the plaintiff may
represent the entire class absent any disabling conflicts of interest that might hinder the plaintiff's
ability to represent the class.



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1 Agent for the U. S. Customs Service alleged discrimination and retaliation in promotions and
2 discipline. The jury awarded compensatory damages. Court subsequently awarded additional
3 back pay and gave Plaintiffs a retroactive promotion. See "Lawsuit Puts Customs Service on
4 Trial: Agent Alleges Corruption, White Supremacist Cabal" by Valerie Alvord, San Diego
5 Union-Tribune, April 29, 1998; "Customs Agent Is Awarded \$200,000: Jury Says He Faced Bias
And Retaliation" by Valerie Alvord, San Diego Union-Tribune, May 16, 1998.

6 b. *Jorge Guzman v. Department of Justice*, United States District Court,
7 Central District of California (the Honorable Lourdes Baird presiding), 1999. Plaintiffs Special
8 Agent for the Immigration and Naturalization Service alleged racial discrimination, retaliation
9 and police brutality by agents of the Office of the Inspector General. Jury found the Defendants
10 liable. Case settled shortly before the damages phase. See "U.S. to Pay \$400,000 to INS Agent
11 in Bias Suit; Courts: Complaint says he suffered 10 years of harassment on the job because he is
12 Latino, including falsified charges" by Patrick J. McDonnell, Los Angeles Times, January 21,
1999.

13 c. *Dr. Perry Crouch v. SHIELDS*, Los Angeles Superior Court, Compton
14 (the Honorable Michael Rutberg presiding), 2001. Plaintiff whistleblower brought civil rights
15 claims and wrongful termination claims against employer in a month-long jury trial. The jury
16 awarded compensatory and punitive damages. See "Activist Says Criticism of Rail Plan Cost His
17 Job" by Dan Weikel, Los Angeles Times, September 28, 2000; "Punitive Damages Awarded to
18 Fired Social Worker" by Dan Weikel, Los Angeles Times, June 10, 2000; "A Whistleblower's
Revenge" by Susan Goldsmith, New Times Los Angeles, June 8, 2000.

19 d. *Imagraph, Inc. (Steve Shiffman) v. Mohamed T. Nehmeh*, Orange County
20 Superior Court, Central Justice Center (the Honorable Kirk H. Nakamura presiding), 2004.
21 Plaintiff, who I represented pro bono sought the return of \$45,000.00 he paid to an attorney
22 escrow officer who subsequently absconded with the money. The jury awarded compensatory
23 damages. The Judgment with interest is now far in excess of that amount. Soon after this case
24 was litigated, the State Bar of California awarded me the Wiley W. Manuel Award for Pro Bono
Legal Services.

25 e. *Rick Pierce v. Department of Treasury*, Merit Systems Protection Board
26 (1999). Administrative Judge awarded compensatory damages to wrongfully terminated
27 Customs Agent, followed by an award of Attorneys' fees and costs.

1 f. *Richard Wamel v. Ocelot Engineering Co.*, Judicate West before the
2 Honorable Robert Polis (ret.) (2008). In that case, I represented a victim of FMLA violations and
3 wrongful termination against his former employer. The Neutral Arbitrator awarded
4 compensatory and liquidated damages. The claims for damages, attorney's fees and costs were
resolved shortly thereafter by means of a confidential settlement.

5 g. *Alina Ghrdilyan v. RJ Financial, Inc., et al.*, LA Superior Court case no.
6 BC430633 (2012), the Honorable Ronald Sohigian presiding. To my knowledge, this case is the
7 first and only case to be successfully prosecuted through trial under the Labor Code Private
8 Attorney Generals Act of 2004, Labor Code §§ 2698, et seq. on behalf of plaintiffs and other
9 aggrieved employees against someone other than an employer for civil penalties including unpaid
10 wages. The case involves claims of unpaid overtime, unprovided rest and meal periods, unpaid
11 vacation, untimely interval and final wages, and unreimbursed expenses. For my work in that
case, the Court awarded me an hourly rate of \$600.00 hour based on my skill and experience.

12 20. Since 2007, I have prosecuted several traditional wage & hour class actions as the
13 sole or primary attorney for the plaintiffs, including *Pudelwitts v. Regent Parking, Inc.*, *Singery*
14 *v. Quality Vessel Engineering*, *Tesillo v. LA Executive Towing Service, Inc.*, and *Madison v. The*
15 *Limousine Connection*. One such case is *Jose Tapia v. Mangen Group, Inc.*, LASC case no.
16 BC377114, a garden-variety wage & hour class action with many of the same claims at issue in
17 this case. The Honorable Jane Johnson of the Los Angeles Superior Court, presiding over the
18 motion for final approval of the Settlement Class action settlement in *Tapia*, had no quarrel with
an hourly rate of \$525.00 for my services.

19 21. In my representation of employees, I have prosecuted several lawsuits on behalf
20 of employees with claims of rest and meal period and overtime violations or other wage claims.

21 22. I have been involved in the prosecution of numerous wage and hour class actions
22 at various stages of litigation. A small sampling of the wage and hour class action cases in which
I have recently been counsel of records is as follows:

23 a. *Alafa v. Custom Built Personal Training, Inc.*, Tulare County Superior
24 Court, Case No. VCU-245496 (appointed Class Counsel and granted final approval class action
25 settlement on behalf of assistant fitness manager employees).



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b. *Cuellar v. Lovin Oven*, Orange County Superior Court, Case No. 30-2010-000382146 (appointed Class Counsel and granted final approval of class action settlement by the court on behalf of nonexempt employees).

c. *Cunningham v. DPI Specialty Foods West, Inc.*, Los Angeles Sup.Ct., Case No. BC465017 (appointed Class Counsel and granted final approval by this Court of class action settlement on behalf of merchandiser employees).

d. *Deckard v. MSL Community Management LLC*, Riverside County Superior Court, Case No. RIC1204182 (appointed Class Counsel and granted final approval of class action settlement on behalf of caregivers and medical technicians).

e. *DiCato v. Francesca's Collections, Inc.*, San Diego County Superior Court, Case No. 37-2012-00094401-CU-OE-CTL (appointed Class Counsel and granted final approval of class action settlement on behalf of boutique manager and assistant manager employees).

f. *Evans v. Equinox, et al.*, Los Angeles Sup.Ct., Case No. BC440058 (appointed Class Counsel and granted final approval by this Court of class action settlement on behalf of personal trainer employees).

g. *Huynh v. Carefusion Resources, LLC, et al.*, San Diego Sup.Ct., Case No. 37-2009-00103277-CU-OE-CTL (appointed Class Counsel and granted final approval of class action settlement on behalf of medical devices employees).

h. *Hidalgo, et al. v. Sun Hill*, Los Angeles Superior Court, Case No. BC480808 (appointed Class Counsel and granted final approval of class action settlement on behalf of hourly employees).

i. *La Fleur v. Medical Management International, Inc.*, United States District Court, Central District of California, Case No. EDCV13-00398-VAP (appointed Class Counsel and granted final approval of class action settlement on behalf of practice managers).

j. *Linder, et al. v. Warehouse Services, Inc.*, San Bernardino Superior Court, Case No. CIVDS1500146 (appointed Class Counsel and granted final approval of class action settlement on behalf of non-exempt hourly employees excluding truck drivers).

k. *Lynch, et al. v. American Guard Services*, Los Angeles Superior Court, Case No. BC462681 (appointed Class Counsel and granted final approval of class action settlement on behalf of security guard employees).



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1 l. *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-
2 1500-CV-282679 (appointed Class Counsel and granted final approval of class action settlement
3 on behalf of dairy and agricultural laborers).

4 m. *Montes v. Branam Enterprises, Inc.*, Los Angeles Sup.Ct. Case No.
5 BC442608 (appointed Class Counsel and granted final approval by this Court of class action
6 settlement on behalf of call concert rigging employees). *Nardone v. Sequoia Beverage Company,*
7 *LP*, Tulare County Superior Court, Case No. VCU-248370 (appointed Class Counsel and granted
8 final approval of class action settlement by the court on behalf of hourly employees).

9 n. *Ogbuehi v. Comcast of California/Colorado/Florida/Oregon, Inc.*, United
10 States District Court, Eastern District of California, Case No. EDCV13-00672-KJM-KJN
(appointed Class Counsel and granted final approval of class action settlement on behalf of virtual
11 customer account executives).

12 o. *Rosen v. Image Transfer*, Los Angeles Superior Court, Case No.
13 BC511072 (appointed Class Counsel and granted final approval of class action settlement on
14 behalf of bobtail truck drivers).

15 p. *Sandoval v. Rite Aid Corp.*, Los Angeles Superior Court, Case No.
16 BC431249 (granted class certification through contested motion and appointed Class Counsel in
17 case on behalf of former pharmacy employees based on late final wage payments in violation of
18 Labor Code §§ 201–203).

19 q. *Shaw, et al. v. Interthinx, Inc.*, United States District Court for the District
20 of Colorado, Case No. 13-CV-01229-REB-BNB (appointed Class Counsel and granted final
21 approval of class action settlement by the court on behalf of auditor employees).

22 r. *Stucker v. L'Oreal*, Los Angeles Sup.Ct. Case No. BC456080 (appointed
23 Class Counsel and granted final approval by this Court of class action settlement involving
24 alleged misclassification of sales employees and unpaid vacation pay).

25 s. *Valdez v. Healthcare Services Group, Inc.*, Los Angeles Sup.Ct., Case No.
26 BC462917 (appointed Class Counsel and granted final approval by this Court of class action
27 settlement on behalf of service account manager employees).

28 t. *Valencia v. SCIS Air Security Corp.*, Los Angeles Superior Court, Case
No. BC421485 (granted class certification through contested motion and appointed Class

Counsel in case on behalf of former security workers based on late final wage payments in violation of Labor Code §§ 201–203).

u. *Vang v. Burlington Coat Factory Corporation*, United States District Court Central District of California, Case No. 09-CV-08061-CAS-JCx (appointed Class Counsel and granted final approval of class action settlement by the court on behalf of assistant store manager employees).

v. *Volney-Parris v. Southern California Edison Company*, Los Angeles Superior Court, Case No. BC493038 (appointed Class Counsel and granted final approval of class action settlement on behalf of customer specialist employees).

w. *White v. 20/20 Communications, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1301718 (appointed Class Counsel and granted final approval of class action settlement on behalf of hourly employees).

Class Action Treatment Is Superior

23. A class action is also superior to other means adjudicating the issues in this action. The predominance of common legal and factual questions shows that this Court could fairly adjudicate the claims of Class Members through a single class action. In view of the *theoretical* alternatives that proposed class members could potentially utilize—representative PAGA action (where there is less relief available), individual civil lawsuits or wage claims through the Division of Labor Standards Enforcement (where there would be relatively little money at stake, but the claims would be time-consuming to litigate)—a class action is plainly superior to all of them. Thus, this consideration supports conditional class action treatment for purposes of this Settlement only.

The Settlement is Presumptively Fair

24. The class settlement here satisfies all of the *Kullar* factors. The Settlement resulted from thorough, arms’ length, negotiations between experienced counsel with the assistance of a respected mediator after sufficient discovery was exchanged to assess the relative strengths and weaknesses of their respective cases and Defendants’ estimated exposure. Both defense counsel and I are particularly experienced in employment law and wage and hour class actions. We are experienced and qualified to evaluate the class claims, the viability of the defenses, and the risks and benefits of settlement versus trial on a fully informed basis. I have negotiated many wage and hour class settlements, including many involving the same issues



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1 presented here. Counsel on both sides share the view that the Settlement is a fair and reasonable
2 settlement in light of the complexities of the case and uncertainties of class certification and
3 litigation, and a fair result for the Class Members.

4 *Exposure & Risk Analysis*

5 **25.** At issue in this class and Private Attorneys General Act ("PAGA") action is a
6 concrete pumper's liability to its approximately 111 hourly employees, including heavy
7 equipment operators, operators, field workers, and comparable employees (hereafter the
8 "Putative Class Members") for its failure to pay all wages owed, provide rest and meal periods,
9 reimburse for business expenses, and related violations of the Labor Code and applicable Wage
10 Order. Plaintiff prepared "damages" estimates in advance of the mediation. In advance of the
11 mediation, Plaintiff determined Defendants' maximum exposure for restitution and penalties to
12 be approximately \$2,724,715.69 (consisting of \$1,482,389.14 in unpaid wages, \$6,684.15 for
13 unreimbursed expenses, \$611,602.26 in missed meal period premium wages, \$624,040.13 in
14 missed rest break premium wages, \$388,700.00 for wage statement penalties, \$329,229.58 for
15 waiting time penalties, and \$8,375,770.58 for civil penalties). True and correct copies of the
16 spreadsheets I prepared for mediation of this Action are collectively attached to this declaration
17 as **Exhibit 9**. After mediation and during settlement discussions, I also prepared my most recent
18 damages analysis. **Exhibit 10**. The estimates are in essence "home run" projections that omit
19 data points that will undoubtedly reduce the maximum possible damages award and do not factor
20 in any of the risks involved in litigating this Action. Plaintiff calculated the damages based on
21 the number of workweeks and pay periods provided by Defendants, Plaintiff's reports, and the
22 sample data. *Id.* Plaintiff also considered the possibility that Defendants could launch a *Pick Up*
23 *Stix* campaign and pursue individual release agreements from the Class Members. Plaintiff's
24 Counsel applied discounts to the maximum exposure to account for all other risks discussed
25 below. While it is difficult to assign anything but crudely-determined percentages of risk to any
26 of the claims, it is safe to say that the risk that a *Pick Up Stix* campaign would preclude recovery
27 for such employees is substantial and alone justifies a significant discount because Defendants
28 would likely by trial have gathered releases from the majority of the Class Members. A settlement



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1 for approximately 8.3% of the potential recovery is a proportion substantially in excess of
2 recovery proportions sanctioned by existing case law.¹

3 **26. Risks Associated with Holding Defendant Collin Fleming Liable.** I concluded
4 that establishing that Defendant Fleming was an employer of the Class Members would be
5 difficult to establish because he was not an officer of Defendant Concrete Placement, Inc.
6 Additionally, the proof that he was responsible for the Labor Code violations, many of which he
7 was not physically present to observe, is inconclusive for personal liability under Labor Code §
8 558.1. Additionally, my initial estimates do not realistically account for the risks outlined below
9 or the risk that a class will not be certified. Therefore, I believe a class settlement for
\$1,000,000.00 is fair and reasonable.

10 **27. Risks Associated with Defendants' Financial Condition.** Defendants' financial
11 condition was the key factor in reaching this Settlement. Due to Defendants' financial condition,
12 even if Plaintiff prevailed on all claims at trial, he may never recover the damages due to the risk
13 of insolvency. A very large class action judgment would almost certainly put the company out of
14 business and/or would interfere with the Defendants' ability to carry out their contractual
obligations.

15 **28. Risks Associated with Unpaid Wages Claim.** There is a risk that Plaintiff's
16 recovery for unpaid wages would be extremely limited at best, largely because Defendants'
17 written policies during the relevant time period prohibited off-the-clock work. Off-the-clock
18 claims are difficult where a defendant requires in its written policies that all work must take place
19 while clocked in. *See Jong v. Kaiser Foundation Hospital* (2012) 226 Cal.App.4th 391 (employer
20 must have notice of off-the-clock work for it to be compensable). *Id.* In their written employment
21 policies, Defendants mandate that employees must record all time worked accurately on their
time records and strictly prohibit employees from performing any work off-the-clock. Moreover,

22
23 ¹ *See, e.g., In re Newbridge Networks Sec. Litig.*, 1998 WL 765724 at *2 (D.D.C. Oct. 23, 1998)
24 (“[A]n agreement that secures roughly six to twelve percent of a total trial recovery . . . seems to
25 be within the targeted range of reasonableness.”); *Wise v. Ulta Salon, Cosmetics & Fragrance,*
26 *Inc.* 2019 WL 3943859 at *8 (E.D. Cal. Aug. 21, 2019) (granting preliminary approval where the
27 proposed allocation to settle class claims was at least 9.53 percent); *Bravo v. Gale Triangle, Inc.*,
28 2017 WL708766 at * 10 (C.D. Cal. Feb 16, 2017) (“a settlement for fourteen percent recovery
of Plaintiffs' maximum recovery is reasonable”); *In re Omnivision Techs., Inc.*, 559 F.Supp.2d
1036, 1042 (N.D. Cal. 2008) (approving settlement amount that “is just over 9% of the maximum
potential recovery asserted by either party.”).



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1 while Defendants dispute that off-the-clock work occurred, they contend that any time spent off
2 the clock was *de minimis*. The California Supreme Court in *Troester v. Starbucks Corp.* (2018)
3 5 Cal. 5th 829, 835 suggested that irregular and minute periods of time may still be subject to a
4 *de minimis* defense even if compensable. (Stating that “We do not decide whether there are
5 circumstances where compensable time is so minute or irregular that it is unreasonable to expect
6 the time to be recorded.”). Following *Troester*, Defendants contend that the *de minimis* doctrine
7 may apply here because the time spent off the clock were minute and insignificant. Plaintiff’s
8 contention that Defendants underpaid recorded overtime hours by miscalculating the weighted
9 average of various pay rates was also disputed and at best support for only a few unpaid cents on
10 the overtime hours worked. This claim could also be susceptible to a *de minimis* defense.
11 Accordingly, a large award of penalties seems unlikely with respect to this claim.

12 **29.** The difficulty inherent in proving that off-the-clock work occurred poses a
13 significant hurdle to Plaintiff. Plaintiff will rely on declarations and witness statements to prove
14 this claim. Generally, a court will not certify a class unless it can determine an appropriate
15 classwide methodology. *See, e.g., Duran v. U.S. Bank National Assn.*, 59 Cal. 4th 1 (2014). Here,
16 Plaintiff may rely heavily on anecdotal evidence to prove the off-the-clock work claim, especially
17 given the lack of records indicating when such off-the-clock work may have taken place.
18 Individualized inquiries would need to be conducted person-by-person, day-by-day, to determine
19 if an individual in fact worked “minutes” off-the-clock on a “regular” basis. Accordingly, there
20 is a significant risk that the Court would consider this evidentiary showing insufficient as a
21 classwide methodology.

22 **30. Risks Associated with the Meal Period Claims.** There are risks to Plaintiff’s
23 meal period claim. Defendants contend that, to establish a violation for missed meal periods, a
24 plaintiff must do more than show that a meal break was not taken. *Brinker*, 53 Cal. 4th at 1004.
25 So long as an employer provides employees with a “reasonable opportunity” to take a duty-free
26 meal period, it has no further duty to “police meal breaks and ensure no work thereafter is
27 performed.” *Id.* at 1040-41. *Id.* Instead, a plaintiff must show the employer impeded, discouraged,
28 or prohibited the employee from taking a proper break, or otherwise failed to release the
employee of all control. *Id.* “Thus, the crucial issue with regard to the meal break claim is the
reason that a particular employee may have failed to take a meal break.” *Washington v. Joe’s
Crab Shack* (N.D. Cal. 2010) 271 F.R.D. 629, 641. *Id.*



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31. Defendants contend they did not impede or discourage Plaintiff, or any other employees, from taking their meal or rest periods. Defendants interpret their time records to show merely that they paid Class Members for their meal time. Defendants' policies mandate that employees take at least a 30-minute, uninterrupted meal periods and record the beginning and ending time of their meal breaks each day on their time records. *Id.* The time records that comprise the random sample Defendants produced to Plaintiff for purposes of mediation show that meal periods were taken the vast majority of the time. *Id.* Of the time records that show a late, short or no lunch, individualized evidence may be necessary to determine whether they occurred due to conduct of the Defendants or each of the employees concerned. Accordingly, there is a significant risk that the value of Plaintiff's meal period claim would be substantially reduced at trial. *Id.*

32. **Risks Associated with the Rest Break Claims.** There are risks to Plaintiff's rest period claim. Employers are not required to record rest periods and such periods are paid. *Id.* Defendants contend they provided non-exempt employees the opportunity to take rest periods in accordance with California law. Further, Defendants' written policies on meal and rest periods are consistent with the Wage Order. *Id.* Thus, unlike meal periods, where there are often records showing whether an employee clocked out or not, there is no such evidence to prove a missed rest period or that the employer refused to authorize and permit one. *Id.* Managing such claims at trial has become exceedingly difficult. *Id.* Plaintiff will depend on sample witness testimony and surveys to prove the claims. *Id.* While a victory with such evidence is certainly possible, relevant caselaw makes such claims risky from a trial management and due process perspective. *Id.*, See *Duran v. U.S. Bank National Assn.*, (2014) 59 Cal. 4th 1, 31 (explaining "[I]f sufficient common questions exist to support class certification, it may be possible to manage individual issues through the use of surveys and statistical sampling."); *Tyson Foods, Inc. v. Bouphakeo* (2015) 136 S.Ct. 382; *Comcast Corporation v. Behrend* (2013) 133 S.Ct. 1426.

33. **Risks Associated with the Failure to Indemnify Claim.** There is a risk that the Court may consider Plaintiff's claims as to Defendants' alleged failure to indemnify for business expenses to be individual in nature and thus decline to certify the class. Plaintiff alleges that Defendants required Plaintiff and the Class Members to use their personal items including cellular phones, computers and other electronic devices, vehicles, and tools, and failed to indemnify them for these business expenses. *Id.* Defendants presented evidence that they have

1 supplied their employees with tools, equipment, and other supplies and had an expense
2 reimbursement policy. As such, there is a risk that the Court may consider Plaintiff's claims to
3 be individual in nature and unfit for class wide resolution. *Id.*

4 **34. Risks Associated with the Statutory "Wage Statement" Penalty Claims.**

5 Plaintiff also asserts claims for wage statement violations, untimely wage violations, and PAGA
6 penalties. Under Labor Code section 226, wage statements must include various information,
7 including the applicable rates of pay, corresponding hours worked, and gross pay. Here,
8 Plaintiff's wage statement claim has the same underlying risks as the above claims, as it is
9 derivative of them. *Id.* On their face, the wage statements issued by Defendants comply with the
requirements of Labor Code § 226.

10 **35. Risks Associated with The Waiting Time Penalties Claim.**

11 Plaintiff's claim for
12 untimely wages is predicated on Labor Code section 201 to 203. Like the claim under Labor
Code sec. 226, Plaintiff must establish that the late payments were willful. The evidence of good
faith Defendants put forth will defeat this claim.

13 **36. Risks Associated With the PAGA Claim.**

14 Regarding PAGA, a court has
15 discretion to award a lesser amount than the maximum penalty. Lab. Code § 2699(e)(2); *Thurman*
v. Bayshore Transit Management, Inc. (2012) 203 Cal.App.4th 1112, 1135 (reducing PAGA
16 award). As set forth above, Defendants have posed valid defenses to the Labor Code claims
17 underlying Plaintiff's PAGA allegations. Thus, the PAGA claims likewise face significant
18 uncertainty. There is a risk that the Court would consider the maximum civil penalty available to
19 be confiscatory. This is particularly the case considering Defendants' financial condition. *Id.*
Moreover, the current COVID-19 pandemic could motivate the Court to further reduce the
20 penalty award to avoid what it may consider a confiscatory taking. *Id.*

21 **37. This uncertainty increases Plaintiff's risk of pursuing the PAGA claims and**

22 required a significant discount for settlement purposes. For mediation purposes, Plaintiff's
23 counsel estimated a maximum exposure of approximately \$8,375,770.58 in civil penalties. This
24 estimate did not take into account any of the risks discussed above and assumed a violation for
25 every single pay period. *Id.* Plaintiff's counsel also assessed multiple penalties for the same pay
26 period for the same alleged violations of different Labor Code provisions and derivative
27 violations. *Id.* Although two federal district court decisions held that "stacking" PAGA penalties
28 in this fashion may be appropriate to determine the amount in controversy for purposes of



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1 removal jurisdiction, Plaintiff's counsel is not aware of any California state courts awarding
2 plaintiffs multiple PAGA penalties for the same violation for the same pay period under different
3 Labor Code provisions. *Id.* This may be because the PAGA does not provide for what many
4 employers characterize as claim splitting and not merely stacking. *Id.*

5 **38.** I am aware of only two significant awards under the PAGA in a contested
6 proceeding, both issued by federal district courts.² PAGA penalty awards are often small even
7 for egregious, intentional violations of the Labor Code.³

8 **39.** For instance, on October 24, 2017, the Los Angeles Superior Court awarded a
9 prevailing PAGA plaintiff, represented by very experienced counsel, civil penalties totaling only
10 \$50.00. *Shields v. Security Paving Company, Inc.*, LA Superior Court case no. BC492828.
11 Further, in *Carrington v. Starbucks Corp.*, 30 Cal.App.5th 504, 529 (2018), the Court of Appeal

12 ² In *Bernstein v. Virgin Am., Inc.* (N.D. Cal. 2019) U.S. Dist. LEXIS 13253, the court awarded
13 civil penalties under the PAGA of approximately \$25 million, representing a 25% reduction from
14 plaintiff's claim for approximately \$33 million. *Bernstein* represents a unique set of
15 circumstances that is distinguishable from the case at hand. Notably, the plaintiffs in *Bernstein*
16 suffered a particularly sizeable injury – the court found that the defendant's policies caused
17 damages to the plaintiffs in excess of \$45 million. *Id.* at 20. Additionally, the defendants in
18 *Bernstein*, who the court noted had received “millions of dollars from the state of California” to
19 train their flight attendants, engaged in glaring violations of the labor code, such as failing to
20 compensate its flight attendants for work performed outside of “block time” (time during which
21 the aircraft is moving), including time spent participating in pre-flight briefings, boarding
22 passengers, and deplaning. *Bernstein v. Virgin Am., Inc.* (N.D. Cal 2017) 227 F. Supp. 3d 1049,
23 1055-1058. Indeed, the defendant's liability was so clear in *Bernstein* that the case was resolved
24 on the plaintiffs' motion for summary judgment. *Bernstein v. Virgin Am., Inc.* (N.D. Cal. 2019)
25 U.S. Dist. LEXIS 13253.

26 In *Robert Magadia v. Wal-Mart Assocs.* (N.D. Cal. 2019) 384 F. Supp. 3d. 1058, the court
27 awarded approximately \$102 million in damages, primarily based on the defendants' failures to
28 comply with the requirements of California Labor Code section 226.

³ In 2012, I tried *Ghrdilyan v. RJ Financial, Inc.*, Los Angeles Superior Court case number
BC430633. In *Ghrdilyan*, the employer underpaid commission overtime wages. A true and
correct copy of the complaint is attached as **Exhibit 11**. The plaintiff sought in excess of \$9
million in civil penalties under the PAGA. After a bench trial, the Honorable Judge Ronald M.
Sohigian awarded approximately \$325,000 in civil penalties under the PAGA. A true and correct
copy of the statement of decision is attached as **Exhibit 12**, 19:8-20:19. Also, on October 24,
2017, the Los Angeles Superior Court awarded a prevailing PAGA plaintiff civil, represented by
very experienced counsel, penalties totaling only \$50.00. *Shields v. Security Paving Company,*
Inc., LA Superior Court case no. BC492828. A similar result could occur here.



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1 affirmed judgment which provided for a PAGA penalty of only \$5 per pay period for the
2 defendant's meal period violations. A similar result could occur here.

3 **40. Risks Associated With A Pick-Up Stix Campaign.** An employer enjoys the
4 right to settle a putative class member's disputed wage claims individually, without the consent
5 or involvement of class counsel. (See *Chindarah v. Pick Up Stix, Inc.* 171 Cal. App. 4th 796
6 (2009). As discussed above, Defendants may launch a "pick off" settlement campaign to pursue
7 individual release agreements from the Class Members, thereby potentially narrowing the size of
8 the Settlement Class – 111 members - until it is no longer numerous enough for class certification.
9 *Id.* Plaintiff, then, may not have sufficient number of employees to represent. This led to a
10 significant reduction of claim value in settlement negotiations.

11 **41.** While the evidence gathered through Plaintiff's discovery supports the merits of
12 the claims asserted in this lawsuit, Plaintiff and his counsel recognize that continued litigation
13 presents significant risks that support a downward departure from Defendants' estimated liability
14 exposure. In view of the risks, the Settlement reflects my estimate of the total amount of damages,
15 monetary penalties or other relief that the Class could reasonably expect to be awarded at trial,
16 taking into account the likelihood of prevailing and other attendant risks. It also represents a fair,
17 adequate, and reasonable compromise amount for these claims and warrants preliminary
18 approval. *Id.*, *Torrison v. Tucson Elec. Power Co.* (9th Cir. 1993) 8 F.3d 1370, 1376 (the financial
19 condition of defendant predominated in assessing the reasonableness of settlement); *Spann v.*
20 *J.C. Penney Corp.* (C.D. Cal. 2016) 211 F. Supp. 3d 1244, 1256 (uncertainty concerning
21 defendant's financial stability "strongly supports the reasonableness of the settlement"); See
22 *Laguna v. Coverall N. Am., Inc.*, Case No. 12-55479 (9th Cir. June 3, 2014) 2014 WL 2465049,
23 * 3.

Allocation of the PAGA Payment

24 **42.** The settlement of PAGA penalties in the sum of \$4,000.00, of which 75%
25 (\$3,000.00) will be paid to the LWDA and 25% (\$1,000.00) will be distributed to the Class, is
26 reasonable and appropriate under the circumstances. The Parties negotiated a good faith amount
27 for PAGA penalties to be paid to the LWDA and to the Class. The portion to be paid to the
28 LWDA was not the result of self-interest at the expense of other Class Members.

///

///

Attorneys' Fees and Costs

43. I intend to request Class Counsel Attorneys' Fees of \$333,333.00 (one-third of the GSA) and Class Counsel's litigation costs incurred in prosecuting this Action, which I currently estimate to be approximately \$12,500.00 and will be no more than \$12,500.00 at the conclusion of matters related to the Settlement. In view of my efforts and risks in pursuing this case these amounts are well within the range of reasonableness and thus warrant this Court's preliminary approval. In addition, based on my experience in wage and hour class action matters, fee awards of approximately one-third of the settlement fund are routinely approved as reasonable. I have been awarded attorneys' fees equaling approximately one-third of the fund in several recent wage and hour class actions, including: *Alvarez v. Gary Grace Enterprises, LP*, Marin County Superior Court, Case No. CIV1002553 (one-third of fund); *Calderon v. Greatcall, Inc.*, San Diego Superior Court, Case No. 37-2010-00093743-CU-OE-CTL (one-third of fund); *Butler v. Lexxiom, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1001579 (one-third of fund); *Perez v. Southwest Dealer Services, Inc.*, Los Angeles County Superior Court, Case No. BC439253 (one-third of fund); *O'Brien v. Optima Network Services, Inc.*, San Bernardino County Superior Court, Case No. CIVRS1107056 (one-third of fund); *Noyd v. The Cristcat Group, et al.*, Los Angeles County Superior Court, Case No. BC439558 (one-third of fund); *Huynh v. Carefusion Resources, LLC, et al.*, San Diego Sup.Ct., Case No. 37-2009-00103277-CU-OE-CTL (one-third of fund); *Cunningham v. DPI Specialty Foods West, Inc.*, Los Angeles Sup.Ct., Case No. BC465017 (one-third of fund); *Stucker v. L'Oreal USA S/D, Inc.*, Los Angeles Sup. Ct., Case No. BC456080 (one-third of fund); *Valdez v. Healthcare Services Group, Inc.*, Los Angeles Sup.Ct., Case No. BC462917 (one-third of fund); *Hernandez, et al v. HSBC*, U.S. District Court, Central District of California, Case No. 10-CV-4753 (one-third of fund); *Sandoval, et al. v. Thrifty Payless, Inc., et al.* Los Angeles Sup.Ct., Case No. BC431249 (one-third of fund); *Alafa v. Custom Built Personal Training, Inc.*, Tulare County Superior Court, Case No. VCU-245496 (one-third of fund); *Nardone v. Sequoia Beverage Company, LP*, Tulare Sup.Ct., Case No. VCU-248370 (one-third of fund); *Rosen v. Image Transfer*, Los Angeles Sup.Ct., Case No. BC511702 (one-third of fund); *Tucker v. Maly's West, Inc.*, Los Angeles Sup.Ct., Case No. BC483920 (one-third of fund); *King v. Build.com*, Butte Sup.Ct., Case No. 159985 (one-third of fund); *Clifford v. Anderson Hay & Grain*, Los Angeles Sup.Ct., Case No. BC517625 (one-third of fund); *Nichols, et al. v. Vitamin Shoppe*, Contra Costa Sup.Ct., Case No.



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CIVMSC13-01136 (one-third of fund); *Clarke v. Insight Global*, U.S. District Court, Southern District of California, Case No. 13-CV-0357 (one-third of fund); *Fischer, et al. v. National Distribution Centers LP, et al.*, Riverside Sup.Ct., Case No. RIC1114952 (one-third of fund); *Shaw, et al. v. Interthinx, Inc.*, United States District Court for the District of Colorado, Case No. 13-CV-01229-REB-BNB (one-third of fund); *Ogbuehi v. Comcast of California/ Colorado/ Florida/ Oregon, Inc.*, United States District Court, Eastern District of California, Case No. EDCV13-00672-KJM-KJN (one-third of fund); *Lynch, et al. v. American Guard Services*, Los Angeles Superior Court, Case No. BC462681 (one-third of fund); *Volney-Parris v. Southern California Edison Company*, Los Angeles Superior Court, Case No. BC493038 (one-third of fund); *Hidalgo, et al. v. Sun Hill*, Los Angeles Superior Court, Case No. BC480808 (one-third of fund); *Martin, et al. v. Aukeman Dairy, et al.*, Kern Superior Court, Case No. S-1500-CV-282679 (one-third of fund); *Linder, et al. v. Warehouse Services, Inc.*, San Bernardino Superior Court, Case No. CIVDS1500146 (one-third of fund).

44. The amount of fees and costs requested are commensurate with (1) the risk Class Counsel took in bringing the case, (2) the extensive time, effort and expense dedicated to the case, (3) the skill and determination Class Counsel has shown, (4) the results Class Counsel achieved, (5) the value of the Class Counsel achieved for the class, and (6) the other cases Class Counsel turned down to devote time to this matter. Class Counsel also interviewed and obtained information from putative class members, met and conferred with Defendants' counsel on numerous occasions, reviewed and analyzed hundreds of pages of data and documents provided by Defendants and obtained through other sources, researched applicable law, and estimates of "damages" for purposes of settlement discussions, among other tasks.

45. Class Counsel have borne all the risks and costs of litigation and will receive no compensation until recovery is obtained. Class Counsel are well-experienced in wage-and-hour class action litigation and used that experience to obtain a fair result for the Class. Considering the amount of the attorney fees requested, the work performed, and the risks incurred, the requested fees and costs are reasonable and should be awarded.

Class Representative Service Payment

46. The Settlement provides that Plaintiff may seek a Class Representative Service Payment of \$20,000.00. This amount is entirely reasonable given Plaintiff's efforts in this Action and the risks he undertook on behalf of Class Members. Here, Plaintiff has devoted many hours



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1 advancing the interests of the Settlement Class. Plaintiff has done this by, among other things,
2 retaining experienced counsel, providing them with information about his work history with
3 Defendants and Defendants' policies and practices with respect to the wage and hour claims at
4 issue, assisting counsel in identifying witnesses, traveling to and participating in mediation, and
5 being actively involved in the settlement process to ensure a fair result for the Settlement Class
6 as a whole. In doing this, Plaintiff has been exposed to significant risks, including the risk of an
7 order to pay Defendants' attorneys' fees and costs if this action had been unsuccessful (*See* Labor
8 Code §§ 218.5-218.6). The efforts and risks that Plaintiff undertook on behalf of the Settlement
9 Class shows that the proposed Class Representative Service Payment is fair, adequate, and
reasonable, and thus warrant preliminary approval.

Individual Class Payment

10 47. The Individual Class Payment will be paid to each Class Member based on his or
11 her eligible Work Weeks compared to the total Work Weeks. Settlement ¶ 3.2.4. Because this
12 method compensates Class Members based on the extent of their potential injuries, in that Class
13 Members who worked for Defendants longer would have been subject to more alleged violations,
14 it is fair, adequate, and reasonable.

