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

RANDY WATERMAN, FRANK AUDINO CONSTRUCTION, INC., SIOUX CITY ENGINEERING CO., CITY OF LE MARS, IOWA, HOLTZE CONSTRUCTION COMPANY, and BROWN COMMERCIAL CONSTRUCTION, INC., on behalf of themselves and all others similarly-situated,

Plaintiffs,

vs.

GCC ALLIANCE CONCRETE, INC., SIOUXLAND CONCRETE COMPANY, VS HOLDING COMPANY, f/k/a ALLIANCE CONCRETE, INC., GREAT LAKES CONCRETE, INC., STEVEN KEITH VANDE BRAKE, KENT ROBERT STEWART, CHAD VAN ZEE and TRI-STATE READY-MIX, INC.,

Defendants.

**No. C10-4038-MWB**
**(Consolidated Cases)**

# SECOND AMENDED CONSOLIDATED CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Randy Waterman, Frank Audino Construction, Inc., Sioux City Engineering Co., the City of Le Mars, Iowa, Holtze Construction Company and Brown Commercial Construction, Inc. (collectively "Plaintiffs"), on behalf of themselves and all others similarly-situated as more specifically set forth below, by counsel, bring this action for treble damages, injunctive relief and statutory attorneys' fees under the antitrust laws of the United States, demanding a trial by jury, and make the following allegations based on information, belief, and investigation of counsel, except those allegations that pertain to Plaintiffs, which are based on personal knowledge:

## SUMMARY OF CLAIMS

1. This lawsuit arises from three overlapping antitrust conspiracies involving the four largest Ready-Mix Concrete producers in northwest Iowa. At the center of these three conspiracies was Defendant Steven VandeBrake, the head of sales and pricing at GCC Alliance Concrete, Inc. and its predecessor Alliance Concrete, Inc. ("Alliance") (Defendant GCC Alliance Concrete, Inc. and its predecessor Alliance Concrete, Inc. are collectively referred to herein as "GCC"). Defendant VandeBrake and his companies operated in a unique business environment, in which family patriarchs owned a piece of the "competitors," in which the participants rejected market competition in favor of something they called "good competition," and in which sellers freely replaced competitive prices with their own idea of "fair" prices. Within this culture, Defendant VandeBrake easily entered into and executed unlawful agreements with the only significant "competitors" he had – allowing them all to cheat their customers out of millions of dollars. As this Court observed, "By entering into three separate conspiracies to fix the price of concrete, all in northwest Iowa, VandeBrake effectively created his own concrete cartel."

2. From at least January 1, 2006 through November 2010, Defendant GCC and its predecessor – with VandeBrake in charge of sales and pricing – participated in conspiracies with Defendants Tri-State Ready Mix, Inc. ("Tri-State"), Great Lakes Concrete, Inc. ("Great Lakes"), and Siouxland Concrete Company ("Siouxland"). In each instance, GCC and its "competitor" entered into and engaged in a combination and conspiracy in order to suppress and eliminate competition in the market for Ready-Mix Concrete by fixing prices, rigging bids and/or allocating territories. In each instance the combination and conspiracy was a *per se* unreasonable restraint of trade under federal antitrust law.

3. All of the Defendants named to date – either directly or through their principals – have admitted to engaging in discussions and entering agreements with other Defendants in order to artificially inflate or fix the price of Ready-Mix Concrete sold to their customers. They have admitted they did so by discussing projects, customers, price lists and bids, and by fixing or raising price lists and/or rigging bids, all in violation of the Sherman Act, 15 U.S.C. § 1. They have admitted that their agreements impacted interstate commerce and have caused at least some of their customers to pay higher prices for Ready-Mix Concrete than they would have in the absence of such violations. These admissions have provided a factual basis for three individual guilty pleas, to date two of which have led to convictions, and a corporate leniency agreement with the Antitrust Division of the United States Department of Justice.

4. Despite such admissions and convictions, the Defendants have reimbursed few if any of their customers for overpayments caused by their antitrust conspiracies. Moreover, despite such admissions and convictions, some of the Defendants have taken the position that their customers were not really harmed because the prices they paid for Ready-Mix Concrete were "fair" even though they were the result of unlawful collusion. Further, despite such admissions and convictions, and the collusion regarding inflated prices that they represent, most or all Defendants have taken the position little or none of the $277 million they received from customers during the conspiracies resulted from illegal overcharges.

