

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF IOWA  
WESTERN DIVISION

IN RE: IOWA READY-MIX CONCRETE  
ANTITRUST LITIGATION

No. 5:10-CV-04038-MWB  
(CONSOLIDATED CASES)

**SETTLEMENT AGREEMENT WITH TRI-STATE READY MIX, INC., CHAD VAN  
ZEE, GCC ALLIANCE CONCRETE, INC., STEVEN KEITH VANDEBRAKE,  
AND VS HOLDING COMPANY, F/K/A ALLIANCE CONCRETE, INC.**

This Settlement Agreement ("Agreement") is made and entered into as of this 8<sup>th</sup> day of July, 2011 (the "Execution Date") by and among Defendants Tri-State Ready Mix, Inc. ("Tri-State"), Chad Van Zee ("Van Zee"), GCC Alliance Concrete, Inc. ("GCC Alliance"), Steven Keith VandeBrake ("VandeBrake"), and VS Holding Company, f/k/a Alliance Concrete, Inc. ("VS Holding") (collectively and for convenience, "Alliance/Tri-State Class Settling Defendants") and Plaintiffs Brown Commercial Construction, Inc., Frank Audino Construction, Inc., Randy Waterman, and Holtze Construction Company ("Plaintiffs"), both individually and on behalf of a proposed class of direct purchasers of Ready-Mix Concrete who purchased Ready-Mix Concrete from January 1, 2006 through December 31, 2009 directly from the Hawarden, Orange City, Sioux Center, and Sheldon plants that were formerly owned by VS Holding and that GCC Alliance acquired on January 14, 2008 (for convenience the "Alliance Plants"), and the Tri-State Rock Valley plant (the "Tri-State Plant"), but excluding federal government entities, Defendants named in the Second Amended Consolidated Class Action Complaint (the "Complaint") in the above-captioned consolidated action (the "Action") pending in the United States District Court for the Northern District of Iowa (the "Court") and their co-conspirators and respective predecessors, parents, subsidiaries, and affiliates (the "Alliance/Tri-State Settlement Class").

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WHEREAS, Plaintiffs are prosecuting the Action on their own behalf and on behalf of the proposed Alliance/Tri-State Settlement Class against (among others) the Alliance/Tri-State Class Settling Defendants; and

WHEREAS, Plaintiffs allege that the Alliance/Tri-State Class Settling Defendants participated in an unlawful conspiracy to raise, fix, maintain, or stabilize the price of Ready-Mix Concrete sold from the Alliance Plants and Tri-State Plant at artificially high levels, in violation of Section 1 of the Sherman Act; and

WHEREAS, several motions to dismiss filed by Defendants are pending, consideration of which has been stayed by the Court; and

WHEREAS, the Court has made no determination in the Action of any wrongdoing or liability of any kind by the Alliance/Tri-State Class Settling Defendants; and

WHEREAS, counsel for the parties participated in the mediations of this dispute before former United States District Court Judge James M. Rosenbaum to resolve the Action on Wednesday and Thursday, April 27 and 28 and Wednesday, May 11, 2011, in Omaha, Nebraska (“Mediation”); and

WHEREAS, although the Mediation sessions did not result in an immediate settlement of the Action at that time, counsel for the parties continued to engage in good faith settlement discussions concerning the possibility of settlement; and

WHEREAS, Plaintiffs, through their counsel, have conducted an investigation into the facts and the law regarding the Action and have concluded that a settlement with the Alliance/Tri-State Class Settling Defendants according to the terms set forth below is in the best interest of Plaintiffs and the proposed Class Members; and

WHEREAS, the Alliance/Tri-State Class Settling Defendants believe their defenses to

Plaintiffs' claims are meritorious, but recognize and wish to avoid the burden, expense, inconvenience, and distraction associated with further litigation and the uncertainties associated with trial;

NOW, THEREFORE, in consideration of the covenants, agreements and releases set forth herein, for payments by the Alliance/Tri-State Class Settling Defendants of their respective Settlement Amounts, and for other good and valuable consideration, including the entry of that certain letter agreement dated July 11, 2011, and signed by Class Counsel, it is agreed by and among the undersigned that the Action be settled, compromised and dismissed on the merits with prejudice as to the claims of the Alliance/Tri-State Settlement Class set forth in the Action, subject to the approval of the Court, with all sides to bear their own costs and attorneys' fees, and on the following terms and conditions.

**A. Certain Definitions**

The following terms, as used in this Agreement, have the following meanings:

1. "Alliance/Tri-State Class Settling Defendants" are defined in the first paragraph of this Agreement.
2. "Alliance/Tri-State Settlement Class" is defined the first paragraph of this Agreement.
3. "Alliance Plants" means the Ready-Mix Concrete plants at Hawarden, Orange City, Sioux Center, and Sheldon plants that were owned by VS Holding until January 14, 2008 and that GCC Alliance owned on or after that date.
4. "Class Counsel" shall refer to attorneys Irwin B. Levin, Cohen & Malad, LLP, One Indiana Square, Suite 1400, Indianapolis, Indiana, 46204, and Gregory P. Hansel, Preti, Flaherty, Beliveau & Pachios, LLP, One City Center, Portland, Maine, 04101.

5. "Class Member" means each member of the Alliance/Tri-State Settlement Class who does not timely elect to be excluded from the Alliance/Tri-State Settlement Class.

6. "Class Period" means the period from and including January 1, 2006 through and including December 31, 2009.

7. "Class Representatives" or "Plaintiffs" means Plaintiffs Frank Audino Construction, Inc., Brown Commercial Construction, Inc., Randy Waterman, and Holtze Construction Company.

8. "Defendants" means the Defendants named in the above-captioned Action, and includes Siouxland Concrete Company ("Siouxland"), GCC Alliance, Tri-State, Great Lakes Concrete, Inc. ("Great Lakes"), VS Holding, Van Zee, VandeBrake, and Kent Robert Stewart ("Stewart"). "Other Defendants" means all Defendants except the Alliance/Tri-State Class Settling Defendants.

9. The "Effective Date" of this Agreement shall be the first day on which all of the following are true: (a) the Court has entered a final order approving this Agreement under Rule 23(e) of the Federal Rules of Civil Procedure and a final judgment dismissing the Action against Alliance/Tri-State Class Settling Defendants on the merits with prejudice as to all Alliance/Tri-State Settlement Class Members and without costs, (b) each Settling Defendant has fully paid its or his Settlement Amount to the Settlement Fund in accordance with this Agreement, and (c) the time for appeal or to seek permission to appeal from the Court's approval of this Agreement and the final judgment has expired, or the final judgment has been affirmed in its entirety by the Court of last resort to which such appeal has been taken and such affirmance has become no longer subject to further appeal or review.

10. "Execution Date" means the last date on which this Agreement is signed by a

party hereto, which is the date identified in the first sentence of this Agreement.

11. "Net Settlement Fund" means the Settlement Fund less all payments, costs, and expenses ordered or approved to be made out of the Settlement Fund by the Court for providing notice of the settlement, administering and implementing the settlement, addressing and resolving taxation matters relating to the settlement, and paying an incentive award to Plaintiffs and Class Counsel's reasonable attorneys' fees as awarded by the Court.

12. "Ready-Mix Concrete" means a product comprised of cement, sand, gravel, water, and occasionally additional additives.

13. "Released Claims" are defined in Paragraph 29 of this Agreement.

14. "Released Parties" means and refers individually and collectively to: Tri-State, Van Zee, VandeBrake, GCC Alliance, and VS Holding, and/or their current or former subsidiaries, parents, successors, affiliates and/or assignees, and any and all of each of the foregoing's current and/or former employees, agents, heirs, executors, administrators, guardians, successors, assigns, attorneys, officers, directors, shareholders, and members. Notwithstanding the foregoing, "Released Parties" does not include any Other Defendant or any person or entity not covered by the foregoing definition of Released Parties who is shown or alleged to have been a co-conspirator of Defendants with respect to any of the conspiracies alleged in the Complaint.

15. "Releasers" means and refers to jointly and severally and individually and collectively to the Class Representatives and their respective past and present parents, attorneys, subsidiaries, affiliates, agents, heirs, executors, administrators, guardians, successors and assigns; the Class Members and their respective past and present parents, attorneys, subsidiaries, affiliates, agents, heirs, executors, administrators, guardians, successors and

assigns; and Class Counsel and their co-counsel, respective past and present parents, subsidiaries, affiliates, agents, heirs, executors, administrators, guardians, successors and assigns.

16. The "Settlement Amount" is \$10,730,335 unless reduced as a result of one or more of the Settling Defendants ceasing to be bound by the terms of this Agreement. As to GCC Alliance, its share of the "Settlement Amount" means the sum of \$4,491,013; as to VandeBrake, his share of the "Settlement Amount" means the sum of \$3,659,114; as to VS Holding, its share of the "Settlement Amount" means the sum of \$1,380,208; and as to Tri-State and Van Zee, their share of the "Settlement Amount" means the sum of \$1,200,000. Notwithstanding anything else in this Agreement, in no event shall any Settling Defendant ever be required to pay any amount pursuant to this Agreement that is greater than its or his share of the Settlement Amount.

17. "Settlement Fund" means the Settlement Amount paid by the Alliance/Tri-State Class Settling Defendants, that Class Counsel will desposit in the "Iowa Ready-Mix Concrete Antitrust Litigation Settlement Fund" at Bangor Savings Bank in Bangor, Maine maintained under the Court's jurisdiction as a Qualified Settlement Fund within the meaning of Treasury Regulation 1.468B-1, as amended, for the purpose of investing, conserving and protecting the Settlement Amounts, and any interest earned thereon, prior to distribution, and distribution as directed by the Court. Any interest earned upon the Settlement Fund shall become part of the Settlement Fund.

18. "Tri-State Plant" means the Tri-State Rock Valley Plant.

**B. Stipulation to Certification of Alliance/Tri-State Settlement Class**

19. The parties to this Agreement hereby stipulate and agree that, for purposes only of

this settlement and for no other purpose, the requirements of Federal Rules of Civil Procedure 23(a) and 23(b)(3) are satisfied and, subject to Court approval, the Alliance/Tri-State Settlement Class shall be certified for settlement purposes as to the Alliance/Tri-State Class Settling Defendants as follows:

All persons or entities who purchased Ready-Mix Concrete from January 1, 2006 through December 31, 2009 directly from the Hawarden, Orange City, Sioux City, and Sheldon plants, that were formerly owned by VS Holding and that GCC Alliance acquired on January 14, 2008, and the Tri-State Rock Valley plant, but excluding federal government entities, Defendants named in the Second Amended Consolidated Class Action Complaint and their co-conspirators and respective predecessors, parents, subsidiaries, and affiliates.

In the event this settlement is not approved or becomes void or ineffective for any reason, the execution of this Settlement Agreement and any related papers, the certification of the Alliance/Tri-State Settlement Class, and any act taken or court paper filed in furtherance of this Settlement Agreement shall not be used to urge that a litigation class should be or should have been certified against the Alliance/Tri-State Class Settling Defendants, and the Alliance/Tri-State Class Settling Defendants retain the right to object to the maintenance of this or any other action as a class action and to contest this or any other action on any other grounds.

**C. Plan of Distribution**

20. Plaintiffs will propose a distribution of amounts from the Net Settlement Fund to Class Members who do not opt out of this Agreement and who file a valid claim.

21. Class Counsel will, with the supervision and approval of the Court, be solely responsible for the administration of the implementation of the Plan of Distribution and for the disbursement of monies from the Settlement Fund. Except as provided herein in Paragraph 42, in no event shall any of the Alliance/Tri-State Settling Defendants have any responsibility, financial or other obligation, or other liability whatsoever with respect to any such matters

beyond their contributions of the Settlement Amount to the Settlement Fund.

