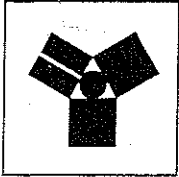


Southern
California
Rock
Products
Association

Southern
California
Ready Mixed
Concrete
Association



23 May, 2005

Dear Ready Mix Concrete Members;

I am very pleased to tell all of our Ready Mixed Concrete Members that your contributions and support toward on duty lunch periods have been rewarded. The Association's attorney Robert Roginson, from the attorney firm of Atkinson, Andelson, Loya, Ruud & Romo, has reported that a signed Stipulated Judgment has been completed. This judgment clarifies the circumstances which must be present to establish an on duty lunch period for mixer drivers. Please take a moment to read through the Westside Judgment which as you remember was funded by SCRMA. Let me thank Westside Concrete for lending their name to the law suit upon who's success this judgment is largely based. Please also read the Sample Meal Period Policy for Ready Mixed Concrete Drivers. This draft gives you a plan and sample documents to implement a program based on the Judgment. We at the Association are very pleased to be able to report this success for our members and the industry's benefit. Thanks again for your continued support.

Sincerely,

A handwritten signature in black ink, appearing to read "Stephen Bledsoe".

Stephen Bledsoe
President
SCRPA / SCRMA

C:/mstipjudgmentltr

Main Office

P.O. Box 40 • South Pasadena, Ca. 91031 • Tel: (626) 441-3107 • Fax: (626) 441-0649

San Diego Office

2831 Camino Del Rio South • Suite 204 • San Diego, Ca. 92108 • Tel: (619) 260-8316 • Fax: (619) 260-1015

E-mail scrpa@scrpa.com • Web Page www.scrpa.com

WESTSIDE SETTLEMENT

The Division of Labor Standards Enforcement (DLSE), Industrial Welfare Commission (IWC), and Westside Concrete Company, Inc. entered a stipulated judgment, which was approved by the court and entered on April 27, 2005.

The settlement clarifies what circumstances are necessary to establish that an on-duty meal period may be taken. The judgment provides as follows:

- Due to the particular and unique circumstances of the ready-mix concrete industry, the nature of the duties of the drivers in the industry, normally, but not in all cases, prevents the driver from being relieved of all duty in order to take a 30 minute off-duty meal period.
- Outside of the plant, drivers cannot stop their trucks and leave them unattended for an uninterrupted 30 minute off-duty meal period.
- There are opportunities during the course of the day for drivers to take breaks and to eat lunch while waiting for the truck to be loaded or unloaded.
- There may be circumstances when the driver returns to the plant for the driver to take an off-duty meal period.
- There will be a rebuttable presumption that the nature of the driver's work prevented the driver from taking an off-duty meal period at the plant for a particular day so long as:
 1. the affected driver voluntarily verifies in writing that the driver agrees that the nature of duties prevented the driver from taking an off-duty meal period on that particular day;
 2. the employer verifies in writing that there were jobs in progress on the day which prevented the driver from taking an off-duty meal period; and
 3. the driver signed an On-Duty Meal Period Agreement.
- The settlement applies to ready mix drivers only.
- The judgment is binding on the DLSE, constitutes official DLSE enforcement policy, and the DLSE shall promulgate and distribute the judgment to its hearing officers and deputy labor commissioners.
- The judgment supercedes prior DLSE opinion letters or interpretations that conflict with the judgment.

1 ATKINSON, ANDELSON, LOYA, RUUD & ROMO
A Professional Corporation
2 Steven D. Atkinson - SBN 59094
Robert R. Roginson - SBN 185286
3 Christopher S. Milligan - SBN 211532
17871 Park Plaza Drive, Suite 200
4 Cerritos, CA 90703-8597
(562) 653-3200 • (714) 826-5480
5 FAX: (562) 653-3333
Attorneys for Plaintiff
6 WESTSIDE CONCRETE COMPANY, INC.

ORIGINAL FILED

APR 27 2005

LOS ANGELES
SUPERIOR COURT

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF LOS ANGELES, CENTRAL DISTRICT.
10

11 WESTSIDE CONCRETE COMPANY, INC., a
California corporation

12 Plaintiff,

13 v.