5. In truth, the three overlapping conspiracies among Defendants were highly effective. The conspiracies occurred in highly concentrated markets, concerned a highly standardized and interchangeable product, and occurred against a background of supply and demand factors that were common to all customers. As a result, the conspiracies caused or allowed identical prices and/or parallel price movements among the conspirators, not only on

price sheet or "list" prices, but also in transactional pricing. As a further result, the Defendants were able to suppress and eliminate competition and artificially sustain or raise the price of Ready-Mix Concrete paid by their customers. The Defendants' customers therefore paid substantially more for Ready-Mix Concrete than they would have in the absence of the conspiracies and have suffered antitrust injury to their business or property.

6. This case is brought as a class action in order to recover these unlawful overcharges for most or all of the Defendants' customers who were harmed by the Defendants' antitrust conspiracies. In light of the three overlapping conspiracies, the Plaintiffs request the certification of three classes (the GCC/Tri State Class, the GCC/Great Lakes Class and the GCC/Siouxland Class), comprised of all individuals and entities who directly purchased Ready-Mix Concrete from plants affected by the three conspiracies among Defendants GCC, Tri-State, Great Lakes or Siouxland, during the respective Class Periods set forth below.

7. Each proposed Class brings claims for violations of the Sherman Act, 15 U.S.C. § 1, against Defendants GCC, VS Holding and VandeBrake, and either: (i) Tri-State and Chad Van Zee; (ii) Great Lakes and Kent Sewart; or (iii) Siouxland. The named Plaintiffs (like many other proposed class members) are direct purchasers from one or more Defendants participating in each of the three conspiracies. For each conspiracy, Plaintiffs with direct purchases affected by that conspiracy have been proposed as Class representatives.

## JURISDICTION AND VENUE

8. Plaintiffs bring this action for treble damages, costs of suit, attorneys' fees, and injunctive relief under Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15 and 26, for the injuries sustained by Plaintiffs and members of the Classes arising from violations of Section 1

of the Sherman Act, 15 U.S.C. § 1, as alleged in this Second Amended Consolidated Class Action Complaint ("Second Amended Complaint").

9. Jurisdiction is conferred upon this Court by 28 U.S.C. §§ 1331 and 1337, and Sections 4 and 16 of the Clayton Act, 15 U.S.C. §§ 15(a) and 26.

10. Venue in this District is proper pursuant to Sections 4, 12 and 16 of the Clayton Act, 15 U.S.C. §§ 15, 22 and 26, and 28 U.S.C. § 1391. The combinations and conspiracies charged in this Complaint were carried out in substantial part within this District. Defendants are found, or transact business within, this District, and the trade and commerce described in this Complaint were carried out in substantial part within this District.

## THE PARTIES AND CO-CONSPIRATORS

11. Plaintiff Randy Waterman ("Waterman") is a citizen of Iowa with a principal place of residence in Sioux Center, Iowa. Waterman purchased Ready-Mix Concrete directly from GCC's Hawarden plant during 2006.

12. Plaintiff Frank Audino Construction, Inc. ("Audino") is an Iowa corporation with its principal place of business in Sioux City, Iowa. Audino purchased Ready-Mix Concrete directly from the following GCC plants during the years noted: Akron (2008-09), Hawarden (2009), Joe's (2006), Le Mars North (2007-08), Moville (2008), Remsen (2008), Russell's (2006), Sergeant Bluff (2007-09). Audino purchased Ready-Mix Concrete directly from the following Siouxland plants during the years noted: 11th Street (2006), Sioux City (2006-09), South Sioux City (2006-08).

13. Plaintiff Sioux City Engineering Co. ("Sioux City Engineering") is an Iowa corporation with its principal place of business in Sioux City, Iowa. Sioux City Engineering purchased Ready-Mix Concrete directly from the following GCC plants during the years noted:

Joe's (2006), Le Mars South (2009), Sergeant Bluff (2008). Sioux City Engineering purchased Ready-Mix Concrete directly from the following Siouxland plants during the years noted: 11th Street (2006-08), Maurice (2008-09), Sioux City (2006-2009), Vermillion (2006, 2008-09.