**D. Approval of this Agreement and Dismissal of Claims**

22. Plaintiffs and the Alliance/Tri-State Class Settling Defendants shall use their best efforts to effectuate this Agreement, including cooperating in (a) promptly seeking both the Court's certification of the Alliance/Tri-State Settlement Class under Federal Rules of Civil Procedure 23(a) and 23(b)(3) and the Court's approval of the procedures for implementing and effectuating this Settlement Agreement (including the giving of class notice under Federal Rules of Civil Procedure 23(d) and (e)) (b) securing the prompt, complete, and final dismissal with prejudice of the Action under Federal Rule of Civil Procedure 54(b) as to the Alliance/Tri-State Class Settling Defendants.

23. As soon as practicable, but in no event later than 10 business days after the Execution Date, Plaintiffs shall submit to the Court a motion for preliminary approval of this Settlement Agreement and certification of the Alliance/Tri-State Settlement Class (the "Motion"). The Motion shall include: (a) a copy of this Settlement Agreement executed by the parties hereto; (b) a request that the Court certify, pursuant to Federal Rules of Civil Procedure 23(a) and (b)(3) and the terms of this Agreement, the Alliance/Tri-State Settlement Class defined herein; (c) a request that the Court preliminarily approve this Settlement Agreement as fair, reasonable and adequate to the Plaintiffs and members of the Alliance/Tri-State Settlement Class ("Preliminary Approval Order"); (d) a request that the Court approve and direct, as the best notice practicable under the circumstances: (i) mailed notice to Alliance/Tri-State Settlement Class members substantially in the form attached hereto and marked as Exhibit "A" ("Long Form Notice"), and (ii) published notice to Alliance/Tri-State Settlement Class members substantially in the form attached hereto and marked as Exhibit "B" ("Summary Notice"); (e) a



request that the Court approve and enter a proposed Preliminary Approval Order substantially in the form attached hereto and marked as Exhibit "C"; and (f) a request that the Court schedule a hearing on final approval of this Agreement at the convenience of the Court.

24. Subject to the Court's approval, individual copies of the Long form Notice marked as Exhibit "A" shall be mailed to persons and entities who are identified by Class Counsel as Alliance/Tri-State Settlement Class Members. The Alliance/Tri-State Class Settling Defendants hereby represent that they have produced documents, databases, and other information to Class Counsel that the Alliance/Tri-State Class Settling Defendants believe in good faith contain the names and addresses of all potential Class Members known to them.

25. Subject to the Court's approval, the Summary Notice shall be published twice in the Sioux City Journal and in any additional local or regional papers recommended by the Claims Administrator to achieve the best notice practicable under the circumstances.

26. Within 10 days of the filing of the Motion, the Alliance/Tri-State Class Settling Defendants shall provide notice of this settlement, the filed Motion and other court papers to federal and state government officials as required by 28 U.S.C. § 1715. Pursuant to 28 U.S.C. § 1715(d), the Alliance/Tri-State Class Settling Defendants shall notify the Court upon expiration of 90 days after the later of the dates on which the appropriate federal official and the appropriate state official are served with the notice required under 28 U.S.C. § 1715(b).

27. Plaintiffs and the Alliance/Tri-State Class Settling Defendants shall jointly seek entry of an Order and Final Judgment, substantially in the form attached hereto and marked as Exhibit "D":

- (a) as to the Action, approving finally this Agreement and its terms as being a fair, reasonable, and adequate settlement as to the Alliance/Tri-State

Settlement Class Members within the meaning of Rule 23 of the Federal Rules of Civil Procedure and directing its consummation according to its terms;

- (b) directing that upon the Effective Date, the Action be dismissed as to the Alliance/Tri-State Class Settling Defendants, with prejudice and without costs, with respect to the Released Claims as defined by paragraph 29;
- (c) reserving exclusive jurisdiction over the settlement, the Settlement Fund and this Agreement, including the administration and consummation of this settlement; and
- (d) determining under Federal Rule of Civil Procedure 54(b) that there is no just reason for delay and directing that the judgment of dismissal as to the Alliance/Tri-State Class Settling Defendants shall be final and entered forthwith.

28. This Agreement shall become final on the Effective Date, and shall relate back to the Execution Date. It is agreed that neither the provisions of Rule 60 of the Federal Rules of Civil Procedure nor the All Writs Act, 28 U.S.C. § 1651, shall be taken into account in determining the occurrence of the Effective Date. Notwithstanding the foregoing, on the date that Plaintiffs and the Alliance/Tri-State Class Settling Defendants have executed this Agreement, Plaintiffs and the Alliance/Tri-State Class Settling Defendants shall be bound by its terms, and this Agreement shall not be rescinded except in accordance with paragraph 33 or 39 of this Agreement.

**E. Release and Discharge**

29. Upon the Effective Date, in consideration of payment of the Settlement Amount

as specified in this Agreement, the mutual promises and commitments contained herein, and for other good and valuable consideration, the Released Parties, and each of them, shall be completely released, acquitted, and forever discharged by Releasors from any and all claims, demands, actions, suits and causes of action at law or in equity, or pursuant to statute, whether known or unknown, whether fraudulently concealed or otherwise concealed, or whether the damages or injury have fully accrued or will accrue in the future, whether class, individual or otherwise in nature, that Releasors, or any of them, ever had, now have, or hereafter can, shall, or may have on account of, or related to, or arising out of or resulting from conduct, including but not limited to any conduct or action or inaction related to or arising out of any alleged conspiracy, combination or agreement concerning directly or indirectly the pricing, selling, discounting, marketing, manufacturing, or distributing of Ready-Mix Concrete in or from the Alliance Plants or the Tri-State Plant during the Class Period, including but not limited to any conduct alleged, and causes of action asserted, or that could have been alleged or asserted, in the Complaint filed in the Action or any amendment thereto, which arises under any federal or state antitrust or anticompetitive statute, law, rule, regulation, or common law doctrine, whether pursuant to a conspiracy or otherwise, including, without limitation, the Sherman Antitrust Act, 15 U.S.C. §§ 1, *et seq.*, and the Iowa Competition Law, I.C.A. §§ 553.1, *et seq.* (collectively herein “Released Claims”), provided, however, that Released Claims (i) shall not include claims not related to the foregoing antitrust or anticompetitive claims, such as claims for personal injury, wrongful death, product defect, or breach of contract claims between buyers and sellers of Ready-Mix Concrete; (ii) shall not include claims based upon the indirect purchase of Ready-Mix Concrete; and (iii) shall only include claims related to sales of Ready-Mix Concrete from the Alliance Plants or the Tri-State Plant during the Class Period. The Releasors shall not, after

the Effective Date of this Agreement, seek to recover against any of the Released Parties for any of the Released Claims.

30. Upon the Effective Date, for good and valuable consideration, the Released Parties shall be completely released, acquitted, and forever discharged from any and all Released Claims by Releasers against any and all of the Released Parties. The failure of any member of the Alliance/Tri-State Settlement Class to opt out by the opt-out date set by the Court or to obtain any payment from the Settlement Fund shall not affect the releases herein. Nor shall the releases be affected in any way by any subsequent determination that the allocation of any payment to the Alliance/Tri-State Settlement Class from the Settlement Fund was unfair. Upon the Effective Date, for good and valuable consideration, any claims against Releasers, arising out of, relating to or in connection with the Action as against the Alliance/Tri-State Class Settling Defendants with respect to the Released Claims are hereby released by the Released Parties.

**F. Settlement Payments**

31. Each of the Alliance/Tri-State Settling Defendants promises and agrees to pay its or his respective Settlement Amount in accordance with the terms of this Agreement. The parties to this Agreement agree that the Settlement is for the approximate full value of the preliminary single damages calculation of Plaintiffs' expert, plus the Plaintiffs' anticipated requested attorneys' fees, incentive awards, settlement expenses, and costs of litigation. The Settlement Amounts shall be remitted by the Alliance/Tri-State Class Settling Defendants by wire-transfer into the Settlement Fund at Bangor Saving's Bank and pursuant to instructions from Class Counsel, to be administrated in accordance with the provisions of Section F of this Agreement.

32. Settlement Payment; Failure to Pay.

(a) The Alliance/Tri-State Class Settling Defendants shall pay their share of the Settlement Amount to the Settlement Fund by wire transfer pursuant to wire instructions that have been provided by Alliance/Tri-State Settlement Class Counsel to counsel for the Alliance/Tri-State Class Settling Defendants, according to the following terms:

- i. VS Holding. Defendant VS Holding is currently liquidating assets to pay its share of the Settlement Amount. Counsel for Defendant VS Holding represents that as of the Execution Date all currently liquidated portions of VS Holding's share of the Settlement Amount have been deposited in the trust account of Counsel for Defendant VS Holding ("Trust Account"), that as the remaining assets of VS Holding are liquidated they will be deposited in the Trust Account, and that these funds shall not be withdrawn or distributed except according to the terms of this Agreement. VS Holding shall pay or cause to be paid to the Settlement Fund: 50% of its share of the Settlement Amount no later than ten days after the Execution date, and 50% of its share of the Settlement amount no later than five days after the date the Court enters the Preliminary Approval Order.
- ii. VandeBrake. Vandebrake shall pay or cause to be paid to the Settlement Fund: 10% of his share of the Settlement Amount no later than ten days after the Execution date, 40% of his share of the

Settlement amount no later than ten days after the date the Court enters the Preliminary Approval Order, and the remaining 50% of his share of the Settlement amount no later than ten days after the date the Court enters an order finally approving this Agreement. If any of the payments are not timely received from VandeBrake by the Settlement Fund, VandeBrake stipulates to the Court's entry of a judgment against him and in favor of the Alliance/Tri-State Settlement Class in an amount two times VandeBrake's share of the Settlement Amount less the amount of any payments received by Plaintiffs from VandeBrake.

- iii. GCC Alliance. GCC Alliance shall pay or cause to be paid to the Settlement Fund: \$449,101.30 no later than ten business days after the Execution Date, \$2,195,400 no later than ten business days after the date the Court enters an order finally approving this Agreement, and \$1,846,511.70 no later than January 7, 2012. If any of the payments are not timely received from GCC Alliance by the Settlement Fund, GCC Alliance stipulates to the Court's entry of a judgment against it and in favor of the Alliance/Tri-State Settlement Class in an amount two times its share of the Settlement Amount less the amount of any payments received by Plaintiffs from or on behalf of GCC Alliance, provided, however, that not more than 48 hours after any of the foregoing installments are due from GCC Alliance, GCC Alliance may petition the Court for an

extension of the installment date, not to exceed 7 days, in the event such payment was not made when due for a reason outside the control of GCC Alliance or its counsel. As evidenced by its signature hereto, Control Administrativo Mexicano, S.A. de C.V. ("CAMSA") confirms that in return for Plaintiff's/Plaintiffs' entry of this Settlement Agreement with GCC Alliance, CAMSA will make its best effort to establish an irrevocable letter of credit ("LOC") with a U.S. bank for the above amounts in advance of each of the above dates to guarantee payments of those amounts on those dates.

- iv. TriState and Van Zee. Within five days of the Execution date, Defendants Tri-State and Van Zee shall deliver their share of the Settlement Amount to counsel for Tri-State and Van Zee, which shall be immediately desposited in the trust account of counsel for Tri-State and Van Zee and which shall not be withdrawn or distributed except according to the terms of this Agreement. Defendants Tri-State and Van Zee shall pay or cause to be paid to the Settlement Fund: 10% of their share of the Settlement Amount no later than ten days after the Execution date, 40% of their share of the Settlement amount no later than ten days after the date the Court enters the Preliminary Approval Order, and the remaining 50% of their share of the Settlement amount no later than ten days

after the date the Court enters an order finally approving this Agreement.

- (b) If any Settling Defendant's share of the Settlement Amount, or any installment thereof, is not paid in full by the due date provided herein, then Plaintiffs, at their sole option and discretion, may (I) move to enforce the settlement as against any Settling Defendant who did not pay its or his respective share of the Settlement Amount by the due date, including a request that the Court: (i) immediately enter and enforce any judgment provided herein, (ii) immediately attach and order the prompt payment of any Settlement Amount held in an attorney trust account as provided herein, and/or (iii) award Plaintiffs the costs of such enforcement and/or collections, including attorney's fees; or (II) reinstate litigation in the Action as against any Settling Defendant who did not pay its or his respective Settlement Amount in full. In the event litigation in the Action is reinstated as against any Settling Defendant, such Settling Defendant and the Plaintiffs agree to request the Court to keep the current May 7, 2012 trial date and to complete all remaining discovery and dispositive motions prior to trial.