Notice By First Class U.S. Mail Only (No Email)

15 48. The Settlement requires distribution of the Notice by First Class U.S. mail only.
16 Settlement, ¶ 4.4.2. Although there are current employee Class Members, it is uncertain whether
17 Defendants' records of their contact information include email addresses and Class Members,
18 who perform all of their work away from a desk, are not in a position to check their emails. As
19 such, notice by mail alone is fair, adequate, and reasonable. The Notice Packet (attached as
20 Exhibit A to the Settlement) provides Class Members with all pertinent information that they
21 need to fully evaluate their options and exercise their rights under the Settlement. Specifically, it
22 clearly and concisely explains, among other things: (1) what the Settlement is about; (2) who is
23 a Settlement Class Member; (3) how Class Counsel will be paid; (4) how to submit an exclusion
24 request not to be bound by the Settlement; (5) how to object to the Settlement; (6) how the
25 Settlement will be allocated; (7) how payments to Class Members will be calculated; (8) how the
26 disputes will be resolved; and (9) the estimated Individual Settlement Payment for each Class
27 Member. Additionally, the Class Notice will be in English and Spanish and will include the
28 number of Eligible Workweeks a Class Member had during the Class Period. Accordingly, the



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1 Notice should be approved because it describes the Settlement with sufficient clarity and
2 specificity to explain to Class Members what this action is about, their rights under the
3 Settlement, and how to exercise those rights. As such, the parties' proposed Notice fully complies
4 with California Rules of Court 3.766(d) and 3.769(f) and will allow Class Members to make
5 informed responses to the proposed settlement.

Settlement Administration Duties

6 **49.** The duties of the Settlement Administrator are spelled out in section III(C) of the
7 Settlement and in the bid provided by ILYM Group, Inc., a true and correct copy of which is
8 attached hereto as **Exhibit 13**.

Settlement Administration Costs

9 **50.** With regard to the settlement administration costs provision (Settlement ¶ 3.2.3),
10 it is reasonable. Before agreeing to ILYM Group, Inc., the Parties sought and reviewed bids from
11 other reputable third-party administrators: (A) Phoenix Class Action Administration Solutions =
12 \$9,000.00; (B) CPT Group, Inc. = \$12,750.00 and (C) ILYM Group, Inc. = \$5,000.00. A true
13 and correct copy of the bid from Phoenix Class Action Administration Solutions is attached
14 hereto as **Exhibit 14**. A true and correct copy of the bid from CPT Group, Inc. is attached hereto
15 as **Exhibit 15**. The bid provided by ILYM Group, Inc. was comparable. Thus, settlement
16 administration costs provision should be given preliminary approval.

Notice of Settlement to the LWDA

17 **51.** Pursuant to Labor Code § 2699(l)(2), Plaintiff submitted a copy of the Settlement
18 with the Labor and Workforce Development Agency ("LWDA") at the same time Plaintiff's
19 Motion is being filed with the Court. A true and correct copy of Plaintiff's submission with the
20 LWDA and a confirmation email is attached hereto as **Exhibit 16**.

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

David Spivak



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EXHIBIT 1

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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
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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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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 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.

3 1.43. "Response Deadline" means 60 days after the Administrator mails Notice to Class
4 Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a)
5 fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or
6 her Objection to the Settlement. Class Members to whom Notice Packets are resent after having
7 been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond
the Response Deadline has expired.

8 1.44. "Settlement" means the disposition of the Action effected by this Agreement and
9 the Judgment.

10 1.45. "Workweek" means any week during which a Class Member worked for
11 Defendants for at least one day, during the Class Period.

12 **2. RECITALS.**

13 2.1. On October 07, 2021, Plaintiff commenced this Action by filing a Complaint
14 alleging causes of action against Defendants for unauthorized and unlawful wage deductions,
15 failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify
16 for work expenses, and related claims. On October 22, 2021, Plaintiff filed a First Amended
17 Complaint alleging causes of action against Defendants for failure to provide meal periods, failure
18 to authorize and permit rest periods, failure to indemnify for work expenses, and related
allegations.

19 2.2. Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written
20 notice to Defendants and the LWDA by sending the PAGA Notice.

21 2.3. On June 14, 2022, the Parties participated in an all-day mediation presided over
22 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.

23 2.4. Prior to mediation, Plaintiff obtained, through informal discovery, the number of
24 comparable employees, the number of workweeks, the number of pay periods, average rates of
25 pay, sample time records, sample payroll records, sample schedules, written policies, financial
26 records, and related information. Plaintiff's investigation was sufficient to satisfy the criteria for
27 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
13 the Operative Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released
14 under 6.2, below; and (c) and all claims known and unknown, without exception, except as may
15 be prohibited by law. ("Plaintiff's Release.") Plaintiff's Release does not extend to any claims
16 or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits,
17 disability benefits, social security benefits, workers' compensation benefits that arose at any time,
18 or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may
19 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.

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

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

3
4 **8. SETTLEMENT ADMINISTRATION.**

5 8.1 Selection of Administrator. The Parties have jointly selected ILYM Group, Inc.
6 to serve as the Administrator and verified that, as a condition of appointment, ILYM Group, Inc.
7 agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this
8 Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel
9 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.

10 8.2 Employer Identification Number. The Administrator shall have and use its own
11 Employer Identification Number for purposes of calculating payroll tax withholdings and
providing reports state and federal tax authorities.

12 8.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund
13 that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury
14 Regulation section 468B-1.

15 8.4 Notice to Class Members.

16 8.4.1 No later than three (3) business days after receipt of the Class Data, the
17 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.

18 8.4.2 Using best efforts to perform as soon as possible, and in no event later than
19 14 days after receiving the Class Data, the Administrator will send to all Class Members identified
20 in the Class Data, via first-class United States Postal Service ("USPS") mail, the Class Notice
21 with Spanish translation, substantially in the form attached to this Agreement as **Exhibit A**. The
22 first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class
23 Payment and/or Individual PAGA Payment payable to the Class Member, and the number of
24 workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing
25 Class Notices, the Administrator shall update Class Member addresses using the National Change
of Address database.

26 8.4.3 Not later than 3 business days after the Administrator's receipt of any Class
27 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
28 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

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

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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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.

13
14
15
16
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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21
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”) 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.

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,
you should consult the rules of the Fund for instructions on how to retrieve your money.

8 9. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated
9 as a Participating Class Member, participating fully in the Class Settlement, unless you notify the
10 Administrator in writing, not later than ____, that you wish to opt-out. The easiest way to notify
11 the Administrator is to send a written and signed Request for Exclusion by the ____ Response
12 Deadline. The Request for Exclusion should be a letter from a Class Member or his/her
13 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: ____

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10. WHAT IF I LOSE MY SETTLEMENT CHECK?

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

11. WHAT IF I CHANGE MY ADDRESS?

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

EXHIBIT 2



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

August 18, 2021

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

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

To Whom It May Concern:

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

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

Statement of Facts

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Wage Order

The Wage Order applies to

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

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

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

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

Wage Order, § 2(C).

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

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

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

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

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

In relevant part, Labor Code section 512 states:

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

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

Meal Periods:

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

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

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

In addition, Labor Code section 226.7 states:

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

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

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

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

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

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

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

Section 2(J) of the Wage Order states,

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

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

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

Rest Periods:

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

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

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

In addition, Labor Code section 226.7 states:

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

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

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

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

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

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

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

Additionally, the Wage Order states,

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

Wage Order, §§ 9(A) and (B).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Labor Code § 2350 states,

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

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

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

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

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

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

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

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

Every person employing labor in this state shall:

...

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

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

Labor Code section 1174.5 states:

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

Section 6 of Wage Order states,

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

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

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

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

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

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

Conclusion

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

Sincerely,



David Spivak, Esq.

David@spivaklaw.com

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

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EXHIBIT 3

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Assigned for all Purposes
Judge William Claster
CX-104

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

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

13 MICHAEL CANTRELL, on behalf of
14 himself, all others similarly situated, and the
general public,

15 *Plaintiff,*

16 vs.

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

20 *Defendants.*

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

CLASS ACTION

COMPLAINT FOR:

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

JURY TRIAL DEMANDED

26 Plaintiff, MICHAEL CANTRELL (hereafter “Plaintiff”), on behalf of himself and all
27 others similarly situated, complains and alleges as follows:
28



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ADDITIONAL ATTORNEY FOR PLAINTIFF

WALTER L. HAINES (SBN 71075)
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1 **INTRODUCTION**

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

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

13
14 **JURISDICTION AND VENUE**

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

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

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

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

25 **PARTIES**

26 7. Plaintiff MICHAEL CANTRELL is a resident of California.

27 8. Defendant CONCRETE PLACEMENT, INC., is a corporation organized and
28 existing under the laws of California and also a citizen of California based on Plaintiff’s



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1 information and belief.

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

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

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

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

22 **CLASS ALLEGATIONS**

23 13. This action has been brought and may be maintained as a class action pursuant to
24 California Code of Civil Procedure § 382 because there is a well-defined community of interest
25 among the persons who comprise the readily ascertainable class defined below and because
26 Plaintiff is unaware of any difficulties likely to be encountered in managing this case as a class
27 action.

28 14. **Class Definition:** The Class is defined as follows: All individuals currently and



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

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

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

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

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

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

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

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

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

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



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

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

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

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

STATEMENT OF FACTS

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



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

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

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

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

24 27. At all relevant times, Defendants required Plaintiff and the Class Members to
25 incur certain business expenses in the course of performing their duties. Defendants required
26 Plaintiff and the Class Members to supply mobile phones to perform their job duties, but
27 Defendants did not provide these items or reimburse Plaintiff and the Class Members for these
28 items. Defendant also required Plaintiff and the Class Members to use these personal mobile



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1 phones to communicate with their managers and other individuals. Defendants failed to provide
2 these phones or reimburse Plaintiff and the Class Members for phone usage.

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

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

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

15 **FIRST CAUSE OF ACTION**

16 **FAILURE TO PROVIDE REST PERIODS**

17 **(Lab. Code §§ 226.7 and 1198)**

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

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

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

23 33. In relevant part, California Labor Code § 1198 states:

24 The maximum hours of work and the standard conditions of labor
25 fixed by the commission shall be the maximum hours of work and
26 the standard conditions of labor for employees. The employment
27 of any employee for longer hours than those fixed by the order or
28 under conditions of labor prohibited by the order is unlawful.



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

2 **Rest Periods**

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

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

19
20 35. In relevant part, California Labor Code § 226.7 states:

21
22 (b) An employer shall not require an employee to work during
23 a meal or rest period mandated pursuant to an applicable statute,
24 or applicable regulation, standard, or order of the Industrial
25 Welfare Commission, the Occupational Safety and Health
26 Standards Board, or the Division of Occupational Safety and
27 Health.



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

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

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

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

19 39. Plaintiff is informed and believes and thereon alleges that, at all relevant times
20 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
21 which resulted in Defendants not providing the Class with all off-duty rest breaks required by
22 California law.

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

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



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SECOND CAUSE OF ACTION
FAILURE TO PROVIDE MEAL PERIODS
(Lab. Code §§ 226.7, 512, and 1198)
(By Plaintiff and the Class against all Defendants)

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

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

44. In relevant part, California Labor Code § 1198 states:

The maximum hours of work and the standard conditions of labor fixed by the commission shall be the maximum hours of work and the standard conditions of labor for employees. The employment of any employee for longer hours than those fixed by the order or under conditions of labor prohibited by the order is unlawful.

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

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

An employer shall not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes, except that if the total hours worked is no more than 12 hours, the second meal

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period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

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

Meal Periods

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

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

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



1 (b) An employer shall not require an employee to work during
2 a meal or rest period mandated pursuant to an applicable statute,
3 or applicable regulation, standard, or order of the Industrial
4 Welfare Commission, the Occupational Safety and Health
5 Standards Board, or the Division of Occupational Safety and
6 Health.

7
8 (c) If an employer fails to provide an employee a meal period
9 or rest period in accordance with a state law, including, but not
10 limited to, an applicable statute or applicable regulation, standard,
11 or order of the Industrial Welfare Commission, the Occupational
12 Safety and Health Standards Board, or the Division of
13 Occupational Safety and Health, the employer shall pay the
14 employee one additional hour of pay at the employee's regular rate
15 of compensation for each work day that the meal or rest period is
16 not provided.

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

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

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

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



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

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

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

9 **THIRD CAUSE OF ACTION**

10 **FAILURE TO REIMBURSE FOR EXPENSES**

11 **(Lab. Code §§ 1198 and 2802)**

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

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

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

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

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

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

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



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1 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
2 failure to indemnify Plaintiff and the Class Members for the reasonable expenses they incurred
3 during the course of performing their duties.

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

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

11 **FOURTH CAUSE OF ACTION**

12 **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

13 **(Lab. Code § 226)**

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

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

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

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

22 (1) Gross wages earned,

23 (2) Total hours worked by the employee, except for any employee whose
24 compensation is solely based on a salary and who is exempt from payment of overtime under
25 subdivision (a) of § 515 or any applicable order of the Industrial Welfare Commission,

26 (3) The number of piece rate units earned and any applicable piece rate if the
27 employee is paid on a piece-rate basis,

28 (4) All deductions, provided that all deductions made on written orders of the



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employee may be aggregated and shown as one item,

(5) Net wages earned,

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

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

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

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

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

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

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

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

C. The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of § 1682 of the California Labor Code, the name and



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1 address of the legal entity that secured the services of the employer during the pay period; and

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

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

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

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

20 70. As a result of being provided with inaccurate wage statements by Defendants,
21 Plaintiff and the other Class Members have suffered injury. Their legal rights to receive accurate
22 wage statements were violated and they were misled about the amount of wages they had actually
23 earned and were owed. In addition, the absence of accurate information on their wage statements
24 prevented immediate challenges to Defendants’ unlawful pay practices, has required discovery
25 and mathematical computations to determine the amounts of wages owed, has caused difficulty
26 and expense in attempting to reconstruct time and pay records and/or has led to the submission of
27 inaccurate information about wages to state and federal government agencies. Further, Plaintiff
28 and the other Class Members were not able to ascertain from the wage statements whether



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1 Defendants complied with their obligations under California Labor Code § 226(a).

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

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

11 **FIFTH CAUSE OF ACTION**

12 **WAITING TIME PENALTIES**

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

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

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

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

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

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

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

28 78. Plaintiff is informed and believes that Defendants' failures to timely pay all final



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1 wages to him and the Class Members have been willful in that Defendants have the ability to
2 pay final wages in accordance with Labor Code §§ 201, and 202 but have intentionally adopted
3 policies or practice that are incompatible with those requirements.

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

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

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

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

19 **SIXTH CAUSE OF ACTION**

20 **UNFAIR COMPETITION**

21 **(Bus. & Prof. Code §§ 17200, et seq.)**

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

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

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

27 85. The unlawful conduct of Defendants alleged herein amounts to and constitutes
28 unfair competition within the meaning of California Business & Professions Code §§ 17200, et



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

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

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

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

23 **PRAYER FOR RELIEF**

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

- 26 A. An order that the action be certified as a class action;
27 B. An order that Plaintiff be appointed class representative;
28 C. An order that counsel for Plaintiff be appointed class counsel;



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- D. Unpaid Wages;
- E. Actual Damages;
- F. Statutory Damages;
- G. Restitution;
- H. Declaratory and injunctive relief;
- I. Equitable relief;
- J. Pre-judgment interest;
- K. Statutory penalties;
- L. Costs of suit;
- M. Interest;
- N. Reasonable attorneys’ fees; and
- O. Such other relief as the Court deems just and proper.

DEMAND FOR JURY TRIAL

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

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: October 7, 2021

By 

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

EXHIBIT 4

1 DAVID G. SPIVAK (SBN 179684)
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2 MARALLE MESSRELIAN (SBN 316974)
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3 SARA BROWN (SBN 325763)
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5 16530 Ventura Blvd., Suite 203
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8 Attorneys for Plaintiff,
9 MICHAEL CANTRELL and all others similarly situated
(Additional attorney for Plaintiff on the following page)

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

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

17 *Plaintiff(s),*

18 vs.

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

22 *Defendants.*
23
24
25
26

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

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

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

JURY TRIAL DEMANDED



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ADDITIONAL ATTORNEY FOR PLAINTIFF

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

4 **INTRODUCTION**

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

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

17 **JURISDICTION AND VENUE**

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

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

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

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

28 **PARTIES**

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



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

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

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

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

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

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

26 **CLASS ALLEGATIONS**

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



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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

28 **STATEMENT OF FACTS**



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

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

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

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

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

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



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

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

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

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

18 **FIRST CAUSE OF ACTION**

19 **FAILURE TO PROVIDE REST PERIODS**

20 **(Lab. Code §§ 226.7 and 1198)**

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

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

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

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



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

3 **Rest Periods**

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

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

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

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

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

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

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

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

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



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

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

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

9 **SECOND CAUSE OF ACTION**

10 **FAILURE TO PROVIDE MEAL PERIODS**

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

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

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

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

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

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

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

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

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

Meal Periods



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

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

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

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

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

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

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

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

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



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

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

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

10 **THIRD CAUSE OF ACTION**

11 **FAILURE TO REIMBURSE FOR EXPENSES**

12 **(Lab. Code §§ 1198 and 2802)**

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

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

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

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

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

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



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

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

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

FOURTH CAUSE OF ACTION

FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS

(Lab. Code § 226)

(By Plaintiff and the Class against all Defendants)

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

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

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

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



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

(5) Net wages earned,

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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



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

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

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

12 **FIFTH CAUSE OF ACTION**

13 **WAITING TIME PENALTIES**

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

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

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

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

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

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

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



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

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

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

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

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

SIXTH CAUSE OF ACTION

UNFAIR COMPETITION

(Bus. & Prof. Code §§ 17200, et seq.)

(By Plaintiff and the Class against all Defendants)

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

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

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



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

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

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

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

24 **SEVENTH CAUSE OF ACTION**

25 **CIVIL PENALTIES**

26 **(Lab Code §§2698, et seq.)**

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

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



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

4 91. Labor Code § 204 states

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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



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1 these allegations.

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

5 **PRAYER FOR RELIEF**

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

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

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DEMAND FOR JURY TRIAL

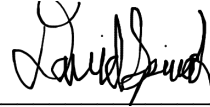
Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial on all issues so triable.

Respectfully submitted,

THE SPIVAK LAW FIRM

Dated: October 22, 2021

By



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



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EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

August 18, 2021

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

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

To Whom It May Concern:

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

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

Statement of Facts

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Wage Order

The Wage Order applies to

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

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

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

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

Wage Order, § 2(C).

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

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

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

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

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

In relevant part, Labor Code section 512 states:

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

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

Meal Periods:

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

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

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

In addition, Labor Code section 226.7 states:

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

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

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

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

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

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

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

Section 2(J) of the Wage Order states,

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

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

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

Rest Periods:

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

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

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

In addition, Labor Code section 226.7 states:

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

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

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

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

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

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

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

Additionally, the Wage Order states,

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

Wage Order, §§ 9(A) and (B).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Labor Code § 2350 states,

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

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

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

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

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

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

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

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

Every person employing labor in this state shall:

...

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

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

Labor Code section 1174.5 states:

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

Section 6 of Wage Order states,

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

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

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

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

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

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

Conclusion

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

Sincerely,



David Spivak, Esq.

David@spivaklaw.com

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

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EXHIBIT 5

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Attorneys for Defendant

CONCRETE PLACEMENT, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

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

Plaintiff,

v.

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

Defendants.

CASE NO. 30-2021-01225534-CU-OE-CXC

Assigned for All Purposes To:

Hon. William Claster

Dept. CX104

**DEFENDANT CONCRETE
PLACEMENT’S ANSWER TO
PLAINTIFF MICHAEL CANTRELL’S
FIRST AMENDED CLASS ACTION
COMPLAINT**

Action Filed: October 7, 2021

FAC Filed: October 22, 2021

Trial Date: None Set

Defendant CONCRETE PLACEMENT, INC. (“Defendant”) hereby submits its Answer to
Plaintiff MICHAEL CANTRELL’s (“Plaintiff”) Class Action Complaint (“Complaint”), as
follows:

GENERAL DENIAL

1. Under the provisions of section 431.30 of the California Code of Civil Procedure,
Defendant denies each, every, and all of the allegations of the Complaint, and the whole thereof,
and denies that Plaintiff has sustained damages in the sums alleged, or in any other sum, or at all.

1 2. Further answering Plaintiff's Complaint, and the whole thereof, Defendant denies
2 that Plaintiff has sustained any injury, damage, or loss, if any, by reason of any act, omission or
3 negligence on the part of Defendant or its agents or employees.

4 **AFFIRMATIVE DEFENSES**

5 **FIRST AFFIRMATIVE DEFENSE**

6 **(Failure to State a Cause of Action)**

7 1. Defendant alleges that neither the Complaint nor any purported cause of action
8 alleged therein state claims upon which relief can be granted.

9 **SECOND AFFIRMATIVE DEFENSE**

10 **(Statute of Limitations)**

11 2. Defendant alleges that Plaintiff's claims, and those of the putative class, are barred,
12 in whole or in part, to the extent the events complained of took place more than one (1) year, three
13 (3) years, or (4) four years prior to the filing of the Complaint, and thus Plaintiff's and the putative
14 class members' claims are barred by Code of Civil Procedure sections 338 and 340; Business and
15 Professions Code section 17200, et seq.; and Labor Code section 203 respectively.

16 **THIRD AFFIRMATIVE DEFENSE**

17 **(Inadequate Class Representative)**

18 3. Defendant alleges that Plaintiff's claims, and those of the putative class members,
19 are barred, in whole or in part, because Plaintiff is an inadequate class representative to the claims
20 asserted.

21 **FOURTH AFFIRMATIVE DEFENSE**

22 **(Uncertifiable Putative Class)**

23 4. Defendant alleges that Plaintiff's claims, and those of the putative class members,
24 are barred because Defendant has not engaged in actions of the kind alleged that are generally
25 applicable to the putative class members, and as such, this action is not properly maintainable
26 and/or does not qualify for certification under the requirements for a class action.

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FIFTH AFFIRMATIVE DEFENSE

(No Common Questions of Law and Fact)

5. Defendant alleges that questions of law and fact common to the putative class members do not predominate over questions affecting individual members of the proposed class. Therefore, this action is not appropriate for certification as a class action.

SIXTH AFFIRMATIVE DEFENSE

(No Typicality)

6. Defendant alleges that Plaintiff's claims, and those of the putative class members, are barred, in whole or in part, because Plaintiff cannot establish that his claims are typical of those of the class and therefore the Complaint cannot proceed as a class action.

SEVENTH AFFIRMATIVE DEFENSE

(No Numerosity)

7. Defendant alleges that Plaintiff's claims, and those of the putative class members, are barred in whole or in part, because Plaintiff cannot establish that members of the class are so numerous that joinder is impracticable.

EIGHTH AFFIRMATIVE DEFENSE

(No Community of Interest)

8. Defendant alleges that the class allegations in the Complaint are improper as a matter of law because there is no community of interest in the claims asserted by Plaintiff and those of the putative class members.

NINTH AFFIRMATIVE DEFENSE

(Actions Adverse to Class Members)

9. Defendant alleges that Plaintiff's claims are barred and/or reduced by virtue of Plaintiff and his attorneys having taken actions adverse and inimical to the interests of the putative class members, and for their own benefit, and by purporting to act when Plaintiff have and had an irreconcilable conflict of interest with the putative class members, rendering any judgment, award or settlement void or voidable.

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TENTH AFFIRMATIVE DEFENSE

(No Willful Conduct)

10. Defendant alleges that even if Defendant engaged in the conduct alleged by Plaintiff, which allegations Defendant denies, such actions or failure to act were not willful.

ELEVENTH AFFIRMATIVE DEFENSE

(Adequate Remedy at Law)

11. Defendant alleges that the Complaint fails to state facts sufficient to support any granting of extraordinary or equitable relief, and otherwise has adequate remedies at law.

TWELFTH AFFIRMATIVE DEFENSE

(Lack of Standing)

12. Defendant alleges that Plaintiff lacks standing to assert some or all of the claims alleged in the Complaint either individually or as a class action.

THIRTEENTH AFFIRMATIVE DEFENSE

(Meal Period Law)

13. Defendant alleges that, pursuant to the applicable Wage Order, Defendant “authorized and permitted” Plaintiff and the putative class members to take meal periods.

FOURTEENTH AFFIRMATIVE DEFENSE

(Rest Period Law)

14. Defendant alleges that, pursuant to the applicable Wage Order, Defendant “authorized and permitted” Plaintiff and the putative class members to take rest periods.

FIFTEENTH AFFIRMATIVE DEFENSE

(Business Expense Reimbursements)

15. Defendant alleges that Plaintiff, and those of the putative class, did not incur any business expenses and therefore cannot recover damages or statutory penalties under Labor Code section 2802.

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SIXTEENTH AFFIRMATIVE DEFENSE

(No Waiting Time Penalties)

16. Defendant alleges that Plaintiff’s claims for “waiting time penalties” under Labor Code section 203 for untimely payment of wages, and those of the putative class, are barred because Defendant did not intentionally or willfully withhold payment of wages.

SEVENTEENTH AFFIRMATIVE DEFENSE

(Labor Code Section 226)

17. Defendant alleges that Plaintiff did not suffer an actual injury and therefore cannot recover damages or statutory penalties under Labor Code section 226.

EIGHTEENTH AFFIRMATIVE DEFENSE

(Penalties)

18.. Defendant alleges that the Complaint fails to allege facts sufficient to establish a claim for penalties.

NINETEENTH AFFIRMATIVE DEFENSE

(Failure to Exhaust Administrative Remedies)

19. Defendant alleges that Plaintiff’s causes of action are barred as Plaintiff has failed to satisfy the statutory prerequisites to sue and to exhaust administrative remedies under PAGA and/or any other applicable administrative remedy.

TWENTIETH AFFIRMATIVE DEFENSE

(Unmanageable PAGA Claims)

20. Defendant alleges that the Complaint fails to allege facts sufficient to establish a claim for penalties.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Attorneys’ Fees)

21. Defendant alleges that the Complaint fails to allege facts sufficient to establish a claim for attorneys’ fees.

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TWENTY-SECOND AFFIRMATIVE DEFENSE

(Attorneys’ Fees)

22. Defendant alleges that the Complaint fails to allege facts sufficient to establish a claim for attorneys’ fees.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Plaintiff Did Not Sustain Any Damages)

23. Defendant alleges that Plaintiff’s claim for prejudgment interest is barred because Plaintiff sustained no damages.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(Payment)

24. Defendant alleges that that Plaintiff and the putative class members have been paid all sums earned by them and that are due and owing to them by virtue of their performance of work as alleged in the Complaint.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Avoidable Consequences)

25. Defendant alleges that Plaintiff and putative class members are precluded from asserting the Complaint, and each purported cause of action therein, because they failed to exercise reasonable care to avoid the injuries they purportedly suffered in that, among other things, Plaintiff and putative class members unreasonably failed to utilize Defendant’s internal complaint procedures.

TWENTY-SIXTH AFFIRMATIVE DEFENSE

(Estoppel)

26. Defendant alleges that Plaintiff, by virtue of his own inequitable conduct, is estopped from recovery on the Complaint and each claim for relief therein.

TWENTY-SEVENTH AFFIRMATIVE DEFENSE

(Consent)

27. Defendant alleges that Plaintiff, at all relevant times, gave his consent, express or implied, to the alleged acts, omissions and conduct of Defendant.

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TWENTY-EIGHTH AFFIRMATIVE DEFENSE

(Laches)

28. Defendant alleges that Plaintiff’s claims as set forth in the Complaint are barred by the equitable doctrine of laches.

TWENTY-NINTH AFFIRMATIVE DEFENSE

(Unclean Hands)

29. Defendant alleges that the Complaint is barred, in its entirety, by the doctrine of unclean hands.

THIRTIETH AFFIRMATIVE DEFENSE

(Waiver)

30. Defendant alleges that the Complaint, and each purported cause of action contained therein, is barred by the doctrine of waiver.

THIRTY-FIRST AFFIRMATIVE DEFENSE

(Manageability)

31. Defendant alleges that no trial plan exists whereby Plaintiff’s claims could be managed and decided upon as class claims at trial.

THIRTY-SECOND AFFIRMATIVE DEFENSE

(Exempt)

32. Defendant alleges that Plaintiff’s claims, and those of the putative class members, are barred, in whole or in part, because Plaintiff and the putative class members were exempt from applicable California law providing for the payment of meal break, rest break and/or overtime wages and premiums as alleged in the Complaint.

THIRTY-THIRD AFFIRMATIVE DEFENSE

(Unknown Defenses)

33. Defendant alleges that they may have other separate and/or additional defenses of which it is not aware, and hereby reserves the right to assert them by amendment to this Answer as discovery continues.

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DATED: December 27, 2021

LEWIS BRISBOIS BISGAARD & SMITH LLP

By: /s/ Samuel P. Knecht
Katherine C. Den Bleyker
Samuel P. Knecht
Attorneys for Defendant
CONCRETE PLACEMENT, INC.

1 **CALIFORNIA STATE COURT PROOF OF SERVICE**

2 **ANTONIO GONZALES ET AL V KEECO LLC ET AL**
3 **Case No. CVRI2104851**

4 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

5 At the time of service, I was over 18 years of age and not a party to this action. My
6 business address is 633 West 5th Street, Suite 4000, Los Angeles, CA 90071.

7 On December 16, 2021, I served true copies of the following document(s): **DEFENDANT**
8 **KEECO LLC'S ANSWER TO PLAINTIFF ANTONIO GONZALES'S CLASS ACTION**
9 **COMPLAINT**

10 I served the documents on the following persons at the following addresses (including fax
11 numbers and e-mail addresses, if applicable):

12 Douglas Han, Esq.	Attorneys for Plaintiff, ANTONIO
13 Shunt Tatavos-Gharaie, Esq.	GONZALES
14 Chancellor D. Nobles, Esq.	
15 JUSTICE LAW CORPORATION	Tel: (818) 230-7502
16 751 N. Fair Oaks Avenue, Suite 101	Fax: (818) 230-7259
17 Pasadena, CA 91103	dhan@justicelawcorp.com
	statavos@justicelawcorp.com
	cnobles@justicelawcorp.com

18 The documents were served by the following means:

19 ☒ (BY U.S. MAIL) I enclosed the documents in a sealed envelope or package addressed to
20 the persons at the addresses listed above and:

21 ☒ Placed the envelope or package for collection and mailing, following our ordinary
22 business practices. I am readily familiar with the firm's practice for collection and processing
23 correspondence for mailing. Under that practice, on the same day that correspondence is placed
24 for collection and mailing, it is deposited in the ordinary course of business with the U.S. Postal
25 Service, in a sealed envelope or package with the postage fully prepaid.

26 ☒ (BY ELECTRONIC TRANSMISSION ONLY) Only by e-mailing the document(s) to the
27 persons at the e-mail address(es) listed above based on notice provided on March 16, 2020
28 that, during the Coronavirus (COVID-19) pandemic, this office will be working remotely,
not able to send physical mail as usual, and is therefore using only electronic mail. No
electronic message or other indication that the transmission was unsuccessful was received
within a reasonable time after the transmission.

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

Executed on December 16, 2021, at Los Angeles, California.

Beatrice Hilke

EXHIBIT 6

FILED

SUPERIOR COURT OF CALIFORNIA
COUNTY OF ORANGE
CENTRAL JUSTICE CENTER

OCT 25 2022

DAVID H. YAMASAKI, Clerk of the Court

BY: _____, DEPUTY

1 DAVID G. SPIVAK (SBN 179684)

david@spivaklaw.com

2 CHRISTINA J. PREJEAN (SBN 314772)

christina@spivaklaw.com

3 THE SPIVAK LAW FIRM

8605 Santa Monica Blvd., PMB42554

4 West Hollywood, CA 90069

5 Telephone: (310) 499-4730

6 Facsimile: (310) 499-4739

7 Attorneys for Plaintiff,

MICHAEL CANTRELL and all others similarly situated

8 (Additional Counsel on Following Page)

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **FOR THE COUNTY OF ORANGE**
12 **(UNLIMITED JURISDICTION)**

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

17 *Plaintiff,*

18 vs.

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

22 *Defendants.*

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

CLASS ACTION

**AMENDMENT TO COMPLAINT RE:
FICTITIOUS NAMES FOR DEFENDANT
DOE 1**

[Cal. Code Civ. Proc. §§ 471.5, 472, 473, 474]

Action filed: 10/07/2021



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28 Office:
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1 TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

2 Upon the filing of the Complaint and First Amended Complaint, the Plaintiff, being
3 ignorant of the true name of the defendants and having designated the defendant in the
4 complaint by the fictitious name of "DOE 1" and having discovered the true name of the
5 defendant to be "COLLIN FLEMING, an individual" amends the complaint by substituting
6 the true name for the fictitious name wherever it appears in the First Amended Complaint.

7 Respectfully submitted,

8

9

THE SPIVAK LAW FIRM

10

11 Dated: October 25, 2022

By 

DAVID SPIVAK,
CHRISTINA PREJEAN, Attorneys for
Plaintiff, MICHAEL CANTRELL, and all
others similarly situated

12

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17

18 IT IS SO ORDERED.

19

DATE: 10-25-22

20



HON. WILLIAM D. CLASTER

21

22



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28

EXHIBIT 7

1 DAVID G. SPIVAK (SBN 179684)
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2 CHRISTINA J. PREJEAN (SBN 314772)
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7 Attorneys for Plaintiff,
MICHAEL CANTRELL and all others similarly situated
8 (Additional attorney for Plaintiff on the following page)

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

12 MICHAEL CANTRELL, on behalf of
13 himself, all others similarly situated, and as an
14 “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
19 California corporation; COLLIN FLEMING;
20 and DOES 2–50, inclusive,

21 *Defendants.*

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

CLASS ACTION

**~~PROPOSED~~ SECOND AMENDED
COMPLAINT FOR:**

1. Failure to Provide Rest Periods (Lab. Code §§ 226.7, 558.1 and 1198);
2. Failure to Provide Meal Periods (Lab. Code §§ 226.7, 512, 558.1 and 1198);
3. Failure to Pay All Wages Earned for All Hours Worked at the Correct Rates of Pay (Lab. Code §§ 204, 510, 558, 1194, 1197, 1197.1 and 1198)
4. Failure to Reimburse for Expenses (Lab. Code §§ 1198 and 2802);
5. Wage Statement Penalties (Lab. Code §§ 226 and 558);
6. Waiting Time Penalties (Lab. Code §§ 201, 202, 203 and 558.1;
7. Unfair Competition (Bus. & Prof. Code §§ 17200, et seq.); and
8. Civil Penalties (Lab. Code §§ 2698, et seq.).

JURY TRIAL DEMANDED



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ADDITIONAL ATTORNEY FOR PLAINTIFF

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

3 INTRODUCTION

4 1. Plaintiff brings this class and representative action against Defendants
5 CONCRETE PLACEMENT, INC., a California corporation; COLLIN FLEMING; and DOES 2–
6 50, inclusive (collectively “Defendants”) for alleged violations of the California Labor Code,
7 Industrial Welfare Commission Order No. 16–2001 (hereafter “the Wage Order”), and the
8 Business and Professions Code.

9 2. As set forth in more detail below, Plaintiff alleges that Defendants are liable to
10 him and other similarly situated current and former employees in California for unpaid wages and
11 other related relief. These claims are based on Defendants’ failures to: (1) Provide all rest periods;
12 (2) Provide all meal periods; (3) Pay all wages, including minimum, regular, overtime and
13 doubletime wages, earned for all hours worked at the correct rates of pay; (4) Failure to pay all
14 wages earned for all hours worked at the correct rates of pay; (5) Failure to reimburse for
15 expenses; (6) Issue accurate and complete itemized written wage statements; (7) Timely pay all
16 wages upon termination of employment; and (8) Fairly compete. Accordingly, Plaintiff now seeks
17 to recover unpaid wages, statutory penalties, interest, and related relief through this class action.
18 Additionally, Plaintiff seeks civil penalties under the California Labor Code Private Attorneys
19 General Act, Labor Code §§ 2698, *et seq.* (“PAGA”). Accordingly, Plaintiff now seeks to recover
20 civil penalties and related relief through this class and representative action.

21 JURISDICTION AND VENUE

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

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

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

28 6. Venue is proper in Orange County pursuant to California Code of Civil



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1 Procedure § 395(a) and § 395.5 in that liability arose in Orange County because at least some
2 of the transactions that are the subject matter of this Complaint occurred therein and/or because
3 each defendant is found, maintains offices, transacts business, and/or has an agent therein.