14 DIVISION OF LABOR STANDARDS
15 ENFORCEMENT, a public agency; DONNA M.
16 DELL, in her official capacity as LABOR
COMMISSIONER; INDUSTRIAL WELFARE
17 COMMISSION, a public agency; and DOES 1-
50,

18 Defendants.
19
20
21
22
23
24
25
26
27
28

CASE NO. BC286838

The Honorable Judge Ralph W. Dau
Dept. 57

STIPULATED JUDGMENT AND
~~PROPOSED~~ ORDER FOR
DECLARATORY RELIEF

Case filed: December 12, 2002
Trial Date: None

///

///

///

1 **STIPULATION AND [PROPOSED] ORDER RE DECLARATORY RELIEF**

2 Plaintiff Westside Concrete Company, Inc. (herein "Westside"), having filed its Complaint
3 for Declaratory and Injunctive Relief in this matter on December 12, 2002, and the parties having
4 agreed to resolve their dispute without adjudication or admission of any issue of fact or law,

5 THEREFORE, pursuant to stipulation and agreement of the parties, it is hereby
6 **ORDERED, ADJUDGED and DECREED** as follows:

7 **A. FINDINGS**

8 1. Defendant Industrial Welfare Commission has promulgated Wage Orders 1 through
9 17 (collectively referred to herein as the "Wage Orders"), which regulate the wages, hours, and
10 working conditions of nonexempt California employees. The Wage Orders and Labor Code § 512
11 contain the various meal period requirements that California employers must follow. Section 11
12 of Wage Order 1-2001 states that "[n]o employer shall employ any person for a work period of
13 more than five (5) hours without a meal period of not less than 30 minutes," and requires
14 employers to provide employees a thirty (30) minute uninterrupted ("off-duty") meal period after
15 five (5) hours of work and a second off-duty meal period after ten (10) hours of work.¹ Section 11
16 of Wage Order 1-2001 and Labor Code § 226.7(b) further provide that if the employer fails to
17 properly provide a meal period and comply with the Wage Order's meal period requirements, the
18 employer shall pay the employee one additional hour of pay at the employee's regular rate of pay.

19 Section 11 of Wage Order 1-2001 also provides that employers may comply with the meal
20 period requirements if the requirements for an "on-duty meal period" are met. An on-duty meal
21 period is allowed under Wage Order 1-2001 if (1) the nature of the work prevents the employee
22 from being relieved of all duty during the period of time when he or she would otherwise be
23 entitled to a duty-free meal period pursuant to the wage order, and (2) the employer and the
24 employee have previously entered into a voluntary written agreement authorizing an on-duty meal
25 period, and (3) this written agreement states that the employee may, in writing, revoke the

26 _____
27 ¹ The other Wage Orders contain similar meal period requirements to those found in Wage
28 Order 1-2001, with various differences in substance and language. Additionally, Wage Order 12-
2001 provides that an employer must provide a meal period after six (6), rather than five (5) hours
of work. The meal period provisions are found in Section 11 of Wage Orders 1-2001 through 15-
2001, in Section 10 of Wage Order 16-2001 and Section 9 of Wage Order 17-2001.

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
17871 Park Plaza Drive, Suite 200
Cerritos, CA 90703-8597
(562) 653-3200 • (714) 826-5480
FAX: (562) 653-3333
9230.00011/506938v1

1 agreement at any time.

2 2. Plaintiff Westside Concrete Company filed a Complaint for Declaratory and
3 Injunctive Relief on December 12, 2002, in part seeking a declaration and interpretation of when
4 the above-referenced "nature of the work" element is met with respect to drivers in the Ready-Mix
5 Concrete industry, thus permitting those drivers to take an "on-duty" meal period under the Wage
6 Orders.

7 3. The parties now hereby stipulate and agree that, due to the particular and unique
8 circumstances of the Ready-Mix Concrete industry, the nature of the duties of drivers in the
9 Ready-Mix Concrete industry, normally, but not in all cases, prevents a driver from being relieved
10 of his or her duties in order to take a thirty (30) minute "off-duty" meal period. These
11 circumstances include, but are not limited to, the following:

12 a. Ready mix drivers frequently start their workday prior to 6:00 a.m. They
13 initially perform a safety check of the truck, then wait for their truck to be loaded with concrete.
14 The drivers then drive to the job site location. The job site locations are usually within twenty
15 miles from the batch plant. The round trip from the batch plant to the job site and return may be
16 as long as three hours. However, actual delivery time is indeterminate due to job site problems,
17 concrete problems and traffic.