33. Opt Outs

- (a) Within five business days after the end of the period to request exclusion from the Alliance/Tri-State Settlement Class established by the Court and set forth in the notice, Alliance/Tri-State Settlement Class Counsel shall provide the Alliance/Tri-State Class Settling Defendants, through their



undersigned counsel, with a written list of all potential Alliance/Tri-State Settlement Class Members who have timely exercised their rights to be excluded from the class (the “opt outs”) and their class period purchase amounts (the “exclusion amounts”).

- (b) In the event that the sum of the exclusion amounts is equal to or greater than the amount set forth in a separate letter agreement between Alliance/Tri-State Settlement Class Counsel and counsel for the Alliance/Tri-State Class Settling Defendants, then any or all of the Alliance/Tri-State Class Settling Defendants shall have the right individually or collectively to withdraw from this Settlement Agreement by providing written notice to Alliance/Tri-State Settlement Class Counsel within five business days after receipt of the list of opt-outs and exclusion amounts.
- (c) Upon receipt of such notice, Alliance/Tri-State Settlement Class Counsel shall, within five business days, provide the Alliance/Tri-State Class Settling Defendants with written notice of any challenge by Plaintiffs to such claims of entitlement to withdraw from this Settlement Agreement.
- (d) In the event the parties are unable to agree upon the exclusion amount or the Alliance/Tri-State Class Settling Defendants right to withdraw from this Agreement under this paragraph, they shall submit the issue to the Court for decision within five business days after Alliance/Tri-State Settlement Class Counsel’s notice to the Alliance/Tri-State Class Settling Defendants of Plaintiffs’ challenge, and the Court’s decision will be final,

binding, and not appealable. The separate letter agreement will not be filed with the Court unless directed by the Court or until a dispute among the parties concerning its interpretation or application arises, in which event, if the Court approves, it shall be filed and maintained in the Court under seal.

- (e) Plaintiffs may attempt to obtain rescission of any decision by an Alliance/Tri-State Settlement Class Member to request exclusion prior to the Alliance/Tri-State Class Settling Defendants invoking their rights under this paragraph, and if Plaintiffs provide the Alliance/Tri-State Class Settling Defendants with written rescission of one or more requests for exclusion that lowers the exclusion amount below the threshold necessary to trigger the Alliance/Tri-State Class Settling Defendants' right to withdraw, then the Alliance/Tri-State Class Settling Defendants may not withdraw pursuant to this paragraph. Neither Plaintiffs nor the Alliance/Tri-State Class Settling Defendants shall solicit or advise potential Alliance/Tri-State Settlement Class Members to request exclusion from the Alliance/Tri-State Settlement Class.

**G. The Settlement Fund**

34. The Settlement Fund shall at all times be subject to the jurisdiction of the Court. Both before and after the Court issues any final order approving this Agreement, disbursements for reasonable expenses (not including attorneys' fees) associated with the following may be made from the Settlement Fund as directed by Class Counsel: providing notice of the settlement to the Alliance/Tri-State Settlement Class, administering the settlement, and making any

payments and expenses incurred in connection with taxation matters relating to the settlement and this Agreement as addressed by paragraph 41 of this Agreement. Such reasonable expenses shall not be refundable to Alliance/Tri-State Class Settling Defendants in the event the Agreement is disapproved, rescinded, or otherwise fails to become effective. In no event shall the Alliance/Tri-State Class Settling Defendants have any liability with respect to the giving of notice of this settlement to Alliance/Tri-State Settlement Class members, including, but not limited to, the expense and cost of such notice.

35. After the Effective Date, Plaintiffs and Class Counsel shall have the right to seek Court approval of payments from the Settlement Fund for distribution to Class Members or to reimburse Class Counsel for reasonable expenditures made or to be made by Class Counsel in the prosecution of the Action against the Other Defendants..

36. Class Counsel shall have the sole responsibility, subject to Court approval, and in no event shall any of the Alliance/Tri-State Class Settling Defendants have any responsibility, financial or other obligation, or liability whatsoever, with respect to the investment, distribution, or administration of the Settlement Fund, including but not limited to, the costs and expenses of such distribution and administration.

37. Class Counsel shall be reimbursed and paid solely out of the Settlement Fund for all fees and expenses including, but not limited to, attorneys' fees and past, current or future litigation expenses. No attorneys' fees or expenses, other than the reimbursement of any costs or expenses advanced by Class Counsel associated with providing notice of the settlement to the Alliance/Tri-State Settlement Class, administering the settlement, or in connection with taxation matters relating to the settlement and this Agreement as addressed by paragraph 41 of this Agreement, shall be paid to Class Counsel prior to the Effective Date. Except as provided

herein, the Alliance/Tri-State Class Settling Defendants shall not be liable for any costs, fees or expenses of any of Plaintiffs' respective attorneys, experts, advisors, agents, or representatives, but all such costs, fees, and expenses as approved by the Court shall be paid out of the Settlement Fund.

38. The Settlement Fund less Court-awarded attorneys' fees, expenses, incentive awards to Alliance/Tri-State Settlement Class Representatives, taxes and tax-related expenses, and expenses reimbursed pursuant to paragraph 34 shall be distributed to Alliance/Tri-State Settlement Class Members pursuant to a plan of distribution submitted by Class Counsel and approved by the Court.

**H. Rescission if the Agreement is Not Finally Approved**

39. If the Court refuses to approve this Agreement or any part hereof, or if such approval is modified or set aside on appeal, or if the Court does not enter the final judgment substantially as provided for in paragraph 27 of this Agreement, or if the Court enters the final judgment and appellate review is sought and, on such review, such final judgment is not affirmed, then the Alliance/Tri-State Class Settling Defendants and the Plaintiffs shall each, in its or their sole discretion, and without incurring any liability to each other or to any other party to this Agreement, have the option to rescind this Agreement in its entirety and any and all amounts paid by the Alliance/Tri-State Class Settling Defendants into the Settlement Fund pursuant to this Agreement (including all interest earned thereon) shall be returned forthwith to the Alliance/Tri-State Class Settling Defendants less only such disbursements properly made in accordance with this Agreement. A modification or reversal on appeal of any amount of Class Counsel's attorneys' fees and expenses awarded by the Court from the Settlement Fund or any Plan of Allocation of the Settlement Fund shall not be deemed a modification of all or a part of

the terms of this Agreement or such final judgment.

40. The Alliance/Tri-State Class Settling Defendants and Plaintiffs expressly reserve all of their rights if the Agreement does not become effective or if it is rescinded pursuant to paragraph 33 or 39 of this Agreement. The Alliance/Tri-State Class Settling Defendants enter this Agreement without in any way acknowledging any fault, liability or wrongdoing of any kind. Nothing contained in this Agreement or any notice or other exhibit to this Agreement, including the Class definition and any reference to “co-conspirators” in this Agreement or in any notice or other exhibit to this Agreement, shall be construed in any way as an admission or evidence of any illegal conduct, fault, liability or wrongdoing of any kind by the Alliance/Tri-State Class Settling Defendants. Further, Plaintiffs and the Alliance/Tri-State Class Settling Defendants agree that this Agreement, whether or not it is finally approved and whether or not rescinded pursuant to paragraph 33 or 39 of this Agreement, and any and all negotiations, documents, and discussions associated with it, shall not be deemed or construed to be an admission or evidence of any violation of any statute or law, or of any liability or wrongdoing by any defendant, or of the truth of any of the claims or allegations contained in the Complaint or any other pleading filed by Plaintiffs in the Action, and evidence thereof shall not be discoverable or used directly or indirectly, in any way, whether in the Action or in any other action or proceeding.

**I. Taxes**

41. The Settlement Fund shall be established and maintained at all times as a Qualified Settlement Fund within the meaning of Treasury Regulation Section 1.468B-1, as amended. Class Counsel shall be solely responsible for filing all informational and other tax returns necessary to report any net taxable income earned by the Settlement Fund and shall file

all informational and other tax returns necessary to report any income earned by the Settlement Fund and shall be solely responsible for taking out of the Settlement Fund, as and when legally required, any tax payments, including interest and penalties due on income earned by the Settlement Fund. All taxes (including any interest and penalties) due with respect to the income earned by the Settlement Fund shall be paid from the Settlement Fund. The Alliance/Tri-State Class Settling Defendants shall have no responsibility to make any filings relating to the Settlement Fund and will have no responsibility to pay tax on any income earned by the Settlement Fund or pay any taxes on the Settlement Amounts, unless the settlement is not consummated and the Settlement Amounts are returned to the Alliance/Tri-State Class Settling Defendants. In the event the settlement is not consummated, the Alliance/Tri-State Class Settling Defendants shall be responsible for the payment of all taxes on said income that have not already been paid out of the Settlement Fund as provided in this Agreement. However, the Alliance/Tri-State Class Settling Defendants shall not be responsible for paying any interest or penalties relating to tax filings made by Class Counsel or tax payments owed as a result of those filings or the lack of timely filing thereof.

**J. Miscellaneous**

42. Discovery and Future Cooperation.

- (a) The Alliance/Tri-State Class Settling Defendants agree to provide reasonable, complete and truthful cooperation with Class Counsel with respect to discovery and gathering evidentiary materials relating to Plaintiffs' claims against any Defendant in this Action who does not settle with Plaintiffs and an applicable Settlement Class in the Action.
- (b) The Alliance/Tri-State Class Settling Defendants agree to withdraw from

any joint defense or similar agreement they or their counsel may have with any Other Defendant who does not settle with Plaintiffs and an applicable Settlement Class or with counsel for any such Other Defendant, and agree not to voluntarily assist such Other Defendants in their defense of the claims brought against them by the Plaintiffs and the Settlement Classes in the Action unless such action is responsive to discovery served by such Other Defendant(s) or unless the Alliance/Tri-State Class Settling Defendants are ordered to do so by a court of competent jurisdiction or they are otherwise required to do so by law provided, however, that the limitation on future cooperation with Other Defendants shall apply only to this Action and shall not apply to any other investigation, litigation or proceeding. Nothing in this paragraph prohibits the Alliance/Tri-State Class Settling Defendants from cooperating with Other Defendants in this action against any claim brought against the Alliance/Tri-State Class Settling Defendants by any purchaser who elects to be excluded from the Settlement Class.

- (c) The Alliance/Tri-State Class Settling Defendants agree in the event of a trial in the Action, upon request by Class Counsel, to appear voluntarily as a witness at trial either individually or through appropriate employees or representatives, without the necessity of a subpoena. Any such request shall be made through counsel for the Alliance/Tri-State Class Settling Defendants, and shall include a reasonable description of the subjects on which testimony is sought. If the Alliance/Tri-State Class Settling

Defendants fail or refuse to appear voluntarily to testify at trial as agreed herein, Class Counsel may subpoena the Alliance/Tri-State Class Settling Defendants to appear at trial. If VandeBrake, Van Zee, or a current officer or employee of Alliance/Tri-State Class Settling Defendants removes himself or herself from the jurisdiction of the Court to avoid testifying and fails or refuses to appear voluntarily to testify at trial as agreed herein, Class Counsel may subpoena the individual to appear for a deposition in such jurisdiction for the purpose of preserving his or her testimony for trial.