4 PARTIES

5 7. Plaintiff MICHAEL CANTRELL is a resident of the State of South Carolina. At
6 all relevant times, Plaintiff was an “employee” within the meaning of Title 8 California Code of
7 Regulations Section 11160 and an “aggrieved employee” within the meaning of Labor Code
8 Section 2699(c).

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

12 9. Defendant COLLIN FLEMING is an individual and a citizen of the State of
13 California based on Plaintiff’s information and belief.

14 10. In relevant part, California Labor Code § 558.1 states:

15 (a) Any employer or other person acting on behalf of an employer, who
16 violates, or causes to be violated, any provision regulating minimum wages
17 or hours and days of work in any order of the Industrial Welfare
18 Commission, or violates, or causes to be violated, §§ 203, 226, 226.7,
19 1193.6, 1194, or 2802, may be held liable as the employer for such
20 violation.

21 (b) For purposes of this section, the term “other person acting on behalf
22 of an employer” is limited to a natural person who is an owner, director,
23 officer, or managing agent of the employer, and the term “managing
24 agent” has the same meaning as in subdivision (b) of § 3294 of the Civil
25 Code.

26 11. Based on Plaintiffs’ information and belief, Defendant COLLIN FLEMING is
27 natural person and an owner, director, officer, and/or managing agent of Defendant CONCRETE
28 PLACEMENT, INC., who directly or indirectly, or through an agent or any other person,
employed or exercised control over the wages, hours, or working conditions of Plaintiffs and the
Class. Therefore, he is liable to Plaintiff and the Class for his violations of, or causing Defendants
to violate the Labor Code and the Wage Order pursuant to Labor Code section 558.1.



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heavy equipment operators, field workers, machine operators, construction workers, and persons in similar positions., individuals performing work comparable to the aforementioned, and individuals in similar positions at any time during the period beginning four years prior to the filing of this action and ending on the date that final judgment is entered in this action (“Class” or “Class Members”).

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

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

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

A. Whether Defendants failed to pay all wages, including minimum, regular, overtime and doubletime wages, earned for all hours worked at the correct rates of pay;

B. Whether Defendants failed to pay all wages earned for all hours worked at the correct rates of pay;

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

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

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

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

G. Whether Defendants engaged in unfair competition within the meaning of



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1 Business and Professions Code §§ 17200, et seq., with respect to the Class Members; and

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

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

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

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

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

27 **STATEMENT OF FACTS**

28 25. On approximately May 15, 2014, Plaintiff began working for Defendants as a



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1 heavy equipment operator in the city of Santa Ana. Defendants continuously employed him in
2 that capacity until on or about March 15, 2021, when Plaintiff's employment ended.

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

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

14 28. Defendants failed to compensate Plaintiff and the Class Members for all hours
15 worked at the correct rates of pay, including overtime. Plaintiff and the Class Members often
16 worked seven (7) days in a workweek, and between eight (8) and sixteen (16) hours per workday.
17 At all relevant times, Plaintiff and the Class Members worked over eight (8) hours in one
18 workday and over forty (40) hours in one workweek. Defendants, however, failed to pay Plaintiff
19 and the Class Members overtime wages at least one and a half times their hourly rates of pay for
20 all hours in excess of forty (40) in a week, all hours in excess of eight (8) in a day, and all hours
21 on the seventh (7th) day worked in a workweek. Additionally, Defendants failed to pay Plaintiff
22 and the Class Members at least twice their hourly rates of pay when they worked over twelve
23 (12) hours in a workday or for hours in excess of eight (8) on the seventh (7th) workday of the
24 workweek.

25 29. Moreover, Defendants failed to authorize and permit rest periods to Plaintiff and
26 the Class Members in violation of California law. Defendants required Plaintiff and the Class
27 Members to continuously monitor concrete and failed to authorize and permit Plaintiff and the
28 Class Members to take ten-minute, paid, duty-free rest periods every four hours worked or major



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1 fraction thereof. Defendants often required Plaintiff and the Class Members to work in excess of
2 12 hours in a day, but failed to provide 3 duty-free, 10-minute rest periods. Defendants did not
3 seek an exemption from the rest period protections of the Wage Order from the California
4 Divisions of Labor Standards Enforcement.

5 30. Defendants failed to pay premium wages for days on which they failed to provide
6 Plaintiff and the other Class Members with timely meal periods. Defendants also failed to pay
7 premium wages for days on which they failed to provide Plaintiff and the other Class Members
8 with timely rest periods.

9 31. At all relevant times, Defendants required Plaintiff and the Class Members to
10 incur certain business expenses in the course of performing their duties. Defendants required
11 Plaintiff and the Class Members to supply mobile phones to perform their job duties, but
12 Defendants did not provide these items or reimburse Plaintiff and the Class Members for these
13 items. Defendant also required Plaintiff and the Class Members to use these personal mobile
14 phones to communicate with their managers and other individuals. Defendants failed to provide
15 these phones or reimburse Plaintiff and the Class Members for phone usage.

16 32. Defendants failed to maintain accurate employee records of Plaintiff and the Class
17 Members. Defendants failed to maintain accurate and complete records of Plaintiff's and the
18 Class Members' meal periods and rest periods, as well as the premium wages they earned for
19 missed meal and rest periods.

20 33. Defendant failed to timely pay Plaintiff and the Class Members all earned wages
21 during and at the conclusion of employment.

22 34. Defendants failed to issue to Plaintiff and the Class Members complete and
23 accurate wage statements that state all hours worked at the correct rates of pay, and all wages
24 earned. Defendants knowingly and intentionally failed to state on the wage statements they issued
25 to Plaintiff and the Class Members all meal period premium wages earned and all rest break
26 premium wages earned. Defendants also failed to timely pay Plaintiff and the Class Members all
27 earned wages described above at the conclusion of employment.

28 //



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1 **FIRST CAUSE OF ACTION**

2 **FAILURE TO PROVIDE REST PERIODS**

3 **(Lab. Code §§ 226.7, 558.1 and 1198)**

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

5 35. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

6 36. At all relevant times during the applicable limitations period, Plaintiff and the
7 Class Members have been employees of Defendants and entitled to the benefits and protections
8 of California Labor Code §§ 226.7, 558.1, 1198, and the Wage Order.

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

12 38. In relevant part, § 12 of the Wage Order states:

13 **Rest Periods**

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

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

22 39. In relevant part, California Labor Code § 226.7 states:

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

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



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

4 41. In relevant part, Labor Code § 558.1 states

5 a.) Any employer or other person acting on behalf of an
6 employer, who violates, or causes to be violated, any provision
7 regulating minimum wages or hours and days of work in any order
8 of the Industrial Welfare Commission, or violates, or causes to be
9 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
10 held liable as the employer for such violation

11 b.) For purposes of this section, the term “other person acting
12 on behalf of an employer” is limited to a natural person who is an
13 owner, director, officer, or managing agent of the employer, and the
14 term “managing agent” has the same meaning as in subdivision (b)
15 of Section 3294 of the Civil Code.

16 42. At all relevant times, Defendant COLLIN FLEMING was an employer of Plaintiff
17 and all of the other Class Members, and/or “owner,” “managing agent,” and/or “officer” of the
18 Defendants and the other employers identified above. Defendant COLLIN FLEMING directly
19 or indirectly, or through an agent or other person, employed and exercised control over the wages,
20 hours, and/or working conditions of the Class Members, and caused the violations to the Labor
21 Code and the Wage Order described above. On behalf of himself and all of the other Class
22 Members, Plaintiff seeks an award of unpaid wages, interest, restitution, statutory penalties,
23 liquidated damages, attorneys’ fees, costs, and related relief against Defendant COLLIN
24 FLEMING that is the same as the award of against the other Defendants on the same grounds for
25 which Plaintiff seeks against the Defendants.

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

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



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the second meal period may be waived by mutual consent of the employer and the employee only if the first meal period was not waived.

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

Meal Periods

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

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

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

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

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

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

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

56. In relevant part, Labor Code § 558.1 states

(c) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision



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1 regulating minimum wages or hours and days of work in any order
2 of the Industrial Welfare Commission, or violates, or causes to be
3 violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be
4 held liable as the employer for such violation

5 (d) For purposes of this section, the term “other person acting
6 on behalf of an employer” is limited to a natural person who is an
7 owner, director, officer, or managing agent of the employer, and the
8 term “managing agent” has the same meaning as in subdivision (b)
9 of Section 3294 of the Civil Code.

10 57. At all relevant times, Defendant COLLIN FLEMING was an employer of Plaintiff
11 and all of the other Class Members, and/or “owner,” “managing agent,” and/or “officer” of the
12 Defendants and the other employers identified above. Defendant COLLIN FLEMING directly
13 or indirectly, or through an agent or other person, employed and exercised control over the wages,
14 hours, and/or working conditions of the Class Members, and caused the violations to the Labor
15 Code and the Wage Order described above. On behalf of himself and all of the other Class
16 Members, Plaintiff seeks an award of unpaid wages, interest, restitution, statutory penalties,
17 liquidated damages, attorneys’ fees, costs, and related relief against Defendant COLLIN
18 FLEMING that is the same as the award of against the other Defendants on the same grounds for
19 which Plaintiff seeks against the Defendants.

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

24 59. Plaintiff is informed and believes and thereon alleges that, at all relevant times
25 within the applicable limitations period, Defendants had a policy, practice, or a lack of a policy
26 which resulted in Defendants not providing the Class with all off-duty meal periods and rest
27 breaks required by California law.

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

61. By reason of the above, pursuant to California Labor Code § 226.7, Plaintiff and



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1 the Class Members are entitled to premium wages for workdays in which one or more off-duty
2 meal periods were not provided to them.

3
4 **THIRD CAUSE OF ACTION**

5 **FAILURE TO PAY ALL WAGES EARNED FOR ALL HOURS WORKED**

6 **(Lab. Code §§ 204, 510, 558, 1194, 1197, 1197.1 and 1198)**

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

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

9 63. At all relevant times, Plaintiff and the other Class Members have been non-exempt
10 employees of Defendants and entitled to the benefits and protections of California Labor Code
11 §§ 204, 510, 558, 1194, 1197, 1197.1 and 1198 and the Wage Order.

12 64. § 2 of the Wage Order defines “hours worked” as “the time during which an
13 employee is subject to the control of an employer, and includes all the time the employee is
14 suffered or permitted to work, whether or not required to do so.”

15 65. § 3 of the Wage Order states:

16 (A) Daily Overtime - General Provisions

17 (1) The following overtime provisions are applicable to employees 18 years of
18 age or over and to employees 16 or 17 years of age who are not required by law
19 to attend school and are not otherwise prohibited by law from engaging in the
20 subject work. Such employees shall not be employed more than eight (8) hours in
21 any workday or more than 40 hours in any workweek unless the employee
22 receives one and one-half (1 ½) times such employee’s regular rate of pay for all
23 hours worked over 40 hours in the workweek. Eight (8) hours of labor constitutes
24 a day’s work. Employment beyond eight (8) hours in any workday or more than
25 six (6) days in any workweek is permissible provided the employee is
26 compensated for such overtime at not less than:

27 (a) One and one-half (1 ½) times the employee’s regular rate of pay for all hours
28 worked in excess of eight (8) hours up to and including 12 hours in any workday,
and for the first eight (8) hours worked on the seventh (7th) consecutive day of
work in a workweek.

(b) Double the employee’s regular rate of pay for all hours worked in excess of
12 hours in any workday and for all hours worked in excess of eight (8) hours on
the seventh (7th) consecutive day of work in a workweek.



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(c) The overtime rate of compensation required to be paid to a nonexempt full-time salaried employee shall be computed by using the employee's regular hourly salary as one-fortieth (1/40) of the employee's weekly salary.

66. Section 4 of the Wage Order requires an employer to pay non-exempt employees at least the minimum wage set forth therein for all hours worked, which consists of all hours that an employer has actual or constructive knowledge that employees are working.

67. Labor Code § 204 states

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

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

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

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

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

68. Labor Code § 510 states:

Eight hours of labor constitutes a day's work. Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee. Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in excess of eight hours on any seventh day of a workweek shall be compensated at the rate of no less than twice the regular rate of pay of an employee. Nothing in this § requires an employer to combine more than one rate of overtime compensation in order to calculate the amount to be paid to an employee for any hour of overtime work.



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1 69. Labor Code § 1194 invalidates any agreement between an employer and an
2 employee to work for less than the minimum wage required under the applicable Wage Order.

3 70. Labor Code § 1197 makes it unlawful for an employer to pay an employee less
4 than the minimum wage required under the applicable Wage Order for all hours worked during a
5 payroll period.

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

8 72. In conjunction, these provisions of the Labor Code require employers to pay non-
9 exempt employees no less than their agreed-upon or statutorily mandated wage rates for all hours
10 worked, including unrecorded hours when the employer knew or reasonably should have known
11 that employees were working during those hours. (See *Morillion v. Royal Packing Co.* (2000) 22
12 Cal.4th 575, 585.)

13 73. At all relevant times during the applicable limitations period, Defendants failed to
14 compensate Plaintiff and the Class Members for all hours worked, including, but not limited to
15 overtime wages for all overtime hours they worked at the correct rates of pay, including overtime
16 wages for the hours worked on the seventh (7th) consecutive day, and twice their hourly rates of
17 pay for all hours worked in excess of twelve (12) hours in a workday. Defendants also failed to
18 compensated Plaintiff and the Class Members for all off-the-clock hours they worked at the
19 correct rates of pay.

20 74. Plaintiff is informed and believes and thereon alleges that, at all relevant times,
21 Defendants maintained a policy and/or practice, or lack thereof, which resulted in Defendants'
22 failure to compensate Plaintiff and the other Class Members for all hours worked as required by
23 California law.

24 75. In relevant part, California Labor Code § 558.1 states:

25 (e) Any employer or other person acting on behalf of an employer, who
26 violates, or causes to be violated, any provision regulating minimum wages or
27 hours and days of work in any order of the Industrial Welfare Commission, or
28 violates, or causes to be violated, §§ 203, 226, 226.7, 1193.6, 1194, or 2802, may
be held liable as the employer for such violation.

(f) For purposes of this section, the term "other person acting on behalf of
an employer" is limited to a natural person who is an owner, director, officer, or



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managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of § 3294 of the Civil Code.

76. At all relevant times, Defendant COLLIN FLEMING was an employer of Plaintiff and all of the other Class Members, and/or “owner,” “managing agent,” and/or “officer” of the Defendants and the other employers identified above. Defendant COLLIN FLEMING directly or indirectly, or through an agent or other person, employed and exercised control over the wages, hours, and/or working conditions of the Class Members, and caused the violations to the Labor Code and the Wage Order described above. On behalf of himself and all of the other Class Members, Plaintiff seeks an award of unpaid wages, interest, restitution, statutory penalties, liquidated damages, attorneys’ fees, costs, and related relief against Defendant COLLIN FLEMING that is the same as the award of against the other Defendants on the same grounds for which Plaintiff seeks against the Defendants.

77. As a result of Defendants’ unlawful conduct, Plaintiff and the other Class Members have suffered damages, in an amount subject to proof, to the extent they were not paid the full amount of wages earned during each pay period during the applicable limitations period, including minimum and overtime wages.

78. Pursuant to Labor Code § 1194, Plaintiff, on behalf of herself and Class Members, seeks to recover unpaid wages, liquidated damages in amounts equal to the amounts of unpaid wages, interest thereon, and awards of reasonable costs and attorneys’ fees, all in amounts subject to proof.

FOURTH CAUSE OF ACTION

FAILURE TO REIMBURSE FOR EXPENSES

(Lab. Code §§ 1198 and 2802)

(By Plaintiff and the Class against Defendants)

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

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

81. In pertinent part, California Labor Code § 2802(a) states, “[a]n employer shall indemnify his or her employee[s] for all necessary expenditures incurred by the employee in direct



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1 consequence of the discharge of his or her duties.”

2 82. California Labor Code § 1198 prohibits employers from employing their
3 employees under conditions prohibited by the Wage Order.

4 83. At all relevant times during the applicable limitations period, Defendants required
5 Plaintiff and the Class Members to supply mobile phones to perform their job duties, but
6 Defendants did not provide these items or reimburse Plaintiff and the Class Members for these
7 items. Defendant also required Plaintiff and the Class Members to use these personal mobile
8 phones to communicate with their managers and other individuals. Defendants failed to provide
9 these phones or reimburse Plaintiff and the Class Members for phone usage

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

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

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

21
22 **FIFTH CAUSE OF ACTION**

23 **FAILURE TO PROVIDE ACCURATE WRITTEN WAGE STATEMENTS**

24 **(Lab. Code § 226 and 558.1)**

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

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

27 88. At all relevant times during the applicable limitations period, Plaintiff and the
28 other Class Members have been employees of Defendants and entitled to the benefits and
protections of California Labor Code §§ 226 and 558.1.



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

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

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

27 91. Pursuant to California Labor Code § 226(e), an employee is deemed to suffer
28 injury if the employer fails to provide a wage statement. Also, an employee is deemed to suffer



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injury if the employer fails to provide accurate and complete information as required by California Labor Code § 226(a) and the employee cannot “promptly and easily determine” from the wage statement alone one or more of the following:

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

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

C. The name and address of the employer and, if the employer is a farm labor contractor, as defined in subdivision (b) of § 1682 of the California Labor Code, the name and address of the legal entity that secured the services of the employer during the pay period; and

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

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

93. In relevant part, Labor Code § 558.1 states

(g) Any employer or other person acting on behalf of an employer, who violates, or causes to be violated, any provision regulating minimum wages or hours and days of work in any order of the Industrial Welfare Commission, or violates, or causes to be violated, Sections 203, 226, 226.7, 1193.6, 1194, or 2802, may be held liable as the employer for such violation

(h) For purposes of this section, the term “other person acting on behalf of an employer” is limited to a natural person who is an owner, director, officer, or managing agent of the employer, and the term “managing agent” has the same meaning as in subdivision (b) of Section 3294 of the Civil Code.

94. At all relevant times, Defendant COLLIN FLEMING was an employer of Plaintiff and all of the other Class Members, and/or “owner,” “managing agent,” and/or “officer” of the



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1 Defendants and the other employers identified above. Defendant COLLIN FLEMING directly
2 or indirectly, or through an agent or other person, employed and exercised control over the wages,
3 hours, and/or working conditions of the Class Members, and caused the violations to the Labor
4 Code and the Wage Order described above. On behalf of himself and all of the other Class
5 Members, Plaintiff seeks an award of unpaid wages, interest, restitution, statutory penalties,
6 liquidated damages, attorneys' fees, costs, and related relief against Defendant COLLIN
7 FLEMING that is the same as the award of against the other Defendants on the same grounds for
8 which Plaintiff seeks against the Defendants.

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

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

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



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1 inaccurate information about wages to state and federal government agencies. Further, Plaintiff
2 and the other Class Members were not able to ascertain from the wage statements whether
3 Defendants complied with their obligations under California Labor Code § 226(a).

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

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

13 **SIXTH CAUSE OF ACTION**

14 **WAITING TIME PENALTIES**

15 **(Lab. Code §§ 201, 202, 203, and 558.1)**

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

17 100. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

18 101. At all relevant times during the applicable limitations period, Plaintiff and the
19 Class have been non-exempt employees of Defendants and entitled to the benefits and
20 protections of California Labor Code §§ 201, 202, 203, and 558.1 and the Wage Order.

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

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

27 104. In relevant part, Labor Code § 558.1 states

28 (i) Any employer or other person acting on behalf of an employer,
who violates, or causes to be violated, any provision



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1 regulating minimum wages or hours and days of work in
2 any order of the Industrial Welfare Commission, or violates,
3 or causes to be violated, Sections 203, 226, 226.7, 1193.6,
4 1194, or 2802, may be held liable as the employer for such
5 violation

6 (j) For purposes of this section, the term “other person acting
7 on behalf of an employer” is limited to a natural person who
8 is an owner, director, officer, or managing agent of the
9 employer, and the term “managing agent” has the same
10 meaning as in subdivision (b) of Section 3294 of the Civil
11 Code.

12 105. At all relevant times, Defendant COLLIN FLEMING was an employer of Plaintiff
13 and all of the other Class Members, and/or “owner,” “managing agent,” and/or “officer” of the
14 Defendants and the other employers identified above. Defendant COLLIN FLEMING directly
15 or indirectly, or through an agent or other person, employed and exercised control over the wages,
16 hours, and/or working conditions of the Class Members, and caused the violations to the Labor
17 Code and the Wage Order described above. On behalf of himself and all of the other Class
18 Members, Plaintiff seeks an award of unpaid wages, interest, restitution, statutory penalties,
19 liquidated damages, attorneys’ fees, costs, and related relief against Defendant COLLIN
20 FLEMING that is the same as the award of against the other Defendants on the same grounds for
21 which Plaintiff seeks against the Defendants.

22 106. By failing to pay earned minimum and premium wages to Plaintiff and the Class,
23 Defendants failed to timely pay them all earned and unpaid wages in violation of Labor Code
24 § 201 or § 202.

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

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

109. Defendants failed to pay Plaintiff and the Class Members whose employment



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

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

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

SEVENTH CAUSE OF ACTION

UNFAIR COMPETITION

(Bus. & Prof. Code §§ 17200, et seq.)

(By Plaintiff and the Class against all Defendants)

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

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

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



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1 per day.

2 115. As a result of Defendants' unfair competition as herein alleged, Plaintiff and the
3 other Class Members have suffered injuries in fact and lost money or property. Defendants
4 deprived Plaintiff and the other Class Members of minimum, overtime, off-the-clock, and
5 premium wages that Plaintiff and the other Class Members incurred during the course of
6 performing their duties. Defendants also failed to reimburse Plaintiff and the other Class Members
7 for necessary business expenses, such as, but not limited to personal cell phone usage and mobile
8 phones.

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

13 117. Plaintiff and the other Class Members are entitled to reasonable attorneys' fees in
14 connection with their unfair competition claims pursuant to California Code of Civil Procedure
15 § 1021.5, the substantial benefit doctrine and/or the common fund doctrine.

16
17 **EIGHTH CAUSE OF ACTION**

18 **CIVIL PENALTIES**

19 **(Lab Code §§2698, *et seq.*)**

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

21 118. Plaintiff incorporates all paragraphs of this Complaint as if fully alleged herein.

22 119. The "Aggrieved Employees" are all members of the Class defined above who
23 Defendants employed during the period beginning January 10, 2020, and ending on the date that
24 final judgment is entered in this action.

25 120. Labor Code § 204 states

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

(b) (1) Notwithstanding any other provision of this section, all wages



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1 earned for labor in excess of the normal work period shall be paid no later than the
2 payday for the next regular payroll period.

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

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

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

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

19 122. During the applicable time period, Defendants violated California Labor Code §§
20 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198, and 2802.

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

24 124. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiff and the Class are
25 entitled to recover civil penalties for each of the Defendants' violations of California Labor Code
26 §§ 201, 202, 203, 204, 226, 226.7, 510, 512, 558, 1194, 1197, 1197.1, 1198 and 2802 during the
27 applicable limitations period in the following amounts:

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

 B. For violations of California Labor Code § 226(a), two hundred fifty dollars
 (\$250.00) for each Aggrieved Employee for initial violation and one thousand dollars (\$1,000.00)



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1 for each Aggrieved Employee for each subsequent violation (penalty amounts established by
2 California Labor Code § 226.3).

3 C. For violations of California Labor Codes §§ 510 and 512, fifty dollars
4 (\$50.00) for each Aggrieved Employee for initial violation and one hundred dollars (\$100.00) for
5 each Aggrieved Employee for each subsequent violation, per pay period (penalty amounts
6 established by California Labor Code § 558).

7 D. For violations of California Labor Codes §§ 201, 202, 203, 226.7, 1194,
8 1198, and 2802 one hundred dollars (\$100.00) for each Aggrieved Employee per pay period for
9 each initial violation and two hundred dollars (\$200.00) for each Aggrieved Employee per pay
10 period for each subsequent violation (penalty amounts established by California Labor Code §
11 2699(f)(2)).

12 E. For violations of California Labor Code § 1197, one hundred dollars
13 (\$100.00) for each Aggrieved Employee per pay period for each initial violation and two hundred
14 fifty dollars (\$250.00) for each underpaid aggrieved employee for each subsequent violation per
15 pay period (regardless of whether the initial violations were intentionally committed), in addition
16 to an amount sufficient to recover underpaid wages, liquidated damages pursuant to Section
17 1194.2, and any applicable penalties imposed pursuant to Section 203 (penalties set by Labor
18 Code § 1197.1).

19 F. For violations of California Labor Code § 1198, one hundred dollars
20 (\$100.00) for each Aggrieved Employee per pay period for each initial violation and two hundred
21 dollars (\$200.00) for each aggrieved employee for each subsequent violation, per pay period
22 (penalties set by Labor Code § 2699(f)(2)).

23 125. Plaintiff has complied with the procedures for bringing suit specified in California
24 Labor Code § 2699.3. By letter dated August 18, 2021, Plaintiff filed written notice online with
25 the Labor and Workforce Development Agency (“LWDA”) and gave written notice by certified
26 mail to Defendants of the specific provisions of the California Labor Code alleged to have been
27 violated, including the facts and theories to support the alleged violations. A true and correct copy
28 of the notice to the LWDA dated August 18, 2021, is attached as **Exhibit A**. Plaintiff accompanied



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1 his LWDA notice with a fee in the amount of \$75.00. The LWDA has failed to take action in
2 response within 65 calendar days of the date of Plaintiff's notice, but Plaintiff anticipates that the
3 LWDA will provide written notice to Plaintiff informing him that it does not intend to investigate
4 these allegations.

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

8 **PRAYER FOR RELIEF**

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

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

27 **DEMAND FOR JURY TRIAL**

28 Plaintiff, on behalf of himself and all others similarly situated, hereby demands a jury trial



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1 on all issues so triable.

2
3 Respectfully submitted,

4 THE SPIVAK LAW FIRM

5 Dated: 11 / 02 / 2022

6 By 
7 DAVID G. SPIVAK,
8 CHRISTINA J. PREJEAN, Attorneys for
9 Plaintiff, MICHAEL CANTRELL, and all
10 others similarly situated
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EXHIBIT A



SPIVAK LAW

SENT BY ELECTRONIC SUBMISSION, CERTIFIED MAIL, AND EMAIL

August 18, 2021

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

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

To Whom It May Concern:

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

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

Statement of Facts

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Wage Order

The Wage Order applies to

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

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

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

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

Wage Order, § 2(C).

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

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

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

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

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

In relevant part, Labor Code section 512 states:

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

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

Meal Periods:

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

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

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

In addition, Labor Code section 226.7 states:

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

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

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

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

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

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

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

Section 2(J) of the Wage Order states,

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

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

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

Rest Periods:

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

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

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

In addition, Labor Code section 226.7 states:

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

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

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

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

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

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

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

Additionally, the Wage Order states,

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

Wage Order, §§ 9(A) and (B).

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Labor Code § 2350 states,

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

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

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

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

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

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

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

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

Every person employing labor in this state shall:

...

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

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

Labor Code section 1174.5 states:

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

Section 6 of Wage Order states,

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

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

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

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

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

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

Conclusion

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

Sincerely,



David Spivak, Esq.

David@spivaklaw.com

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

Concrete Placement, Inc.
c/o Olivia B. Perry Esq.
Lewis Brisbois Bisgaard & Smith LLP
633 West 5th Street
Suite 4000
Los Angeles, CA 90071
Olivia.Perry@lewisbrisbois.com

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1. I am a citizen of the United States and am employed in the County of Los Angeles, State of California. I am over the age of 18 years, and not a party to the within action. My business address is 1801 Century Park East 25th Fl Los Angeles CA 90067.

On Tuesday, November 29, 2022, I served the foregoing document described as **SECOND AMENDED COMPLAINT** on interested parties by electronic mail, addressed as follows:

XXXX (BY EMAIL) I caused the documents to be sent to the persons at the electronic service addresses listed above from my electronic service address emily@spivaklaw.com.

XXXX (State) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

____ (Federal) I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.


EMILY HONG LY

EXHIBIT 8

LEWIS BRISBOIS BISGAARD & SMITH LLP

KATHERINE C. DEN BLEYKER, SB# 257187

E-Mail: Katherine.DenBleyker@lewisbrisbois.com

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633 West 5th Street, Suite 4000

Los Angeles, California 90071

Telephone: 213.250.1800

Facsimile: 213.250.7900

Attorneys for Defendants CONCRETE
PLACEMENT, INC. and COLLIN FLEMING

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ORANGE

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

Plaintiff,

vs.

CONCRETE PLACEMENT, INC., a
California corporation; COLLIN FLEMING;
and DOES 2–50, inclusive,

Defendants.

CASE NO. 30-2021-01225534-CU-OE-CXC

Assigned for All Purposes To:
Hon. William Claster
Dept. CX104

**DEFENDANTS’ ANSWER TO
PLAINTIFF’S SECOND AMENDED
CLASS ACTION COMPLAINT**

Action Filed: October 7, 2021
FAC Filed: October 22, 2021
SAC Filed: November 29, 2022
Trial Date: None Set

Defendants CONCRETE PLACEMENT, INC. and COLLIN FLEMING (“Defendants”) hereby submit their Answer to Plaintiff MICHAEL CANTRELL’S (“Plaintiff”) Class Action Complaint (“Complaint”), as follows:

GENERAL DENIAL

1. Under the provisions of section 431.30 of the California Code of Civil Procedure, Defendants deny each, every, and all of the allegations of the Complaint, and the whole thereof, and deny that Plaintiff has sustained damages in the sums alleged, or in any other sum, or at all.

2. Further answering Plaintiff’s Complaint, and the whole thereof, Defendants deny that Plaintiff has sustained any injury, damage, or loss, if any, by reason of any act, omission or negligence on the part of Defendants or their agents or employees.

1 **AFFIRMATIVE DEFENSES**

2 **FIRST AFFIRMATIVE DEFENSE**

3 **(Failure to State a Cause of Action)**

4 1. Defendants allege that neither the Complaint nor any purported cause of action
5 alleged therein state claims upon which relief can be granted.

6 **SECOND AFFIRMATIVE DEFENSE**

7 **(Statute of Limitations)**

8 2. Defendants allege that Plaintiff's claims, and those of the putative class, are barred,
9 in whole or in part, to the extent the events complained of took place more than one (1) year, three
10 (3) years, or (4) four years prior to the filing of the Complaint, and thus Plaintiff's and the putative
11 class members' claims are barred by Code of Civil Procedure sections 338 and 340; Business and
12 Professions Code section 17200, et seq.; and Labor Code section 203 respectively.

13 **THIRD AFFIRMATIVE DEFENSE**

14 **(Inadequate Class Representative)**

15 3. Defendants allege that Plaintiff's claims, and those of the putative class members,
16 are barred, in whole or in part, because Plaintiff is an inadequate class representative to the claims
17 asserted.

18 **FOURTH AFFIRMATIVE DEFENSE**

19 **(Uncertifiable Putative Class)**

20 4. Defendants allege that Plaintiff's claims, and those of the putative class members,
21 are barred because Defendants have not engaged in actions of the kind alleged that are generally
22 applicable to the putative class members, and as such, this action is not properly maintainable and/or
23 does not qualify for certification under the requirements for a class action.

24 **FIFTH AFFIRMATIVE DEFENSE**

25 **(No Common Questions of Law and Fact)**

26 5. Defendants allege that questions of law and fact common to the putative class
27 members do not predominate over questions affecting individual members of the proposed class.
28 Therefore, this action is not appropriate for certification as a class action.

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SIXTH AFFIRMATIVE DEFENSE

(No Typicality)

6. Defendants allege that Plaintiff’s claims, and those of the putative class members, are barred, in whole or in part, because Plaintiff cannot establish that his claims are typical of those of the class and therefore the Complaint cannot proceed as a class action.

SEVENTH AFFIRMATIVE DEFENSE

(No Numerosity)

7. Defendants allege that Plaintiff’s claims, and those of the putative class members, are barred in whole or in part, because Plaintiff cannot establish that members of the class are so numerous that joinder is impracticable.

EIGHTH AFFIRMATIVE DEFENSE

(No Community of Interest)

8. Defendants allege that the class allegations in the Complaint are improper as a matter of law because there is no community of interest in the claims asserted by Plaintiff and those of the putative class members.

NINTH AFFIRMATIVE DEFENSE

(Actions Adverse to Class Members)

9. Defendants allege that Plaintiff’s claims are barred and/or reduced by virtue of Plaintiff and his attorneys having taken actions adverse and inimical to the interests of the putative class members, and for their own benefit, and by purporting to act when Plaintiff has and had an irreconcilable conflict of interest with the putative class members, rendering any judgment, award or settlement void or voidable.

TENTH AFFIRMATIVE DEFENSE

(No Willful Conduct)

10. Defendants allege that even if Defendants engaged in the conduct alleged by Plaintiff, which allegations Defendants deny, such actions or failure to act were not willful.

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1 **ELEVENTH AFFIRMATIVE DEFENSE**

2 **(Adequate Remedy at Law)**

3 11. Defendants allege that the Complaint fails to state facts sufficient to support any
4 granting of extraordinary or equitable relief, and otherwise has adequate remedies at law.

5 **TWELFTH AFFIRMATIVE DEFENSE**

6 **(Lack of Standing)**

7 12. Defendants allege that Plaintiff lacks standing to assert some or all of the claims
8 alleged in the Complaint either individually or as a class action.

9 **THIRTEENTH AFFIRMATIVE DEFENSE**

10 **(No Wages Owed)**

11 13. Defendants allege that Plaintiff's claims for unpaid wages, and those of the putative
12 class or similarly aggrieved employees, are barred because Defendants timely paid all wages owed
13 to them.

14 **FOURTEENTH AFFIRMATIVE DEFENSE**

15 **(Meal Period Law)**

16 14. Defendants allege that, pursuant to the applicable Wage Order, Defendants
17 "authorized and permitted" Plaintiff and the putative class members to take meal periods.

18 **FIFTEENTH AFFIRMATIVE DEFENSE**

19 **(Rest Period Law)**

20 15. Defendants allege that, pursuant to the applicable Wage Order, Defendants
21 "authorized and permitted" Plaintiff and the putative class members to take rest periods.

22 **SIXTEENTH AFFIRMATIVE DEFENSE**

23 **(Maintenance of Records)**

24 16. Defendants allege that Plaintiff's claims for failure to maintain records are barred
25 because Defendants maintained all records as required by the Labor Code.

26 **SEVENTEENTH AFFIRMATIVE DEFENSE**

27 **(Business Expense Reimbursements)**

28 17. Defendants allege that Plaintiff, and those of the putative class, did not incur any

1 business expenses and therefore cannot recover damages or statutory penalties under Labor Code
2 section 2802.

3 **EIGHTEENTH AFFIRMATIVE DEFENSE**

4 **(No Waiting Time Penalties)**

5 18. Defendants allege that Plaintiff's claims for "waiting time penalties" under Labor
6 Code section 203 for untimely payment of wages, and those of the putative class, are barred because
7 Defendants did not intentionally or willfully withhold payment of wages.

8 **NINETEENTH AFFIRMATIVE DEFENSE**

9 **(Labor Code Section 226)**

10 19. Defendants allege that Plaintiff did not suffer an actual injury and therefore cannot
11 recover damages or statutory penalties under Labor Code section 226.

12 **TWENTIETH AFFIRMATIVE DEFENSE**

13 **(Penalties)**

14 20.. Defendants allege that the Complaint fails to allege facts sufficient to establish a
15 claim for penalties.

16 **TWENTY-FIRST AFFIRMATIVE DEFENSE**

17 **(Failure to Exhaust Administrative Remedies)**

18 21. Defendants allege that Plaintiff's causes of action are barred as Plaintiff has failed to
19 satisfy the statutory prerequisites to sue and to exhaust administrative remedies under PAGA and/or
20 any other applicable administrative remedy.

21 **TWENTY-SECOND AFFIRMATIVE DEFENSE**

22 **(Unmanageable PAGA Claims)**

23 22. Defendants allege that the Complaint fails to allege facts sufficient to establish a
24 claim for penalties.

25 **TWENTY-THIRD AFFIRMATIVE DEFENSE**

26 **(Attorneys' Fees)**

27 23. Defendants allege that the Complaint fails to allege facts sufficient to establish a
28 claim for attorneys' fees.