18 b. Concrete is a perishable commodity which hardens over time. This
19 characteristic limits the distance which concrete may travel. If concrete is poured too long after it
20 is batched and loaded into the truck, the concrete may become hardened and unusable for the
21 purpose for which it is intended. Additionally, there is always the risk the concrete will harden
22 inside the truck drum. Concrete which remains in a truck too long after it is batched is referred to
23 as "hot" concrete. The length of time before concrete will harden depends on the mix design of
24 the concrete and ambient temperature. The higher the temperature, the more quickly the concrete
25 becomes "hot."

26 c. A proper time sequence between when the concrete is batched and when it is
27 poured is essential to meet quality requirements and homogeneity. Awarding bodies and project
28

1 owners typically specify maximum time standards by which the concrete must be delivered or
2 else it is rejected. It is essential that there not be a break in the delivery of concrete to a job site.
3 To maintain a properly batched homogenous mixture and to prevent the concrete from hardening
4 the drum must be continuously rotated prior to the actual pouring of the concrete. Accordingly,
5 after the newly batched concrete is placed inside the drum, the truck must be continuously
6 operated until the concrete is delivered. There is normally some residue remaining in the drum
7 after a pour and, accordingly, the drum is typically also rotated on the return trip to the plant
8 where the drum is then cleaned out. Concrete is poured into a form to form a single, monolithic
9 mass. Nearly all pours require multiple truck loads of concrete. If there is a break of any length
10 between the delivery of the truck loads, there is a risk that the concrete from one load will not
11 bond with the concrete from other loads. This type of concrete defect is known as a "cold joint."
12 A cold joint significantly diminishes the structural integrity of the concrete. For these reasons,
13 concrete contractors order and schedule concrete trucks so that there will be a timely and
14 continuous pouring of homogenous concrete into the forms. The California Building Code,
15 Sections 1905.8.2 through 1905.10.1-8, the ASTM C94 for ready mixed concrete Section 11.7
16 and the Standard Specification for Public Works ("Greenbook") Section 201-1.3.1.all contain
17 strict requirements on how concrete should be transported and poured so as to maintain the public
18 safety.
19

20 d. Pours are scheduled to conform with the contractor's rate of delivery. The
21 ready mix company is responsible for assigning enough trucks to a pour to make certain that there
22 will be a continuous flow of concrete from the plant to the job site to maintain homogeneity of the
23 concrete and to limit job disruption. The pouring of concrete at a job site also typically requires
24 coordination among many different entities and individuals including the concrete contractor,
25 concrete pumping service providers, and other contractors and trades affected by the concrete
26 pour to ensure the continuous and uninterrupted pouring and placement of concrete.

27 e. Because of the necessity to deliver concrete to the job site within the
28 contractor's narrowly defined time sequences and mix restrictions, thereby avoiding "hot"

1 concrete, and the necessity to pour the concrete continuously to avoid cold joints, drivers cannot
2 stop their trucks and leave them unattended for an uninterrupted thirty-minute off-duty meal
3 period. However, there are many occasions of idle standby time even though the mixer drum is
4 still turning during which drivers can and do take a break and eat their lunch. Idle standby time
5 normally occurs when drivers are waiting to pick up their load, when the drivers are waiting to
6 pour their load and while the concrete is being poured by the concrete contractor.

7 f. After the concrete is poured, the driver then normally returns to the batch
8 plant to clean out residual concrete and pick up another load of concrete. The driver typically
9 must return immediately to the concrete plant in order to pick up another load of concrete for
10 delivery in order not to cause any interruption in the delivery and placement of concrete. Because
11 it is essential that the driver watch the truck at all times because of safety requirements due to the
12 constant movement of the drum, the driver cannot be entirely relieved of duty for 30 minutes in
13 order to take an off-duty meal period.

14 g. Because of the continuous nature of pours and the necessity of avoiding cold
15 joints, there is normally no opportunity for the driver to stop and leave the truck unattended at the
16 plant for thirty minutes prior to picking up another load and repeating the process. However,
17 there is opportunity during the return and pick-up sequence for the driver to take breaks and to eat
18 lunch while waiting for the truck to be reloaded. The delivery times cannot readily be controlled
19 due to the need to pour homogenous concrete. On the other hand, when a driver completes a
20 concrete delivery and returns to the concrete batch plant, the circumstances may at times allow
21 that driver to take a break in accordance with the off-duty meal period requirements.