- (d) No provision of this Agreement or the Final Judgment shall relieve the Alliance/Tri-State Class Settling Defendants from any duty to provide any and all discovery, including deposition testimony, permitted by the Federal Rules of Civil Procedure or as ordered by the Court; provided, however, that prior to serving any discovery requests or notices of deposition directed to the Alliance/Tri-State Class Settling Defendants, Class Counsel shall meet and confer with counsel for the Alliance/Tri-State Class Settling Defendants and both shall make a good faith effort to agree to an alternative to such discovery or deposition, or to agree on the scope of the proposed discovery or deposition.
- (e) The Alliance/Tri-State Class Settling Defendants agree to voluntarily cooperate in good faith with, and to provide reasonable technical assistance to, Class Counsel with respect to obtaining and understanding Alliance/Tri-State Class Settling Defendants' operational and financial



records, including electronic transaction and customer data, to the extent reasonable necessary: (1) for Plaintiffs to provide court-ordered noticed to potential Class Members; and (2) to facilitate distribution of funds to Class Members.

43. This Agreement does not settle or compromise any claim by Plaintiffs or any Class Member asserted in the Action against any Other Defendant or any alleged co-conspirator other than the Released Parties or with respect to any claims other than the Released Claims. All rights of any Class Member against Other Defendants, alleged co-conspirators or any other person or entity other than the Released Parties or with respect to any claims other than the Released Claims are specifically reserved by Plaintiffs and the Class Members.

44. The Court shall retain jurisdiction over the implementation, enforcement, and performance of this Agreement, and shall have exclusive jurisdiction over any suit, action, proceeding, or dispute arising out of or relating to this Agreement or the applicability of this Agreement that cannot be resolved by negotiation and agreement by Plaintiffs and the Alliance/Tri-State Class Settling Defendants.

45. This Agreement, which incorporates any and all recitals, along with the Exhibits hereto and those certain letter agreements referred to herein, constitute the entire agreement among Plaintiffs and the Alliance/Tri-State Class Settling Defendants pertaining to the settlement of the Action against the Alliance/Tri-State Class Settling Defendants only and supersede any and all prior and contemporaneous undertakings of Plaintiffs and the Alliance/Tri-State Class Settling Defendants in connection therewith. This Agreement may be modified or amended only by a writing executed by Plaintiffs and the Alliance/Tri-State Class Settling Defendants and approved by the Court.

46. The Alliance/Tri-State Class Settling Defendants agree not to retaliate or discriminate against Plaintiffs on account of its having brought the Action or entered into this Settlement Agreement.

47. This Agreement shall be binding upon, and inure to the benefit of, the successors and assigns of Releasors and Released Parties. Without limiting the generality of the foregoing and subject to the Effective Date occurring: (a) each and every covenant and agreement made herein by Plaintiffs or Class Counsel shall be binding upon each Class Member and Releasor, and (b) each and every covenant and agreement made herein by the Alliance/Tri-State Class Settling Defendants shall be binding upon all Released Parties.

48. This Agreement may be executed in counterparts by Plaintiffs and the Alliance/Tri-State Class Settling Defendants, and a facsimile or scanned signature shall be deemed an original signature for purposes of executing this Agreement.

49. Neither the Alliance/Tri-State Class Settling Defendants nor Plaintiffs, nor any of them, shall be considered to be the drafter of this Agreement or any of its provisions for the purpose of any statute, case law, or rule of interpretation or construction that would or might cause any provision to be construed against the drafter of this Agreement.

50. Nothing expressed or implied in this Agreement is intended to or shall be construed to confer upon or give any person or entity other than Plaintiffs, the Alliance/Tri-State Settlement Class Members, Class Counsel, Releasors, and Released Parties any right or remedy under or by reason of this Agreement.

51. Where this Agreement requires any party to provide notice or any other communication or document to any other party, such notice, communication, or document shall be provided by letter sent by same day facsimile transmission or electronic mail transmission

with confirmation by overnight delivery or hand delivery.

52. The Alliance/Tri-State Class Settling Defendants reserve the right to move the Court on an expedited basis for relief if they find any content posted on the proposed Internet website [www.IowaConcreteAntitrustSettlement.com](http://www.IowaConcreteAntitrustSettlement.com) to be objectionable.

53. Each of the undersigned attorneys represents that he or she is fully authorized to enter into the terms and conditions of, and to execute, this Agreement, subject to Court approval.

54. This Agreement shall be interpreted and construed in accordance with the laws of the State of Iowa, and any dispute or claims arising under or related to the terms or provisions of this Agreement, whether styled in contract, tort or otherwise, shall be governed by the internal laws of the State of Iowa without reference to choice of law or conflict of law principles.

IN WITNESS WHEREOF, the Parties have executed this Settlement Agreement as of the Execution Date set forth above.



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Scott D. Gilchrist  
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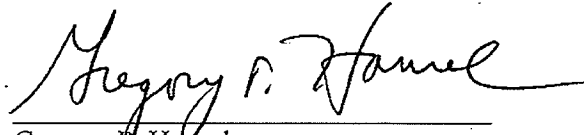
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VS Holding Company

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Printed: \_\_\_\_\_

Control Administrativo Mexicano, S.A. de C.V.

By: Manuel Milan

Printed: MANUEL MILAN

Title: ATTORNEY IN FACT

Title: \_\_\_\_\_

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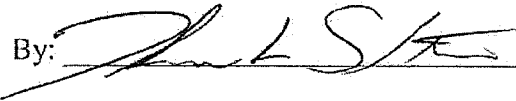
Counsel for Defendant VS Holding Company

Counsel for Defendant GCC Alliance  
Concrete, Inc. and Control Administrativo  
Mexicano, S.A. de C.V.

GCC Alliance Concrete, Inc.

VS Holding Company

By: \_\_\_\_\_

By: 

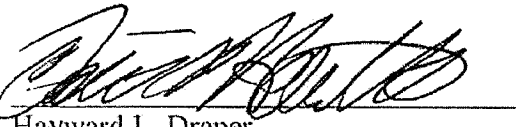
Printed: \_\_\_\_\_

Printed: Thomas S. Sanclutte

Title: \_\_\_\_\_

Title: President

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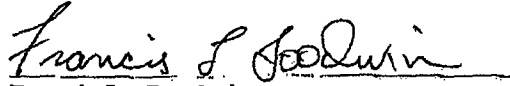
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Counsel for Defendant GCC Alliance  
Concrete, Inc.

Counsel for Defendant VS Holding Company

  
Steven Keith VandeBrake

Tri-State Ready Mix, Inc.

  
Francis L. Goodwin  
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P.O. Box 717  
Sioux City, IA 51101  
Telephone: (712) 277-1015  
Facsimile: (712) 277-3067  
fgoodwin@baronsar.com

By: \_\_\_\_\_

Printed: \_\_\_\_\_

Title: \_\_\_\_\_

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Counsel for Defendants  
Tri-State Ready Mix, Inc. and Chad Van Zee



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Counsel for Defendant Steven Keith  
VandeBrake

Tri-State Ready Mix, Inc.

By: Chad Van Zee

Printed: Chad VAN ZEE

Title: PRESIDENT

Chad Van Zee  
Chad Van Zee, Individually

Mark A. Thornhill  
Mark A. Thornhill  
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Counsel for Defendants  
Tri-State Ready Mix, Inc. and Chad Van Zee

**Exhibit "A"**

THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF IOWA

**NOTICE OF CLASS ACTION SETTLEMENT AND HEARING**

ALL INDIVIDUALS OR ENTITIES WHO PURCHASED READY-MIX CONCRETE FROM JANUARY 1, 2006 THROUGH DECEMBER 31, 2009 DIRECTLY FROM THE HAWARDEN, ORANGE CITY, SIOUX CENTER, OR SHELDON PLANTS THAT ALLIANCE CONCRETE, INC. OWNED BEFORE JANUARY 14, 2008 AND THAT GCC ALLIANCE CONCRETE, INC. HAS OWNED SINCE THAT DATE, OR TRI-STATE READY-MIX, INC.'S ROCK VALLEY PLANT.

PLEASE READ THIS ENTIRE NOTICE CAREFULLY. YOUR LEGAL RIGHTS MAY BE AFFECTED BY A LAWSUIT NOW PENDING IN THIS COURT.

***The United States District Court for the Northern District of Iowa has authorized this notice. This is not a solicitation. This is not a lawsuit against you and you are not being sued.***

- Settlements have been reached on behalf of three separate classes of direct purchasers of Ready-Mix Concrete in the lawsuit entitled *In re: Iowa Ready-Mix Concrete Antitrust Litigation*, Case No. 5:10-cv-04038-MWB (the "Lawsuit"), which is pending in the United States District Court for the Northern District of Iowa (the "Court"). You may be a member of one, two or all three proposed "Settlement Classes" for which settlements have been reached. Please read this and any other notices from the Lawsuit carefully to determine if and how your rights may be affected.
- This notice concerns a Settlement between the Plaintiffs in the Lawsuit and Defendants Tri-State Ready Mix, Inc. ("Tri-State"), Chad Van Zee ("Van Zee"), GCC Alliance Concrete, Inc. ("GCC Alliance"), Steven Keith VandeBrake ("VandeBrake"), and VS Holding Company, f/k/a Alliance Concrete, Inc. ("VS Holding") (collectively and for convenience, referred to as "Alliance/Tri-State Class Settling Defendants").
- The Court has preliminarily approved the Settlement and has certified the following "Alliance/Tri-State Settlement Class": All persons or entities who purchased Ready-Mix Concrete from January 1, 2006 through December 31, 2009 directly from the Hawarden, Orange City, Sioux Center or Sheldon plants that Alliance Concrete, Inc. owned before January 14, 2008 and that GCC Alliance has owned since that date (for convenience the "Alliance Plants"), or Tri-State's Rock Valley plant (the "Tri-State Plant").
- The Court has appointed the Plaintiffs to represent the Alliance/Tri-State Settlement Class and their attorneys as Class Counsel. This is a partial settlement, and does not conclude any claims against Defendants other than the Alliance/Tri-State Class Settling Defendants with respect to the Alliance Plants and the Tri-State Plant.

- You received this Notice because records produced in the Lawsuit indicate you may be a member of the Alliance/Tri-State Settlement Class.
- The purpose of this Notice is to advise members of the Alliance/Tri-State Settlement Class of the proposed Settlement of claims being asserted against the Alliance/Tri-State Class Settling Defendants and how to assert any rights you may have under the Settlement. It is also intended to advise you of a hearing to consider the proposed settlement on \_\_\_\_\_, 2011. The Court must decide whether to approve the Settlement as fair, reasonable and adequate.
- If you are a member of the Alliance/Tri-State Settlement Class, your legal rights are affected whether you act or choose not to act. Please read this notice carefully.

<b>YOUR LEGAL RIGHTS AND OPTIONS: (YOU MUST CHOOSE AMONG ONE OF THESE OPTIONS)</b>		<b>DEADLINE</b>
<b>EXCLUDE YOURSELF</b>	You may exclude yourself from the Settlement, in which case you will not be eligible to receive any payments from the Settlement that are approved by the Court, or to comment on the Settlement. This is the only option that allows you to be part of any other lawsuit against the Alliance/Tri-State Class Settling Defendants about the legal claims brought or which could be brought in this case.	M/D/Y
<b>DO NOTHING</b>	If you chose to do nothing you will remain eligible to receive any payments from the Settlement that are approved by the Court. This will result in a release of any right you may have to pursue the legal claims brought, or which could have been brought in this case against the Alliance/Tri-State Class Settling Defendants based on direct purchases from the Alliance Plants and the Tri-State plant during the Class Period. If you choose to do nothing, and the settlement is approved by the Court, you will be required to submit a claim form to receive money from the settlement.	N/A
<b>OBJECT</b>	Write to the Court if you do not think the Settlement is fair. If you exclude yourself from the Settlement you may not object.	M/D/Y
<b>GO TO A HEARING</b>	If you object, you may also ask to speak in Court about the fairness of the Settlement.	M/D/Y

*These rights and options – and the deadlines to exercise them – are explained in this Notice.*

## **BASIC INFORMATION**

### **1. *Why did I get this Notice?***

This Notice has been sent to you because the Alliance/Tri-State Class Settling Defendants' records show that you purchased Ready-Mix Concrete directly from the Tri-State Plant or the Alliance Plants at any time from and including January 1, 2006 through and including December 31, 2009. You have the right to know about a proposed settlement of a class action lawsuit that may affect your rights.