1 **TWENTY-FOURTH AFFIRMATIVE DEFENSE**

2 **(Plaintiff Did Not Sustain Any Damages)**

3 24. Defendants allege that Plaintiff's claim for prejudgment interest is barred because
4 Plaintiff sustained no damages.

5 **TWENTY-FIFTH AFFIRMATIVE DEFENSE**

6 **(Payment)**

7 25. Defendants allege that Plaintiff and the putative class members have been paid all
8 sums earned by them and that are due and owing to them by virtue of their performance of work as
9 alleged in the Complaint.

10 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

11 **(Avoidable Consequences)**

12 26. Defendants allege that Plaintiff and putative class members are precluded from
13 asserting the Complaint, and each purported cause of action therein, because they failed to exercise
14 reasonable care to avoid the injuries they purportedly suffered in that, among other things, Plaintiff
15 and putative class members unreasonably failed to utilize Defendants' internal complaint
16 procedures.

17 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

18 **(Estoppel)**

19 27. Defendants allege that Plaintiff, by virtue of his own inequitable conduct, is estopped
20 from recovery on the Complaint and each claim for relief therein.

21 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

22 **(Consent)**

23 28. Defendants allege that Plaintiff, at all relevant times, gave his consent, express or
24 implied, to the alleged acts, omissions and conduct of Defendants.

25 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

26 **(Laches)**

27 29. Defendants allege that Plaintiff's claims as set forth in the Complaint are barred by
28 the equitable doctrine of laches.

1 **THIRTIETH AFFIRMATIVE DEFENSE**

2 **(Unclean Hands)**

3 30. Defendants allege that the Complaint is barred, in its entirety, by the doctrine of
4 unclean hands.

5 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

6 **(Waiver)**

7 31. Defendants allege that the Complaint, and each purported cause of action contained
8 therein, is barred by the doctrine of waiver.

9 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

10 **(Manageability)**

11 32. Defendants allege that no trial plan exists whereby Plaintiff's claims could be
12 managed and decided upon as class claims at trial.

13 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

14 **(Not Employer/Joint Employer)**

15 33. Defendants allege that they were not Plaintiff's and/or the putative class's and/or the
16 aggrieved employees' employer or joint employer and are thus not legally responsible for the
17 damages alleged in the Complaint.

18 **THIRTY-FOURTH AFFIRMATIVE DEFENSE**

19 **(Unpaid Minimum Wages)**

20 34. Defendants allege that Plaintiff's claims for unpaid minimum wages to Plaintiff, and
21 those of the putative class or similarly aggrieved employees, are barred, because Defendants paid
22 minimum wages in accordance with applicable state or local law at all times.

23 **THIRTY-FIFTH AFFIRMATIVE DEFENSE**

24 **(Business and Professions Code Section 17200)**

25 35. Defendants allege that Plaintiff's claims that Defendants violated Business and
26 Professions Code section 17200, and those of the putative class or similarly aggrieved employees,
27 are barred because Defendants have complied Business and Professions Code section 17200, and
28 Plaintiff, and those of the putative class, have not suffered any injury and therefore cannot recover

1 damages or statutory penalties under Business and Professions Code section 17200.

2 **THIRTY-SIXTH AFFIRMATIVE DEFENSE**

3 **(Unpaid Overtime Wages)**

4 36. Defendants allege that Plaintiff's claims for unpaid overtime wages to Plaintiff, and
5 those of the putative class or similarly aggrieved employees, are barred, because Defendants paid
6 overtime wages in accordance with applicable state or local law at all times.

7 **THIRTY-SEVENTH AFFIRMATIVE DEFENSE**

8 **(Not an Aggrieved Employee)**

9 37. Defendants allege that Plaintiff lacks standing to bring a representative action under
10 the Private Attorneys General Act because he is not an "aggrieved employee."

11 **THIRTY-EIGHTH AFFIRMATIVE DEFENSE**

12 **(Reasonableness and Good Faith)**

13 38. Defendants and their agents acted reasonably and in good faith at all times material
14 herein, based on all relevant facts and circumstances known by them at the time they so acted.
15 Accordingly, Plaintiff, the putative class, and the purported aggrieved employees are barred from
16 any recovery in this action.

17 **THIRTY-NINTH AFFIRMATIVE DEFENSE**

18 **(PAGA Unconstitutional)**

19 39. Defendants allege that Plaintiff is not entitled to recover civil penalties or wage
20 pursuant to Labor Code sections 558, 558.1 and 2698 et. seq, under the Private Attorneys General
21 Act ("PAGA"), on the grounds that PAGA violates the United States and California Constitutions,
22 in that: (1) such damages are so punitive in purpose and effect as to constitute excessive fines and
23 unusual punishment in violation of the Excessive Fines Clause (U.S. Const., amend. VIII); (2) the
24 imposition of such damages would violate Defendants' right to due process and/or equal protection
25 under the law, under the United States and California Constitutions; and (3) PAGA violates the
26 Separation of Powers Doctrine (see Cal. Const. art. IV, section 1).

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(FORTIETH AFFIRMATIVE DEFENSE)

(Exempt)

40. Defendants allege that Plaintiff’s claims, and those of the putative class members, are barred, in whole or in part, because Plaintiff and the putative class members were exempt from applicable California law providing for the payment of meal break, rest break and/or overtime wages and premiums as alleged in the Complaint.

FORTY-FIRST AFFIRMATIVE DEFENSE

(Unknown Defenses)

41. Defendants allege that they may have other separate and/or additional defenses of which they are not aware, and hereby reserves the right to assert them by amendment to this Answer as discovery continues.

DATED: December 16, 2022

KATHERINE C. DEN BLEYKER
SAMUEL P. KNECHT
LEWIS BRISBOIS BISGAARD & SMITH LLP

By: /s/ Samuel Knecht
SAMUEL P. KNECHT
Attorneys for Defendants CONCRETE
PLACEMENT, INC. and COLLIN FLEMING

1 **CALIFORNIA STATE COURT PROOF OF SERVICE**

2 Michael Cantrell v. Concrete Placement, Inc.
3 Case No. 30-2021-01225534-CU-OE-CXC / LBBS: 32571.2197

4 STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

5 At the time of service, I was over 18 years of age and not a party to this action. My business
6 address is 633 West 5th Street, Suite 4000, Los Angeles, CA 90071.

7 On December 16, 2022, I served true copies of the following document(s):
8 **DEFENDANTS' ANSWER TO PLAINTIFF'S SECOND AMENDED CLASS ACTION COMPLAINT**

9 I served the documents on the following persons at the following addresses (including fax
10 numbers and e-mail addresses, if applicable):

11 David Spivak, Esq.
12 Maralle Messrelian, Esq.
13 Spivak Law
14 15303 Ventura Boulevard, Suite 900
15 Sherman Oaks, CA 91403

Attorneys for Plaintiff *Michael Cantrell*
Phone: (213) 725-9094
Fax: (213) 634-2485
Email: david@spivaklaw.com
Email: maralle@spivaklaw.com
Email: daniela@spivaklaw.com
Email: CantrellConcretePlacementIncZ8913197@projects.filevine.com

16 Walter Haines, Esq.
17 United Employees Law Group
18 4276 Katella Avenue, Suite 301
19 Los Alamitos, CA 90720

Attorneys for Plaintiff *Michael Cantrell*
Phone: (888) 474-7242
Fax: (562) 256-1006
Email: walter@whaines.com

20 The documents were served by the following means:

21 ☒ (BY E-MAIL OR ELECTRONIC TRANSMISSION) Based on a court order or an
22 agreement of the parties to accept service by e-mail or electronic transmission, I caused the
23 documents to be sent from e-mail address shurla.thomason@lewisbrisbois.com to the
24 persons at the e-mail addresses listed above. I did not receive, within a reasonable time after
25 the transmission, any electronic message or other indication that the transmission was
26 unsuccessful.

27 I declare under penalty of perjury under the laws of the State of California that the foregoing
28 is true and correct.

Executed on December 16, 2022, at Los Angeles, California.

/s/ Shurla L. Thomason
Shurla L. Thomason

EXHIBIT 9

By continuing to review this documents, recipient agrees not to use this document for purposes other than settlement discussions

Case title:	Michael M. Cantrell v. Concrete Placement, Inc.
Case no.:	30-2021-01225534-CU-OE-CXC
Court:	Orange
Judge:	The Honorable William D. Claster, Dept. CX104
Page subject:	Data

Important Dates

Unfair Competition, Bus.&Prof. § 17200 ("UCL") period begins:	Sunday, October 8, 2017
Lab.Code § 203 (waiting time penalties) period begins:	Monday, October 8, 2018
Lab.Code § 2699 (civil penalties) period begins:	Tuesday, August 18, 2020
Lab.Code § 226 (pay stub penalties) period begins:	Wednesday, October 7, 2020
LWDA Notice:	Wednesday, August 18, 2021
Lawsuit:	Thursday, October 7, 2021
Sample begin:	Monday, October 9, 2017
Sample end:	Friday, May 6, 2022
Sample calendar days:	1,670.00
Mediation:	Tuesday, June 14, 2022
Anticipated Settlement Period end date:	Wednesday, October 12, 2022
Settlement Period to Sample Period:	109.58%

Classes / Groups sizes

UCL Class Members:	108
UCL Workweeks:	10,691
UCL Wage Statements:	10,734
UCL Workdays:	49,499
UCL Calendar days:	1,710
UCL Months:	56.22
 Waiting Time Penalties Class Members:	 51
 PAGA Aggrieved Employees:	 70
PAGA Wage Statements:	4,255
 Wage Statement Class Members:	 70
Wage Statement Class Wage Statements:	3,922

Averages

Average Hourly Rate:	\$	25.51
Average Overtime Rate:	\$	38.27
Average Doubletime Rate:	\$	51.02
 Average Work Hours Per Day:		 8.29
Average Work Hours Per Week:		38.37
Average Workdays Per Week:		4.63
Workdays to Calendar Days (%):		66.14%
Paycycle:		Weekly (52 / year)
Paychecks Per Year:		

Confidential Settlement Communication

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Case title:	Michael M. Cantrell v. Concrete Placement, Inc.
Case no.:	30-2021-01225534-CU-OE-CXC
Court:	Orange
Judge:	The Honorable William D. Claster, Dept. CX104
Page subject:	Underpaid wages Overtime Wages (OT hours paid at regular rates)
Authority:	Lab.Code §§ 510, 1194, 1194.2, and 1198

Unpaid overtime rate:	\$	12.76
Unpaid hours per pay week:		11.58
Actionable workweeks:		9,124
Interest:		10%

Unpaid overtime wages:	\$	1,482,389.14
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Confidential Settlement Communication

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Case title:	Michael M. Cantrell v. Concrete Placement, Inc.
Case no.:	30-2021-01225534-CU-OE-CXC
Court:	Orange
Judge:	The Honorable William D. Claster, Dept. CX104
Page subject:	Unprovided Meal Periods
Authority:	Lab.Code §§ 226.7, 512, and 1198
Unpaid overtime rate:	\$ 12.76
Actionable workdays:	49,499
>>Percentage qualifying for meal periods:	96.87%
Violation rate (%)	100.00%
Meal period premium wages:	\$ 611,602.26

Confidential Settlement Communication

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Case title:	Michael M. Cantrell v. Concrete Placement, Inc.
Case no.:	30-2021-01225534-CU-OE-CXC
Court:	Orange
Judge:	The Honorable William D. Claster, Dept. CX104
Page subject:	Unprovided Rest Periods
Authority:	Lab.Code §§ 226.7 and 1198
Unpaid overtime rate:	\$ 12.76
Actionable workdays:	49,499
>>Percentage qualifying for rest periods:	98.84%
Violation rate (%)	100.00%
Rest period premium wages:	\$ 624,040.13

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Case title:	Michael M. Cantrell v. Concrete Placement, Inc.
Case no.:	30-2021-01225534-CU-OE-CXC
Court:	Orange
Judge:	The Honorable William D. Claster, Dept. CX104
Page subject:	Unreimbursed expenses
Authority:	Lab.Code § 2802

Telecom

Plaintiff's Telecom provider:		Verizon
UCL Months:		56
Average Monthly Telecom bill:	\$	150.00
Percentage attributable to work:		75%
Interest rate:		10%
Unreimbursed Telecom costs:	\$	6,345.35

Tools

Unprovided tools:	tools/tool bag items, wrench set metric through 32m, crescent 8"- 36" (length of wrench), hammer, test light, screwdriver set, set vice grips, allens metric through 14mm, duct tape, electrical tape, two scrappers, one pipe wrench, safety vest, hard hat, safety gloves, safety glasses, steel toe boots	
Cost of tools:	\$	200.00
UCL Class Members:		108
Interest rate:		10%
Unreimbursed tools and supplies:	\$	338.80

Unreimbursed expenses:	\$	6,684.15
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By continuing to review this documents, recipient agrees not to use this document for purposes other than settlement discussions

Case title:	Michael M. Cantrell v. Concrete Placement, Inc.
Case no.:	30-2021-01225534-CU-OE-CXC
Court:	Orange
Judge:	The Honorable William D. Claster, Dept. CX104
Page subject:	Itemized Wage Statements
Authority:	Lab.Code § 226

Wage Statement Class Members:		70
Wage Statement Class Wage Statements:		3,922
Initial penalty:	\$	50.00
Subsequent penalty:	\$	100.00
Statutory wage statement penalties:	\$	388,700.00

Confidential Settlement Communication

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Case title:	Michael M. Cantrell v. Concrete Placement, Inc.
Case no.:	30-2021-01225534-CU-OE-CXC
Court:	Orange
Judge:	The Honorable William D. Claster, Dept. CX104
Page subject:	Waiting Time / Final Wages
Authority:	Lab.Code § 203

Waiting Time Penalties Class Members:		51
Days waiting:		30
Average Hourly Rate:	\$	25.51
Average Overtime Rate:	\$	38.27
Average Doubletime Rate:	\$	51.02
Average Work Hours Per Day:		8.29
Regular Hours Per Day:		8.00
Overtime Hours Per Day:		0.29
Doubletime Hours Per Day:		-
Waiting time penalties:	\$	329,220.58

By continuing to review this documents, recipient agrees not to use this document for purposes other than settlement discussions

Case title:

Michael M. Cantrell v. Concrete Placement, Inc.

Case no.:

30-2021-01225534-CU-OE-CXC

Court:

Orange

Judge:

The Honorable William D. Claster, Dept. CX104

Page subject:

PAGA Civil Penalties

Authority:

Lab.Code §§ 2698, *et seq.*

Labor Code violation	Labor Code Civil		Subsequent		Pay periods		Total
	Penalty Statute	Initial penalty	penalty				
Overtime wages (Lab.Code § 510):	Lab.Code § 558	\$ 50.00	\$ 100.00		4,255	\$	425,450.00
Meal periods Lab.Code § 512):	Lab.Code § 558	\$ 50.00	\$ 100.00		4,255	\$	425,450.00
Rest periods (Lab.Code § 1198):	Lab.Code § 2699	\$ 100.00	\$ 200.00		4,255	\$	850,900.00
Business expenses (Lab.Code § 2802):	Lab.Code § 2699	\$ 100.00	\$ 200.00		4,255	\$	850,900.00
Improper pay stubs (Lab.Code § 226):	Lab.Code § 226.3	\$ 250.00	\$ 1,000.00		4,255	\$	4,254,250.00
Untimely wages (Lab.Code §§ 201-204):	Lab.Code § 2699	\$ 100.00	\$ 200.00		4,255	\$	850,900.00
Total:						\$	7,657,850.00

By continuing to review this documents, recipient agrees not to use this document for purposes other than settlement discussions

Case title:	Michael M. Cantrell v. Concrete Placement, Inc.
Case no.:	30-2021-01225534-CU-OE-CXC
Court:	Orange
Judge:	The Honorable William D. Claster, Dept. CX104
Page subject:	Totals
Authority:	Various

Restitution		Reduction		Demand
Unpaid overtime wages:	\$ 1,482,389.14	5%	\$	1,408,269.68
Meal period premium wages:	\$ 611,602.26	5%	\$	581,022.15
Rest period premium wages:	\$ 624,040.13	5%	\$	592,838.13
Unreimbursed expenses:	\$ 6,684.15	5%	\$	6,349.95
Restitution subtotal:	\$ 2,724,715.69		\$	2,588,479.90
Penalties				
Statutory wage statement penalties:	\$ 388,700.00	5%	\$	369,265.00
Waiting time penalties:	\$ 329,220.58	5%	\$	312,759.55
Overtime wages (Lab.Code § 510):civil penalties:	\$ 425,450.00	5%	\$	404,177.50
Meal periods Lab.Code § 512):civil penalties:	\$ 425,450.00	5%	\$	404,177.50
Rest periods (Lab.Code § 1198):civil penalties:	\$ 850,900.00	5%	\$	808,355.00
Business expenses (Lab.Code § 2802):civil penalties:	\$ 850,900.00	5%	\$	808,355.00
Improper pay stubs (Lab.Code § 226):civil penalties:	\$ 4,254,250.00	5%	\$	4,041,537.50
Untimely wages (Lab.Code §§ 201-204):civil penalties:	\$ 850,900.00	5%	\$	808,355.00
Penalties subtotal:	\$ 8,375,770.58		\$	7,956,982.05
Grand total:	\$ 11,100,486.27		\$	10,545,461.95

EXHIBIT 10

Case title:	Michael M. Cantrell v. Concrete Placement, Inc.
Case no.:	30-2021-01225534-CU-OE-CXC
Court:	Orange
Judge:	The Honorable William D. Claster, Dept. CX104
Page subject:	Data

Important Dates

Unfair Competition, Bus.&Prof. § 17200 ("UCL") period begins:	Sunday, October 8, 2017
Lab.Code § 203 (waiting time penalties) period begins:	Monday, October 8, 2018
Lab.Code § 2699 (civil penalties) period begins:	Tuesday, August 18, 2020
Lab.Code § 226 (pay stub penalties) period begins:	Wednesday, October 7, 2020
LWDA Notice:	Wednesday, August 18, 2021
Lawsuit:	Thursday, October 7, 2021
Sample begin:	Monday, October 9, 2017
Sample end:	Friday, May 6, 2022
Sample calendar days:	1,670.00
Mediation:	Tuesday, June 14, 2022
Anticipated Settlement Period end date:	Wednesday, October 12, 2022
Settlement Period to Sample Period:	109.58%

Classes / Groups sizes

UCL Class Members:	108
UCL Workweeks:	10,691
UCL Wage Statements:	10,734
UCL Workdays:	49,499
UCL Calendar days:	1,710
UCL Months:	2,460.39

Waiting Time Penalties Class Members:	51
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PAGA Aggrieved Employees:	70
PAGA Wage Statements:	4,255

Wage Statement Class Members:	70
Wage Statement Class Wage Statements:	3,922

Averages

Average Hourly Rate:	\$	25.51
Average Overtime Rate:	\$	38.27
Average Doubletime Rate:	\$	51.02

Average Work Hours Per Day:	8.29
Average Work Hours Per Week:	38.37
Average Workdays Per Week:	4.63
Workdays to Calendar Days (%):	66.14%
Paycycle:	Weekly (52 / year)
Paychecks Per Year:	

Case title:	Michael M. Cantrell v. Concrete Placement, Inc.
Case no.:	30-2021-01225534-CU-OE-CXC
Court:	Orange
Judge:	The Honorable William D. Claster, Dept. CX104
Page subject:	Underpaid wages Overtime Wages (OT hours paid at regular rates)
Authority:	Lab.Code §§ 510, 1194, 1194.2, and 1198

Unpaid overtime rate:	\$	12.76
Unpaid hours per pay week:		11.58
Actionable workweeks:		9,124
Interest:		10%

Unpaid overtime wages:	\$	1,482,389.14
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Case title:	Michael M. Cantrell v. Concrete Placement, Inc.
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Case no.:	30-2021-01225534-CU-OE-CXC
Court:	Orange
Judge:	The Honorable William D. Claster, Dept. CX104
Page subject:	Unprovided Meal Periods
Authority:	Lab.Code §§ 226.7, 512, and 1198

Unpaid overtime rate:	\$	25.51
Actionable workdays:		49,499
>>Percentage qualifying for meal periods:		96.87%
Violation rate (%)		100.00%

Meal period premium wages:	\$	1,223,204.52
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Case title:	Michael M. Cantrell v. Concrete Placement, Inc.
Case no.:	30-2021-01225534-CU-OE-CXC
Court:	Orange
Judge:	The Honorable William D. Claster, Dept. CX104
Page subject:	Unprovided Rest Periods
Authority:	Lab.Code §§ 226.7 and 1198

Unpaid overtime rate:	\$	25.51
Actionable workdays:		49,499
>>Percentage qualifying for rest periods:		98.84%
Violation rate (%)		100.00%

Rest period premium wages:	\$	1,248,080.26
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Case title:	Michael M. Cantrell v. Concrete Placement, Inc.
Case no.:	30-2021-01225534-CU-OE-CXC
Court:	Orange
Judge:	The Honorable William D. Claster, Dept. CX104
Page subject:	Unreimbursed expenses
Authority:	Lab.Code § 2802

Telecom

Plaintiff's Telecom provider:		Verizon
UCL Months:		2,460
Average Monthly Telecom bill:	\$	150.00
Percentage attributable to work:		75%
Interest rate:		10%
Unreimbursed Telecom costs:	\$	277,055.50

Tools

Unprovided tools:	tools/tool bag items, wrench set metric through 32m, crescent 8"- 36" (length of wrench), hammer, test light, screwdriver set, set vice grips, allens metric through 14mm, duct tape, electrical tape, two scrappers, one pipe wrench, safety vest, hard hat, safety gloves, safety glasses, steel toe boots	
Cost of tools:	\$	200.00
UCL Class Members:		108
Interest rate:		10%
Unreimbursed tools and supplies:	\$	338.80

Unreimbursed expenses:	\$	277,394.30
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Case title:	Michael M. Cantrell v. Concrete Placement, Inc.
Case no.:	30-2021-01225534-CU-OE-CXC
Court:	Orange
Judge:	The Honorable William D. Claster, Dept. CX104
Page subject:	Itemized Wage Statements
Authority:	Lab.Code § 226

Wage Statement Class Members:		70
Wage Statement Class Wage Statements:		3,922
Initial penalty:	\$	50.00
Subsequent penalty:	\$	100.00

Statutory wage statement penalties: \$ 388,700.00

Case title: Michael M. Cantrell v. Concrete Placement, Inc.
Case no.: 30-2021-01225534-CU-OE-CXC
Court: Orange
Judge: The Honorable William D. Claster, Dept. CX104
Page subject: **Waiting Time / Final Wages**
Authority: Lab.Code § 203

Waiting Time Penalties Class Members:	51
Days waiting:	30
Average Hourly Rate:	\$ 25.51
Average Overtime Rate:	\$ 38.27
Average Doubletime Rate:	\$ 51.02
Average Work Hours Per Day:	8.29
Regular Hours Per Day:	8.00
Overtime Hours Per Day:	0.29
Doubletime Hours Per Day:	-
Waiting time penalties:	\$ 329,220.58

Case title: Michael M. Cantrell v. Concrete Placement, Inc.
Case no.: 30-2021-01225534-CU-OE-CXC
Court: Orange
Judge: The Honorable William D. Claster, Dept. CX104
Page subject: **PAGA Civil Penalties**
Authority: Lab.Code §§ 2698, *et seq.*

Labor Code violation	Labor Code Civil	Initial penalty	Subsequent penalty	Pay periods	Total
Overtime wages (Lab.Code § 510):	Lab.Code § 558	\$ 50.00	\$ 100.00	4,255 \$	425,450.00
Meal periods (Lab.Code § 512):	Lab.Code § 558	\$ 50.00	\$ 100.00	4,255 \$	425,450.00
Rest periods (Lab.Code § 1198):	Lab.Code § 2699	\$ 100.00	\$ 200.00	4,255 \$	850,900.00
Business expenses (Lab.Code § 2802):	Lab.Code § 2699	\$ 100.00	\$ 200.00	4,255 \$	850,900.00
Improper pay stubs (Lab.Code § 226):	Lab.Code § 226.3	\$ 250.00	\$ 1,000.00	4,255 \$	4,254,250.00
Untimely wages (Lab.Code §§ 201-204):	Lab.Code § 2699	\$ 100.00	\$ 200.00	4,255 \$	850,900.00
Total:				\$	7,657,850.00

Case title:
Case no.:
Court:
Judge:
Page subject:
Authority:

Michael M. Cantrell v. Concrete Placement, Inc.
30-2021-01225534-CU-OE-CXC
Orange
The Honorable William D. Claster, Dept. CX104
Totals
Various

Restitution	Reduction	Demand
Unpaid overtime wages:	\$ 1,482,389.14 5%	\$ 1,408,269.68
Meal period premium wages:	\$ 1,223,204.52 5%	\$ 1,162,044.30
Rest period premium wages:	\$ 1,248,080.26 5%	\$ 1,185,676.25
Unreimbursed expenses:	\$ 277,394.30 5%	\$ 263,524.58
Restitution subtotal:	\$ 4,231,068.23	\$ 4,019,514.81
Penalties		
Statutory wage statement penalties:	\$ 388,700.00 5%	\$ 369,265.00
Waiting time penalties:	\$ 329,220.58 5%	\$ 312,759.55
Overtime wages (Lab.Code § 510):civil penalties:	\$ 425,450.00 5%	\$ 404,177.50
Meal periods Lab.Code § 512):civil penalties:	\$ 425,450.00 5%	\$ 404,177.50
Rest periods (Lab.Code § 1198):civil penalties:	\$ 850,900.00 5%	\$ 808,355.00
Business expenses (Lab.Code § 2802):civil penalties:	\$ 850,900.00 5%	\$ 808,355.00
Improper pay stubs (Lab.Code § 226):civil penalties:	\$ 4,254,250.00 5%	\$ 4,041,537.50
Untimely wages (Lab.Code §§ 201-204):civil penalties:	\$ 850,900.00 5%	\$ 808,355.00
Penalties subtotal:	\$ 8,375,770.58	\$ 7,956,982.05
Grand total:	\$ 12,606,838.81	\$ 11,976,496.87

EXHIBIT 11

1 DAVID G. SPIVAK, State Bar # 179684

2 THE SPIVAK LAW FIRM

3 9454 Wilshire Blvd.

4 Suite 303

5 Beverly Hills, CA 90212

6 Telephone (310) 499-4730

7 Facsimile (310) 499-4739

8 Email david@spivaklaw.com

9 Attorney for Plaintiffs,

10 ALINA GHRDILYAN, EVGENIA SULTANIAN, and all others similarly situated

11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

13 **(UNLIMITED JURISDICTION)**

14 ALINA GHRDILYAN; EVGENIA
15 SULTANIAN; and all others similarly situated,

16 *Plaintiffs,*

17 vs.

18 RJ FINANCIAL, INC., a California
19 corporation; RAMIL ABALKHAD, an
20 individual; and DOES 1 through 50, inclusive,

21 *Defendants.*

Case No.: BC430633

CLASS ACTION

FIRST AMENDED COMPLAINT FOR:

1. Failure To Compensate Employees For All Hours Worked;
2. Failure To Provide Rest And Meal Periods;
3. Forfeiture of Vested Vacation Benefits;
4. Failure To Provide Accurate Written Wage Statements;
5. Failure To Timely Pay All Final Wages
6. Unauthorized Deductions;
7. Failure to Indemnify;
8. Unfair Competition; And
9. Civil Penalties

Action filed: 01/28/2010
CMC: 05/10/2010, 8:30 a.m.
FSC: Not set
Trial: Not set
Dept: 36, Hon. Gregory Alarcon

22 On behalf of both himself and all other persons similarly situated, plaintiff ALINA
23 GHRDILYAN and EVGENIA SULTANIAN ("Plaintiffs") bring this action against defendants
24 RJ FINANCIAL, INC., RAMIL ABALKHAD, and the other defendants, (collectively

25
26
27
THE
SPIVAK
LAW FIRM

CONFORMED COPY
OF ORIGINAL FILED
Los Angeles Superior Court
FEB 24 2010

John A. Clarke, Executive Officer/Clerk
BY MARY GARCIA, Deputy

1 “Defendants”) for violations of the California Labor Code, the applicable Industrial Welfare
2 Commission Order(s) (“Wage Order(s)”), and the California Business and Professions Code,
3 and as grounds therefore alleges:

4 INTRODUCTION

5 1. This action arises out of the allegedly unlawful labor practices of Defendants in
6 California. Through this class and collective action, Plaintiffs seek to represent the below-
7 defined classes and subclasses of persons who Defendants have allegedly committed labor law
8 violations against including, but not limited to, wage underpayments. As a result of the
9 allegedly unlawful labor conduct described herein, Plaintiffs now seek declaratory and
10 injunctive relief, damages, restitution, penalties, and other proper relief on behalf of himself and
11 other similarly situated persons.

12 PARTIES AND CONDUCT

13 A. Plaintiffs and Class Members

14 2. During the applicable time period, Plaintiff ALINA GHRDILYAN, an
15 individual, was employed in a position that she alleges Defendants have classified as non-
16 exempt from the overtime requirements of the California Labor Code and the applicable wage
17 order(s).

18 3. During the applicable time period, Plaintiff EVGENIA SULTANIAN, an
19 individual, was employed in a position that she alleges Defendants have classified as non-
20 exempt from the overtime requirements of the California Labor Code and the applicable wage
21 order(s).

22 4. At relevant times during the applicable limitations periods, Plaintiffs allege that
23 Defendants have failed to compensate them and Defendants’ other California employees for all
24 of the hours that they have worked, failed to compensate them for all of the overtime hours that
25 they have worked at overtime rates, failed to provide them with all required rest and meal
26 periods, failed to pay them additional required wages for rest and meal periods, improperly
27 denied earned wages that Defendants without authorization deducted from paychecks or
required reimbursement for, failed to indemnify for necessary expenditures, failed to timely pay

1 all final wages owed, caused them to forfeit vested vacation pay, and/or intentionally failed to
2 provide them with accurate written wage statements.

3 **B. Defendants**

4 5. Defendant RJ FINANCIAL, INC. is a corporation organized under the laws of
5 California. It was at all relevant times a “person” under Labor Code § 18.

6 6. Defendant RAMIL ABALKHAD (also known as Randy Abalkhad), an
7 individual residing in the County of Los Angeles, State of California, was at all relevant times
8 the chief executive officer of Defendant RJ FINANCIAL, INC. At all relevant times,
9 ABALKHAD acted on behalf of RJ FINANCIAL, INC. and oversaw RJ FINANCIAL, INC.’s
10 accounting and bookkeeping and all administrative functions, including payroll. The company
11 maintained books and records by staff members under his direction. At all relevant times,
12 ABALKHAD was a “person acting on behalf of an employer” (RJ FINANCIAL, INC. and the
13 Doe Defendants) who caused to be violated the provisions of the Labor Code regulating hours
14 and days of work in orders of the Industrial Welfare Commission as described below under
15 Labor Code § 558. Also, he was at all relevant times a “person” under Labor Code § 18.

16 7. Plaintiffs are ignorant of the true names, capacities, relationships, and extents of
17 participation in the conduct alleged herein, of the defendants sued as DOES 1-50, inclusive, but
18 are informed and believe and thereon allege that said defendants are legally responsible for the
19 wrongful conduct alleged herein and therefore sue these defendants by such fictitious names.
20 Plaintiffs will amend the complaint to allege the true names and capacities of the DOE
21 defendants when ascertained.

22 8. Plaintiffs are informed and believe and thereon allege that, at all relevant times
23 herein, all defendants were the agents, employees and/or servants, masters or employers of the
24 remaining defendants, and in doing the things hereinafter alleged, were acting within the course
25 and scope of such agency or employment, and with the approval and ratification of each of the
26 other defendants.

27 9. At all relevant times, in perpetrating the acts and omissions alleged herein,
defendants, and each of them, acted pursuant to and in furtherance of a policy and practice of

1 not paying Plaintiffs and other members of the below-described classes in accordance with
2 applicable California labor laws as alleged herein.

3 10. Plaintiffs are informed and believe and thereon allege that each and every one of
4 the acts and omissions alleged herein were performed by, and/or attributable to, all defendants,
5 each acting as agents and/or employees, and/or under the direction and control of each of the
6 other defendants, and that said acts and failures to act were within the course and scope of said
7 agency, employment and/or direction and control.

8 CLASS ACTION ALLEGATIONS

9 11. Plaintiffs incorporate paragraphs 1 through 10 of this Complaint as if fully
10 alleged herein.

11 12. Plaintiffs bring this action on behalf of themselves and all others similarly
12 situated as a class action pursuant to California Code of Civil Procedure § 382. Plaintiffs seek to
13 represent the following classes and subclasses of current, future, and/or former employees of
14 Defendants defined below:

15 **Wages Class:** All persons employed by Defendants in California who
16 have not been paid for all hours worked during the period beginning four
17 (4) years prior to the filing of this action and ending on the date that final
18 judgment is entered in this action.

19 **Overtime Class:** All persons employed by Defendants in California who
20 have not been paid at the legally required overtime rates for all hours
21 worked in excess of eight (8) hours in one (1) day and/or forty (40) hours
22 in one (1) week during the period beginning four (4) years prior to the
23 filing of this action and ending on the date that final judgment is entered in
24 this action.

25 **Rest Periods Class:** All persons employed by Defendants in California
26 who were not provided with a net rest period of at least ten (10) minutes
27 per each four (4) hour work period, or major portion thereof, during the
28 period beginning four (4) years prior to the filing of this action and ending
29 on the date that final judgment is entered in this action.

30 **Meal Periods Class:** All persons employed by Defendants in California
31 who were not provided with uninterrupted thirty (30) minute meal periods
32 during each work period of five (5) or more hours during the period
33 beginning four (4) years prior to the filing of this action and ending on the

1 date that final judgment is entered in this action.

2 **Vacation Pay Class:** All persons employed by Defendants in California
3 who earned vested paid vacation days without receiving
4 compensation for each vested paid vacation day during the
5 period beginning four (4) years prior to the filing of this action
6 and ending on the date that final judgment is entered in this
7 action.

8 **Unauthorized Deduction Class:** All persons employed by Defendants in
9 California whose wages were deducted by Defendants without statutory
10 authority or written consent during the period beginning four (4) years
11 prior to the filing of this action and ending on the date that final judgment
12 is entered in this action.

13 **Inaccurate Wage Statement Class:** All persons employed by Defendants
14 in California, including but not limited to members of the **Wages Class,**
15 **Overtime Class, Rest Period Class, Meal Period Class, and/or**
16 **Unauthorized Deduction Class** during the period beginning four (4)
17 years prior to the filing of this action and ending on the date that judgment
18 is entered in this action.

19 **Former Employee Class:** All persons employed by Defendants in
20 California, including, but not limited to, members of the **Wages Class,**
21 **Overtime Class, Rest Period Class, Meal Period Class, Unauthorized**
22 **Deduction Class, and/or Inaccurate Wage Statement Class** whose
23 employment with Defendants ended during the period beginning four (4)
24 years prior to the filing of this action and ending on the date that final
25 judgment is entered in this action, who either: a) were discharged and not
26 paid all wages owed on or before the day of termination; or b) resigned
27 without notice and were not paid all wages owed within 72 hours of
resignation; or c) resigned with 72 hours notice and were not paid all
wages owed on or before the day of quitting.

Indemnification Class: All persons employed by Defendants in
California, including, but not limited to, members of the **Wages Class,**
Overtime Class, Rest Period Class, Meal Period Class, Unauthorized
Deduction Class, and/or Inaccurate Wage Statement Class, who
Defendants failed to indemnify for all necessary expenditures incurred by
such employees in direct consequence of the discharge of their duties
during the period beginning four (4) years prior to the filing of this action
and ending on the date that final judgment is entered in this action.

UCL Class: All persons who are members of the **Wages Class, Rest**
Period Class, Meal Period Class, Overtime Class, Inaccurate Wage
Statement Class, Former Employee Class, Unauthorized Deduction

1 **Class, and/or Indemnification Class**, who have been employed by
2 Defendants in California at any time during the period beginning four (4)
3 years prior to the filing of this action and ending on the date that final
4 judgment is entered in this action.