22
23 4. Based on the particular and unique circumstances of the Ready-Mix Concrete
24 industry, the parties hereby stipulate and agree that there shall be a rebuttable presumption that the
25 "nature of the work" element of the test for "on-duty" meal periods is satisfied for a particular day
26 so long as: (1) the affected driver voluntarily verifies in writing that he agrees that the nature of his
27 duties prevented him from taking an off-duty meal period on that particular day; (2) the employer
28 verifies in writing that there were jobs in progress on that day which prevented the driver from

1 being relieved of all duty in order to take a thirty (30) minute "off-duty" meal period; and (3) the
2 affected driver has previously voluntarily signed a written agreement to work an "on-duty" meal
3 period, which agreement contains language allowing the employee to revoke the agreement. It is
4 further agreed and understood that, even if these circumstance exist to allow an "on-duty meal
5 period, an affected driver will be provided the opportunity to eat his or her meal while performing
6 the required duties during the "on-duty" meal period.

7 5. The parties affirm their agreement with the holding of Porter v. Quillin, 123
8 Cal.App.3d 869 (1981).

9 **B. RES JUDICATA AND COLLATERAL ESTOPPEL EFFECT**

10 The parties hereby agree and stipulate that the issues resolved through the parties'
11 settlement agreement and this stipulated judgment were fully considered and litigated and the
12 parties therefore intend that this stipulated judgment and the findings set forth herein shall have a
13 *res judicata* and collateral estoppel effect on the parties, and all third parties in privity with the
14 parties, so that they shall be estopped from raising the same claims and issues raised in this action
15 and addressed in this stipulated judgment, including the foregoing findings. The parties further
16 agree and stipulate that the Division of Labor Standards Enforcement ("DLSE"), which is charged
17 with enforcing the interests and rights of California employees, was lawfully authorized to litigate
18 the issues raised in this lawsuit as a matter of public concern. The parties further agree and
19 stipulate that the stipulated judgment and findings shall have a *res judicata* and collateral estoppel
20 effect in any and all court, administrative and/or enforcement proceedings. The parties agree that
21 they will not seek in any manner or future proceeding to change the above findings, subject to any
22 changes in statutory or regulatory law. The parties further agree and stipulate that DLSE shall
23 promulgate and distribute to its hearing officers and deputy labor commissioners the above
24 findings and guidelines and that these findings and guidelines shall represent official DLSE
25 enforcement policy with respect to on-duty meal periods for Ready-Mix Concrete drivers and such
26 policy shall supercede prior opinion letters or interpretations issued by the DLSE that conflict with
27 the provisions herein.

1 The parties further agree and stipulate that the issues resolved through this action are based
2 upon relevant provisions of the Labor Code and California Code of Regulations in existence as of
3 the effective date of this stipulation.

4 **C. COMPLETE SETTLEMENT.**

5 The parties hereby consent to entry of the Court's Order regarding the above-referenced
6 declaratory relief, which shall constitute a final judgment and order in this matter. The parties
7 further stipulate and agree that the entry of the foregoing Order shall constitute a full, complete
8 and final settlement of this action.

9 **D. COSTS.**

10 Each party shall bear its own costs and attorneys' fees incurred in connection with this
11 action.

12 **E. RETENTION OF JURISDICTION.**

13 This Court shall retain jurisdiction over the parties to this matter for the purpose of
14 enabling the parties to apply to the Court at any time for such further orders and directives as may
15 be necessary or appropriate for the interpretation or modification of the Court's Order, for the
16 enforcement or compliance therewith.

17 ///

18 ///

19 ///

20 ///

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
17871 Park Plaza Drive, Suite 200
Cerritos, CA 90703-8597
(562) 653-3200 • (714) 826-5480
FAX: (562) 653-3333

1 IT IS SO STIPULATED:

2 DATED: April 12, 2005

WESTSIDE CONCRETE COMPANY, INC.

3
4 By: Melanie O'Regan
5 Melanie O'Regan, President

6 DATED: April 11, 2005

DIVISION OF LABOR STANDARDS ENFORCEMENT

7
8 By: Miles E. Locker
9 Miles E. Locker, Counsel
10 Attorneys for Defendants
11 Division Of Labor Standards Enforcement and
12 Donna M. Dell, in her official capacity as
13 California Labor Commissioner

14 DATED: April __, 2005

BILL LOCKYER, Attorney General of the State of California

15 By: _____
16 Marguerite C. Stricklin
17 Deputy Attorney General
18 Attorneys for Defendant
19 Industrial Welfare Commission

20 ORDER

21 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment is entered in
22 the form of the above-referenced stipulated findings and declaratory relief.