This Notice explains the Lawsuit, the terms of the Settlement, your legal rights, what benefits may be available, who may be eligible for them, and what you will be giving the Alliance/Tri-State Class Settling Defendants in this Settlement.

The Court in charge of the case is the United States District Court for the Northern District of Iowa. The case is known as *In re: Iowa Ready-Mix Concrete Antitrust Litigation*, Case No. C10-4038-MWB. The companies who sued are called the Plaintiffs. The companies and individuals the Plaintiffs sued are called the Defendants. The Defendants in this lawsuit are: GCC Alliance Concrete, Inc., Siouxland Concrete Company, VS Holding Company, f/k/a Alliance Concrete, Inc., Great Lakes Concrete, Inc., Steven Keith VandeBrake, Kent Robert Stewart, Chad Van Zee, and Tri-State Ready-Mix, Inc. The Defendant companies sold Ready-Mix Concrete in the Northwest Iowa Area during some or all of the period from January 1, 2006 through December 31, 2009; that is the focus of the lawsuit.

### **2. *What is the Lawsuit about?***

The Lawsuit asserts that, from January 1, 2006 through December 31, 2009, the Alliance/Tri-State Class Settling Defendants participated in an unlawful conspiracy to raise, fix, maintain, or stabilize the price of Ready-Mix Concrete sold from the Tri-State Plant and Alliance Plants, in violation of Section 1 of the Sherman Act, Title 15, United States Code, Section 1. The Plaintiffs claim that this conspiracy among the Alliance/Tri-State Class Settling Defendants resulted in artificially high prices for Ready-Mix Concrete sold by Defendants from the Tri-State Plant and Alliance Plants. The Plaintiffs are seeking money damages and other relief on behalf of themselves and other persons and entities who purchased Ready-Mix Concrete directly from the Tri-State Plant and Alliance Plants during this time period. The Court has not made any determination of the Alliance/Tri-State Class Settling Defendants' liability for these claims.

### **3. *What is a class action?***

A class action is a lawsuit in which one or more persons called class representatives sue on behalf of other persons who have similar claims. Together all these persons are a Class or individually, Class Members. One court resolves the issues for all Class Members, except for those who exclude themselves from the Class. For this reason, the judge must find that the

Settlement of this class action is fair, reasonable and adequate before the Settlement can receive final court approval.

***4. Why is there a settlement?***

The Lawsuit has not gone to a trial. Instead, the Plaintiffs and the Alliance/Tri-State Class Settling Defendants agreed to settle to avoid the costs and risks of trial. The Settlement provides the opportunity for payments or other benefits to be made available to Class Members. Under this Settlement, Class Members give the Alliance/Tri-State Class Settling Defendants a release of any right they may have to pursue the same legal claims brought, or which could have been brought, in this case against the Alliance/Tri-State Class Settling Defendants based on direct purchases from the Alliance Plants or the Tri-State Plant.

**WHO IS IN THE SETTLEMENT?**

***5. How do I know if I am part of the settlement?***

You are a member of the Alliance/Tri-State Settlement Class if you purchased Ready-Mix Concrete directly from the Alliance Plants or the Tri-State Plant at any time from and including January 1, 2006 through and including December 31, 2009.

***6. Are there exceptions to being included?***

You are not an Alliance/Tri-State Settlement Class Member if you are one of the Defendants, their co-conspirators, their respective parents, subsidiaries, or affiliates. You are also not a Alliance/Tri-State Settlement Class Member if you are a federal government entity.

**THE SETTLEMENT TERMS**

***7. What does the settlement provide?***

The Alliance/Tri-State Settling Defendants have agreed to pay the amount of \$10,730,335 pursuant to the terms of the Settlement. GCC Alliance, VandeBrake, Tri-State, Van Zee, and VS Holding have also agreed to provide cooperation to Plaintiffs until the termination of the Action.

This Settlement was achieved after a year of litigation and numerous negotiating sessions between Class Counsel and the lawyers for the Alliance/Tri-State Class Settling Defendants. It was also based on an economic analysis of the potential damages of the Alliance/Tri-State Settlement Class. Because of the inherent risks of litigation Plaintiffs believe that the Settlement provides a fair and efficient resolution of the Plaintiffs' and Class Members' claims against the Alliance/Tri-State Class Settling Defendants for these claims.

Under the terms of the Settlement, the Alliance/Tri-State Class Settling Defendants have deposited or will deposit their respective Settlement Amounts into a Settlement Fund. Class Counsel will seek Court permission to distribute the Settlement Fund to Class Members to pay amounts approved by the Court for the costs of administering the Settlement (such as the cost of giving this notice, Class Counsel's attorneys' fees and reasonable expenses, and an incentive payment to the class representative).

It is anticipated that the proposed distribution of amounts from the remaining balance of Settlement Fund to participating Class Members will be in direct proportion to the amount of each participating Class Member's purchases of Ready-Mix Concrete from the Alliance/Tri-State Class Settling Defendants from the Alliance Plants and from the Tri-State Plant at any time from January 1, 2006 through December 31, 2009, when compared to all such purchases by participating Class Members.

**10. When will the Settlement be final?**

The Court will hold a hearing on \_\_\_\_\_, 2011 to decide whether to give final approval to the Settlement. If the Court approves the Settlement and there are no appeals, the Settlement will become final thirty (30) days after the Court's approval.

**PARTICIPATING IN THE SETTLEMENT**

**11. How do I participate in the Settlement?**

If you believe you are a member of the Alliance/Tri-State Settlement Class, you do not need to take any action at this time to participate in the Settlement. Once the Court approves a method of distributing the Settlement Fund, information about the proposed distribution of settlement funds will be provided to Class Members, along with Claim Forms and instructions for completing a claim. These materials will also be made available on the settlement website.

**12. Do I have to give anything up to participate?**

If you are a member of the Alliance/Tri-State Settlement Class and do not exclude yourself, you will be bound by the terms of the Settlement and any orders of the Court related to the Settlement, and you agree to and will release any right you may have to pursue the same legal claims brought, or which could have been brought, in this case against the Alliance/Tri-State Class Settling Defendants based on direct purchases from the Alliance Plants or the Tri-State Plant.

**EXCLUDING YOURSELF FROM THE SETTLEMENT**

**13. How do I get out of the Alliance/Tri-State Settlement Class?**

You may request to be excluded from, or to "opt-out" of, the Alliance/Tri-State Settlement Class. If you elect to be excluded from the Class, you will not be bound by any of the terms of the Settlement or any judgment entered pursuant to the Settlement, nor will you be eligible to receive any of benefits of the Settlement. You will retain and be free to pursue any claims that you may

have against the Alliance/Tri-State Class Settling Defendants on your own behalf and at your own cost.

If you wish to exclude yourself from the Alliance/Tri-State Settlement Class, you must mail a written request for exclusion, no later than \_\_\_\_\_, 2011 to the following:

<b>Settlement Class Counsel:</b>
Gregory P. Hansel Preti Flaherty One City Center P.O. Box 9546 Portland, ME 04112-9546

Requests for exclusion do not need to be in any particular format, except that the request must:

- State that you intend to “opt-out” or request “exclusion” from the Alliance/Tri-State Settlement Class for claims against the Alliance/Tri-State Class Settling Defendants;
- Contain the full name and current address of the person or entity requesting exclusion;
- Contain the title and a statement of authority of any person requesting exclusion from the Alliance/Tri-State Settlement Class on behalf of an entity other than an individual;
- Contain the title of the Lawsuit: “In re: Iowa Ready-Mix Concrete Antitrust Litigation;”
- Be signed by you; and
- Be sent by U.S. mail, first class and postage prepaid, with a postmark on or before \_\_\_\_\_, 2011.

You cannot exclude yourself by phone or email.

***14. If I do not exclude myself, can I sue the Alliance/Tri-State Class Settling Defendants later?***

Unless you exclude yourself, you cannot sue the Alliance/Tri-State Class Settling Defendants for the claims resolved by this Settlement. If you exclude yourself from the Settlement, you cannot participate in or object to the Settlement, and any claims you may have against the Alliance/Tri-State Class Settling Defendants will be subject to applicable statutes of limitation.

**COMMENTING ON THE SETTLEMENT**

***15. How do I tell the Court if I do not think the Settlement is Fair?***

If you are an Alliance/Tri-State Settlement Class Member and have not excluded yourself, you can object to the Settlement or any part of the Settlement. The Court will consider your views.

Your objection must be in writing, and must be mailed no later than \_\_\_\_\_, 2011 to the following:

<b>Settlement Class Counsel</b>	<b>Counsel for VS Holding</b>
Irwin B. Levin Cohen & Malad, LLP One Indiana Square, Suite 1400 Indianapolis, IN 46204	Hayward L. Draper NYEMASTER, GOODE, P.C. 700 Walnut Street, Suite 1600 Des Moines, IA 50309-3899
<b>Counsel for GCC Alliance</b>	<b>Counsel for Tri-State and Van Zee</b>
William R. Pakalka FULBRIGHT & JAWORSKI L.L.P. 1301 McKinney, Suite 5100 Houston, Texas 77010	Mark A. Thornhill SPENCER FANE BRITT & BROWNE, LLP 100 Walnut Street, Suite 1400 Kansas City, MO 64106-2140
<b>Counsel for VandeBrake</b>	<b>The Court</b>
Thomas J. Costakis KRIEG DeVAULT LLP One Indiana Square, Suite 2800 Indianapolis, Indiana 46204-2079	The Honorable Mark W. Bennett, Judge United States District Court, Northern District of Iowa P.O. Box 838 Sioux City, IA 51102-0838

An objection does not need to be in any particular format, except that the objection must:

- State that you intend to object to the Settlement with the Alliance/Tri-State Class Settling Defendants;
- Contain the full name and current address of the person objecting;
- Contain the title and a statement of authority of any person objecting on behalf of an entity other than an individual;
- Contain the title of the Lawsuit: "In re: Iowa Ready-Mix Concrete Antitrust Litigation;"
- State the reasons for your objection;
- Be accompanied by any evidence, briefs, motions or other materials you intend to offer in support of your objection;
- Be signed by you; and
- Be sent by U.S. mail, first class and postage prepaid, with a postmark on or before \_\_\_\_\_, 2011.



You cannot object to the Settlement by phone or email.

**Intervention:** Any request for intervention must meet the requirements set forth above, including the deadline, for filing objections, must be accompanied by any evidence, briefs, motions or other materials you intend to offer in support of your request for intervention, and must meet the requirements of the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the Northern District of Iowa.

***16. What's the difference between excluding myself and objecting?***

If you exclude yourself, you are no longer a member of the Alliance/Tri-State Settlement Class and you keep your right to file your own lawsuit against the Alliance/Tri-State Class Settling Defendants at your own expense. If you exclude yourself, you may not object to the Settlement and you cannot receive any payments or credits from the Settlement. If you remain a Alliance/Tri-State Settlement Class Member, you may object.

***17. Can I have a lawyer represent me?***

The law firms of Cohen & Malad, LLP and Preti, Flaherty, Beliveau & Pachios LLP have been appointed by the Court and represent you and other Alliance/Tri-State Settlement Class Members. These lawyers are called Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense. However, any lawyer intending to appear at the Fairness Hearing must be duly admitted to practice law before the United States District Court for the Northern District of Iowa and must file a written appearance no later than \_\_\_\_\_, 2011. Copies of the appearance must be served on Class Counsel and counsel for the Alliance/Tri-State Class Settling Defendants at the addresses included in this Notice in accordance with the Federal Rules of Civil Procedure.

***18. What happens if I do nothing at all?***

If you do nothing, you will remain an Alliance/Tri-State Settlement Class Member and will remain eligible for any benefits available under the Settlement. If the Court approves the Settlement, you will be bound by its terms as well as any Court orders related to the Settlement, and a release will be granted to the Alliance/Tri-State Class Settling Defendants of any rights you may have to pursue the same legal claims in this case against them. To receive payments from the Settlement, you will be required to submit a completed Claim Form. Once the Court approves a method of distributing the Settlement Fund, information about the proposed distribution of settlement funds will be provided to Class Members, along with Claim Forms and instructions for completing a claim. These materials will also be made available on the settlement website.