5 **All-Inclusive Class:** All members of the **Wages Class, Overtime Class,**
6 **Rest Periods Class, Meal Periods Class, Inaccurate Wage Statement**
7 **Class, Unauthorized Deduction Class, Former Employee Class, and/or**
8 **Indemnification Class.**

9 13. This action has been brought and may be maintained as a class action pursuant to
10 California Code of Civil Procedure § 382 because there is a well-defined community of interest
11 among the persons who comprise readily ascertainable class.

12 14. Plaintiffs are unaware of any difficulties that are likely to be encountered in the
13 management of this case as a class action.

14 15. The class members are so numerous that the individual joinder of each individual
15 class member is impractical. While Plaintiffs do not currently know the exact number of class
16 members, Plaintiffs are informed and believe and thereon allege that the actual number of class
17 members exceeds the minimum number required for numerosity purposes under California law.

18 16. Common questions of law and fact exist as to all class members and predominate
19 over any questions which affect only individual class members. These questions include, but are
20 not limited to:

21 A. Do Defendants maintain policies or practices that systematically cause
22 the **Wages Class** not to be paid for all hours worked?

23 B. Have members of the **Overtime Class** been paid at the legally required
24 overtime rates for all hours worked in excess of eight (8) hours in one (1) day?

25 C. Do Defendants maintain policies or practices that systematically cause
26 the **Overtime Class** not to be paid at overtime rates for all overtime hours worked?

27 D. Did Defendants fail to provide members of the **Rest Period Class** with
all legally required rest periods in violation of California law?

 E. Did Defendants fail to provide members of the **Meal Period Class** with
all legally required meal periods in violation of California law?

 F. Did Defendants fail to pay members of the **Rest Period Class** the

1 additional wages required for rest periods that were not provided?

2 G. Did Defendants fail to pay members of the **Meal Period Class** the
3 additional wages required for meal periods that were not provided?

4 H. Did Defendants deduct wages from the paychecks of members of the
5 **Unauthorized Deduction Class** without written consent?

6 I. Did Defendants intentionally fail to provide members of the **Inaccurate**
7 **Wage Statement Class** with accurate written wage statements?

8 J. Did Defendants intentionally fail to indemnify members of the
9 **Indemnification Class** for all necessary expenditures incurred by the members of the class in
10 direct consequence of the discharge of their duties?

11 K. Are the vacation days received by members of the **Vacation Pay Class**
12 subject to forfeiture?

13 L. Did Defendants fail to timely pay **Former Employee Class** all final
14 wages owed following termination or discharge?

15 M. Are Defendants liable to members of the **Former Employee Class** for
16 continuation wages under California Labor Code § 203?

17 N. Did Defendants engage in unfair competition within the meaning of
18 California Business & Professions Code §§ 17200, *et seq.*, with respect to members of the **UCL**
19 **Class**?

20 O. Are class members entitled to prejudgment interest?

21 P. Are class members entitled to attorneys' fees?

22 17. Plaintiffs' claims are typical of the other class members' claims. Plaintiffs are
23 informed and believe and thereon allege that Defendants have a policy or practice of failing to
24 comply with the California Labor Code and the California Business and Professions Code as
25 alleged herein.

26 18. Plaintiffs will fairly and adequately represent and protect the interests of the
27 other class members. Plaintiffs have no interests adverse to the interests of the other class
members. In addition, Plaintiffs are represented by counsel experienced in wage and hour class

1 action cases.

2 19. A class action is vastly superior to other available means for fair and efficient
3 adjudication of the class members' claims and would be beneficial to the parties and the Court.
4 Class action treatment will allow a number of similarly situated persons to simultaneously and
5 efficiently prosecute their common claims in a single forum without the unnecessary duplication
6 of effort and expense that numerous individual actions would entail. In addition, the monetary
7 amounts due to many individual class members are likely to be relatively small and would thus
8 make it difficult, if not impossible, for individual class members to both seek and obtain relief.
9 Moreover, a class action will serve an important public interest by permitting class members to
10 effectively pursue the recovery of moneys owed to them. Further, a class action will prevent the
11 potential for inconsistent or contradictory judgments inherent in individual litigation.

12 **FIRST CLAIM FOR RELIEF**

13 **FAILURE TO PAY ALL EARNED HOURLY WAGES IN VIOLATION OF THE**
14 **CALIFORNIA LABOR CODE**

15 **(By Plaintiffs, the Wages Class, and the Overtime Class)**

16 20. Plaintiffs incorporate paragraphs 1 through 19 of the Complaint as if fully
17 alleged herein.

18 21. At all relevant times, Plaintiffs and the other members of the **Wages Class** and
19 the **Overtime Class** have been entitled to the protections of the California Labor Code,
20 including California Labor Code §§ 204, 510, and applicable Wage order(s). These protections
21 include the rights to be timely paid all wages earned at the legally required rates for all hours
22 worked.

23 22. California Labor Code § 510(a) requires employers to compensate employees at
24 one and one-half times their regular rates of pay for:

- 25 A. All hours worked in excess of eight hours in one workday;
26 B. All hours worked in excess of forty hours in one workweek; and,
27 C. The first eight hours worked on a seventh consecutive workday during a
workweek.

1 226.7 and 512, and Wage order 11.

2 29. Pursuant to the applicable wage order(s), Defendants are required to provide
3 Plaintiffs and the other members of the **Rest Period Class** with net rest periods of a least ten
4 (10) minutes for each four (4) hour work period, or major portion thereof, during any given
5 workday.

6 30. Pursuant to California Labor Code § 226.7, Defendants are required to pay
7 Plaintiffs and the other members of the **Rest Period Class** one (1) additional hour of wages for
8 each rest period not provided in accordance with the applicable wage order(s).

9 31. During the applicable limitations period, Defendants failed to provide Plaintiffs
10 with net rest periods of at least ten (10) minutes for every four (4) hours work period, or major
11 portion thereof, and failed to pay them the required additional wages for rest periods not
12 provided to her.

13 32. Plaintiffs are informed and believe and thereon allege that Defendants maintain a
14 policy or practice of failing to provide other members of the **Rest Period Class** with net rest
15 periods of at least ten (10) minutes for every four (4) hours worked and of failing to pay them
16 the required additional wages for rest periods not provided to them.

17 33. Pursuant to California Labor Code § 512 and Industrial Welfare Commission
18 Order 7-2001, Defendants are required to provide Plaintiffs and the other members of the **Meal**
19 **Period Class** with an uninterrupted thirty (30) minute meal period for each five (5) hour work
20 period during any given workday.

21 34. Pursuant to California Labor Code § 226.7, Defendants are required to pay
22 Plaintiffs and the other members of the **Meal Period Class** one (1) additional hour of wages for
23 each meal period not provided in accordance with Wage order 11.

24 35. During the applicable limitations period, Defendants failed to provide Plaintiff
25 with an uninterrupted thirty (30) minute meal period for each five (5) hour work period,
26 including a second uninterrupted thirty (30) minute meal period on days he worked more than
27 ten (10) hours, and failed to pay him the required additional wages for rest periods not provided
to her.

1 36. Plaintiffs are informed and believe and thereon allege that Defendants maintain a
2 policy or practice of failing to provide other members of the **Meal Period Class** with
3 uninterrupted thirty (30) minute meal periods for each five (5) hour work period, including
4 second uninterrupted thirty (30) minute meal periods on days they worked more than ten (10)
5 hours, and failed to pay him the required additional wages for meal periods not provided to her.

6 37. Plaintiffs on behalf of themselves and the other members of the **Rest Period**
7 **Class** and the **Meal Period Class**, seeks declaratory and injunctive relief, damages for unpaid
8 wages owed, interest thereon and costs of suit pursuant to California Labor Code § 218.6, and
9 reasonable attorney's fees pursuant to California Code of Civil Procedure § 1021.5.

10 **THIRD CLAIM FOR RELIEF**

11 **FORFEITURE OF VACATION PAY**

12 **(By Plaintiffs and the Vacation Pay Class)**

13 38. Plaintiffs incorporate paragraphs 1 through 37 of the Complaint as if fully
14 alleged herein.

15 39. Under California Labor Code § 227.3 and applicable case law, vested paid
16 vacation benefits and other similar forms of paid time off that earned based on labor performed
17 are considered wages and cannot be subject to forfeiture without providing compensation for
18 forfeited days at the applicable rates required by law.

19 40. Pursuant to written company policies, members of the **California Vacation Pay**
20 **Class** have earned vested paid vacation days, including, but not limited to, "Personal Holidays"
21 and/or "Management Recognition Days," that are explicitly subject to unpaid forfeiture
22 pursuant to written company policies if they are not used within specified time periods.

23 41. During the applicable limitations period, Plaintiff has earned vested paid
24 vacation days, including, but not limited to, "Personal Holidays" and "Management Recognition
25 Days," without being compensated by Defendants for each vested paid vacation day.

26 42. Plaintiff is informed and believes and thereon alleges that Defendants have
27 maintained policies or practices of causing members of the **California Vacation Pay Class** to
forfeit vested paid vacation days, including, but not limited to, "Personal Holidays" and/or

1 "Management Recognition Days," without compensating them for each vested paid vacation
2 day.

3 43. As a result of the above, Plaintiff seeks declaratory and injunctive relief,
4 damages for unpaid wages owed, interest thereon and costs of suit pursuant to California Labor
5 Code § 218.6, and reasonable attorney's fees pursuant to California Code of Civil Procedure §
6 1021.5.

7 **FOURTH CLAIM FOR RELIEF**

8 **FAILURE TO PROVIDE ACCURATE, WRITTEN WAGE STATEMENTS**

9 **(By Plaintiffs and the All-Inclusive Class)**

10 44. Plaintiffs incorporate paragraphs 1 through 43 of the Complaint as if fully
11 alleged herein.

12 45. At all relevant times, Plaintiffs and the other members of the **All-Inclusive Class**
13 have been employees of Defendants entitled to the benefits and protections of California Labor
14 Code § 226. Pursuant to California Labor Code § 226(a), Plaintiffs and the other class members
15 were entitled to receive, semimonthly or at the time of each payment of wages, an accurate
16 itemized statement showing: a) gross wages earned; b) net wages earned; c) all applicable
17 hourly rates in effect during the pay period; and d) the corresponding number of hours worked
18 at each hourly rate by the employee.

19 46. Defendants failed to provide Plaintiffs accurate itemized statements in
20 accordance with California Labor Code § 226(a) because Plaintiffs' wage statements did not,
21 among other things, accurately reflect all of the hours that they actually worked, the descriptions
22 for all of the hours they actually worked, and the corresponding rates of pay for all of the hours
23 they actually worked.

24 47. Plaintiffs are informed and believe and thereon allege that, at all relevant times
25 during the applicable limitations period, Defendants maintained a policy or practice of not
26 providing the other members of the **All-Inclusive Class** wage statements did not, among other
27 things, accurately reflect all of the hours that they actually worked, the descriptions for all of the
hours they actually worked, and the corresponding rates of pay for all of the hours they actually

1 worked.

2 48. Defendants' failure to provide Plaintiffs and the other members of the **All-**
3 **Inclusive Class** with accurate wage statements was knowing and intentional. Defendants had
4 the ability to provide Plaintiffs and the other class members with accurate wage statements but
5 intentionally provided wage statements that Defendants knew were not accurate.

6 49. As a result of being provided with inaccurate wage statements by Defendants,
7 Plaintiffs and the other members of the **All-Inclusive Class** have suffered an injury. Their legal
8 rights to receive accurate wage statements were violated and they were misled about the amount
9 of wages they had actually earned and were owed. In addition, the absence of accurate
10 information on their wage statements prevented immediate challenges to Defendants' unlawful
11 pay practices, has required discovery and mathematical computations to determine the amounts
12 of wages owed, has caused difficulty and expense in attempting to reconstruct time and pay
13 records, and/or has led to the submission of inaccurate information about wages and amounts
14 deducted from wages to state and federal government agencies.

15 50. Pursuant to California Labor Code § 226(e), Plaintiffs and the other members of
16 the **All-Inclusive Class** are entitled to recover the greater of actual damages, or penalties of fifty
17 dollars (\$50) for the initial pay period in which a violation of California Labor Code § 226(a)
18 occurred and one hundred dollars for each violation of California Labor Code § 226(a) in a
19 subsequent pay period, not to exceed an aggregate penalty of four thousand dollars (\$4,000) per
20 class member, and are also entitled to an award of costs and reasonable attorney's fees.

21 **FIFTH CAUSE OF ACTION**

22 **FAILURE TO TIMELY PAY ALL FINAL WAGES**

23 **(Cal. Lab. Code §§ 201-203)**

24 **(By Plaintiffs and the Former Employee Class)**

25 51. Plaintiffs incorporate paragraphs 1 through 50 of the Complaint as if fully
26 alleged herein.

27 52. At all relevant times, Plaintiffs and the members of the **Former Employee Class**
were employees of Defendants covered by California Labor Code § 201 or California Labor

1 Code § 202. Pursuant to California Labor Code § 201 or California Labor Code § 202, Plaintiffs
2 and the members of the **Former Employee Class** were entitled to payment of all wages earned
3 and unpaid prior to the termination of their employment. Members of the **Former Employee**
4 **Class** who are discharged employees were entitled to payment of their earned and unpaid wages
5 no later than the day on which their employment was terminated. Members of the **Former**
6 **Employee Class** who resigned were entitled to payment of their earned and unpaid wages
7 within 72 hours after giving notice of resignation or, if they had given at least 72 hours previous
8 notice, no later than the day their employment terminated.

9 53. Defendants failed to timely pay Plaintiffs all final wages earned and unpaid prior
10 to the termination of his employment with Defendants, including, but not limited to, additional
11 earned wages for rest and meal periods not provided to them, and earned wages in the forms of
12 vested paid vacation time and unlawfully deducted wages, in accordance with California Labor
13 Code § 201. Plaintiffs are informed and believe and thereon allege that, at relevant times during
14 the applicable limitations period, Defendants maintained a policy or practice of not providing
15 members of the **Former Employee Class** with a final paycheck encompassing all wages owed
16 upon termination or discharge of employment, including, but not limited to, additional earned
17 wages for rest and meal periods not provided to them, and/or earned wages in the forms of
18 vested paid vacation time and/or unlawfully deducted wages, in accordance with California
19 Labor Code § 201 or California Labor Code § 202.

20 54. Defendants' failure to pay Plaintiffs and members of the **Former Employee**
21 **Class** all wages earned prior to termination in accordance with California Labor Code § 201 or
22 California Labor Code § 202 was willful. Plaintiffs are informed and believe and thereon allege
23 that Defendants had the ability to pay all wages earned by members of the **Former Employee**
24 **Class** prior to termination in accordance with California Labor Code § 201 or California Labor
25 Code § 202, but intentionally adopted policies or practices incompatible with the requirements
26 of California Labor Code § 201 or California Labor Code § 202.

27 55. Pursuant to California Labor Code § 201 or California Labor Code § 202,
Plaintiffs and the members of the **Former Employee Class** are entitled to all wages earned

1 prior to the termination of their employment that Defendants did not pay them as well as
2 continuations of their wages, from the days they earned and unpaid wages were due upon the
3 termination of their employment until paid, up to a maximum of thirty (30) days, in amounts
4 subject to proof.

5 56. Accordingly, Plaintiffs and the members of the **Former Employee Class** are
6 entitled to recover the full amount of their unpaid wages and interest thereon pursuant to
7 California Labor Code § 218.6, continuation wages under California Labor Code § 203,
8 reasonable attorney's fees, and costs of suit.

9 **SIXTH CLAIM FOR RELIEF**

10 **UNAUTHORIZED DEDUCTIONS**

11 **(By Plaintiffs and the Unauthorized Deductions Class)**

12 57. Plaintiffs incorporate paragraphs 1 through 56 of the Complaint as if fully
13 alleged herein.

14 58. California Labor Code §§ 221 and 224 prohibit an employer from taking
15 deductions from an employee's wages without the employee's express written consent or other
16 legal authority for doing so.

17 59. At relevant times during the applicable limitations period, Defendants deducted
18 wages from Plaintiffs' paychecks without their express written consent or other legal authority
19 for doing so. Plaintiffs are informed and believe and thereon allege that, at relevant times during
20 the applicable limitations period, Defendants deducted wages from the paychecks of members
21 of the **Unauthorized Deduction Class** without their express written consent or other legal
22 authority for doing so.

23 60. By reason of the above, Plaintiffs and the members of the **Unauthorized**
24 **Deductions Class** are entitled to restitution for all unpaid amounts due and owing to within four
25 years (4) of the date of the filing of the Complaint until the date of entry of judgment. Further,
26 Plaintiffs, on behalf of themselves and the members of the **Unauthorized Deductions Class**,
27 seek interest thereon pursuant to California Labor Code § 218.6, costs pursuant to California
Labor Code § 218.6, and reasonable attorney's fees pursuant to California Code of Civil

1 Procedure § 1021.5.

2 **SEVENTH CLAIM FOR RELIEF**

3 **FAILURE TO INDEMNIFY**

4 **(By Plaintiffs and the Indemnification Class)**

5 61. Plaintiffs incorporate paragraphs 1 through 60 of the Complaint as if fully
6 alleged herein.

7 62. In pertinent part, California Labor Code § 2802(a) states, "An employer shall
8 indemnify his or her employee[s] for all necessary expenditures incurred by the employee in
9 direct consequence of the discharge of his or her duties." California Labor Code § 452 of the
10 Labor Code authorizes employers to prescribe the weight, color, quality, texture, style, form,
11 and make of uniforms required to be worn by their employees. However, the Wage Orders
12 impose an obligation on an employer that requires uniforms to be worn by its nonexempt
13 employees as a condition of employment to provide and maintain such uniforms, regardless of
14 the amount of the employees' compensation. The applicable wage order states, "When uniforms
15 are required by the employer to be worn by the employee as a condition of employment, such
16 uniforms shall be provided and maintained by the employer. The term "uniform" includes
17 wearing apparel and accessories of distinctive design or color." If the employer does not choose
18 to maintain employees' uniforms itself where it is required to do so, the Division of Labor
19 Standards Enforcement takes the position that the employer may pay each affected employee a
20 weekly maintenance allowance of an hour's pay at the state minimum wage rate (\$7.50 as of
21 January 1, 2007, and \$8.00 as of January 1, 2008) in lieu of maintaining the uniforms, assuming
22 that an hour is a realistic estimate of the time involved in maintaining the uniforms. The term
23 "uniform" is defined to include wearing apparel and accessories of distinctive design or color.

24 63. At relevant times during the applicable limitations period, Defendants required
25 Plaintiffs and the members of the **Indemnification Class** to purchase and maintain uniforms
26 and apparel unique to Defendants at their expense. Defendants failed to indemnify Plaintiffs and
27 the members of the **Indemnification Class** for such expenditures.

64. By reason of the above, Plaintiffs and the members of the **Indemnification Class**

1 are entitled to restitution for all unpaid amounts due and owing to within four years (4) of the
2 date of the filing of the Complaint until the date of entry of judgment. Further, Plaintiffs, on
3 behalf of themselves and the members of the **Indemnification Class**, seeks interest thereon
4 pursuant to California Labor Code § 218.6, costs pursuant to California Labor Code § 218.6,
5 and reasonable attorney's fees pursuant to California Code of Civil Procedure § 1021.5.

6 **EIGHTH CLAIM FOR RELIEF**

7 **UNFAIR COMPETITION**

8 **(By Plaintiffs and the California All-Inclusive Class)**

9 65. Plaintiffs incorporate paragraphs 1 through 64 of the Complaint as if fully
10 alleged herein.

11 66. The unlawful conduct of Defendants alleged herein amounts to and constitutes
12 unfair competition within the meaning of California Business & Professions Code §§ 17200, *et*
13 *seq.* California Business & Professions Code §§ 17200, *et seq.*, protects against unfair
14 competition and allows a person who has suffered an injury-in-fact and has lost money or
15 property as a result of an unfair, unlawful, or fraudulent business practice to seek restitution on
16 her own behalf and on behalf of other similarly situated persons in a class action proceeding.

17 67. As a result of Defendants' violations of the California Labor Code as during the
18 applicable limitations period as alleged herein, Plaintiffs have suffered an injury-in-fact and
19 have lost money or property in the form of earned wages. Specifically, Plaintiffs have lost
20 money or property as a result of not being paid for hours worked, not being paid at legal
21 overtime rates for all overtime hours worked, not being paid additional required wages for rest
22 and meal periods not provided to them, being provided with inaccurate written wage statements
23 that have had the effect of concealing other wage underpayments, Defendants' improper
24 deductions, and Defendants' failure to reimburse for necessary expenditures, and Defendants'
25 failure to timely pay all wages due or owed upon termination or resignation.

26 68. Plaintiffs are informed and believe that other similarly situated persons have
27 been subject to the same unlawful policies or practices of Defendants, including not being paid
for all wages earned, not being paid at overtime rates for all overtime hours worked, not being

1 paid additional required wages for rest and meal periods not provided to them, being provided
2 with inaccurate written wage statements that have had the effect of concealing other wage
3 underpayments, Defendants' improper deductions, and Defendants' failure to reimburse for
4 necessary expenditures, and/or Defendants' failure to timely pay all wages due or owed upon
5 termination or resignation.

6 69. Due to its unfair and unlawful business practices in violation of the California
7 Labor Code as alleged herein, Defendants have gained a competitive advantage over other
8 comparable companies doing business in the State of California that comply with their legal
9 obligations to compensate employees for all earned wages and to provide them with reasonable
10 means of verifying that they have been paid all earned wages with accurate written wage
11 statements.

12 70. Pursuant to California Business & Professions Code § 17203, Plaintiffs, on
13 behalf of themselves and the other members of the **All-Inclusive Class**, seek declaratory and
14 injunctive relief, and restitution of all monies rightfully belonging to them that Defendants did
15 not pay them or otherwise retained by means of its unlawful and unfair business practices.

16 71. Plaintiffs and the other members of the **All-Inclusive Class** are entitled to
17 recover reasonable attorney's fees in connection with their unfair competition claims pursuant
18 to California Code of Civil Procedure § 1021.5, the substantial benefit doctrine and/or the
19 common fund doctrine.

20 **NINTH CLAIM FOR RELIEF**

21 **CIVIL PENALTIES**

22 **(By Plaintiffs and the All-Inclusive Class)**

23 72. Plaintiffs incorporate paragraphs 1 through 71 of the Complaint as if fully
24 alleged herein.

25 73. During the applicable time period, Defendants violated California Labor Code §§
26 204, 223, 226(a), 226.7, 227.3, 510, 512, and 1194.

27 74. California Labor Code §§ 2699(a) and (g) authorize an aggrieved employee, on
behalf of himself and other current or former employees, to bring a civil action to recover civil

1 penalties pursuant to the procedures specified in California Labor Code § 2699.3.

2 75. Pursuant to California Labor Code §§ 2699(a) and (f), Plaintiffs and the other
3 aggrieved employees of Defendants are entitled to recover civil penalties for Defendants'
4 violations of California Labor Code §§ 200, 201, 202, 203, 204, 224, 226(a), 226.7, 227.3, 510,
5 512, 1194 and 2802 during the applicable limitations period in the following amounts:

6 A. For violations of California Labor Code §§ 200, 201, 202, 203, 224,
7 226.7, 1194, and 2802, one hundred dollars (\$100.00) for each aggrieved employee per pay
8 period for each initial violation and two hundred dollars (\$200.00) for each aggrieved employee
9 per pay period for each subsequent violation (penalty amounts established by California Labor
10 Code § 2699(f)(2));

11 B. For violations of California Labor Code § 204, one hundred dollars
12 (\$100.00) for each aggrieved employee for each initial violation and two hundred dollars
13 (\$200.00) for each aggrieved employee plus twenty-five percent (25%) of the amount
14 unlawfully withheld from each aggrieved employee for each subsequent, willful or intentional
15 violation (penalty amounts established by California Labor Code § 210);

16 C. For violations of California Labor Code § 226(a), two hundred fifty
17 dollars (\$250.00) per employee for initial violation and one thousand dollars (\$1,000.00) per
18 employee for each subsequent violation (penalty amounts established by California Labor Code
19 § 226.3); and,

20 D. For violations of California Labor Code §§ 510 and 512, fifty dollars
21 (\$50.00) for each aggrieved employee for each initial violation for pay period for which the
22 employee was underpaid in addition to an amount sufficient to recover unpaid wages and one
23 hundred dollars (\$100.00) for each underpaid employee for each pay period for which the
24 employee was underpaid in addition to an amount sufficient to recover unpaid wages (penalty
25 amounts established by California Labor Code § 558).

26 76. Plaintiffs have complied with the procedures for bringing suit specified in
27 California Labor Code § 2699.3. By letters dated January 8 and February 19, 2010, Plaintiffs
gave written notice by certified mail to the Labor and Workforce Development Agency

1 (“LWDA”) and Defendants of the specific provisions of the California Labor Code alleged to
2 have been violated, including the facts and theories to support the alleged violations. Plaintiffs
3 anticipate that the LWDA will soon provide Plaintiffs with written notice that it does not intend
4 to investigate the violations of the California Labor Code alleged herein.

5 77. Pursuant to California Labor Code § 2699(g), Plaintiffs and the other members of
6 the **All-Inclusive Class** are entitled to an award of reasonable attorney’s fees and costs in
7 connection with their claims for civil penalties.

8 **PRAYER FOR RELIEF**

9 78. WHEREFORE, Plaintiffs, on behalf of themselves and all others similarly
10 situated, prays for relief and judgment against Defendants as follows:

11 A. An order that the action be certified as a class action with respect to
12 Plaintiffs’ claims for violations of California law;

13 B. An order that Plaintiffs be appointed class representatives;

14 C. An order that counsel for Plaintiffs be appointed class counsel;

15 D. Declaratory relief;

16 E. Injunctive relief;

17 F. Actual damages;

18 G. Liquidated damages;

19 H. Restitution;

20 I. Civil penalties;

21 J. Statutory penalties;

22 K. Pre-judgment interest;

23 L. Costs of suit;

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- M. Reasonable attorney's fees; and
- N. Such other relief as the Court deems just and proper.

Respectfully submitted,

THE SPIVAK LAW FIRM

Date: February 23, 2010

By:



DAVID G. SPIVAK, Attorney for
Plaintiff, ALINA GHRDILYAN,
EVGENIA SULTANIAN, and all others
similarly situated

EXHIBIT 12

1 CASE NUMBER: BC430633
2 CASE NAME: ALINA GHRDILYAN, ET AL., VERSUS
3 RJ FINANCIAL, ET AL.,
4 LOS ANGELES, CALIFORNIA MONDAY, APRIL 23, 2012
5 DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE
6 APPEARANCES: (SEE TITLE PAGE.)
7 REPORTER: ANGELA Z. PARADELA, CSR NO. 9659
8 TIME: A.M. SESSION
9

10 (THE FOLLOWING PROCEEDINGS WERE HELD IN
11 OPEN COURT:)

12
13 THE COURT: OKAY. THANK YOU VERY MUCH. I'M GOING
14 TO ASK YOU LAWYERS TO WAIT FOR JUST A MOMENT.

15 AS YOU CAN PROBABLY TELL, FROM THE QUESTIONS
16 AND THE WAY I'VE BEEN TAKING NOTES, SO FORTH, I HAVE A CASE
17 IN MIND AND I HAVE BEEN WORKING ON IT BOTH WHILE YOU'VE BEEN
18 WITH ME AND DURING THE RECESSES LIKE WEEKENDS AND NIGHTS.
19 JUST A SECOND. I HAVE TWO MORE THINGS I HAVE TO BRING OUT.
20 I WILL DO SOME MORE WORK WITH YOU.

21 (A PAUSE IN THE PROCEEDINGS.)

22 THE COURT: OKAY. YOU PROBABLY ALREADY GOT THE
23 IMPRESSION THAT I AM A JUDGE WHO TRIES TO DOCUMENT AND SHOW
24 THE LEGAL PREMISES FOR PROCEDURAL STEPS WE TAKE, AND I INTEND
25 TO DO THAT. I JUST WANT TO TELL YOU WHAT I'M GOING TO DO
26 HERE AND I GUESS I WILL START THIS WAY.

27 I SAID I AM GOING TO BRING OUT TWO THINGS. I
28 BROUGHT OUT ONLY ONE.

1 (A PAUSE IN THE PROCEEDINGS.)

2 THE COURT: THE -- I'M GOING TO CALL YOUR ATTENTION
3 TO SOME CASES THAT HAVEN'T BEEN CITED. I'M GOING TO DEAL
4 WITH THE MERITS OF YOUR CLIENTS'S CASE. SO HERE WE GO.

5 UNDER CALIFORNIA CONSTITUTION ARTICLE VI,
6 SECTION 6 AND GOVERNMENT CODE 68070(B) AND 68603(A), THE
7 CALIFORNIA JUDICIAL COUNCIL HAS CONSTITUTIONALLY GRANTED AND
8 LEGISLATIVELY AFFIRMED POWER TO ADOPT RULES, REPORT
9 ADMINISTRATION PRACTICE AND PROCEDURE THAT ARE CONSISTENT
10 WITH STATUTES. THE CALIFORNIA RULES OF COURT HAVE THE FORCE
11 OF LAW AND BINDING AS PROCEDURAL STATUTES AS LONG AS THEY ARE
12 CONSISTENT WITH LEGISLATIVE ENACTMENTS AND CONSTITUTIONAL
13 GUARANTEES.

14 I WILL CITE YOU THREE CASES WHERE THAT POINT
15 IS MADE. THEY ARE IN RE JUAN -- THAT'S J-U-A-N -- C.,
16 (1993), 20 CALIFORNIA APPELLATE 4TH, 748, PARTICULARLY AT
17 PAGES 752 TO 753; ALICIA T. VERSUS COUNTY OF LOS ANGELES,
18 (1990), 222 CALIFORNIA APPELLATE 3D 869 AT 884, AND OATS
19 VERSUS OATS. OATS IS SPELLED O-A-T-S, (1983) 14 CALIFORNIA
20 APPELLATE 3D 416 AT 420. THIS IS HOW THE OATS VERSUS OATS
21 COURT EXPRESSED THIS VIEW.

22 RULES OF COURT HAVE THE FORCE OF POSITIVE LAW.
23 THEY ARE AS BINDING ON THIS COURT AS PROCEDURAL STATUTES
24 UNLESS THEY TRANSCEND LEGISLATIVE ENACTMENTS OR
25 CONSTITUTIONAL GUARANTEES.

26 SO THE HIERARCHY THEN WOULD BE CONSTITUTION,
27 STATUTES AND CALIFORNIA RULES OF COURT, AND THEN CASE LAW.

28 I SAY THAT BECAUSE THE CASE OF WHITTINGTON

1 VERSUS MCKINNEY -- WHITTINGTON IS SPELLED

2 W-H-I-T-I-N-G-T-O-N, VERSUS MCKINNEY, CAPITAL M, C, CAPITAL
3 K, I-N-N-E-Y, (1991), 234 CALIFORNIA APPELLATE 3D 123 --
4 CRITICIZED THE CONDUCT OF A NOW FORMER JUDGE, I BELIEVE, AT
5 THE ORANGE COUNTY SUPERIOR COURT, WHO ANNOUNCED A DECISION,
6 GAVE A STATEMENT OF DECISION ORALLY AND SAID IF YOU WANTED A
7 WRITTEN STATEMENT OF DECISION, YOU COULD MAKE REFERENCE TO
8 THE COURT TRANSCRIPT. THAT CASE, WHITTINGTON VERSUS MCKINNEY
9 WAS, AS I SAY, DECIDED IN 1991.

10 IN 2010, EFFECTIVE JANUARY 1, 2010, THE
11 CALIFORNIA RULES OF COURT WERE AMENDED WITH RESPECT TO, AMONG
12 OTHER PROVISIONS OF THE CALIFORNIA RULES OF COURT, RULE
13 3.1590 HAVING TO DO WITH ANNOUNCEMENT OF TENTATIVE DECISION
14 AND STATEMENT DECISION AND JUDGMENT.

15 THE (C) SUBSECTION OF RULE 15 -- RULE 3.1590
16 WAS AMENDED BY THE ELIMINATION OF SOME PROVISIONS AND BY
17 BEING INSERTION OF OTHER PROVISIONS. I'M GOING TO REFER TO
18 THE (C) SUBSECTION.

19 IT READS NOW, (READING:)

20 THE COURT IN ITS TENTATIVE DECISION MAY:
21 STATE THAT IT IS THE COURT'S PROPOSED
22 STATEMENT OF DECISION, SUBJECT TO A PARTY'S
23 OBJECTION UNDER SUBSECTION (G);

24 (2) INDICATE THAT THE COURT WILL PREPARE
25 A STATEMENT OF DECISION;

26 (3) ORDER A PARTY TO PREPARE A STATEMENT
27 OF DECISION; OR

28 (4) DIRECT THAT THE TENTATIVE DECISION

1 WILL BECOME THE STATEMENT OF DECISION UNLESS,
2 WITHIN 10 DAYS AFTER ANNOUNCEMENT OR SERVICE
3 OF THE TENTATIVE DECISION, A PARTY SPECIFIES
4 THOSE PRINCIPAL CONTROVERTED ISSUES AS TO
5 WHICH THE PARTY IS REQUESTING A STATEMENT OF
6 DECISION OR MAKES PROPOSALS NOT INCLUDED IN
7 THE TENTATIVE DECISION.

8 NOW, I WILL NOT USE METHOD TWO. THAT'S THE
9 COURT WILL PREPARE A STATEMENT OF DECISION. I WILL USE
10 EITHER (1), (3), OR (4) EITHER SAYING THAT THIS IS A PROPOSED
11 STATEMENT OF DECISION SUBJECT TO OBJECTIONS UNDER SUBSECTION
12 (G), OR ORDER A PARTY TO PREPARE A STATEMENT OF DECISION, OR
13 DIRECT THAT THE TENTATIVE DECISION WILL BECOME THE STATEMENT
14 OF DECISION UNLESS WITHIN TEN DAYS A PARTY SPECIFIES
15 PRINCIPAL CONTROVERTED ISSUES AS TO WHICH THE PARTY IS
16 REQUESTING A STATEMENT OF DECISION OR MAKES PROPOSALS NOT
17 INCLUDED IN THE TENTATIVE DECISION.

18 I WOULD LIKE TO HEAR FROM BOTH SIDES NOW
19 CONCERNING WHICH OF THREE ALTERNATIVES WHICH I PROPOSED THEY
20 PREFER, AND THEN I WILL MAKE THE DECISION CONCERNING THAT
21 THAT IS PROPER. LET'S START WITH THE DEFENSE. DEFENDANT?

22 MR. SABZEVAR: YOUR HONOR, I PREFER THAT THE COURT
23 ISSUES A STATEMENT OF DECISION ITSELF AND NOT LEAVE IT TO THE
24 PARTIES OR TEN DAYS.

25 THE COURT: I TOLD YOU I'M NOT GOING TO PREPARE A
26 STATEMENT OF DECISION. I'M GOING TO USE EITHER METHOD (1),
27 (3), OR (4). (1) IS THIS IS THE PROPOSED STATEMENT OF
28 DECISION SUBJECT TO OBJECTIONS UNDER (D). (3) IS ORDER A

1 PARTY TO PREPARE A STATEMENT OF DECISION; OR (4), DIRECT THAT
2 THE TENTATIVE DECISION WILL BECOME THE STATEMENT OF DECISION
3 UNLESS WITHIN TEN DAYS AFTER ANNOUNCEMENT OR SERVICE OF THE
4 TENTATIVE DECISION, THE PARTY SPECIFIES THOSE PRINCIPAL
5 CONTROVERTED ISSUES AS TO WHICH THE PARTY IS REQUESTING A
6 STATEMENT OF DECISION OR MAKES PROPOSALS NOT INCLUDED IN THE
7 TENTATIVE DECISION.

8 MR. SABZEVAR: DEFENSE PREFERENCE IS NUMBER ONE.

9 THE COURT: STATE THAT THIS IS THE COURT'S
10 STATEMENT OF DECISION SUBJECT TO A PARTY'S OBJECTION UNDER
11 (G)?

12 MR. SABZEVAR: YES, YOUR HONOR.

13 THE COURT: PLAINTIFF?

14 MR. SPIVAK: WE PREFER TO WRITE THE DECISION, YOUR
15 HONOR, ONCE THE COURT HAS MADE ITS POSITION KNOWN.

16 THE COURT: ALL RIGHT.

17 MR. SPIVAK: BY "WE" I MEAN WE BELIEVE IT SHOULD BE
18 PREVAILING PARTY.

19 THE COURT: UH-HUH. I'M GOING TO USE -- I
20 APPRECIATE -- I'M GOING TO USE METHOD (4). THIS TENTATIVE
21 DECISION WILL BECOME THE STATEMENT OF DECISION UNLESS WITHIN
22 TEN DAYS AFTER ANNOUNCEMENT, AND SO FORTH. THAT'S
23 3.1590(C)(4).