23 Dated: APR 27 2005

Ralph W. Dau

24
25 JUDGE, SUPERIOR COURT FOR THE
26 STATE OF CALIFORNIA

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
17871 Park Plaza Drive, Suite 200
Cerritos, CA 90703-8597
(562) 653-3200 • (714) 826-5480
FAX: (562) 653-3333

1 **IT IS SO STIPULATED:**

2 DATED: April __, 2005

WESTSIDE CONCRETE COMPANY, INC.

3
4 By: _____
5 Melanie O'Regan, President

6 DATED: April __, 2005

DIVISION OF LABOR STANDARDS ENFORCEMENT

7
8 By: _____
9 Miles E. Locker, Counsel
10 Attorneys for Defendants
11 Division Of Labor Standards Enforcement and
12 Donna M. Dell, in her official capacity as
13 California Labor Commissioner

12 DATED: April 11, 2005

BILL LOCKYER, Attorney General of the State of California

14 By: Marguerite C. Stricklin
15 Marguerite C. Stricklin
16 Deputy Attorney General
17 Attorneys for Defendant
18 Industrial Welfare Commission

19 **ORDER**

20
21 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that judgment is entered in
22 the form of the above-referenced stipulated findings and declaratory relief.

23
24 Dated: _____

25 _____
26 JUDGE, SUPERIOR COURT FOR THE
27 STATE OF CALIFORNIA
28

A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
17871 Park Plaza Drive, Suite 200
Cerritos, CA 90703-8597
(562) 653-3200 • (714) 826-5480
FAX: (562) 653-3333

DRAFT

SAMPLE MEAL PERIOD POLICY FOR READY MIX DRIVERS

Drivers are to be provided either an Off-Duty or an On-Duty Meal Period each day. It is each driver's responsibility to take the appropriate meal period, as follows:

Off-Duty Meal Period

- Unless all of the conditions for an On-Duty Meal Period are satisfied, drivers working a shift of five (5) hours or more are to be provided a 30 minute Off-Duty Meal Period.
- Off-Duty Meal Periods must be taken at the plant only.
- Off-Duty Meal Periods must begin before the end of the 5th hour of work. If the driver works less than six (6) hours, the driver may waive this meal period.
- If the driver works more than ten (10) hours, the driver will be provided a second Off-Duty Meal Period which shall begin before the end of the 10th hour. The driver may waive this second meal period only if the driver's shift is less than twelve (12) hours.
- Drivers should check with the dispatcher before taking an Off-Duty Meal Period in order to minimize interruption to operations.
- Drivers taking an Off-Duty Meal Period must complete the meal period start and stop times on the driver's load sheet.

On-Duty Meal Period

- Drivers may take an On-Duty Meal Period only if all of the following three conditions are satisfied:
 - (1) The driver has signed an On-Duty Meal Period Agreement;
 - (2) The driver verifies on his/her daily load sheet that the nature of the work on that day prevented the driver from being relieved of duty while at the plant before the 5th hour of work; and
 - (3) The dispatcher verifies that there were jobs in progress at the time the driver was at the plant before the end of the 5th hour of work.
- Drivers taking an On-Duty Meal Period will be paid for all time worked.

Drivers who abuse or fail to comply with this policy, including failing to complete the meal period sections on the load sheet, may be disciplined up to and including discharge.

DRAFT

SAMPLE ON-DUTY MEAL PERIOD AGREEMENT

_____ (“Company”) and _____ (“Employee”) agree that the nature of Employee’s work as a ready mix truck driver usually prevents Employee from being relieved of all duties in order to take an uninterrupted 30-minute meal break. As such, Employee agrees to an “on-duty” meal period whenever the nature of Employee’s work prevents Employee from being relieved of all duties. Employee understands that he/she will be compensated for all on-duty meal periods.

Employee understands that if a 30-minute uninterrupted meal period is provided, this will not be an on-duty meal period and Employee will not be compensated for this time.

Employee understands that this on-duty meal period agreement may be revoked at any time by providing Company with written notice of revocation.

Date

Employee Name

Employee Signature

Date

Company Representative

DRAFT

SAMPLE LANGUAGE TO BE INCLUDED ON DRIVER LOAD SHEET

- (A) I took a 30 minute off-duty meal period today ____ from: ____ to ____; **OR**
(B) The nature of my work prevented me from taking an off-duty meal period today ____

[Driver must complete *either* (A) or (B)]