***19. How will the lawyers and costs be paid?***

Class Counsel will file a petition with the Court no later than \_\_\_\_\_ asking for payment of attorneys' fees in the amount of 33 1/3 % of the Settlement Amount, and the reimbursement of reasonable expenses, to be paid from the Settlement Fund. The petition will be available on the

settlement website. The Court may consider whether to approve the payment of attorneys' fees and expenses in this amount during the Fairness Hearing, or at a later time determined by the Court.

If the Court approves these fees and expenses, they will be paid from the Settlement Fund. These fees and expenses, however, will not be paid until time for appeal and/or any appeal of this Settlement has been exhausted. The costs of providing this Notice and published notice of the Settlement, and the costs of settlement administration, will be paid from the Settlement Fund.

### THE COURT'S FAIRNESS HEARING

#### ***20. When and where will the Court decide whether to approve the Settlement?***

The Court will hold a hearing – which is called the Fairness Hearing – at the United States Courthouse, 320 Sixth Street, Sioux City, Iowa, at \_\_\_\_ o'clock on \_\_\_\_\_, 2011. At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will consider any objections, and listen to people who have made written objections and timely asked to speak at the hearing. After the Fairness Hearing, the Court will decide whether to approve the Settlement.

#### ***21. Do I have to come to the hearing?***

You do not need to attend the Fairness Hearing, but you are welcome to come at your own expense. If you have sent a written objection, you do not need to be present for the Court to consider it.

#### ***22. May I show up and speak at the hearing?***

If you have submitted a timely written objection to the Settlement and requested to be heard, the Court may allow you to speak at the Fairness Hearing. If you wish for your lawyer to speak for you, he or she must have submitted a timely appearance as provided above.

***Reminder:*** If you have excluded yourself from the Alliance/Tri-State Settlement Class, you may not object to the Settlement and you may not speak at the Fairness Hearing

#### ***23. How can I get more information?***

The description in this Notice is general and does not cover all of the issues and the proceedings thus far. More details about the Lawsuit and the Settlement, including a detailed definition of terms, are in the Settlement Agreement. You may review the Settlement Agreement and the court file during business hours at the Office of the Clerk of the United States District Court, United States Courthouse, 320 Sixth Street, Sioux City, Iowa. You may also direct questions concerning the Settlement to Class Counsel at the address above. **Please do not contact the Court directly with any questions.**

Additional information about the Lawsuit and the Settlement may be obtained from the following Internet website: [www.IowaConcreteAntitrustSettlement.com](http://www.IowaConcreteAntitrustSettlement.com)

/s/ Mark W. Bennett, Judge  
United States District Court,  
Northern District of Iowa

**Exhibit "B"**

**\*\*\*ATTENTION DIRECT PURCHASERS OF READY-MIX CONCRETE\*\*\***

**NOTICE OF CLASS ACTION SETTLEMENT**

IF YOU ARE OR WERE A PERSON OR ENTITY WHO PURCHASED READY-MIX CONCRETE FROM JANUARY 1, 2006 THROUGH DECEMBER 31, 2009 DIRECTLY FROM THE HAWARDEN, ORANGE CITY, SIOUX CENTER, OR SHELDON PLANTS THAT ALLIANCE CONCRETE, INC. OWNED BEFORE JANUARY 14, 2008 AND THAT GCC ALLIANCE HAS OWNED SINCE THAT DATE, OR TRI-STATE READY-MIX, INC.'S ROCK VALLEY PLANT, YOU MAY BE ENTITLED TO COMMENT ON, EXCLUDE YOURSELF, OR RECEIVE PAYMENTS FROM THE SETTLEMENT.

**PLEASE READ THIS NOTICE CAREFULLY.**

Settlements have been reached on behalf of three separate classes of direct purchasers of Ready-Mix Concrete in the lawsuit entitled *In re: Iowa Ready-Mix Concrete Antitrust Litigation*, Case No. 5:10-cv-04038-MWB (the "Lawsuit"), which is pending in the United States District Court for the Northern District of Iowa (the "Court"). You may be a member of one, two or all three proposed "Settlement Classes" for which settlements have been reached. Please read this and any other notices from the Lawsuit carefully to determine if and how your rights may be affected.

This notice concerns a Settlement between the Plaintiffs in the Lawsuit and Defendants Tri-State Ready Mix, Inc. ("Tri-State"), Chad Van Zee ("Van Zee"), GCC Alliance Concrete, Inc. ("GCC Alliance"), Steven Keith VandeBrake ("VandeBrake"), and VS Holding Company, f/k/a Alliance Concrete, Inc. ("VS Holding") (collectively, "Alliance/Tri-State Class Settling Defendants").

**WHAT THIS LAWSUIT IS ABOUT:** The Lawsuit asserts that Tri-State, Van Zee, GCC Alliance, VandeBrake, and VS Holding conspired in an unlawful conspiracy to raise, fix, maintain, or stabilize the price of Ready-Mix Concrete sold from the Alliance Plants and Tri-State Plant at artificially high levels, in violation of Section 1 of the Sherman Act, Title 15, United States Code, Section 1.

**WHO IS IN THE CLASS:** The Court has preliminarily certified the following "Alliance/Tri-State Settlement Class": All persons or entities who purchased Ready-Mix Concrete from January 1, 2006 through December 31, 2009 directly from GCC's Hawarden, Orange City, Sioux Center or Sheldon plants (the "Alliance Plants"), or Tri-State's Rock Valley plant (the "Tri-State Plant") (the "Alliance/Tri-State Settlement Class"). You are not an Alliance/Tri-State Settlement Class Member if you are one of the Defendants, their co-conspirators, their respective parents, subsidiaries, or affiliates. You are also not a Alliance/Tri-State Settlement Class Member if you are a federal government entity.

**THE PROPOSED SETTLEMENT:** The Alliance/Tri-State Class Settling Defendants have agreed to pay the amount of \$10,730,335 pursuant to the terms of the Settlement. This Settlement was achieved after a year of litigation and numerous negotiating sessions between Class Counsel and the lawyers for the Alliance/Tri-State Class Settling Defendants. Because of the inherent risks of litigation Plaintiffs believe that the Settlement provides a fair and efficient resolution of the Plaintiffs' and Class Members' claims against the Alliance/Tri-State Class Settling Defendants. The Court has not made any determination of any liability of the Alliance/Tri-State Settling Defendants for these claims.

Under the terms of the Settlement, the Alliance/Tri-State Class Settling Defendants have deposited or will deposit their respective Settlement Amounts into a Settlement Fund. Class Counsel will seek Court permission to distribute the Settlement Fund to Class Members and to pay amounts approved by the Court for Class Counsel's attorneys' fees and reasonable expenses, notices to Class Members, and incentive payments to the class representatives.

It is anticipated that the proposed distribution of amounts from the remaining balance of the Settlement Fund to participating Class Members will be in direct proportion to the amount of each participating Class Member's purchases of Ready-Mix Concrete from the Alliance/Great Lakes Class Settling Defendants from the Alliance Plants and from the Great Lakes Plants at any time from January 1, 2006 through December 31, 2009, when compared to all such purchases by participating Class Members.

Once the Court approves a method of distributing the Settlement Fund, information about the proposed distribution of settlement funds will be provided to known Class Members, along with Claim Forms and instructions for completing a claim. These materials will also be made available on the settlement website.

**PAYMENT OF ATTORNEYS' FEES AND COSTS:** Class Counsel will file a petition with the Court no later than \_\_\_\_\_ asking for payment of attorneys' fees in the amount of 33 1/3 % of the Settlement Amount, and the reimbursement of reasonable expenses, to be paid from the Settlement Fund. The petition will be available on the settlement website. The Court may consider whether to approve the payment of attorneys' fees and expenses in this amount during the Fairness Hearing, or at a later time determined by the Court. These fees and expenses, however, will not be paid until time for appeal and/or any actual appeal of this Settlement has been exhausted.

<b>YOUR LEGAL RIGHTS AND OPTIONS: (YOU MUST CHOOSE AMONG ONE OF THESE OPTIONS)</b>		<b>DEADLINE</b>
<b>EXCLUDE YOURSELF</b>	You may exclude yourself from the Settlement, in which case you will not be eligible to receive any payments from the Settlement that are approved by the Court, or to comment on the Settlement. This is the only option that allows you to be part of any other lawsuit against the Alliance/Tri-State Class Settling Defendants about the legal claims brought or which could be brought in this case. A request for exclusion must include: (i) a statement that you intend to "opt-out" or request "exclusion" from the Alliance/Tri-State Settlement Class; (ii) the full name and current address of the person or entity requesting exclusion; (iii) the title and a statement of authority of any person requesting	M/D/Y

	exclusion on behalf of an entity other than an individual; (iv) the title of the Lawsuit: "In re Ready-Mix Concrete Antitrust Litigation;" and (v) your signature. The request for exclusion must be sent to Settlement Class Counsel at the address below, by U.S. mail, first class and postage prepaid, with a postmark on or before _____, 2011.	
<b>DO NOTHING</b>	If you chose to do nothing you will remain eligible to receive any payments from the Settlement that are approved by the Court. This will result in a release of any right you may have to pursue the legal claims brought, or which could have been brought in this case against the Alliance/Tri-State Class Settling Defendants based on direct purchases from the Hawarden, Orange City, Sioux Center or Sheldon plants that Alliance Concrete owned until January 14, 2008 and which GCC Alliance has owned since that date, or Tri-State's Rock Valley plant. If you choose to do nothing and the settlement is approved by the Court, you will be required to submit a claim form to receive money from the settlement.	N/A
<b>OBJECT</b>	Write to the Court if you do not think the Settlement is fair. If you exclude yourself from the Settlement you may not object. An objection must include: (i) a statement that you object to the settlement with the Alliance/Tri-State Class Settling Defendants; (ii) the full name and current address of the person or entity objecting; (iii) the title and a statement of authority of any person objecting on behalf of an entity other than an individual; (iv) the title of the Lawsuit: "In re Ready-Mix Concrete Antitrust Litigation;" (v) any evidence, briefs, motions or other materials you intend to offer in support of your objection; and (vi) your signature. The objection must be sent to all the parties and the Court at the address below by U.S. mail, first class and postage prepaid, with a postmark on or before _____, 2011.	M/D/Y
<b>GO TO A HEARING</b>	If you object, you may also ask to speak in Court about the fairness of the Settlement.	M/D/Y

**FAIRNESS HEARING:** The Court will hold a hearing – which is called the Fairness Hearing – at the United States Courthouse, 320 Sixth Street, Sioux City, Iowa, at \_\_\_\_o'clock on \_\_\_\_\_, 2011. At the Fairness Hearing, the Court will consider whether the Settlement is fair, reasonable, and adequate. The Court will consider any objections, and listen to people who have made written objections and timely asked to speak at the hearing. After the Fairness Hearing, the Court will decide whether to approve the Settlement.

**APPEAR BY COUNSEL:** The law firms of Cohen & Malad, LLP and Preti, Flaherty, Beliveau & Pachios LLP have been appointed by the Court and represent you and other Alliance/Tri-State Settlement Class Members. These lawyers are called Class Counsel. If you want to be represented by your own lawyer, you may hire one at your own expense. However, any lawyer intending to appear at the Fairness Hearing must be duly admitted to practice law before the United States District Court for the Northern District of Iowa and must file a written appearance no later than \_\_\_\_\_, 2011. Copies of the appearance must be served on Class Counsel and counsel for the Alliance/Tri-State Class Settling Defendants at the addresses included in this Notice in accordance with the Federal Rules of Civil Procedure.