24 SO WHAT I'M GOING TO DO NOW IS ANNOUNCE A
25 TENTATIVE WHICH, AS YOU CAN SEE, IS ALSO A CONDITIONAL
26 STATEMENT OF DECISION.

27 THIS CASE CAME BEFORE ME PRESIDING IN THIS
28 DEPARTMENT 41 ON THE 10TH OF APRIL, 2012, FOR TRIAL WITHOUT

1 JURY. DAVID G. SPIVAK, STATE BAR 179684, APPEARED AS
2 ATTORNEY FOR PLAINTIFFS ALINA GHRDILYAN AND EVGENIA
3 SULTANIAN, AND F. MICHAEL SABZEVAR, STATE BAR 172312 APPEARED
4 AS ATTORNEY FOR DEFENDANT, RAMIL ABALKHAD.

5 THE CASE WAS SUBMITTED FOR DECISION TODAY, THE
6 23RD OF APRIL, 2012.

7 IN THIS CASE, TWO PLAINTIFFS CLAIM THAT
8 DEFENDANT ABALKHAD IS LIABLE TO THEM ON VARIOUS
9 EMPLOYMENT-DERIVED THEORIES INCLUDING AND ESPECIALLY FOR
10 PENALTIES AND THAT THEY CAN ENFORCE VARIOUS REMEDIES AGAINST
11 THEM UNDER THE LABOR CODE PRIVATE ATTORNEY GENERAL ACT, WHICH
12 IS AT LABOR CODE 2698, AND FOLLOWING.

13 IN OPEN COURT ON THE 10TH OF APRIL, 2012, THE
14 ATTORNEYS CONFIRMED THAT THE OPERATIVE PLEADINGS ARE THE
15 PLAINTIFFS'S FIRST AMENDED COMPLAINT, ET CETERA, FILED
16 FEBRUARY 24, 2010, AND THE DEFENDANT'S ANSWER TO THEIR FIRST
17 AMENDED COMPLAINT FILED SEPTEMBER 13, 2010. I WILL MAKE A
18 COUPLE OF QUICK COMMENTS ABOUT THOSE TWO DOCUMENTS NOW.

19 THE FULL NAME OF THE PLAINTIFFS'S OPERATIVE
20 PLEADING IS FIRST AMENDED COMPLAINT FOR -- AND THEN THERE ARE
21 NINE THEORIES LISTED: FAILURE TO COMPENSATE EMPLOYEES FOR
22 ALL HOURS WORKED; NUMBER TWO IS FAILURE TO PROVIDE BOTH REST
23 AND MEAL PERIODS; NUMBER THREE IS FORFEITURE OF VESTED
24 VACATION BENEFITS; NUMBER FOUR IS FAILURE TO PROVIDE ACCURATE
25 WRITTEN WAGE STATEMENTS; NUMBER FIVE IS FAILURE TO TIMELY PAY
26 ALL FINAL WAGES; NUMBER SIX IS UNAUTHORIZED DEDUCTIONS;
27 NUMBER SEVEN IS FAILURE TO INDEMNIFY; NUMBER EIGHT IS UNFAIR
28 COMPETITION; AND NUMBER NINE IS CIVIL PENALTIES.

1 THE DEFENDANT'S ANSWER TO THE FIRST AMENDED
2 COMPLAINT WAS ON A JUDICIAL COUNCIL FORM PLEADING.

3 INSOFAR AS IT'S PERTINENT TO THIS PORTION OF
4 MY ANALYSIS, LABOR CODE 2699 READS, (READING:)

5 SUBSECTION (A), NOTWITHSTANDING ANY OTHER
6 PROVISION OF LAW, ANY PROVISION OF THIS CODE
7 THAT PROVIDES FOR A CIVIL PENALTY TO BE
8 ASSESSED AND COLLECTED BY THE LABOR AND
9 WORKFORCE DEVELOPMENT AGENCY OR ANY OF ITS
10 DEPARTMENTS, DIVISIONS, COMMISSIONS, BOARDS,
11 AGENCIES, OR EMPLOYEES FOR A VIOLATION OF THIS
12 CODE MAY, AS AN ALTERNATIVE, BE RECOVERED
13 THROUGH A CIVIL ACTION BROUGHT BY AN AGGRIEVED
14 EMPLOYEE ON BEHALF OF HIMSELF OR HERSELF AND
15 OTHER CURRENT OR FORMER EMPLOYEES PURSUANT TO
16 THE PROCEDURES SPECIFIED IN SECTION 2699.3.

17 THE PLAINTIFFS HAD ORIGINALLY DENOMINATED THIS
18 CASE AS A CLASS ACTION AND THEY CONTINUED THAT DESIGNATION
19 THROUGH VARIOUS OTHER FILINGS, BUT THEY HAVE NEVER OBTAINED
20 AN ORDER CERTIFYING THE CLASS. THEY CLAIM, THOUGH, THAT THEY
21 ARE ENTITLED TO PROCEED ON BEHALF OF OTHERS PURSUANT TO THE
22 CALIFORNIA LABOR CODE PRIVATE ATTORNEY GENERAL ACT AS TO
23 DEFENDANT ABALKHAD.

24 THE PLAINTIFFS HAD TRIED THIS CASE BEFORE ME
25 SOLELY AS TO CAUSE OF ACTION NINE. THEY CONCEDE THAT THIS
26 CASE IS STAYED IN THIS COURT IN PART BECAUSE OF THE FACT THAT
27 DEFENDANT RJ FINANCIAL, INC., ORIGINALLY THE ONLY NAMED
28 DEFENDANT, BUT BY VIRTUE OF THE FIRST AMENDED PLEADING, A

1 CODEFENDANT, THAT CORPORATION IS A DEBTOR IN CHAPTER 11
2 PROCEEDING, WHICH IS STILL PENDING.

3 PURSUANT TO 11 U.S.C. 362, THIS CASE WOULD BE
4 STAYED AS TO THAT PARTY. BUT MR. ABALKHAD HAS NOT BEEN SHOWN
5 TO BE A DEBTOR IN A BANKRUPTCY PROCEEDING AND DURING CLOSING
6 ARGUMENT OF THE 17TH OF APRIL, 2012, MR. SPIVAK CONFIRMED HIS
7 CLIENTS HAVE CLAIMS PENDING IN THE BANKRUPTCY CASE. THAT
8 WILL MEAN THAT THE CASE CAN PROCEED AND HAS PROCEEDED ON THE
9 BASIS PLEADED AGAINST MR. ABALKHAD AS AN INDIVIDUAL.

10 ALTHOUGH BECAUSE OF 11 U.S.C. 362, IT IS STAYED AS TO THE
11 CORPORATION.

12 THE PERSONS WHO GAVE TESTIMONY AT THE TRIAL
13 WERE JOSEPH HARSANY, H-A-R-S-A-N-Y, AN EMPLOYEE OF PAYROLL
14 CHECK WRITING SERVICE USED BY THE DEFENDANTS; BREK OYAMA --
15 BREK IS SPELLED B-R-E-K; AND OYAMA IS O-Y-A-M-A, MR. SPIVAK'S
16 PARALEGAL; RAMIL ABALKHAD, ONE OF THE DEFENDANTS, THE
17 PRESIDENT AND CHIEF EXECUTIVE OFFICER OF DEFENDANT RJ
18 FINANCIAL AND, INDEED, THAT -- APPARENTLY THAT COMPANY'S ONLY
19 OFFICER AND ONLY DIRECTOR. THE FOURTH WITNESS WAS ALINA
20 GHRDILYAN, ONE OF THE PLAINTIFFS, AND THE FIFTH WAS EVGENIA
21 SULTANIAN, ONE OF THE PLAINTIFFS, THE OTHER PLAINTIFF.

22 I'M GOING TO REFER TO THE LABOR CODE PRIVATE
23 ATTORNEY GENERAL ACT IN THE WAY THE ATTORNEYS HAVE -- IT
24 SEEMS TO ME TO BE SERVICEABLE -- AND I'M GOING TO REFER --
25 I'M GOING TO USE THE ACRONYM PAGA, P-A-G-A.

26 PAGA ACTIONS DO NOT HAVE BEEN MAINTAINED AS
27 CLASS ACTIONS. THEY CAN BE, BUT THEY ARE NOT REQUIRED TO BE.
28 THE AUTHORITY ON THAT IS ARIAS VERSUS SUPERIOR COURT, (2009),

1 46 CALIFORNIA 4TH, 969, 981 TO 982.

2 WE WILL GO INTO RECESS NOW. COME BACK AT
3 1:30, PLEASE.

4 (AT 11:58 A.M., A LUNCH RECESS WAS TAKEN.)

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(THE FOLLOWING PROCEEDINGS WERE HELD AT 1:47 P.M.)

THE COURT: NOW, WE WILL GO BACK TO THE GHRDILYAN
AGAINST RJ CASE.

OKAY. WHEN WE LEFT, I HAD, I THINK, TALKED
ABOUT SOME GENERAL POINTS OF LAW HAVING TO DO WITH PAGA
ACTIONS, AND I WILL JUST OVERLAP SLIGHTLY.

I WAS SAYING THAT PAGA ACTIONS DO NOT HAVE TO
BE HAVE MAINTAINED AS CLASS ACTIONS. THEY CAN BE, BUT ARE
NOT REQUIRED TO BE. AND ONE OF AUTHORITIES ON THAT IS ARIAS,
A-R-I-A-S, VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH
969 FROM PAGES 981 TO 982. PAGA IS NOT THE EMPLOYEE'S
EXCLUSIVE REMEDY. THEY MAY SEPARATELY OR CONCURRENTLY SEEK
OTHER REMEDIES. LABOR CODE 2699(G) AND CALIBER BODY WORKS
VERSUS SUPERIOR COURT, (2005) 134 CALIFORNIA APPELLATE 4TH
365 AT 375.

THE KINDS OF PENALTIES THAT PAGA PLAINTIFFS
CAN SEEK TO RECOVER, ASSUMING THAT THE FACTS SUPPORT IT, ARE
THOSE FOR FAILURE TO PAY STATUTORILY PRESCRIBED WAGES --
THAT'S LABOR CODE 210 -- UNLAWFULLY WITHHELD WAGES -- THAT'S
LABOR CODE 225.5 -- OR FOR VIOLATING, FOR EXAMPLE, AN
INDUSTRIAL WELFARE COMMISSION ORDER -- THAT'S LABOR CODE 558.
AN AGGRIEVED EMPLOYEE -- THAT WOULD MEAN ANYONE EMPLOYED BY
THE ALLEGED VIOLATOR AND AGAINST WHOM ONE OR MORE VIOLATIONS
WAS COMMITTED -- AND I PICKED UP THAT DEFINITION FROM LABOR
CODE 2699(C) AND FROM THE COMMENTS IN AMALGAMATED TRANSIT
UNION VERSUS SUPERIOR COURT, (2009) 46 CALIFORNIA 4TH 993 AT
1004 TO 1005 -- AN AGGRIEVED EMPLOYEE CAN SUE TO RECOVER
CIVIL PENALTIES FOR VIOLATIONS OF THE LABOR CODE ON BEHALF OF

1 HIMSELF, OR HERSELF, AND OTHER CURRENT OR FORMER EMPLOYEES
2 AGAINST WHOM ONE OR MORE OF THE ALLEGED VIOLATIONS WAS
3 COMMITTED. THAT'S LABOR CODE 2699(G)(1).

4 THE ATTORNEYS HAVE FROM TIME TO TIME REFERRED
5 TO WHAT THEY HAVE CALLED THE BRINKER CASE.

6 NOW, WHAT THEY ARE REFERRING TO IS THE CASE
7 ENTITLED BRINKER RESTAURANT CORPORATION VERSUS SUPERIOR
8 COURT, REAL PARTY IN INTEREST, HOHNBAUM H-O-H-N-B-A-U-M. THE
9 VERSION OF THAT THAT I HAVE USED IN MY ANALYSIS AND
10 PREPARATION IS THE VERSION THAT WAS PRINTED AT 2012 DAILY
11 JOURNAL, DAILY APPELLATE REPORT, PAGE 4615, AND FOLLOWING.

12 I HAVE BEEN REQUIRED TO EVALUATE THE TESTIMONY
13 OF THE PARTY WITNESSES IN THIS CASE, THAT IS, MS. GHRDILYAN,
14 MS. SULTANIAN, AND MR. ABALKHAD WITH SOME CAUTION AND
15 RESERVATIONS. THOSE THREE PERSONS IN THEIR CAPACITIES AS
16 WITNESSES ARGUED AND WRANGLLED WITH THE QUESTIONERS DURING
17 TRIAL, AND SOME OF THAT WAS PROVOKED BY THE QUESTIONERS; SOME
18 OF IT WAS NOT. THAT BECOMES AN IMPORTANT FACTOR IN
19 EVALUATING RELATIVE CREDIBILITIES UNDER EVIDENCE CODE 780(A).
20 THOSE THREE PARTIES ALL HAVE AN INTEREST, BIAS, AND OTHER
21 MOTIVE FOR SLANTING THEIR TESTIMONY, OBVIOUSLY, AND THAT
22 BECOMES SIGNIFICANT UNDER EVIDENCE CODE 780(F) AND EVIDENCE
23 CODE 780(J).

24 MR. ABALKHAD HAS SUFFERED FELONY CONVICTIONS
25 ON HIS PLEA OF NOLO CONTENDERE AS TO PERJURY AND TAX EVASION
26 AND DID NOT OWN UP TO THAT COMPLETELY IN DISCOVERY. THAT'S
27 EVIDENCE -- THAT BECOMES PERTINENT UNDER EVIDENCE CODE 780(E)
28 AND EVIDENCE CODE 780(H), AND EVIDENCE CODE 780(I) AND IS

1 COMMENTED ON IN THE CASE OF RUSHEEN, R-U-S-H-E-E-N, VERSUS
2 DREWS, D-R-E-W-S, (2002) 99 CALIFORNIA APPELLATE 4TH 279 AT
3 PAGES 283 TO 284.

4 ASPECTS OF THE TESTIMONY OF THESE WITNESSES,
5 THESE THREE PEOPLE AS WITNESSES, WERE EXAGGERATED AND
6 OVERSTATED. THAT BECOMES PERTINENT UNDER EVIDENCE CODE
7 780(B).

8 FURTHERMORE, EVIDENCE CODE SECTION 412
9 PROVIDES THAT IF WEAKER AND LESS SATISFACTORY EVIDENCE IS
10 OFFERED WHEN IT WAS IN -- WHEN IT WAS WITHIN THE POWER OF THE
11 PARTY TO PRODUCE STRONGER AND MORE SATISFACTORY EVIDENCE, THE
12 EVIDENCE ACTUALLY OFFERED SHOULD BE VIEWED WITH DISTRUST.
13 THIS, OF COURSE, IS A PERMISSIBLE INFERENCE AND NOT A
14 MANDATORY ONE, BUT THIS COURT HAS, AS THE LAW INDICATES,
15 TAKEN THIS INTO CONSIDERATION.

16 BUT ALL THAT HAVING BEEN SAID, THE COURT DOES
17 NOT ACCEPT MR. SABZEVAR'S INVITATION TO REJECT THE ENTIRETY
18 OF THE PLAINTIFFS'S TESTIMONY. INSTEAD, THIS COURT HAS HAD
19 TO ACCEPT THE PART OF THE TESTIMONY OF THE WITNESSES WHICH
20 THIS COURT FOUND -- HAS FOUND TO BELIEVE TRUE AND -- AND WILL
21 REJECT THE REST. THIS IS PRECISELY WHAT THE COURT -- PARDON
22 ME -- IS AUTHORIZED TO DO OR ANY FINDER OF FACT WOULD BE
23 AUTHORIZED TO DO. ONE MODEL FOR THAT IS CACI INSTRUCTION
24 107, FOURTH PARAGRAPH.

25 THE DATES INVOLVED IN THIS CASE -- AND THE
26 DATES BECOME SIGNIFICANT -- ARE AS FOLLOWS. MS. SULTANIAN
27 WAS HIRED ON -- IN NOVEMBER, 2007, AND WAS FIRED ON NOVEMBER
28 19, 2009. MS. GHRDILYAN WAS HIRED IN AUGUST, 2008, AND WAS

1 FIRED ON DECEMBER 3, 2009. ONE OF THE QUESTIONS WHICH I HAVE
2 BEEN CALLED UPON TO ANSWER IS WHETHER MR. ABALKHAD AS AN
3 INDIVIDUAL WAS AN EMPLOYER OF PLAINTIFFS AND -- UNDER WAGE
4 ORDER 7. I FIND THAT HE WAS NOT. BUT I FIND THAT THE
5 THEORIES OF LIABILITY UNDER -- I SHOULD BACK OFF. BUT I FIND
6 THAT THE OTHER BASES FOR ASSERTING LIABILITY ON THE PART OF
7 MR. ABALKHAD DO HAVE MERIT, AND LIABILITY DOES ATTACH TO HIM
8 UNDER THOSE THEORIES.

9 THE THEORIES I'M REFERRING TO ARE LABOR CODE
10 558 TO WHICH LABOR CODE 510 AND 512 ARE APPENDED OR INCLUDED
11 SUBSTANTIVE PROVISIONS AND LABOR CODE 1197.1 TO WHICH THE
12 SUBSTANTIVE PROVISIONS OF LABOR CODE 1198 AND THE WAGE ORDER
13 ARE ASSOCIATED THEORIES OF LIABILITY.

14 IN OTHER WORDS, I AM FINDING THAT UNDER 558
15 LABOR CODE AND 1197.1 LABOR CODE FOR THE SUBSTANTIVE REASONS
16 REFERRED TO IN THE OTHER TWO SOURCES AS TO EACH OF THOSE
17 SECTIONS, THAT IS 510 AND 512 LABOR CODE, AND 1193 AND WAGE
18 ORDER, LIABILITY CAN ATTACH TO MR. ABALKHAD AND UNDER THE
19 CIRCUMSTANCES OF THIS CASE, WILL ATTACH.

20 I'M GOING TO MAKE A FINDING ON THAT, AS YOU
21 WILL SEE, IN FAVOR OF -- PARDON ME -- OF THE PLAINTIFFS'S
22 POSITION.

23 NOW, I SAY IN FAVOR OF THE PLAINTIFFS'S
24 POSITION BECAUSE THAT MEANS NOT JUST IN FAVOR OF THE
25 PLAINTIFFS BUT SINCE WE HAVE A PAGA ACTION, I AM REFERRING TO
26 THE PLAINTIFFS'S POSITION.

27 NOW -- PARDON ME. I WILL SAY THIS.

28 AS YOU CAN TELL, I AM AT SOME PAINS TO GO

1 THROUGH THE LEGAL REASONING AND STEPS PREPARATORY TO REACHING
2 A DECISION IN THIS CASE WITH SOME CARE BECAUSE IT MAY VERY
3 WELL BE THAT THIS CASE WILL REACH ITS WAY INTO THE APPELLATE
4 COURTS AND THAT IT IS ALSO POSSIBLE THAT THE APPELLATE COURTS
5 MAY DECIDE THIS CASE IN A PUBLISHED OPINION, AND I WILL SAY
6 THAT THE DETERMINATION I HAVE MADE ABOUT ABALKHAD AS AN
7 EMPLOYER -- I SAID THAT HE'S NOT -- OR ABALKHAD AS A
8 POTENTIALLY LIABLE PARTY UNDER LIABILITY-ENHANCING STATUTES
9 OTHER THAN LABOR CODE 558 AND LABOR CODE 1197.1, THAT IS, THE
10 ABALKHAD-FAVORING DETERMINATIONS I HAVE MADE ON THOSE POINTS,
11 ARE NOT BEYOND REASONABLE ARGUMENT.

12 MY DECISION IS, AS I HAVE EXPRESSED IT, AND I
13 BELIEVE THAT I AM CORRECT -- BUT I -- BUT I DO RECOGNIZE THAT
14 THERE ARE ARGUMENTS THAT CAN BE MADE -- AND THEY HAVE BEEN
15 MADE HERE IN THIS COURTROOM -- ON THOSE POINTS.

16 I HAVE COMPARED THE EMPLOYEE HANDBOOKS,
17 EXHIBIT 3 AND EXHIBIT D. IT APPEARS TO ME THAT EXHIBIT D
18 FROM THE EVIDENCE IN THIS CASE WAS NOT SUPPLIED BY ABALKHAD
19 DURING THE DISCOVERY PHASE OF THIS CASE. THE PARTICULAR
20 PROVISIONS THAT I AM DEALING WITH ARE THOSE HAVING TO DO WITH
21 OVERTIME AND LUNCH AND EXHIBIT 3 IS COMMENTED ON BY THE
22 PLAINTIFFS AS BEING DEFICIENT BECAUSE THEY SAY THAT A LUNCH
23 PERIOD MUST BE PROVIDED AFTER FIVE HOURS OF WORK, NOT SIX
24 HOURS OF WORK, AND THE PLAINTIFFS'S POSITION IS THAT THAT WAS
25 THE ONLY PERTINENT EMPLOYEE HANDBOOK.

26 I THINK THE PLAINTIFFS ARE RIGHT AS TO BOTH
27 THOSE CONTENTIONS. EXHIBIT 3 BEARS THE DATE OF JANUARY,
28 2003. PLAINTIFFS ADMIT THAT THIS IS THE CORRECT DATE. THAT

1 IS, IT SEEMS TO ME, THE OPERATIVE EMPLOYEE HANDBOOK. EXHIBIT
2 D WHICH HAS DIFFERENT PROVISIONS IN IT CONCERNING THE SAME
3 TOPICS WAS, IN MY VIEW, FIRST NOT PRODUCED DURING DISCOVERY;
4 SECOND, A WRITING THAT CAME INTO EXISTENCE IN AUGUST, 2010,
5 SUBSTANTIAL PERIOD OF TIME AFTER THE PLAINTIFFS HAD ALREADY
6 HAD THEIR EMPLOYMENT TERMINATED AND INDEED AUGUST, 2010, IS
7 EVEN AFTER THE PRESENT SUIT WAS FILED. THIS CAN BE SEEN FROM
8 EXHIBIT D PAGE 17, SECOND FULL PARAGRAPH.

9 AS I HAVE SAID, THIS SUIT WAS FILED ON THE
10 28TH OF JANUARY, 2010.

11 ONE OF THE COMPLICATING FACTORS IN THIS
12 CASE -- AND THE LAWYERS HAVE RECOGNIZED IT, AND IT'S OBVIOUS
13 TO ANYONE WITH ANY LEGAL EXPERIENCE -- IS THAT ALTHOUGH THE
14 LAWSUIT ORIGINALLY NAMED RJ FINANCIAL, INC., THAT DEFENDANT
15 IS A DEBTOR IN A CHAPTER 11 BANKRUPTCY. AS I HAVE SAID, THE
16 CASE IS OBVIOUSLY STAYED AS TO THAT PARTY, BUT THE PLAINTIFFS
17 HAVE HAD TO REORGANIZE THEIR CASE TO PRESS IT AGAINST
18 MR. ABALKHAD WHO IS NOT IN BANKRUPTCY AND IT SEEMS TO ME THEY
19 HAVE DONE SO SUCCESSFULLY.

20 THERE IS NO SERIOUS QUESTION BETWEEN THE SIDES
21 CONCERNING THE FOLLOWING PROPOSITIONS OF LAW. AN EMPLOYEE IS
22 ENTITLED TO OVERTIME COMPENSATION FOR WORK IN EXCESS OF EIGHT
23 HOURS IN ONE WORKDAY, FOR WORKING IN EXCESS OF 40 HOURS IN
24 ONE WORKWEEK, AND FOR WORK ON THE SEVENTH DAY IN ONE WORK
25 WEEK. THE OVERTIME COMPENSATION DIFFERS, BUT THOSE ARE
26 OVERTIME ITEMS.

27 IT IS ALSO TRUE -- BY THE WAY, THIS IS
28 PROVIDED FOR UNDER LABOR CODE 510(A). IT'S ALSO TRUE THAT

1 EXECUTIVE, ADMINISTRATIVE, AND PROFESSIONAL EMPLOYEES WHO ARE
2 SPECIFICALLY EXEMPTED BY THE CALIFORNIA INDUSTRIAL WELFARE
3 AND COMMISSION ARE EXEMPT FROM THE HOURS WORKED AND DAYS
4 WORKED PER WEEK LIMITATIONS AS PROVIDED FOR IN LABOR CODE 515
5 BUT -- PARDON ME -- THE PLAINTIFFS IN THIS CASE DO NOT FALL
6 INTO THAT EXEMPTED CATEGORY AND INDEED THE DEFENDANT DOES NOT
7 CLAIM THAT THEY DO.

8 FOR THE REASONS THAT I HAVE MENTIONED EARLIER
9 ABOUT THE RESERVATIONS WITH WHICH THE TESTIMONY OF THE
10 WITNESSES HAVE TO BE INTERPRETED WITH, I DO NOT ATTEMPT TO
11 SUMMARIZE ALL THE TESTIMONY OF ALL THE WITNESSES.

12 IT IS ALSO TRUE THAT SUCCESSFUL EMPLOYEE
13 PLAINTIFFS WHO ARE AWARDED UNPAID OVERTIME ARE ENTITLED TO
14 INTEREST ACCRUING FROM THE DATE ON WHICH THE RIGHT TO RECOVER
15 THEIR OVERTIME VESTS. THIS WOULD BE ON THE MODEL INDICATED
16 IN CIVIL CODE 3287(A) COMPUTED TO THE DATE OF ENTRY OF
17 JUDGMENT. THIS IS LABOR CODE 1194(A), AND IT'S ALSO
18 DISCUSSED IN ESPINOSA VERSUS CLASSIC PIZZA, WHICH IS A CASE
19 THAT APPEARS IN 114 CALIFORNIA APPELLATE 4TH. THE PARTICULAR
20 PASSAGE THAT I'M MAKING REFERENCE TO IS AT PAGE 975.

21 THE TERM "WILLFUL" UNDER THE LABOR CODE --
22 THIS APPEARS IN LABOR CODE 203 -- IT MEANS ONLY THAT AN
23 EMPLOYER INTENTIONALLY FAILED OR REFUSED TO PERFORM AN ACT
24 THAT WAS REQUIRED TO BE DONE. THAT POINT IS MADE IN BARNHILL
25 VERSUS ROBERT SAUNDERS & COMPANY, (1981) 125 CALIFORNIA
26 APPELLATE 3D 1 AT PAGES 7 AND 8.

27 OBVIOUSLY, IN THE CURRENT CASE, UNLIKE THE
28 SITUATION IN BARNHILL, THERE'S NO EVIDENCE OF OFFSET. I'M

1 CITING BARNHILL JUST FOR THE PURPOSE OF THE DEFINITION OF THE
2 WORD "WILLFUL."

3 I WILL MAKE A COUPLE OF OTHER POINTS.

4 I RECOGNIZE THE INTENSITY WITH WHICH THE
5 DEFENSE HAS MAINTAINED THAT THIS IS A CASE DRIVEN BY
6 ATTORNEYS AND ATTORNEY'S FEES ON THE PLAINTIFFS'S SIDE. FOR
7 THE REASONS THAT I HAVE MENTIONED PREVIOUSLY, THAT IS, THAT
8 ONE OF THE PURPOSES OF PAGA IS PRECISELY TO INCENTIVIZE
9 ATTORNEYS TO -- TO FILE AND TO PROSECUTE SUCH CASES -- THAT
10 ARGUMENT EXISTS AND IT DOES HAVE A CERTAIN AMOUNT OF
11 OCCURRENCE, BUT I DO NOT REGARD IT AS BEING A STRONG
12 ARGUMENT. IT IS THE PURPOSE OF THE LAW PRECISELY TO PROVIDE
13 AN INCENTIVE FOR ATTORNEYS WHO MIGHT OTHERWISE BE UNABLE TO
14 HANDLE CASES OF THIS TYPE TO BE ABLE TO HANDLE CASES OF THIS
15 TYPE.

16 I WILL SAY THAT APPLICATIONS FOR ATTORNEYS'S
17 FEES, IF ANYBODY CLAIMS ENTITLEMENT TO ANY, CAN BE MADE BY
18 POST-JUDGMENT MOTION FOR ALLOWANCE OF ATTORNEY'S FEES AS
19 PARTS OF COSTS UNDER CIVIL CODE 1717(A), IF THAT'S WHAT
20 APPLIES, OR UNDER THE CORRESPONDING STATUTE IN THE LABOR
21 CODE. AND THE METHOD OF MAKING A POST-JUDGMENT MOTION FOR
22 ALLOWANCE IS REFERRED TO IN SUCH CASES AS ALLSTATE INSURANCE
23 VERSUS LEW, (1996) 46 CALIFORNIA APPELLATE 4TH 174 -- 1794 AT
24 1797, AND BANKES VERSUS LUCAS -- BANKES IS SPELLED
25 B-A-N-K-E-S, VERSUS LUCAS -- (1992) 9 CALIFORNIA --
26 9 CALIFORNIA APPELLATE 4TH, 365 AT 370.

27 I CITE THOSE TWO CASES NOT FOR THE PROPOSITION
28 THAT THEY APPLY IN LABOR CASES OR THAT THEY ARE DISPOSITIVE

1 ON THE ISSUE OF THE AMOUNT OF LEGAL FEES BUT JUST TO SHOW
2 THAT THAT IS AN APPROPRIATE TIME TO MAKE APPLICATIONS FOR
3 FEES.

4 IN THE PREMISES OF THIS CASE, THOUGH, FOR
5 REASONS THAT I WILL EXPLAIN IN JUST A SECOND, THE APPLICATION
6 FOR ATTORNEY'S FEES, IF THERE IS GOING TO BE ONE ON THE PART
7 OF THE PLAINTIFFS'S ATTORNEY, SHOULD BE, IT SEEMS TO ME, MADE
8 AFTER DISTRIBUTION OF ALL THE FUNDS THAT WILL BE DISTRIBUTED
9 UNDER MY AWARD WHICH I'M GOING TO MAKE UNDER PAGA SO THAT WE
10 DON'T HAVE THE SITUATION WHERE THE ATTORNEY IS PAID,
11 PLAINTIFFS'S ATTORNEY IS PAID FIRST OR SEEKS PAYMENT FIRST
12 WITHOUT ALSO DOING ALL THE, IT SEEMS TO ME, RATHER LABORIOUS
13 WORK THAT'S GOING TO BE REQUIRED UNDER PAGA, AND IT'S 25
14 PERCENT, 75 PERCENT SHARING ARRANGEMENT WITH THE PLAINTIFFS
15 TO GET 25 PERCENT AND WITH THE STATE OF CALIFORNIA TO GET THE
16 75 PERCENT.

17 SO I'M GOING TO TREAT THAT ASPECT OF THIS CASE
18 AS CALLING FOR ATTORNEY FEE MOTIONS, IF ANY ARE TO BE MADE,
19 AT A TIME AFTER THAT STEP OF CONCURSUS OF CLAIMS AND
20 DISTRIBUTION OF FUNDS HAS EITHER BEEN COMPLETELY FINISHED OR
21 HAS BEEN FINISHED WITH THE EXCEPTION OF A FEW SMALL
22 MINISTERIAL ACTS.

23 PARDON ME.

24 WITH RESPECT TO THE -- TO THE REMEDIES, IT
25 SEEMS TO ME THAT THE EVIDENCE STRONGLY SUPPORTS THE
26 PLAINTIFFS'S ARGUMENTS AS TO WHAT I WILL CALL THE 558-510-512
27 THEORY AND THE 1197.1-1198-WORK ORDER THEORY.

28 I THINK THAT THE EVIDENCE ESTABLISHES

1 VIOLATIONS OF THOSE SUBSTANTIVE PROVISIONS AND THAT THE
2 EVIDENCE ESTABLISHES A RIGHT TO RECOVER ON BEHALF OF THE
3 PAGA-AGGRIEVED EMPLOYEES AND ON BEHALF OF THE PLAINTIFFS BUT
4 IN AMOUNTS THAT ARE DIFFERENT FROM THOSE -- THE THEORIES ARE
5 THOSE ADVOCATED BY MR. SPIVAK AND HIS CLIENTS. THE AMOUNTS
6 ARE AMOUNTS THAT I AM GOING TO ALTER, THOUGH, AS WILL BE
7 CLEAR.

8 WITH RESPECT TO THE GHRDILYAN 558-510-512
9 LABOR CODE RECOVERY, I AM GOING TO AWARD \$7,654.60 -- THAT'S
10 EXACTLY AS CALCULATED BY MR. SPIVAK AND THOSE ARE -- THAT'S
11 IN FAVOR OF MS. GHRDILYAN AND AGAINST MR. ABALKHAD.

12 WITH RESPECT TO THE 1197.1 THEORY, WITH 1198
13 AND WORK ORDER BEING THE SUBSTANTIVE BASES, I AGREE WITH
14 MR. SPIVAK THAT MS. GHRDILYAN'S RECOVERY SHOULD BE \$14,218
15 AND THAT COMES OUT TO A TOTAL OF 21,872.60 FOR GHRDILYAN.

16 WITH RESPECT TO SULTANIAN, MY DETERMINATION IS
17 THAT REGARDING THE LABOR CODE 558-510-512 THEORY,
18 MS. SULTANIAN IS ENTITLED TO RECOVERY AGAINST MR. ABALKHAD OF
19 \$5,264.19, AND WITH RESPECT TO HER THEORY UNDER 1197.1 LABOR
20 CODE, MS. SULTANIAN IS ENTITLED TO RECOVER AGAINST
21 MR. ABALKHAD \$13,936.50. TOTAL IS \$19,200.69, AND THAT'S THE
22 AMOUNT THAT SULTANIAN IS ENTITLED TO RECOVER ON HER ACCOUNT
23 AGAINST MR. ABALKHAD.

24 THIS NOW BRINGS US TO THE AWARD IN FAVOR OF
25 THE SO-CALLED AGGRIEVED EMPLOYEES.

26 MY DETERMINATION IS THAT THE AGGRIEVED
27 EMPLOYEES'S CLAIMS ARE VALID AND MERITORIOUS CLAIMS; THAT
28 THEY CAN BE AND HAVE BEEN VALIDLY ASSERTED BY, PROSECUTED BY

1 THE TWO PLAINTIFFS IN OUR CASE.

2 I AM GOING, HOWEVER, NOT TO ACCEPT THE DOLLAR
3 FIGURES IN THE ULTIMATE SENSE THAT MR. SPIVAK AND HIS CLIENTS
4 HAVE ADVOCATED. IN DOING THIS, I AM GOING TO SPECIFICALLY
5 EXERCISE MY POWERS, WHICH IT SEEMS TO ME ARE IN THE NATURE OF
6 JUDICIAL DISCRETION, TO REDUCE THE AMOUNT OF RECOVERY FROM
7 THE AMOUNTS ADVOCATED BY MR. SPIVAK AND HIS CLIENTS.

8 WITH RESPECT TO THE LABOR CODE 558, 510, AND
9 512 THEORIES, AS TO THE AGGRIEVED EMPLOYEES, MY DETERMINATION
10 IS THAT THE AMOUNT WHICH MR. ABALKHAD MUST PAY IS NOT THE
11 \$2,164,278 AMOUNT THAT MR. SPIVAK ARGUED FOR BUT RATHER
12 \$125,000.

13 WITH RESPECT TO THE 1197.1-1198-WAGE-ORDER
14 CLAIM, MY DETERMINATION IS THAT THE AMOUNT THAT MR. ABALKHAD
15 WILL BE REQUIRED TO PAY IS NOT \$3,269,490, WHICH WAS THE
16 AMOUNT ADVOCATED BY MR. SPIVAK ON BEHALF OF HIS CLIENTS BUT
17 RATHER \$200,000.