**CONTACT INFORMATION:**

<b>Class Counsel:</b> Irwin B. Levin COHEN & MALAD, LLP One Indiana Square, Suite 1400 Indianapolis, IN 46204  Gregory P. Hansel Preti Flaherty One City Center PO Box 9546 Portland, ME 04112-9546	<b>GCC Alliance's Counsel:</b> William R. Pakalka FULBRIGHT & JAWORSKI L.L.P. 1301 McKinney, Suite 5100 Houston, Texas 77010	<b>VS Holding's Counsel:</b> Hayward L. Draper NYEMASTER, GOODE, P.C. 700 Walnut Street, Suite 1600 Des Moines, IA 50309-3899
<b>VandeBrake's Counsel:</b> Thomas J. Costakis KRIEG DeVAULT LLP One Indiana Square, Suite 2800 Indianapolis, Indiana 46204-2079	<b>Tri-State and Van Zee's Counsel</b> Mark A. Thornhill SPENCER FANE BRITT & BROWNE, LLP 100 Walnut Street, Suite 1400 Kansas City, MO 64106-2140	<b>The Court:</b> The Honorable Mark W. Bennett, Judge United States District Court, Northern District of Iowa PO BOX 838 Sioux City, IA 51102-0838

If you think you are a Class Member and you or your business have not received a notice in the mail, you must write Class Counsel at the address shown above to be added to the list of persons and companies to receive notices and related materials by U.S. Mail.

**ADDITIONAL INFORMATION:** The description in this Notice is general and does not cover all of the issues and the proceedings thus far. More details about the Lawsuit and the Settlement, including a detailed definition of terms, are in the Settlement Agreement. You may review the Settlement Agreement and the court file during business hours at the Office of the Clerk of the United States District

Court, United States Courthouse, 320 Sixth Street, Sioux City, Iowa. You may also direct questions concerning the Settlement to Class Counsel at the address above. **Please do not contact the Court directly with any questions.**

Additional information about the Lawsuit and the Settlement may be obtained from the following Internet website:  
[www.IowaConcreteAntitrustSettlement.com](http://www.IowaConcreteAntitrustSettlement.com)

/s/ Mark W. Bennett, Judge  
United States District Court,  
Northern District of Iowa

**Exhibit "C"**

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF IOWA  
WESTERN DIVISION

IN RE: IOWA READY-MIX CONCRETE  
ANTITRUST LITIGATION

No. 5:10-CV-04038-MWB  
(CONSOLIDATED CASES)

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**ORDER PRELIMINARILY APPROVING SETTLEMENT,  
CERTIFYING ALLIANCE/TRI-STATE SETTLEMENT  
CLASS, AND DIRECTING NOTICE**

Plaintiffs Brown Commercial Construction, Inc, Frank Audino Construction, Inc., Randy Waterman, and Holtze Construction Company. ("Plaintiffs") by Co-Lead Counsel, and Defendants Tri-State Ready Mix, Inc. ("Tri-State"), Chad Van Zee ("Van Zee"), GCC Alliance Concrete, Inc. ("GCC Alliance"), Steven Keith VandeBrake ("VandeBrake"), and VS Holding Company, f/k/a Alliance Concrete, Inc. ("VS Holding") (collectively, "Alliance/Tri-State Class Settling Defendants") by counsel, have submitted the "Settlement Agreement with GCC Alliance Concrete, Inc., Steven Keith VandeBrake, and VS Holding Company, f/k/a Alliance Concrete, Inc." dated \_\_\_\_\_ ("Settlement"), and have applied, pursuant to Rule 23 of the Federal Rules of Civil Procedure ("Rule 23"), for an order: (1) certifying a Settlement Class; (2) preliminarily approving the terms and conditions set forth in the Settlement as fair, reasonable and adequate; (3) approving forms and a program for notice to the Settlement Class; and (4) scheduling a hearing to consider final approval of the Settlement. The Court has given due consideration to the terms of the Settlement, the Exhibits to the Settlement, the submissions of the parties in support of preliminary approval of the Settlement, and the record of proceedings herein, and now finds that the proposed Settlement should be preliminarily approved pending notice to Class

Members and a final hearing on whether the Settlement is fair, reasonable and adequate to the Class.

**ACCORDINGLY, IT IS HEREBY ORDERED:**

1. Terms capitalized herein and not otherwise defined shall have the meanings ascribed to them in the Settlement Agreement with Tri-State Ready Mix, Inc., Chad Van Zee, GCC Alliance Concrete, Inc., Steven Keith VandeBrake, and VS Holding Company, f/k/a Alliance Concrete, Inc.

2. This Court has jurisdiction of the subject matter of this Action and jurisdiction of the Plaintiffs and Defendants in the above-captioned case (the "Parties").

3. This action may be maintained as a class action under Rule 23 for settlement purposes as to the Alliance/Tri-State Class Settling Defendants on behalf of the following class (the "Alliance/Tri-State Settlement Class"):

All persons or entities who purchased Ready-Mix Concrete from January 1, 2006 through December 31, 2009 directly from the Hawarden, Orange City, Sioux City, and Sheldon plants that Alliance Concrete owned before January 14, 2008 and that GCC Alliance has owned since that date, and the Tri-State Rock Valley plant, but excluding federal government entities, Defendants named in the Second Amended Consolidated Class Action Complaint and their co-conspirators and respective predecessors, parents, subsidiaries, and affiliates.

4. The Court finds for purposes of settlement that the prerequisites to class certification under Rule 23(a) are satisfied, including:

a. The proposed Alliance/Tri-State Settlement Class is so numerous that joinder of all members is impracticable;

b. There are questions of law and fact common to Plaintiffs and members of the Alliance/Tri-State Settlement Class, including whether Tri-State, Van Zee, GCC Alliance, VS Holding, and VandeBrake participated in an unlawful conspiracy to raise, fix, maintain, or stabilize the price of Ready-Mixed Concrete in the Northwest Iowa Area at artificially high



levels, in violation of Section 1 of the Sherman Act, and whether members of the proposed Settlement Class were injured by the conspiracy;

c. The claims of the Plaintiffs are based on the same legal theory and are typical of the claims of the members of the Alliance/Tri-State Settlement Class; and

d. The Plaintiffs are represented by counsel experienced in complex litigation, have no interests in conflict with the interests of members of the proposed Alliance/Tri-State Settlement Class, have displayed their commitment to representing the interests of members of the Alliance/Tri-State Settlement Class, during the course of litigation to date, and will fairly and adequately protect the interests of the Settlement Class.

5. The Court finds for purposes of settlement that the prerequisites to class certification under Rule 23(b)(3) are satisfied because questions of law and fact common to all members of the Alliance/Tri-State Settlement Class predominate over questions affecting only individual members of that Class, and certification of the Alliance/Tri-State Settlement Class is superior to other available methods for fair and efficient resolution of this controversy.

6. The Court appoints Plaintiffs Brown Commercial Construction, Inc, Frank Audino Construction, Inc., Randy Waterman, and Holtze Construction Company as Settlement Class Representatives. The Court further appoints Interim Co-Lead Counsel, Irwin B. Levin of Cohen & Malad, LLP, and Gregory P. Hansel of Preti Flaherty Beliveau & Pachios LLP as Settlement Class Counsel.

7. The Court finds that the terms of the Settlement in accordance with and as set forth in the Settlement Agreement are well within the range of a fair, reasonable and adequate settlement between the Alliance/Tri-State Settlement Class and the Alliance/Tri-State Class Settling Defendants under the circumstances of this case. The Court therefore preliminarily

approves the Settlement and directs the parties to the Settlement to perform and satisfy the terms and conditions of the Settlement Agreement that are triggered by such preliminary approval.

8. The proposed Notice of Class Action Settlement and Hearing in the forms attached to the Settlement Agreement as Exhibit "A" (for mailed notice) and Exhibit "B" (for publication notice), and the manner of mailing and distribution of such Notice, as set forth in Paragraph 10 below, are hereby approved by this Court as the best notice practicable to the Settlement Class. The form and manner of notice proposed in the Settlement comply with Rules 23(c) and (e) and the requirements of due process.

9. Pursuant to Rule 23(e), a final fairness hearing (the "Fairness Hearing") shall be held before the undersigned at \_\_\_\_\_ o'clock, on \_\_\_\_\_, at the United States Courthouse, 320 Sixth Street, Sioux City, Iowa, for the purpose of: (a) determining whether the Settlement is fair, reasonable and adequate and should be finally approved; (b) determining whether an order and judgment should be entered dismissing the claims of the Alliance/Tri-State Settlement Class members against the Alliance/Tri-State Class Settling Defendants; and (c) considering Class Counsel's application for an incentive award for Plaintiff and an award of Settlement-related attorneys' fees, costs and expenses pursuant to Rule 23(h). The Court may adjourn, continue, and reconvene the Fairness Hearing pursuant to oral announcement without further notice to the Alliance/Tri-State Settlement Class, and the Court may consider and grant final approval of the Settlement, with or without minor modification and without further notice to the Alliance/Tri-State Settlement Class.

10. In accordance with the Settlement, Class Counsel shall: (a) mail or cause to be mailed to each Class member for whom an address is available, as soon as practicable but no later than thirty (30) days from the date of this Order, a copy of the Mailed Notice in the form

attached to the Settlement as Exhibit "A"; and (b) cause the Published Notice, attached to the Settlement as Exhibit "B", to be published in two issues of the \_\_\_\_\_, no later than forty-five (45) days from the date of this Order.

11. Class members shall be afforded an opportunity to request exclusion from the Class. A request for exclusion from the Class must: (i) state that the Class member intends to "opt-out" or request "exclusion" from the Settlement Class; (ii) contain the full name and current address of the person or entity requesting exclusion; (iii) contain the title and a statement of authority of any person requesting exclusion from the Alliance/Tri-State Settlement Class on behalf of an entity other than an individual; (iv) contain the title of the Lawsuit: "In re: Iowa Ready-Mix Concrete Antitrust Litigation;" (v) be signed by the person or on behalf of the entity requesting exclusion; and (vi) be sent to Settlement Class Counsel by U.S. mail, first class and postage prepaid, with a postmark on or before a date certain to be agreed by Plaintiffs and the Alliance/Tri-State Class Settling Defendants but no less than thirty (30) days after the date that Mailed Notice is issued (the "Exclusion Deadline"). Members of the Alliance/Tri-State Settlement Class who submit a timely and valid request for exclusion shall not participate in and shall not be bound by the Settlement. Members of the Alliance/Tri-State Settlement Class who do not timely and validly opt out of the Settlement Class in accordance with the Notice shall be bound by all determinations and judgments in the action concerning the Settlement, whether favorable or unfavorable.

12. Class members who have not excluded themselves shall be afforded an opportunity to object to the terms of the Settlement. Any objection must: (i) contain the full name and current address of the person objecting; (ii) contain the title and a statement of authority of any person objecting on behalf of an entity other than an individual; (iii) contain the

title of the Lawsuit: “In re: Iowa Ready-Mix Concrete Antitrust Litigation;” (iv) state the reasons for the Class member’s objection; (v) be accompanied by any evidence, briefs, motions or other materials the Class member intends to offer in support of the objection; (vi) be signed by or on behalf of the Class member; and (vii) be sent to the parties and the Court by U.S. mail, first class and postage prepaid, with a postmark on or before a date certain to be agreed by Plaintiffs and the Alliance/Tri-State Class Settling Defendants but no less than thirty (30) days after the date that Mailed Notice is issued (the “Objection Deadline”).

13. Any member of the Alliance/Tri-State Settlement Class who does not make his, her, or its objection known in the manner provided in the Settlement and Notices shall be deemed to have waived such objection and shall forever be foreclosed from making any objection to the fairness or adequacy of the proposed Settlement.

14. Any request for intervention in this action for purposes of commenting on or objecting to the Settlement must meet the requirements set forth above, including the deadline for filing objections, must be accompanied by any evidence, briefs, motions or other materials the proposed intervenor intends to offer in support of the request for intervention, and must meet the requirements of the Federal Rules of Civil Procedure and the Local Rules of the United States District Court for the Northern District of Iowa.