18 NOW, THAT COMES OUT TO A TOTAL THEN OF
19 \$325,000.

20 NOW, IN DOING THIS, I HAVE EXERCISED MY
21 DISCRETION TAKING INTO CONSIDERATION THE FOLLOWING POINTS. I
22 AGREE WITH MR. SPIVAK'S CHARACTERIZATION OF MR. ABALKHAD AS A
23 PERSON WHO WAS INADEQUATELY OBSERVANT OF CALIFORNIA LAW.
24 MR. SPIVAK REFERS TO HIM AS A "SCOFFLAW." THAT'S A
25 JOURNALISTIC RATHER THAN A -- A LEGAL TERM. BUT I THINK HE
26 DID HAVE THE INTENTION SIMPLY OF TRYING TO RUN THINGS THROUGH
27 AND GET OFF AS CHEAPLY AS HE COULD WHILE HE WAS RUNNING HIS
28 BUSINESSES.

1 BUT I ALSO FIND THAT ONE OF THE PROBLEMS IN
2 THE OPERATION OF HIS BUSINESS WAS THAT HE GOT IN WAY OVER HIS
3 HEAD. HE SIMPLY EXPANDED BEYOND HIS OR HIS CORPORATION'S
4 CAPACITY PROPERLY TO RUN THESE BUSINESSES. HE RAN THEM AS
5 THOUGH HE WERE RUNNING A KIND OF SMALL OPERATIONS OUT OF HIS
6 HIP POCKET, AND I RECOGNIZE THAT THAT IS NOT A PRAISEWORTHY
7 BEHAVIOR, BUT IT SEEMS TO ME THAT IT IS NOT BEHAVIOR OF A
8 HIGHLY BLAMEWORTHY SENSE AND THAT IT IS BEHAVIOR WHICH MERITS
9 A REDUCTION OR SOFTENING OF THE PENALTIES.

10 NOW, I WILL ALSO SAY THE FOLLOWING. IF ON
11 APPEAL, THE APPELLATE COURT DETERMINES THAT I AM MISTAKEN
12 CONCERNING THE POTENTIAL OTHER THEORIES OF LIABILITY ASSERTED
13 BY MR. SPIVAK AND HIS CLIENTS AGAINST MR. ABALKHAD, I WILL
14 TELL YOU WHAT I WOULD HAVE AWARDED ON THOSE THEORIES SO THAT
15 IT MAY BE THAT THE APPELLATE COURT CAN SIMPLY TAKE WHAT I
16 HAVE SAID HERE AND RATHER THAN MAKING A DISPOSITION WHICH
17 REMANDS THE CASE FOR FURTHER CALCULATION OF DAMAGES, THE
18 APPELLATE COURT CAN SIMPLY INSERT THE MONETARY REMEDY THAT I
19 WOULD HAVE INSERTED MYSELF HAD I NOT BEEN PERSUADED THAT
20 MR. ABALKHAD WAS NOT LIABLE EXCEPT UNDER THE THEORIES THAT I
21 HAVE MADE REFERENCE TO.

22 HAD THAT BEEN DONE, I WOULD HAVE AWARDED AN
23 ADDITIONAL \$200,000 AS TO THE AGGRIEVED EMPLOYEES.

24 NOW, I WILL SAY THAT THESE AMOUNTS ARE, I
25 RECOGNIZE, EXTREMELY LENIENT AND PERMISSIVE TO MR. ABALKHAD.
26 IN OTHER WORDS, THIS IS NOT A CASE WHERE THE COURT HAS TRIED
27 TO SOCK IT TO HIM. IT IS, RATHER, A CASE IN WHICH I HAVE
28 TREATED IT AS A SERIES OF OFFENSES BUT ONE AS TO WHICH

1 MR. ABALKHAD SHOULD BE GIVEN AT LEAST SOME LENIENCY IN THE
2 FASHIONING OF A REMEDY. I THINK THAT'S IT. LET ME ASK THE
3 LAWYERS.

4 FIRST OF ALL, PLAINTIFFS'S LAWYER. ARE THERE
5 OTHER MATTERS AS TO WHICH YOUR CLIENTS CONTEND I SHOULD MAKE
6 A STATEMENT OF SOME KIND OR A FINDING OF SOME KIND?

7 MR. SPIVAK: WAS THERE SOME FINDING AS TO THE
8 ADDITIONAL \$200,000 WITH RESPECT TO THE INDIVIDUAL
9 PLAINTIFFS, YOUR HONOR?

10 YOU SPOKE TO THE OTHER CLAIMS WHICH PERHAPS
11 WOULD AFFECT THE APPELLATE COURT SHOULD IT SEND BACK FOR
12 CALCULATION.

13 THE COURT: YEAH.

14 MR. SPIVAK: I KNOW YOU GAVE AN AGGRIEVED EMPLOYEE
15 NUMBER BUT NOT FOR THE TWO PLAINTIFFS.

16 THE COURT: SHOW ME -- JUST A SECOND. COULD YOU,
17 PLEASE, TURN BACK TO -- OH, I GUESS I OUGHT TO SAY THAT. LET
18 ME DO THAT NOW.

19 THE PLAINTIFFS CONTEND THAT THERE WERE THESE
20 WRONGS AS TO BOTH THEMSELVES AND AS TO THE AGGRIEVED
21 EMPLOYEES, AND I WILL JUST REFER TO THEM IN SHORT, COMPRESSED
22 TERMS. AND ESSENTIALLY IT BOILS DOWN TO I THINK NINE
23 THEORIES AND I WILL ENUMERATE THEM NOW: OVERTIME, REST AND
24 MEAL PERIODS, WAGE STATEMENT, IN OTHER WORDS, LABOR CODE 226,
25 UNPAID TRAVEL EXPENSES AND MILEAGE -- THAT'S FOUR --
26 OFF-THE-CLOCK WORK, UNTIMELY PAYMENT OF WAGES, VACATION PAY
27 AT TERMINATION, AND FAILURE FAIRLY TO ADVISE THE EMPLOYEES OF
28 CHANGE IN THE COMMISSION STRUCTURE SO THAT WHAT HAPPENED WAS

1 THAT THEY WERE MADE TO DO WORK WITHOUT KNOWING -- WITHOUT, AS
2 IT TURNED OUT, WHAT THE ULTIMATE PAYMENT FOR IT WAS GOING TO
3 BE.

4 EACH OF THOSE CONTENTIONS -- EACH OF THOSE
5 THEORIES IS A THEORY THAT WOULD BE DECIDED IN FAVOR OF THE
6 PLAINTIFFS AND AGAINST THE -- AND AGAINST THE DEFENDANT
7 ABALKHAD EXCEPT FOR MY DETERMINATION THAT HE INDIVIDUALLY IS
8 NOT LIABLE. BUT IF HE IS LIABLE, THAT IS, IF THE APPELLATE
9 COURT DECIDES THAT I HAVE MADE AN ERROR REGARDING EXCESSIVELY
10 NARROW INTERPRETATION OF THE LABOR CODE PROVISIONS, I WOULD
11 AWARD EACH OF THE PLAINTIFFS AS PENALTIES \$60,000 EACH; 60
12 PLUS 60 IS 120.

13 NOW, I WILL SAY, AGAIN, I RECOGNIZE THAT THIS
14 IS WAY BELOW THE PLAINTIFFS'S TARGET NUMBER, BUT IT IS A
15 NUMBER THAT I THINK IS APPROPRIATE.

16 NOW, I WANT TO SAY SOMETHING ELSE ABOUT THIS,
17 AND THIS IS A COMPLICATION CREATED BY FACTORS THAT I HAD
18 REFERRED TO PREVIOUSLY. THIS IS THE BANKRUPTCY OF THE
19 CORPORATION.

20 WHAT I AM SAYING CONCERNING THESE OTHER
21 PENALTIES AND OTHER AMOUNTS, THAT IS, AMOUNTS I AM NOT
22 ACTUALLY AWARDED ARE FOR THE BENEFIT OF THE APPELLATE COURT
23 IN ASSISTING IT TO FRAME A DISPOSITIONAL ORDER IF THE CASE IS
24 SENT BACK TO THE SUPERIOR COURT UPON A REVERSAL IN PART OR IN
25 WHOLE.

26 I WANT TO PUT THESE PEOPLE IN A POSITION SO
27 THEY WILL HAVE A REMEDY ON BOTH SIDES WITHOUT THE NECESSITY
28 OF THE SUPERIOR COURT HAVING TO REVISIT THIS AND BY THE

1 SUPERIOR COURT TELLING THE APPELLATE COURT WHAT THE SUPERIOR
2 COURT WOULD HAVE DONE HAD THE SUPERIOR COURT'S REASONING NOT
3 FORECLOSED IT.

4 I AM EXTREMELY CONCERNED TO STATE THIS IN THAT
5 WAY SO THAT THE BANKRUPTCY PROCEEDINGS ARE NOT IN SOME WAY
6 SPOILED OR IMPROPERLY AFFECTED BY THE WORK DONE HERE IN THE
7 -- IN THE TRIAL COURT. AND I AM TRYING TO SUPPLY ALL OF THE
8 INFORMATION THAT I CAN WHILE STILL BEING TRUE TO AND
9 OBSERVANT OF THE NECESSITY FOR TRYING TO ACHIEVE AS MUCH
10 FINALITY AS I CAN WHILE STILL ASSISTING IN THE LITIGATION
11 PROCESS AS MUCH AS THIS COURT CAN.

12 NOW, I HAVE PREVIOUSLY DISCUSSED AND I WILL
13 MAKE A PART OF MY STATEMENT OF DECISION HERE THE SET OF DATES
14 THAT PIVOT AROUND THE APPEAL. AS I HAVE SAID PREVIOUSLY, THE
15 CASE THAT I HAVE BEEN TRYING, THIS CASE, WAS FILED ON THE
16 26TH OF JANUARY, 2010. THE DEFENDANT WAS AT THAT TIME ONLY
17 RJ FINANCIAL, AND THE CASE WAS DENOMINATED A CLASS ACTION. A
18 LITTLE LESS THAN MONTH AFTER THAT, ON THE 24TH OF FEBRUARY,
19 2010, THE PLAINTIFFS FILED A FIRST AMENDED COMPLAINT. THEY
20 ADDED MR. ABALKHAD AS A NAMED DEFENDANT. THEY CONTINUED WITH
21 THE DESIGNATION OF THIS CASE AS A CLASS ACTION.

22 ON THE 8TH OF MARCH, 2010, THE PLAINTIFFS
23 FILED A 170.6 AS TO JUDGE WILLIAM FAHEY OF THIS COURT.

24 ON THE 22ND OF MARCH, 2010, THE LAWYER WHO THE
25 TESTIMONY HAS IDENTIFIED AS MR. SANFORD FREY, F-R-E-Y -- THAT
26 NAME ALSO APPEARS ON THE DOCUMENT I'M GOING TO DESCRIBE --
27 FILED A NOTICE OF STAY AS TO THE CORPORATE DEFENDANT,
28 REFERRING TO THE CHAPTER 11 BANKRUPTCY. THAT BANKRUPTCY

1 PETITION APPEARS TO HAVE BEEN FILED ON THE 7TH OF JANUARY,
2 2010, THAT IS, BEFORE THE CASE WAS EVER FILED.

3 THAT ACCOUNTS FOR THE MODIFICATION OF THE NAME
4 OF THE PARTIES TO INCLUDE ABALKHAD AS AN INDIVIDUAL. I THINK
5 IT IS THAT OBVIOUS THAT -- BUT I WANT TO MAKE IT VERY, VERY
6 CLEAR THAT THIS IS NOT ONLY OBVIOUS, BUT IT IS A FACT THAT --
7 THIS CASE IS STAYED AS TO THE RJ FINANCIAL CORPORATION UNDER
8 THE STATUTORY CITATION I HAVE GIVEN, 11 U.S.C. 362.

9 MR. ABALKHAD'S DEFAULT WAS TAKEN IN THIS CASE
10 AND IN AUGUST OF 2010, HE MOVED TO SET ASIDE THE DEFAULT. IN
11 THAT SET OF PAPERS, THERE WAS THE CLAIM MADE THAT PLAINTIFFS
12 ADDED ABALKHAD ON THE 26TH OF MARCH, 2010. AS I HAVE
13 INDICATED, THAT WAS NOT TRUE. IT WAS ON THE 26TH -- 24TH OF
14 FEBRUARY, 2010, BUT THAT WAS NOT A SIGNIFICANT INACCURACY
15 BECAUSE IN THE COURT'S VIEW, ABALKHAD WAS ENTITLED TO HAVE
16 THE DEFAULT SET ASIDE.

17 NOW IS THERE ANYTHING THAT I AM SUPPOSED TO
18 SAY?

19 MR. SPIVAK: I DON'T THINK SO, YOUR HONOR.

20 THE COURT: OKAY. HOW ABOUT YOU, MR. SABZEVAR?

21 MR. SABZEVAR: NO, YOUR HONOR.

22 THE COURT: ALL RIGHT. HERE'S WHAT I'M GOING TO DO
23 THEN.

24 I'M GOING TO SET A HEARING OUT IN THE FUTURE.
25 FIRST OF ALL, THE STATEMENT OF DECISION IS SUFFICIENT IF IT
26 STATES ALL THE FACTS. IT NEED NOT STATE EVIDENTIARY FACTS.
27 I THINK THE STATEMENT OF DECISION I HAVE MADE DOES THAT.

28 SECONDLY, I'M GOING TO ORDER THE PLAINTIFFS

1 THROUGH COUNSEL TO PREPARE, SERVE, OBTAIN APPROVAL AS TO FORM
2 FROM DEFENDANT ABALKHAD. THIS MAY REQUIRE A MEET AND CONFER
3 AND COURT EXPECTS COUNSEL TO BE ATTENTIVE AND COOPERATIVE IN
4 THIS REGARD. SO SUBMIT THAT TO DEFENSE COUNSEL AND LODGE
5 WITH THE COURT A JUDGMENT SUITABLE FOR COURT'S SIGNATURE IN
6 CONFORMITY WITH THE FOREGOING.

7 I AM GOING TO ORDER ALSO THAT THE PARTIES
8 AND/OR COUNSEL PICK UP ALL EXHIBITS LODGED WITH THE CLERK AND
9 ALL EXHIBITS MARKED AND/OR RECEIVED IN EVIDENCE, EACH SIDE TO
10 PICK UP THE ITEM PROFFERED BY THAT SIDE FOR RECEIPT INTO
11 EVIDENCE WITHIN FIVE DAYS FROM THE COURT'S SIGNING OF THE
12 JUDGMENT.

13 NOW, TODAY IS THE 23RD OF APRIL, 2010 -- 2012,
14 I SHOULD SAY. I WANT TO HAVE A HEARING AT WHICH THE JUDGMENT
15 IS PRESENTED TO ME FOR SIGNATURE AND I WANT TO DO THESE
16 THINGS AT THAT HEARING. I WANT TO SETTLE THE FORM AND
17 SUBSTANCE OF THE DECISION -- OF THE JUDGMENT. IF THERE'S ANY
18 OTHER WORK THAT NEEDS TO BE DONE, I WANT TO DO THAT AT THIS
19 HEARING. I WANT TO DETERMINE WHAT, IF ANYTHING, REMAINS TO
20 BE DONE REGARDING FUTURE PROCEEDINGS IN THIS CASE, AND I WANT
21 TO DETERMINE WHAT THE STATUS OF THIS CASE IS AND I WANT TO
22 HAVE THE LAWYERS FOR THE PARTIES PERSONALLY PRESENT.

23 MY IDEA WOULD BE THE JUDGMENT SHOULD BE
24 SUBMITTED BEFORE THE HEARING BUT THAT PLAINTIFFS'S COUNSEL
25 SHOULD BRING WITH HIM A DUPLICATE ORIGINAL OF THE JUDGMENT IN
26 CASE THE PAPERWORK HANDLING PRODUCES A SITUATION WHERE I
27 CAN'T LAY MY HANDS ON THE JUDGMENT THAT I AM SUPPOSED TO SIGN
28 IMMEDIATELY. I LOOK TO THE ATTORNEYS NOW FOR SOME

1 SUGGESTIONS AS TO THE DATE WHEN THAT HEARING SHOULD BE
2 SCHEDULED.

3 MR. SABZEVAR, DO YOU HAVE ANY IDEAS ABOUT WHEN
4 I SHOULD SCHEDULE IT?

5 MR. SABZEVAR: FORTY-FIVE DAYS, YOUR HONOR?

6 THE COURT: FORTY-FIVE DAYS.

7 MR. SPIVAK: THAT'S FINE FOR PLAINTIFFS.

8 THE COURT: SO TODAY IS THE 23RD. LET'S SET IT FOR
9 HEARING ON THE -- LET'S GO OUT MORE THAN 45 DAYS.

10 AS YOU CAN SEE, FROM THE 4TH TO THE 8TH, I
11 WON'T BE ABLE TO WORK WITH YOU -- OF JUNE. I WON'T BE ABLE
12 TO WORK WITH YOU. SO WOULD IT ALL RIGHT WITH YOU LAWYERS IF
13 I PICK THE 21ST OF JUNE, 2012, 8:30, THIS DEPARTMENT?

14 MR. SABZEVAR: THAT'S FINE, YOUR HONOR.

15 THE COURT: ARE YOU GOING TO BE AVAILABLE ON THOSE
16 DATES?

17 MR. SPIVAK: YES, YOUR HONOR.

18 THE COURT: ARE YOU GOING TO BE ABLE TO DO THE
19 THINGS I TALKED ABOUT, SETTling THE FORM AND SUBSTANCE OF THE
20 JUDGMENT?

21 MR. SPIVAK: YES, YOUR HONOR.

22 MR. SABZEVAR: THAT'S FINE.

23 THE COURT: THANK YOU VERY MUCH. I APPRECIATE YOUR
24 PARTICIPATION AND -- AND YOUR ADVOCACY, AND I WILL SEE YOU
25 WHEN WE NEXT HAVE TO WORK ON THE CASE.

26 NOW, I WILL TELL YOU SOMETHING ELSE. PLEASE
27 STAY ALERT AND PLEASE LOOK IN ADVISES TO ATTORNEYS, OR
28 NOTICES, OR WHATEVER WE ARE GOING TO DO IN THE NEXT THREE OR

1 FOUR WEEKS. HERE'S OUR SITUATION.

2 AS OF 15TH OF MAY, WE WON'T HAVE REPORTERS IN
3 THESE DEPARTMENTS ANYMORE FOR TRIAL MATTERS -- THEY WILL HAVE
4 TO BE SUPPLIED BY THE PARTIES -- AND WE WON'T HAVE THE
5 REPORTERS EXCEPT TWO LAW AND MOTION SESSIONS A WEEK. THE
6 IDEA IS IT WILL BE ONE MORNING AND ONE AFTERNOON. THAT WILL
7 BE ALL THE REPORTERS WE ARE GOING TO HAVE SUPPLIED BY THE
8 COURT.

9 MOREOVER, THEY ARE GOING TO, AS I MENTIONED TO
10 YOU PREVIOUSLY, THEY ARE GOING TO REDUCE THE STAFF.

11 SO I HAD GIVEN YOU DATE, BUT I AM NOT ONE
12 HUNDRED PERCENT CERTAIN ABOUT HOW THAT DATE IS GOING TO WORK.
13 PLEASE KEEP YOUR EYES AND EARS OPEN. IF THERE'S SOME FOUL UP
14 OR SOMETHING, DO WHATEVER YOU NEED TO DO TO MAKE IT RIGHT. I
15 MEAN, WE ARE -- I WISH I COULD SAY SOMETHING THAT SOUNDED
16 MORE EMPHATIC AND MORE DEFINITIVE, BUT I CAN'T. I JUST DON'T
17 KNOW WHAT'S GOING TO HAPPEN.

18 WHAT I WANT TO DO IS TO FINISH UP YOUR CASE
19 AND GET YOU ALONG FOR THE NEXT STEP FOR OBVIOUS REASONS. AND
20 I DON'T WANT THE COLLAPSE OF THE SYSTEM'S ABILITY TO HANDLE
21 MATTERS TIMELY TO REDOUND TO YOUR DISADVANTAGE OR TO
22 ADDITIONAL EXPENSE ON THE PART OF EITHER SIDE THAT MIGHT
23 OTHERWISE BE AVOIDED IF YOU LAWYERS KEPT YOUR EYES PEELED FOR
24 WHAT'S HAPPENING IN THE COURTS AND IF I WERE ABLE TO PREDICT
25 A LITTLE BIT, I JUST CAN'T PREDICT THAT. I DON'T EVEN KNOW.
26 BUT KEEP YOUR EYES OPEN. TRY TO DO WHAT'S RIGHT, AND I WILL
27 TRY TO DO WHAT'S RIGHT. IT'S ABOUT THE BEST I CAN DO FOR
28 YOU.

1 ALL RIGHT. THANK YOU ALL VERY MUCH.

2 MR. SPIVAK: THANK YOU, YOUR HONOR.

3 MR. SABZEVAR: THANK YOU, YOUR HONOR.

4 THE COURT: SEE YOU WHEN WE NEXT HAVE TO WORK ON

5 THE CASE.

6 (PROCEEDINGS CONCLUDED.)

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DEPARTMENT 41 HON. RONALD M. SOHIGIAN, JUDGE

CASE NO. BC430633
CERTIFIED COPY

MONDAY, APRIL 23, 2012

REPORTED BY:
ANGELA ZARATAN PARADELA
OFFICIAL COURT REPORTER
CSR NO. 9659

EXHIBIT 13

Case Name: Cantrell v. Concrete Placement, Inc.

Thursday, October 13, 2022

Requesting Law Firm:	The Spivak Law Firm
Law Firm Contact:	Stacy Aguirre
E-Mail Address:	stacy.aguirre@spivaklaw.com
ILYM Contact:	Sean Hartranft
E-Mail Address:	Sean@ilymgroup
Contact Number:	949.690.2564

ESTIMATE FOR ADMINISTRATION SOLUTIONS

Opt-Out & PAGA Class

ASSUMPTIONS	
Total Number of Class Members	108
Estimated Percentage of Undeliverable Mail	20%
Reminder Postcard	Yes
Static Website	Yes
Certified Spanish Translations	Yes

Activity	Rate Type	Unit Cost	Volume	Amount
CASE STARTUP				
Initial Setup - Import and Formatting of Data*	Hourly	\$150.00	2	\$300.00
Programming of Class Database	Hourly	\$175.00	2	\$350.00

**ILYM assumes that data will be in a standard format. Client will be notified immediately if not in standard format to correct data or ILYM can convert to standard format @ \$150.00 per hour.*

Subtotal \$650.00

PROJECT MANAGEMENT				
Project Manager (Case notification and maintenance)	Hourly	\$120.00	7	\$840.00
Staff Hours for Processing Opt-Outs, Disputes & Objections via Mail and Email	Hourly	\$70.00	1	\$70.00
Staff Hours for Processing Returned Mailed	Hourly	\$70.00	0	\$0.00
Report Processing	Hourly	\$70.00	2	\$140.00
NCOA	Per Piece	\$42.64	1	\$42.64
Toll-Free Call Center	Flat Fee	\$75.00	1	\$75.00
ILYM Group Static Website, Includes Hosting	Flat Fee	\$750.00	1	\$750.00
Certified Spanish Translation	Flat Fee	\$1,250.00	1	\$1,250.00
Weekly Reports	Flat Fee	\$500.00	1	Waived

Subtotal \$3,167.64

ILYM | GROUP, Inc.

SETTLEMENT ADMINISTRATION EXPERTS

Activity	Rate Type	Unit Cost	Volume	Amount
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NOTIFICATION/MAILING				
Fulfillment of Notice, English & Spanish	Per Piece	\$2.00	108	\$216.00
USPS First Class Postage	Per Piece	\$0.81	108	\$87.48
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$3.00	22	\$64.80
Storage, Photocopies, Deliveries	Flat Fee	\$300.00	1	\$300.00

Subtotal \$668.28

DISTRIBUTION (Includes EIN, Bank Acct * /QSF Setup)				
Distribution Setup & Management	Hourly	\$150.00	8	\$1,200.00
Account Reconciliation & Distribution Reporting	Hourly	\$125.00	8	\$1,000.00
Check, Print & Mail (Including W2/1099)	Per Check	\$1.50	108	\$162.00
USPS First Class Postage	Per Piece	\$0.55	108	\$59.40
Check, Print & Mail (Including W2/1099)	Per Check	\$1.50	108	\$162.00
USPS First Class Postage	Per Piece	\$0.55	108	\$59.40
Check, Print & Mail (Including W2/1099)	Per Check	\$1.50	108	\$162.00
USPS First Class Postage	Per Piece	\$0.55	108	\$59.40
Remails (Forward/Skip Trace Undeliverables)	Per Piece	\$2.00	32	\$64.80
Reminder Postcard	Per Piece	\$0.85	65	\$55.08
Preparation of Taxes	Hourly	\$120.00	18	\$2,160.00
Annual Filing of Tax Return	Per Year	\$1,000.00	2	\$2,000.00

***Additional Bank fees may apply*

Subtotal \$7,144.08

CASE CONCLUSION				
Data Manager Final Reporting	Hourly	\$100.00	8	\$800.00
Project Manager Final Reporting	Hourly	\$120.00	8	\$960.00
Process Unclaimed Funds to Government Recipient	Flat Fee	\$750.00	1	\$750.00
Declaration	Hourly	\$125.00	6	\$750.00

Subtotal \$3,260.00

Will Not Exceed: \$14,890.00

Terms and Conditions

All services to be provided by ILYM Group, Inc. (hereinafter, "ILYM") to Client shall be subject to the following terms and conditions:

Services: Subject to the terms hereof, ILYM agrees to provide the Client with Administration Services (hereinafter, "services") as specified in the Proposal provided to Client to which these Terms and Conditions are attached. The estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make provision for any services or class members/size not delineated in the request for proposal or stipulations. Such services do not in any way constitute legal services or advice. ILYM is performing its services as an Independent Contractor and neither it nor its employees shall be deemed to be employees of the Client.

Mailing and Data Conversion: ILYM's database administration assumes the Client will provide complete data that includes all information required to send notifications and complete the administration process. Data must be provided in a complete, consistent, standardized electronic format. ILYM's standard format is Microsoft Excel, however, ILYM may accept other formats at its discretion. Further developments or enhancements to non-standardized data will be billed to Client by ILYM on a time and materials basis, according to ILYM's Standard Rates.

Charges for Services: Charges to the Client for services shall be on a time and materials basis at our prevailing rates, as the same may change from time to time. Any fee estimates set forth in the proposal are estimates only, based on information provided by Client to ILYM. Actual fees charged by ILYM to Client may be greater or less than such estimate, and Client shall be responsible for the payment of all such charges and expenses in accordance with Section 5 hereof. Charges incurred related to resolving post distribution withholdings and related corrective files due to voids and re-issues of payments and related correspondence with state and federal taxing authorities will not be charged to the Client to the extent that funds are received from the taxing authorities offset these charges. ILYM may derive financial benefits from financial institutions in connection with the deposit and investment of settlement funds with such institutions, including without limitation, discounts on eligible banking services and fees, and loans at favorable rates.

Indemnification: Client will indemnify and hold ILYM (and the officers, employees, affiliates and agents harmless against any Losses incurred by ILYM, arising out of, in connection with, or related to (i) any breach of the terms by Client; (ii) the processing and handling of any payment by ILYM in accordance with Client's instructions, including without limitation, the imposition of any stop payment or void payment on any check or the wrongful dishonor of a check by ILYM pursuant to Client's instructions.

Payment of Charges: ILYM reserves the right to request payment of postage charges and 50% of the final administration charges at the start of the case. ILYM bills are due upon receipt unless otherwise negotiated and agreed to with the Client. In the event settlement terms provide that ILYM is to be paid out of the Settlement Fund, ILYM will request that Counsel endeavor to make alternate payment arrangements for ILYM charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the Settlement Account is funded by, or no later than the time of disbursement. Decisions of the court and actions of the parties, including disapproval or withdrawal of a settlement, do not affect the Client's liability to ILYM for payment of services. Services are not provided on a contingency fee basis.

Confidentiality: ILYM maintain reasonable and appropriate security measures and safeguards to protect the security and confidentiality of Client data provided to ILYM by Client in connection herewith. Should ILYM ever be notified of any judicial order or other proceedings in which a third party seeks to obtain access to the confidential data created by or for the Client, ILYM will promptly notify the Client, unless prohibited by applicable law. The Client shall have the option to (1) provide legal representation at the Client's expense to avoid such access or (2) promptly reimburse ILYM for any of its costs, including attorneys' fees, reasonably incurred in avoiding, attempting to avoid or providing such access and not paid by the entity seeking the data. If ILYM is required, pursuant to a court order, to produce documents, disclose data, or otherwise act in contravention of the obligations imposed by this Agreement, or otherwise, with respect to maintaining the confidentiality, proprietary nature and secrecy of the produced documents or disclosed data, ILYM will not be liable for breach of said obligation.

Data Rights: ILYM does not convey nor does the Client obtain any right in the programs, system data, or materials utilized or provided by ILYM in the ordinary course of business in the performance of this Agreement.

Document Retention: Unless directed otherwise in writing by Client, ILYM will destroy undeliverable mail on the effective date of the settlement or the date that the disposition of the case is no longer subject to appeal or review, whichever is later. ILYM will maintain claim forms and other correspondence for one year after final distribution of funds or benefits, or until the date that the disposition of the case is no longer subject to appeal or review, whichever is later.

Limitation of damages: ILYM is not responsible to the Client for any special, consequential or incidental damages incurred by Client. Any liability of ILYM to the Client shall not exceed the total amount billed to the Client for the particular services that give rise to any loss.

Termination: The services to be provided under this Agreement may be terminated, at will by the Client upon at least 30 calendar days' prior written notice to ILYM. The Client's obligation to pay for services or projects in progress at the time of notice of withdrawal shall continue throughout that 30 day period. ILYM may terminate this Agreement (i) with 10 calendar days' prior written notice, if the Client is not current in payment of charges or (ii) in any event, upon at least 3 months' prior written notice to the Client.

Notice: Any notice required or permitted hereunder shall be in writing and shall be delivered personally, or sent by registered mail, postage prepaid, or overnight courier service to the responsible officer or principal of ILYM or the Client, as applicable, and shall be deemed given when so delivered personally, or, if mailed, five days after the date of deposit in United States mail, or, if sent by courier, one business day after delivery to such courier service.

Force Majeure: To the extent performance by ILYM of any of its obligations hereunder is substantially prevented by reason of any act of God or by reason of any other matter beyond ILYM's reasonable control, then such performance shall be excused and this Agreement, at ILYM's option, be deemed suspended during the continuation of such condition and for a reasonable time thereafter.

Waiver of Rights: No failure or delay on the part of a party in exercising any right hereunder will operate as a waiver of, or impair, any such right. No single or partial exercise of any such right will preclude any other or further exercise thereof or the exercise of any other right. No waiver of any such right will be effective unless given in a signed writing.

Jurisdiction: The parties hereto submit to the jurisdiction of the Court of the applicable case for purposes of any suit, action or proceeding to enforce any provision of, or based on any right arising out of, this Agreement. The parties hereto hereby waive any objection to the laying of venue of any such suit, action or proceeding in the Court.

Entire Agreement: These terms and conditions and the proposal embody the entire agreement between the parties with respect to the subject matter hereof, and cancels and supersedes all prior negotiations, representations, and agreements related thereto, either written or oral, except to the extent they are expressly incorporated herein. No changes in, additions to, or waivers of, the terms and conditions set forth herein will be binding upon any party, unless approved in writing by such party's authorized representative.

EXHIBIT 14



September 27, 2022

Case: Cantrell v. Concrete Placement, Inc, Opt-Out Administration

Phoenix Contact: Michael E. Moore
 Contact Number: 949.331.0131
 Email: mike@phoenixclassaction.com

CASE ASSUMPTIONS

Class Members	108
Opt Out Rate	1%
Opt Outs Received	2
Total Class Claimants	106
Subtotal Admin Only	\$10,291.81

Flat Fee Total \$9,000.00

For 100 Class Members

Pricing Good for Scope of Estimate Only

All Aspects of Escheating to the State of CA Included

Spanish Translation, Printing & Mailing Included

3 Installments, 3 Payments & 3 Tax Reporting Years

Requesting Attorney: Stacy Aguirre
 Firm: The Spvak Law Firm
 Contact Number: 213) 634-3702
 Email: stacy.aguirre@spivaklaw.com

Assumptions and Estimate are based on information provided by counsel. If class size changes, PSA will need to adjust this Estimate accordingly. Estimate is based on **108** Class Members. PSA assumes class data will be sent in Microsoft Excel or other usable format with no or reasonable additional formatting needed. A rate of \$150 per hour will be charged for any additional analysis or programming.

Case & Database Setup / Toll Free Setup & Call Center / NCOA (USPS)				
Administrative Tasks:	Rate	Hours/Units	Line Item	Estimate
Programming Manager	\$100.00	2		\$200.00
Programming Database & Setup	\$100.00	2		\$200.00
Toll Free Setup*	\$150.00	1		\$150.00
Call Center & Long Distance	\$2.00	22		\$43.20
NCOA (USPS)	\$27.00	1		\$27.00
		Total		\$620.20

* Up to 120 days after disbursement

Data Merger & Scrub / Notice Packet, Opt-Out Form & Postage / Spanish Translation / Website				
Project Action	Rate	Hours/Units	Line Item	Estimate
Notice Packet Formatting	\$100.00	2		\$200.00
Spanish Translation	\$800.00	1		\$800.00
Data Merge & Duplication Scrub	\$0.10	108		\$10.80
Notice Packet & Opt-Out Form	\$1.35	108		\$145.80
Estimated Postage (up to 2 oz.)*	\$0.84	108		\$90.72
Static Website	\$100.00	1		\$100.00
Check Cashing Reminder Postcard Postage Included	\$0.60	22		\$13.36
		Total		\$1,360.68

* Prices good for 90 days. Subject to change with the USPS Rate or change in Notice pages or Translation, if any.



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Skip Tracing & Remailing Notice Packets / Tracking & Programming Undeliverables

Project Action:	Rate	Hours/Units	Line Item	Estimate
Case Associate	\$55.00	4		\$220.00
Skip Tracing Undeliverables	\$0.85	27		\$22.95
Remail Notice Packets	\$0.75	24		\$18.00
Estimated Postage	\$0.84	24		\$20.16
Programming Undeliverables	\$50.00	1		\$50.00
Total				\$331.11

Database Programming / Processing Opt-Outs, Deficiencies or Disputes

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Claims Database	\$150.00	2		\$300.00
Non Opt-Out Processing	\$200.00	1		\$200.00
Case Associate	\$55.00	4		\$220.00
Opt-Outs/Deficiency/Dispute Letters	\$10.00	8		\$80.00
Case Manager	\$85.00	3		\$255.00
Total				\$1,055.00

Calculation & Disbursement Programming/ Create & Manage QSF/ Mail Checks

Project Action:	Rate	Hours/Units	Line Item	Estimate
Programming Calculations	\$135.00	2		\$270.00
Disbursement Review	\$135.00	1		\$135.00
Programming Manager	\$95.00	1		\$95.00
QSF Bank Account & EIN	\$135.00	1		\$135.00
Check Run Setup & Printing	\$135.00	4		\$540.00
Mail Class Checks * (x 3)	\$1.10	106		\$349.80
Estimated Postage (x 3)	\$0.61	106		\$193.98
Total				\$1,718.78

* Checks are printed on 8.5 x 11 in. sheets with W2/1099 Tax Filing



PHOENIX

CLASS ACTION ADMINISTRATION SOLUTIONS

Tax Reporting & Reconciliation / Re-Issuance of Checks / Conclusion Reports and Declarations			
Project Action:	Rate	Hours/Units	Line Item Estimate
Case Supervisor	\$115.00	4	\$460.00
Remail Checks & Tax Forms (Postage Included)	\$1.70	21	\$36.04
Case Associate	\$55.00	4	\$220.00
Reconcile Uncashed Checks	\$85.00	8	\$680.00
Conclusion Reports	\$115.00	4	\$460.00
Case Manager Conclusion	\$85.00	4	\$340.00
Final Reporting & Declarations	\$115.00	4	\$460.00
IRS & QSF Annual Tax Reporting * (1 State Tax Reporting Included)	\$750.00	3	\$2,250.00
Check to Cy-Pres	\$150.00	1	Included
Uncashed Checks to the State of California Controllers Office Estimated 9 Total Class Members	\$300.00	1	\$300.00
Total			\$5,206.04

* All applicable California State & Federal taxes, which include SUI, ETT, and SDI, and FUTA filings. Additional taxes are Defendant's responsibility.

Estimate Total: \$10,291.81



TERMS AND CONDITIONS

Provisions: The case estimate is in good faith and does not cover any applicable taxes and fees. The estimate does not make any provision for any services or class size not delineated in the request for proposal or stipulations. Proposal rates and amounts are subject to change upon further review, with Counsel/Client, of the Settlement Agreement. Only pre-approved changes will be charged when applicable. No modifications may be made to this estimate without the approval of PSA (Phoenix Settlement Administrators). All notifications are mailed in English language only unless otherwise specified. Additional costs will apply if translation into other language(s) is required. Rates to prepare and file taxes are for Federal and California State taxes only. Additional charges will apply if multiple state tax filing(s) is required. **Pricing is good for ninety (90) days.**

Data Conversion and Mailing: The proposal assumes that data provided will be in ready-to-use condition and that all data is provided in a single, comprehensive Excel spreadsheet. PSA cannot be liable for any errors or omissions arising due to additional work required for analyzing and processing the original database. A minimum of two (2) business days is required for processing prior to the anticipated mailing date with an additional two (2) business days for a National Change of Address (NCOA) update. Additional time may be required depending on the class size, necessary translation of the documents, or other factors. PSA will keep counsel apprised of the estimated mailing date.

Claims: PSA's general policy is to not accept claims via facsimile. However, in the event that facsimile filing of claims must be accepted, PSA will not be held responsible for any issues and/or errors arising out of said filing. Furthermore, PSA will require disclaimer language regarding facsimile transmissions. PSA will not be responsible for any acts or omissions caused by the USPS. PSA shall not make payments to any claimants without verified, valid Social Security Numbers. All responses and class member information are held in strict confidentiality. Additional class members are \$10.00 per opt-out.

Payment Terms: All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the data and/or notice documents. PSA bills are due upon receipt unless otherwise negotiated and agreed to with PSA by Counsel/Client. In the event the settlement terms provide that PSA is to be paid out of the settlement fund, PSA will request that Counsel/Client endeavor to make alternate payment arrangements for PSA charges that are due at the onset of the case. The entire remaining balance is due and payable at the time the settlement account is funded by Defendant, or no later than the time of disbursement. Amounts not paid within thirty (30) days are subject to a service charge of 1.5% per month or the highest rate permitted by law.

Tax Reporting Requirements

PSA will file the necessary tax returns under the EIN of the QSF, including federal and state returns. Payroll tax returns will be filed if necessary. Under the California Employment Development Department, all taxes are to be reported under the EIN of the QSF with the exception of the following taxes: Unemployment Insurance (UI) and Employment Training Tax (ETT), employer-side taxes, and State Disability Insurance (SDI), an employee-side tax. These are reported under Defendant's EIN. Therefore, to comply with the EDD payroll tax filing requirements we will need the following information:

1. Defendant's California State ID and Federal EIN.
2. Defendant's current State Unemployment Insurance (UI) rate and Employment Training Tax (ETT) rate. This information can be found in the current year DE 2088, Notice of Contribution Rates, issued by the EDD.
3. Termination dates of the class members, or identification of current employee class members, so we can account for the periods that the wages relate to for each class member.
4. An executed Power of Attorney (Form DE 48) from Defendant. This form is needed so that we may report the UI, SDI, and ETT taxes under Defendant's EIN on their behalf. If this form is not provided we will work with the EDD auditors to transfer the tax payments to Defendant's EIN.
5. Defendant is responsible for reporting the SDI portion of the settlement payments on the class member's W-2. PSA will file these forms on Defendant's behalf for an additional fee and will issue an additional W-2 for each class member under Defendant's EIN, as SDI is reported under Defendant's EIN rather than the EIN of the QSF. The Power of Attorney (Form DE 48) will be needed in order for PSA to report SDI payments.

EXHIBIT 15

CASE NAME: CANTRELL V. CONCRETE PLACEMENT, INC.

Date: September 27, 2022

Requesting Attorney: Stacy Aguirre

Plaintiff or Defense: Plaintiff

Firm Name: The Spivak Law Firm

Telephone: (213) 634-3702

Email: stacy.aguirre@spivaklaw.com

All-In Settlement

Class Size: 108

Opt-Out Rate: 1.5%

No. of Checks Issued: 106

Postage Total: \$428.55

Grand Total: \$19,179.37

DISCOUNTED FLAT FEE: \$12,750.00

The services and numbers reflected herein are an estimate provided by counsel. If the actual services and number are different, our cost estimate will change accordingly.

The attached Terms and Conditions are included as part of our cost proposal. By accepting our costs proposal for this matter, you are thereby agreeing to the Terms and Conditions.

CASE SETUP

Upon Intake of the Data, CPT will Scrub all Records to a Useable Format to Reduce Duplicates, Anomalies and Increase the Success Rate of Deliverability of the Class Notice. Class Members will be Assigned a Unique Mailing ID which will be Used Throughout Administration. The Notice Packet will be Translated into Spanish.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Manager: Case Intake & Review	\$95.00	1	\$95.00
Programming: Data Base Setup	\$150.00	1	\$150.00
Spanish Translation	\$1,200.00	1	\$1,200.00
Static Website	\$500.00	1	\$500.00
TOTAL			\$1,945.00

DIRECT MAIL NOTICE

To Ensure Mailing to the Most Current Address Possible, CPT will Perform an Address Update via NCOA. CPT will Mail a Full-Length Notice, Dispute Form & 1-Page Exclusion Form.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Manager: Format Documents	\$95.00	2	\$190.00
National Change of Address Search (NCOA)	\$135.00	1	\$135.00
Print & Mail Notice Packets	\$1.50	108	\$162.00
First-Class Postage (up to 2 oz.)*	\$0.81	108	\$87.48
TOTAL			\$574.48

*Postage costs are subject to change at anytime. The final rate will be determined at the time of mailing.

PROCESS RETURNED UNDELIVERABLE MAIL

Based On CPT's Historical Data, 6% of the Notices will be Returned Undeliverable. Upon Receipt, CPT will Perform a Skip Trace in an Attempt to Obtain a Current Address; Thus, 91% of the Notice Packets are Remailled.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Clerical Staff	\$60.00	1	\$60.00
Update Undeliverable Mail Database	\$0.50	6	\$3.00
Skip Trace for Best Address	\$1.00	5	\$5.00
Print & Remail Notice Packets	\$1.50	5	\$7.50
First-Class Postage (up to 2 oz.)	\$0.81	5	\$4.05
TOTAL			\$79.55

OPT-OUT PROCESSING

CPT will Process and Validate all Opt-Outs and Other Responses from Class Members. Deficient Opt-Outs will Receive a Deficiency Notice by Mail and Provide an Opportunity to Cure. CPT will Scrub the Filed Opt-Outs to Eliminate Duplicates, Fraudulent, and Otherwise Invalid.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: De-duplication/Scrubbing	\$150.00	1	\$150.00
Project Manager: Validate Opt-Out Requests	\$95.00	1	\$95.00
Clerical Staff	\$60.00	1	\$60.00
Opt-Out & Change of Address Processing	\$2.00	2	\$3.24
Print & Mail Deficiency/Dispute Notices	\$1.50	1	\$1.50
First-Class Postage (up to 1 oz.)	\$0.60	1	\$0.60
Review & Process Deficiency Responses	\$10.00	1	\$10.00
		TOTAL	\$320.34

TELEPHONE SUPPORT

CPT will Maintain a Toll-Free Phone Number with IVR Capabilities and Live Class Member Support Representatives During Normal Business Hours, Monday-Friday, 9:00 AM - 5:30 PM, PT. The Dedicated Case Phone Number will Remain Active Up to 120 Days After Disbursement.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Toll-Free Number Establish/Setup	\$150.00	2	\$300.00
Live Call Center Support Reps.	\$3.00	22	\$66.00
		TOTAL	\$366.00

SSN VERIFICATION

Verify SSN for Validity with IRS / IRS Backup Withholdings

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: SSN Selection	\$150.00	1	\$150.00
Department Manager: Analysis & Reporting	\$95.00	3	\$285.00
IRS SSN Verification	\$0.10	106	\$10.64
		TOTAL	\$445.64

DISTRIBUTION SERVICES - PHASE 1

CPT will Establish and Manage the Qualified Settlement Fund (QSF) for up to One Year After Disbursement. Upon Approval, CPT will Perform all Necessary Calculations and Disburse Funds. CPT will Mail an 8.5"x11" MICR Check to Valid Class Members. CPT Uses a Payee Positive Pay System to Reconcile Checks Cashed and Conducts Monthly Account Reconciliations for the QSF. A Check Reminder Postcard will be Sent to All Class Members Who do not Cash Their Check.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: Calculation Totals	\$150.00	3	\$450.00
Project Supervisor: Review of Distribution	\$150.00	3	\$450.00
Project Manager: Correspondence w/Parties	\$95.00	2	\$190.00
Programming: Setup & Printing of Checks	\$150.00	3	\$450.00
Obtain EIN, Setup QSF/Bank Account	\$150.00	3	\$450.00
Print & Mail Notice, Checks & W2/1099	\$2.50	106	\$265.95
First-Class Postage (up to 1 oz.)*	\$0.60	106	\$63.83
Check Reminder Postcard	\$0.30	85	\$25.53
Postage for Check Reminder Postcard	\$0.44	85	\$37.45
		TOTAL	\$2,382.75

*Postage costs are subject to change at anytime. The final rate will be determined at the time of mailing.

POST-DISTRIBUTION & TAX REPORTING - YEAR 1

Any Check Returned Undeliverable is Skip Traced to Locate a Current Address and Remailed Accordingly. CPT will Process Requests for Check Reissues Continuously. CPT Prepares Annual Tax Reporting on Behalf of the QSF and Federal and State Taxes in Accordance with Current State and Federal Regulations. Upon the Conclusion of the Settlement, a Final Report and Declaration will be Provided to all Parties.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Supervisor: Account Reconciliation	\$150.00	3	\$450.00
Update Undeliverable Checks Database	\$0.50	9	\$4.50
Skip Trace for Best Address	\$1.00	9	\$9.00
Remail Undeliverable Checks	\$2.50	8	\$20.00
First-Class Postage (up to 1 oz.)	\$0.60	8	\$4.80
Re-Issue Checks as Required	\$5.00	6	\$30.00
First-Class Postage (up to 1 oz.)	\$0.60	6	\$3.60
Project Supervisor: Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming: Weekly & Final Reports	\$150.00	2	\$300.00
Project Manager: Account Files Sent to Atty	\$95.00	2	\$190.00
CA Tax Preparation*	\$600.00	1	\$600.00
Annual Tax Reporting to IRS*	\$1,000.00	1	\$1,000.00
QSF Annual Tax Reporting	\$500.00	1	\$500.00
TOTAL			\$3,261.90

*CPT will file Federal and California taxes in accordance to current state and federal regulations. Additional charges will apply if the Settlement/Order/parties require(s) multiple state tax filings.

DISTRIBUTION SERVICES - PHASE 2

Upon Approval From the Parties, CPT will Perform all Necessary Calculations and Disburse Funds. CPT will Mail an 8.5"x11" MICR Check to Valid Class Members. CPT Uses a Payee Positive Pay System to Reconcile Checks Cashed and Conducts Monthly Account Reconciliations for the QSF. A Check Reminder Postcard will be Sent to All Class Members Who do not Cash Their Check.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: Calculation Totals	\$150.00	3	\$450.00
Project Supervisor: Review of Distribution	\$150.00	3	\$450.00
Project Manager: Correspondence w/Parties	\$95.00	2	\$190.00
Programming: Setup & Printing of Checks	\$150.00	3	\$450.00
Print & Mail Notice, Checks & W2/1099	\$2.25	106	\$239.36
First-Class Postage (up to 1 oz.)	\$0.60	106	\$63.83
Check Reminder Postcard	\$0.30	85	\$25.53
Postage for Check Reminder Postcard	\$0.44	85	\$37.45
TOTAL			\$1,906.16

DISTRIBUTION SERVICES - PHASE 3

Upon Approval From the Parties, CPT will Perform all Necessary Calculations and Disburse Funds. CPT will Mail an 8.5"x11" MICR Check to Valid Class Members. CPT Uses a Payee Positive Pay System to Reconcile Checks Cashed and Conducts Monthly Account Reconciliations for the QSF. A Check Reminder Postcard will be Sent to All Class Members Who do not Cash Their Check.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Programming: Calculation Totals	\$150.00	3	\$450.00
Project Supervisor: Review of Distribution	\$150.00	3	\$450.00
Project Manager: Correspondence w/Parties	\$95.00	2	\$190.00
Programming: Setup & Printing of Checks	\$150.00	3	\$450.00
Print & Mail Notice, Checks & W2/1099	\$2.25	106	\$239.36
First-Class Postage (up to 1 oz.)	\$0.60	106	\$63.83
Check Reminder Postcard	\$0.30	90	\$27.13
Postage for Check Reminder Postcard	\$0.44	90	\$39.79
TOTAL			\$1,910.10

POST-DISTRIBUTION & TAX REPORTING - YEAR 2/FINAL

Any Check Returned Undeliverable is Skip Traced to Locate a Current Address and Remailled Accordingly. CPT will Process Requests for Check Reissues Continuously. CPT Prepares Annual Tax Reporting on Behalf of the QSF and Federal and State Taxes in Accordance with Current State and Federal Regulations. Upon the Conclusion of the Settlement, a Final Report and Declaration will be Provided to all Parties.

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
Project Supervisor: Account Reconciliation	\$150.00	12	\$1,800.00
Update Undeliverable Checks Database	\$0.50	3	\$1.60
Skip Trace for Best Address	\$1.00	3	\$3.19
Remail Undeliverable Checks	\$2.50	3	\$7.50
First-Class Postage (up to 1 oz.)	\$0.60	3	\$1.80
Re-Issue Checks as Required	\$5.00	3	\$15.00
First-Class Postage (up to 1 oz.)	\$0.60	3	\$1.80
Project Supervisor: Reconcile Uncashed Chk	\$150.00	1	\$150.00
Programming: Weekly & Final Reports	\$150.00	2	\$300.00
Project Supervisor: Final Declaration	\$150.00	2	\$300.00
Project Manager: Account Files Sent to Atty	\$95.00	1	\$95.00
CA Tax Preparation	\$350.00	1	\$350.00
Annual Tax Reporting to IRS	\$500.00	1	\$500.00
QSF Annual Tax Reporting	\$350.00	1	\$350.00
		TOTAL	\$3,875.89

SCO ESCHEATMENT PROCESSING

Escheatment Processing to the State Controller Unclaimed Property Division / Uncashed Check Rate 21%

ADMINISTRATIVE TASKS	UNIT PRICE	PIECES/HOURS	COST ESTIMATE
UPEnterprise Reporting Services	\$0.15	22	\$3.30
Project Manager: SCO Fall Reporting	\$95.00	2	\$190.00
Project Supervisor: Review of SCO Reports	\$150.00	1	\$150.00
Certified Mail Report to SCO	\$8.53	1	\$8.53
Check Reissues for Winter/Spring QTR	\$5.00	2	\$10.00
First-Class Postage (up to 1 oz.)	\$0.60	2	\$1.20
Project Supervisor: June Remittance	\$150.00	1	\$150.00
Project Manager: June Remittance	\$95.00	2	\$190.00
Certified Mail Report to SCO	\$8.53	1	\$8.53
Add'l Account Recons	\$150.00	6	\$900.00
Add'l QSF Annual Tax Reporting	\$500.00	1	\$500.00
		TOTAL	\$2,111.56

GRAND TOTAL **\$19,179.37**

TERMS AND CONDITIONS

These Terms and Conditions are made a part of, and incorporated by reference into, any cost proposal or Bid presented by CPT Group, Inc. to Client

1. Definitions.

- a) **"Affiliate"** means a party that partially (at least 50%) or fully controls, is partially or fully controlled by, or is under partial (at least 50%) or full common control with another party.
 - b) **"Approved Bank"** means a financial institution insured by the Federal Deposit Insurance Corporation with capital exceeding \$1 billion.
 - c) **"Case"** means the particular judicial matter identified by the name of plaintiff(s) and defendant(s) on the applicable Order.
 - d) **"Claims Administrator"** means CPT Group, Inc., a reputable third-party Claims Administrator selected by all the Parties (Plaintiff and Defense Counsel) to administer the Settlement or Notification Mailing.
 - e) **"Client"** means collectively Plaintiff Counsel and Defense Counsel.
 - f) **"Client Content"** means all Class Member written document communications relating to the Case, including claim forms, opt-out forms, and objections, which contain Client Data.
 - g) **"Client Data"** means proprietary or personal data regarding Client or any of its Class Members under this Agreement, as provided by Client.
 - h) **"Class Member"** means an individual who is eligible under the Settlement Agreement to receive a designated amount of the Settlement, including the named Plaintiff(s) in the Case and all other putative persons so designated or addressed therein.
 - i) **"Confidential Information"** means any non-public information of CPT or Client disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, or to which the other party may have access, which a reasonable person would consider confidential and/or which is marked "confidential" or "proprietary" or some similar designation by the disclosing party. Confidential Information shall also include the terms of this Agreement, except where this Agreement specifically provides for disclosure of certain items. Confidential Information shall not, however, include the existence of the Agreement or any information which the recipient can establish: (i) was or has become generally known or available or is part of the public domain without direct or indirect fault, action, or omission of the recipient; (ii) was known by the recipient prior to the time of disclosure, according to the recipient's prior written documentation; (iii) was received by the recipient from a source other than the discloser, rightfully having possession of and the right to disclose such information; or (iv) was independently developed by the recipient, where such independent development has been documented by the recipient.
 - j) **"Court Order"** means a legal command or direction issued by a court, judicial office, or applicable administrative body requiring one or more parties to the Case to carry out a legal obligation pursuant to the Case.
 - k) **"Defendant"** means the named party and/or parties in the Case against whom action is brought.
 - l) **"Defense Counsel"** means the attorney of record for the defendant(s) in the Case.
 - m) **"Intellectual Property Right"** means any patent, copyright, trade or service mark, trade dress, trade name, database right, goodwill, logo, trade secret right, or any other intellectual property right or proprietary information right, in each case whether registered or unregistered, and whether arising in any jurisdiction, including without limitation all rights of registrations, applications, and renewals thereof and causes of action for infringement or misappropriation related to any of the foregoing.
 - n) **"Order"** means a Product purchase in a schedule, statement of work, addendum, exhibit, or amendment signed by Client and CPT.
 - o) **"Parties"** shall mean collectively Defendants, Defense and Plaintiff as defined in the Settlement Agreement or Court Order.
 - p) **"Plaintiff"** means the named party and/or parties in the Case who are bringing the action.
 - q) **"Plaintiff Counsel"** means the attorney of record for plaintiff Class Members in the Case.
 - r) **"Products"** means any and all CPT Services, and work products resulting from Services.
 - s) **"Qualified Settlement Fund"** means the entity as defined by Treasury Regulation section 4686-1 under which a bank account is established to receive settlement funds from the Defendant in the Case, which such funds are then disbursed by CPT according to the Settlement Agreement and pursuant to Court Order.
 - t) **"Service"** means any service rendered by CPT specifically to Client, including, but not limited to: (i) notifications to Class Members; (ii) setting up a Qualified Settlement Fund with a financial institution; (iii) management of disbursement of funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement; (iv) provision of customer support relating to the Case; (v) management of Case claim forms and correspondence; and/or (vi) any administrative or consulting service.
 - u) **"Software"** means any and all of CPT's proprietary applications, including, without limitation, all updates, revisions, bug-fixes, upgrades, and enhancements thereto.
 - v) **"Settlement"** means the total dollar amount agreed to between parties to the Case, as negotiated by Plaintiff Counsel and Defense Counsel, to resolve the Case to mutual satisfaction.
 - w) **"Settlement Agreement"** means the contract between parties to the Case to resolve the same, which specifies amounts to be disbursed from the Qualified Settlement Fund to attorneys, CPT, and individual Class Members.
 - x) **"Term"** means the term of the Agreement, as set forth in the Order.
 - y) **"Transmission Methods"** means the secure authorized manner to send Client Data and/or Wire Information as specified on a schedule or Order hereto.
 - z) **"Wire Information"** means instructions for (i) Defense Counsel to transfer funds from Defendant to the Qualified Settlement Fund or (ii) CPT to transfer funds from the Qualified Settlement Fund to applicable parties pursuant to the Settlement Agreement.
2. Client Obligations. Client will ensure that it has obtained all necessary consents and approvals for CPT to access Client Data for the purposes permitted under this Agreement and shall only transmit Client Data and/or Wire Instructions to CPT via the Transmission Methods. Client shall use and maintain appropriate administrative, technical, and physical safeguards designed to protect Client Data provided under this Agreement. Client shall not send, or attempt to send, Client Data and/or Wire Instructions via email, facsimile, unprotected spreadsheet, USB flash drive or other external or removable storage device, cloud storage provider, or any other method not specified in the Transmission Methods. Notwithstanding the foregoing, Client acknowledges and understands that the electronic transmission of information cannot be guaranteed to be secure or error free, and such information could be intercepted, corrupted, lost, and/or destroyed. Client further warrants that any Client Data and/or Wire Instructions it transmits shall be free of viruses, worms, Trojan horses, or other harmful or disabling codes which could adversely affect the Client Data and/or CPT. If Client is in breach of this section, CPT may suspend Services, in addition to any other rights and remedies CPT may have at law or in equity.
3. Security. The Parties and CPT shall each use reasonable administrative, technical, and physical safeguards that are reasonably designed to: (a) protect the security and confidentiality of any personally identifiable information provided by Class Members and/or Client under this Agreement; (b) protect against any anticipated threats or hazards to the security or integrity of such personally identifiable information; (c) protect against unauthorized access to or use of such personally identifiable information that could result in substantial harm or inconvenience to any individual; and (d) protect against unauthorized access to or use of such personally identifiable information in connection with its disposal. Each Party will respond promptly to remedy any known security breach involving the personally identifiable information provided by you and/or Client under this Agreement and shall promptly inform the other Parties of such breaches.
4. CPT Obligations. Provided that Client complies with all provisions of Section "Client Obligations", CPT will (i) maintain appropriate safeguards for the protection of Client Data, including regular back-ups, security and incident response protocols, and (ii) not access or disclose Client Data except (A) as compelled by law, (B) to prevent or address service or technical issues, (C) in accordance with this Agreement or the provisions of the Settlement Agreement, or (D) if otherwise permitted by Client.
5. Mutual Obligations.
- a) **Resources.** Each party agrees to: (i) provide the resources reasonably necessary to enable the performance of the Services; (ii) manage its project staffing, milestones, and attendance at status meetings; and (iii) ensure completion of its project deliverables and active participation during all phases of a Service project. The parties acknowledge that failure to cooperate during a Service project may delay delivery of the Service.

- If there is a delay, the party experiencing the delay will notify the other party as soon as reasonably practicable, and representatives of each party will meet to discuss the reason for the delay and applicable consequences. Changes beyond the scope of an Order and/or a party's delay in performing its obligations may require an amended Order.
- b) **Incident Notification.** Each party will promptly inform the other parties in the event of a breach of Client Data in their possession and shall utilize best efforts to assist the other parties to mitigate the effects of such incident.
6. **Qualified Settlement Fund Account.** At Client's request, CPT shall be authorized to establish one or more bank accounts at an Approved Bank. The amounts held at the Approved Bank under this Agreement are at the sole risk of Client. Without limiting the generality of the foregoing, CPT shall have no responsibility or liability for any diminution of the funds that may result from the deposit thereof at the Approved Bank, including deposit losses, credit losses, or other claims made against the Approved Bank. It is acknowledged and agreed that CPT has acted reasonably and prudently in depositing funds at an Approved Bank, and CPT is not required to conduct diligence or make any further inquiries regarding such Approved Bank.
7. **Fees and Payment.** Pricing stated within the proposal is good for 90 Days. All postage charges and 50% of the final administration charges are due at the commencement of the case and will be billed immediately upon receipt of the Client data and /or notice documents. Client will be invoiced for any remaining fees according to the applicable Order. Pricing stated within any proposal from CPT to Client is for illustrative purposes only and is only binding upon an Order executed by CPT and Client. Payment of fees will be due within 30 days after the date of the invoice, except where this Agreement expressly prescribes other payment dates. All fees set forth in an Order are in U.S. dollars, must be paid in U.S. dollars, and are exclusive of taxes and applicable transaction processing fees. Late payments hereunder will incur a late charge of 1.5% (or the highest rate allowable by law, whichever is lower) per month on the outstanding balance from the date due until the date of actual payment. In addition, Services are subject to suspension for failure to timely remit payment therefor. If travel is required to effect Services, Client shall reimburse CPT for pre-approved, reasonable expenses arising from and/or relating to such travel, including, but not limited to, airfare, lodging, meals, and ground transportation.
8. **Term and Termination.**
- a) **Term.** The Term is set forth in the Order. The Agreement may be renewed by mutual written agreement of the parties.
- b) **Termination for Cause.** Either party may immediately terminate this Agreement if the other party materially breaches its obligations hereunder, and, where capable of remedy, such breach has not been materially cured within forty-five (45) days of the breaching party's receipt of written notice describing the breach in reasonable detail.
- c) **Bankruptcy Events.** A party may immediately terminate this Agreement if the other party: (i) has a receiver appointed over it or over any part of its undertakings or assets; (ii) passes a resolution for winding up (other than for a bona fide scheme of solvent amalgamation or reconstruction), or a court of competent jurisdiction makes an order to that effect and such order is not discharged or stayed within ninety (90) days; or (iii) makes a general assignment for the benefit of its creditors.
- d) **Effect of Termination.** Immediately following termination of this Agreement, upon Client's written request, Client may retrieve Client Data via Client's secure FTP site in the same format in which the Client Data was originally inputted into the Software, at no additional charge. Alternatively, Client Data can be returned in a mutually agreed format at a scope and price to be agreed. CPT will maintain a copy of Client Data and Client Content for no more than four (4) years following the date of the final check cashing deadline for Class Members under the Settlement Agreement, after which time any Client Data and Client Content not retrieved will be destroyed.
- e) **Final Payment.** If Client terminates this Agreement due to Section "Termination", Client shall pay CPT all fees owed through the termination date. If CPT terminates the Agreement in accordance with Section "Termination," Client shall pay CPT all fees invoiced through the termination date, plus all fees remaining to be invoiced during the Term, less any costs CPT would have incurred had the Agreement not been terminated.
- Confidentiality.** Each of the parties agrees: (i) not to disclose any Confidential Information to any third parties except as mandated by law and except to those subcontractors of CPT providing Products hereunder who agree to be bound by confidentiality obligations no less stringent than those set forth in this Agreement; (ii) not to use any Confidential Information for any purposes except carrying out such party's rights and responsibilities under this Agreement; and (iii) to keep the Confidential Information confidential using the same degree of care such party uses to protect its own confidential information; provided, however, that such party shall use at least reasonable care. These obligations shall survive termination of this Agreement.
- a) **Compelled Disclosure.** If receiving party is compelled to disclose any Confidential Information by judicial or administrative process or by other requirements of law, such party shall (i) promptly notify the other party, (ii) reasonably cooperate with the other party in such party's efforts to prevent or limit such compelled disclosure and/or obtain confidential treatment of the items requested to be disclosed, and (iii) shall disclose only that portion of such information which each party is advised by its counsel in writing is legally required to be disclosed.
- b) **Remedies.** If either party breaches any of its obligations with respect to confidentiality or the unauthorized use of Confidential Information hereunder, the other party shall be entitled to seek equitable relief to protect its interest therein, including but not limited to, injunctive relief, as well as money damages.
10. **Intellectual Property.** As between the parties, CPT will and does retain all right, title and interest (including, without limitation, all Intellectual Property Rights) in and to the Products. Client retains all ownership rights to Client Data.
11. **Indemnification.** Client agrees to indemnify, defend, and hold harmless CPT, its Affiliates, and the respective officer, directors, consultants, employees, and agents of each (collectively, Covered CPT Parties") from and against any and all third party claims and causes of action, as well as related losses, liabilities, judgments, awards, settlements, damages, expenses and costs (including reasonable attorney's fees and related court costs and expenses) (collectively, "Damages") incurred or suffered by CPT which directly relate to or directly arise out of (i) Client's breach of this Agreement; (ii) CPT's performance of Services hereunder; (iii) the processing and/or handling of any payment by CPT; (iv) any content, instructions, information or Client Data provided by Client to CPT in connection with the Services provided by CPT hereunder. The foregoing provisions of this section shall not apply to the extent the Damages relate to or arise out of CPT's willful misconduct. To obtain indemnification, indemnitee shall: (i) give written notice of any claim promptly to indemnitor; (ii) give indemnitor, at indemnitor's option, sole control of the defense and settlement of such claim, provided that indemnitor may not, without the prior consent of indemnitee (not to be unreasonably withheld), settle any claim unless it unconditionally releases indemnitee of all liability; (iii) provide to indemnitor all available information and assistance; and (iv) not take any action that might compromise or settle such claim.
12. **Warranties.** Each party represents and warrants to the other party that, as of the date hereof: (i) it has full power and authority to execute and deliver the Agreement; (ii) the Agreement has been duly authorized and executed by an appropriate employee of such party; (iii) the Agreement is a legally valid and binding obligation of such party; and (iv) its execution, delivery and/or performance of the Agreement does not conflict with any agreement, understanding or document to which it is a party. CPT WARRANTS THAT ANY AND ALL SERVICES PROVIDED BY IT HEREUNDER SHALL BE PERFORMED IN A PROFESSIONAL MANNER CONSISTENT WITH PREVAILING INDUSTRY STANDARDS. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CPT DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT AND ANY WARRANTIES ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.
13. **Liability.**
- a) **Liability Cap.** EXCEPT FOR A PARTY'S WILLFUL MISCONDUCT, EACH PARTY'S MAXIMUM AGGREGATE LIABILITY ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, WILL BE LIMITED TO THE TOTAL CLAIMS ADMINISTRATOR FEES PAID OR PAYABLE BY CLIENT TO CPT HEREUNDER. THE EXISTENCE OF MORE THAN ONE CLAIM SHALL NOT EXPAND SUCH LIMIT. THE PARTIES ACKNOWLEDGE THAT THE FEES AGREED UPON BETWEEN CLIENT AND CPT ARE BASED IN PART ON THESE LIMITATIONS, AND THAT THESE LIMITATIONS WILL APPLY NOTWITHSTANDING ANY FAILURE OF ANY ESSENTIAL PURPOSE OF ANY LIMITED REMEDY. THE FOREGOING LIMITATION SHALL NOT APPLY TO A PARTY'S PAYMENT OBLIGATIONS UNDER THE AGREEMENT.
- b) **Exclusion of Consequential Damages.** NEITHER PARTY WILL BE LIABLE FOR LOST PROFITS, LOST REVENUE, LOST BUSINESS OPPORTUNITIES, LOSS OF DATA, INTERRUPTION OF BUSINESS, OR ANY OTHER INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATING TO THIS AGREEMENT, REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF IT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
14. **Communications.** CPT may list Client's name and logo alongside CPT's other clients on the CPT website and in marketing materials, unless and until Client revokes such permission. CPT may also list the Case name and/or number, and certain Qualified Settlement Fund information, on the CPT website and in marketing materials, unless stated otherwise in the Settlement Agreement.

15. Miscellaneous Provisions.

- a) Governing Law: Jurisdiction. This Agreement will be governed by and construed in accordance with the laws of the State of California and the federal laws of the United States of America, without regard to conflict of law principles. CPT and Client agree that any suit, action or proceeding arising out of, or with respect to, this Agreement or any judgment entered by any court in respect thereof shall be brought exclusively in the state or federal courts of the State of California located in the County of Orange, and each of CPT and Client hereby irrevocably accepts the exclusive personal jurisdiction and venue of those courts for the purpose of any suit, action or proceeding.
- b) Force Majeure. Neither party will be liable for any failure or delay in its performance under this Agreement due to any cause beyond its reasonable control, including without limitation acts of war, acts of God, earthquake, flood, weather conditions, embargo, riot, epidemic, acts of terrorism, acts or omissions of vendors or suppliers, equipment failures, sabotage, labor shortage or dispute, governmental act, failure of the Internet or other acts beyond such party's reasonable control, provided that the delayed party: (i) gives the other party prompt notice of such cause; and (ii) uses reasonable commercial efforts to correct promptly such failure or delay in performance.
- c) Counterparts. This Agreement may be executed in any number of counterparts and electronically, each of which shall be an original but all of which together shall constitute one and the same instrument.
- d) Entire Agreement. This Agreement contains the entire understanding of the parties in respect of its subject matter and supersedes all prior agreements and understandings (oral or written) between the parties with respect to such subject matter. The schedules and exhibits hereto constitute a part hereof as though set forth in full herein.
- e) Modifications. Any modification, amendment, or addendum to this Agreement must be in writing and signed by both parties.
- f) Assignment. Neither party may assign this Agreement or any of its rights, obligations, or benefits hereunder, by operation of law or otherwise, without the other party's prior written consent; provided, however, either party, without the consent of the other party, may assign this Agreement to an Affiliate or to a successor (whether direct or indirect, by operation of law, and/or by way of purchase, merger, consolidation or otherwise) to all or substantially all of the business or assets of such party, where the responsibilities or obligations of the other party are not increased by such assignment and the rights and remedies available to the other party are not adversely affected by such assignment. Subject to that restriction, this Agreement will be binding on, inure to the benefit of, and be enforceable against the parties and their respective successors and permitted assigns.
- g) No Third-Party Beneficiaries. The representations, warranties, and other terms contained herein are for the sole benefit of the parties hereto and their respective successors and permitted assigns and shall not be construed as conferring any rights on any other persons.
- h) Statistical Data. Without limiting the confidentiality rights and Intellectual Property Rights protections set forth in this Agreement, CPT has the perpetual right to use aggregated, anonymized, and statistical data ("Statistical Data") derived from the operation of the Software, and nothing herein shall be construed as prohibiting CPT from utilizing the Statistical Data for business and/or operating purposes, provided that CPT does not share with any third-party Statistical Data which reveals the identity of Client, Client's Class Members, or Client's Confidential Information.
- i) Export Controls. Client understands that the use of CPT's Products is subject to U.S. export controls and trade and economic sanctions laws and agrees to comply with all such applicable laws and regulations, including the Export Administration Regulations maintained by the U.S. Department of Commerce and the trade and economic sanctions maintained by the Treasury Department's Office of Foreign Assets Control.
- j) Severability. If any provision of this Agreement is held by a court or arbitrator of competent jurisdiction to be contrary to law, such provision shall be changed by the court or by the arbitrator and interpreted so as to best accomplish the objectives of the original provision to the fullest extent allowed by law, and the remaining provisions of this Agreement shall remain in full force and effect.
- k) Notices. Any notice or communication required or permitted to be given hereunder may be delivered by hand, deposited with an overnight courier, sent by electronic delivery, or mailed by registered or certified mail, return receipt requested and postage prepaid to the address for the other party first written above or at such other address as may hereafter be furnished in writing by either party hereto to the other party. Such notice will be deemed to have been given as of the date it is delivered, if by personal delivery; the next business day, if deposited with an overnight courier; upon receipt of confirmation of electronic delivery (if followed up by such registered or certified mail); and five days after being so mailed.
- l) Independent Contractors. Client and CPT are independent contractors, and nothing in this Agreement shall create any partnership, joint venture, agency, franchise, sales representative or employment relationship between Client and CPT. Each party understands that it does not have authority to make or accept any offers or make any representations on behalf of the other. Neither party may make any statement that would contradict anything in this section.
- m) Subcontractors. CPT shall notify Client of its use of any subcontractors to perform Client-specific Services. CPT shall be responsible for its subcontractors' performance of Services under this Agreement.
- n) Headings. The headings of the sections of this Agreement are for convenience only, do not form a part hereof, and in no way limit, define, describe, modify, interpret, or construe its meaning, scope or intent.
- o) Waiver. No failure or delay on the part of either party in exercising any right, power or remedy under this Agreement shall operate as a waiver, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise or the exercise of any other right, power, or remedy.
- p) Survival. Sections of the Agreement intended by their nature and content to survive termination of the Agreement shall so survive.

EXHIBIT 16