15. Except for counsel of record for the parties, any lawyer intending to appear at the Fairness Hearing must be authorized to represent an Alliance/Tri-State Settlement Class Member, must be duly admitted to practice law before the United States District Court for the Northern District of Iowa, and must file a written appearance no later than a date certain to be agreed by Plaintiffs and the Alliance/Tri-State Class Settling Defendants but no less than thirty (30) days after the date that Mailed Notice is issued (the “Appearance Deadline”). Copies of the

appearance must be served on Class Counsel and counsel for the Alliance/Tri-State Class Settling Defendants in accordance with the Federal Rules of Civil Procedure.

16. Not more than fifteen (15) days after the Exclusion Deadline, Class Counsel shall file a Notice of Settlement Class Exclusions, listing the names of all persons or entities who timely and validly excluded themselves from the Alliance/Tri-State Settlement Class.

17. On or before a date certain to be agreed by Plaintiffs and the Alliance/Tri-State Class Settling Defendants but no less than thirty (30) days prior to the Objection Deadline, Class Counsel shall file a motion for approval of an incentive award for Plaintiffs and for approval of attorneys' fees and reasonable expenses, to be paid from the Settlement Fund under the terms of the Settlement once all appeals and/or the time for appeals of the Settlement have been exhausted, along with any supporting materials.

18. If Final Approval of the Settlement is not achieved, or if the Settlement is terminated for any reason whatsoever, the Settlement and all proceedings had in connection therewith shall be without prejudice to the status quo ante rights of the Plaintiffs and the Alliance/Tri-State Class Settling Defendants in this action, and all Orders issued pursuant to the Settlement shall be vacated.

19. The Court may adjourn the date and/or time of the Fairness Hearing without further notice to the members of the Alliance/Tri-State Settlement Class, and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement.

SO ORDERED.

Date: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Mark W. Bennett, Judge  
United States District Court,  
Northern District of Iowa

**Exhibit "D"**

IN THE UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF IOWA  
WESTERN DIVISION

IN RE: IOWA READY-MIX CONCRETE  
ANTITRUST LITIGATION

No. 5:10-CV-04038-MWB  
(CONSOLIDATED CASES)

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**ORDER APPROVING ALLIANCE/TRI-STATE  
SETTLEMENT AND FINAL JUDGMENT**

WHEREAS, Plaintiffs Brown Commercial Construction, Inc., Frank Audino Construction, Inc., Randy Waterman, and Holtze Construction Company (collectively "Plaintiffs"), by Co-Lead Counsel, and Defendants Tri-State Ready Mix, Inc. ("Tri-State"), Chad Van Zee ("Van Zee"), GCC Alliance Concrete, Inc. ("GCC Alliance"), Steven Keith VandeBrake ("VandeBrake"), and VS Holding Company, f/k/a Alliance Concrete, Inc. ("VS Holding") (collectively, "Alliance/Tri-State Class Settling Defendants") by counsel, entered into the "Alliance/Tri-State Settlement Agreement with GCC Alliance Concrete, Inc., Steven Keith VandeBrake, and VS Holding Company, f/k/a Alliance Concrete, Inc." dated \_\_\_\_\_, 2011 ("Alliance/Tri-State Settlement"); and

WHEREAS, the Plaintiffs and the Alliance/Tri-State Class Settling Defendants applied pursuant to Rule 23 of the Federal Rules of Civil Procedure ("Rule 23") for an order certifying a Class for settlement purposes, preliminarily approving the proposed Alliance/Tri-State Settlement and preliminarily approving the form and plan of notice as set forth in the Settlement;

WHEREAS, on \_\_\_\_\_, 2011, pursuant to 28 U.S.C. § 1715, the Alliance/Tri-State Class Settling Defendants notified the United States Attorney General and the Attorney General of \_\_\_\_\_ of the proposed Alliance/Tri-State Settlement, and more than 90 days have passed since that notice was given and entry of this Order;

WHEREAS, on \_\_\_\_\_, 2011, the Court provisionally ordered that this Action may be settled as a class action on behalf of the following class (the “Alliance/Tri-State Settlement Class”):

All persons or entities who purchased Ready-Mix Concrete from January 1, 2006 through December 31, 2009 directly from the Hawarden, Orange City, Sioux City, and Sheldon Plants that Alliance Concrete owned until January 14, 2008 and that GCC Alliance has owned since that date, and the Tri-State Rock Valley Plant, but excluding federal government entities, Defendants named in the Second Amended Consolidated Class Action Complaint and their co-conspirators and respective predecessors, parents, subsidiaries, and affiliates.

WHEREAS, on \_\_\_\_\_, 2011 the Court entered an order certifying the Alliance/Tri-State Settlement Class for purposes of Alliance/Tri-State Settlement, preliminarily approving the Settlement, approving the forms of notice of the Settlement to Class Members, directing that appropriate notice of the Alliance/Tri-State Settlement be given to Class Members, and scheduling a hearing on final approval (the “Preliminary Approval Order”);

WHEREAS, in accordance with the Alliance/Tri-State Settlement Agreement and the Preliminary Approval Order: (1) on \_\_\_\_\_, 2011, Class Counsel caused the Notice of Class Action Alliance/Tri-State Settlement and Hearing in the form attached to the Alliance/Tri-State Settlement as Exhibit “A” (“Mailed Notice”) to be mailed by United States First Class Mail to all known members of the Alliance/Tri-State Settlement Class, and on \_\_\_\_\_, 2011, caused the Published Notice in the form attached to the Alliance/Tri-State Settlement as Exhibit “B” to be published in the \_\_\_\_\_ on \_\_\_\_\_ and \_\_\_\_\_, 2011; and (2) the Affidavit of Notice filed with this Court by Class Counsel demonstrates compliance with the Preliminary Approval Order with respect to the Mailed Notice and the Published Notice and, further, that the best notice practicable under the circumstances was, in fact, given;

WHEREAS, on \_\_\_\_\_, 2011, at \_\_\_\_\_m., this Court held a hearing on whether the Alliance/Tri-State Settlement is fair, reasonable, adequate and in the best interests of the Alliance/Tri-State Settlement Class (the “Fairness Hearing”); and

WHEREAS, based upon the foregoing, having heard the statements of counsel for the Plaintiffs and the Alliance/Tri-State Class Settling Defendants, and of such persons as chose to appear at the Fairness Hearing; having considered all of the files, records and proceedings in the Action, the benefits to the Alliance/Tri-State Settlement Class under the Alliance/Tri-State Settlement and the risks, complexity, expense and probable duration of further litigation; and being fully advised in the premises;

**THEREFORE, IT IS HEREBY ORDERED AND ADJUDGED that:**

1. Terms capitalized herein and not otherwise defined shall have the meanings ascribed to them in the “Alliance/Tri-State Settlement Agreement with Tri-State Ready Mix, Inc., Chad Van Zee, GCC Alliance Concrete, Inc., Steven Keith VandeBrake, and VS Holding Company, f/k/a Alliance Concrete, Inc.”
2. This Court has jurisdiction of the subject matter of this Action and jurisdiction of the Plaintiffs and Defendants in the above-captioned case (the “Parties”).
3. The Court hereby adopts and reaffirms the findings and conclusions set forth in the Preliminary Approval Order.
4. The Plaintiffs and Class Counsel fairly and adequately represent the interests of the Alliance/Tri-State Settlement Class in connection with the Alliance/Tri-State Settlement.
5. The Alliance/Tri-State Settlement is the product of good faith, arm’s-length negotiations by the Plaintiffs and Class Counsel, and the Alliance/Tri-State Class Settling



Defendants and their counsel, and the Alliance/Tri-State Settlement Class and the Alliance/Tri-State Class Settling Defendants, were represented by capable and experienced counsel.

6. The form, content and method of dissemination of the notice given to members of the Alliance/Tri-State Settlement Class, including both published notice and individual notice to all members of the Alliance/Tri-State Settlement Class who could be identified through reasonable effort, were adequate and reasonable, constituted the best notice practicable under the circumstances, and satisfied the requirements of Rules 23(c) and (e) and due process.

7. The Alliance/Tri-State Settlement Agreement with the Alliance/Tri-State Class Settling Defendants is fair, reasonable and adequate and in the best interests of the Alliance/Tri-State Settlement Class, and is approved in all respects. The Court hereby directs the Plaintiffs, the Alliance/Tri-State Settlement Class, Class Counsel, the Alliance/Tri-State Class Settling Defendants, Alliance/Tri-State Class Settling Defendants' counsel, Releasors and Released Parties to effectuate the Alliance/Tri-State Settlement according to its terms.

8. The certification of the Alliance/Tri-State Settlement Class, under Rules 23(a), (b)(3) and (e), for purposes of effectuating the Alliance/Tri-State Settlement, is hereby confirmed.

9. Upon the occurrence of the Effective Date of the Alliance/Tri-State Settlement, the Released Parties, and each of them, are completely released, acquitted, and forever discharged by Plaintiff and each member of the Alliance/Tri-State Settlement Class from any and all claims, demands, actions, suits and causes of action at law or in equity, or pursuant to statute, whether known or unknown, whether fraudulently concealed or otherwise concealed, or whether the damages or injury have fully accrued or will accrue in the future, whether class, individual or otherwise in nature, that Releasors, or any of them, ever had, now have, or hereafter can, shall, or

may have on account of, or related to, or arising out of or resulting from conduct, including but not limited to any conduct or action or inaction related to or arising out of any alleged conspiracy, combination or agreement concerning directly or indirectly the pricing, selling, discounting, marketing, manufacturing, or distributing of Ready-Mix Concrete in or from the Tri-State Plants or the Alliance Plants during the Class Period, including but not limited to any conduct alleged, and causes of action asserted, or that could have been alleged or asserted, in the Complaint filed in the Action or any amendment thereto, which arise under any federal or state antitrust or anticompetitive statute, law, rule, regulation, or common law doctrine, whether pursuant to a conspiracy or otherwise, including, without limitation, the Sherman Antitrust Act, 15 U.S.C. §§ 1, *et seq.*, and the Iowa Competition Law, I.C.A. §§ 553.1, *et seq.* (collectively herein “Released Claims”), provided, however, that Released Claims (i) does not include claims not related to the foregoing antitrust or anticompetitive claims, such as claims for personal injury, wrongful death, product defect or breach of contract claims between buyers and sellers of Ready-Mix Concrete; (ii) does not include claims based upon the indirect purchase of Ready-Mix Concrete; and (iii) only includes claims related to sales of Ready-Mix Concrete from the Tri-State Plants and the Alliance Plants during the Class Period. No other Defendant in the above-captioned Action is released from any claim of any kind whatsoever as a result of the Alliance/Tri-State Settlement, the Court’s approval of the Alliance/Tri-State Settlement or the entry of this Order and Judgment.

10. As to the Alliance/Tri-State Class Settling Defendants but not as to any Other Defendant, the claims asserted by the Alliance/Tri-State Settlement Class in the above-captioned Action are hereby dismissed with prejudice and, except as provided for in the Alliance/Tri-State Settlement, without costs.

11. Any claims against Plaintiffs or their counsel arising out of, relating to or in connection with the Action as against the Alliance/Tri-State Class Settling Defendants are hereby released by the Released Parties and their counsel.

12. The Court hereby reserves its exclusive, general, and continuing jurisdiction over the Plaintiffs, the Alliance/Tri-State Settlement Class, Class Counsel, the Alliance/Tri-State Class Settling Defendants, Alliance/Tri-State Class Settling Defendants' counsel, Releasors and Released Parties as needed or appropriate in order to administer, supervise, implement, interpret, or enforce the Alliance/Tri-State Settlement in accordance with its terms, including the investment, conservation, protection of Alliance/Tri-State Settlement funds prior to distribution, and distribution of Alliance/Tri-State Settlement funds.

13. Pursuant to Federal Rule of Civil Procedure 54(b), the Court finds there is no just reason for delay and therefore directs entry of this Final Judgment.

SO ORDERED.

Date: \_\_\_\_\_

\_\_\_\_\_  
The Honorable Mark W. Bennett, Judge  
United States District Court,  
Northern District of Iowa