14. Plaintiff City of Le Mars, Iowa ("Le Mars") is an Iowa municipality and the county seat of Plymouth County. Le Mars purchased Ready-Mix Concrete directly from the following GCC plants during the years noted: Joe's (2006), Le Mars North (2007-08), Le Mars South (2007-09), Orange City (2007), Russell's (2006).

15. Plaintiff Holtze Construction Company ("Holtze") is an Iowa corporation with its principal place of business in Sioux City, Iowa. Holtze purchased Ready-Mix Concrete directly from the following GCC plants during the years noted: Akron (2009), Hawarden (2007), Le Mars South (2009). Holtze purchased Ready-Mix Concrete directly from the following Siouxland plants during the years noted: (Sioux City (2009), South Cioux City (2009).

16. Plaintiff Brown Commercial Construction Co. ("Brown") is an Iowa corporation with its principal place of business in Sioux City, Iowa. Brown purchased Ready-Mix Concrete directly from the following GCC plants during the years noted: Hawarden (2009), Ida Grove (2009), Joe's (2006), Lake Park (2008), Le Mars North (2007-08), Le Mars South (2007-09), Moville (2008-09), Remsen (2008), Russell's (2006), Sergeant Bluff (2008-09), Sheldon (2008), Sibley (2008), Storm Lake (2007-08). Brown purchased Ready-Mix Concrete directly from the following Great Lakes plants during the years noted: Estherville (2008), Northwest Ready Mix (2006-07), Spencer (2006-07), Spirit Lake (2006). Brown purchased Ready-Mix Concrete directly from the following Siouxland plants during the years noted: 11th Street (2006), Maurice (2006, 2008-09), Sioux City (2006-09), South Sioux City (2006-09). Brown purchased Ready-Mix Concrete directly from Tri-State plants during 2006, 2007 and 2008.

17. Defendant GCC Alliance Concrete, Inc. is an Iowa corporation with its principal place of business in Orange City, Iowa. GCC is the successor in interest to the assets of Alliance Concrete, Inc. ("Alliance"). During the respective Class Periods proposed below, GCC produced and sold Ready-Mix Concrete to members of the GCC/Tri State Class, the GCC/Great Lakes Class and the GCC/Siouxland Class located in this District.

18. Defendant Siouxland Concrete Co. ("Siouxland") is a Nebraska corporation with its principal place of business in South Sioux City, Nebraska. During the GCC/Siouxland Class Period, Siouxland produced and sold Ready-Mix Concrete to members of the GCC/Siouxland Class located in this District.

19. Defendant VS Holding Co. ("VS Holding") f/k/a Alliance Concrete, Inc. is an Iowa Corporation with its principal place of business in Sioux Center, Iowa. VS Holding is the successor in interest of the liabilities of Alliance Concrete, Inc. and recipient of the proceeds of the sale of Alliance Concrete, Inc. During the Class Period, VS Holding, operating as Alliance, produced and sold Ready-Mix Concrete to members of GCC/Tri State Class, the GCC/Great Lakes Class and the GCC/Siouxland Class located in this District.

20. Defendant Great Lakes Concrete, Inc. ("Great Lakes") is an Iowa corporation with its principal place of business in Spencer, Iowa. During the Class Period, Great Lakes produced and sold Ready-Mix Concrete to members of the GCC/Great Lakes Class located in this District.

21. Defendant Tri-State Ready-Mix, Inc. ("Tri-State") is an Iowa corporation with its principal place of business in Rock Valley, Iowa. During the Class Period, Tri-State produced and sold Ready-Mix Concrete to members of the GCC/Tri-State Class located in this District.

22. Defendant Chad Van Zee ("Van Zee") is an individual citizen of the State of Iowa who was an owner, officer, director and/or employee of Defendant Tri-State before and during the GCC/Tri-State Class Period. Defendant Van Zee acted with the actual or apparent authority of Defendant Tri-State when carrying out the conduct and statements alleged in this Complaint.

23. Defendant Steven Keith VandeBrake ("VandeBrake") is an individual citizen of Iowa who was an owner, officer, director and/or employee of Defendants GCC and VS Holding, and Alliance and one or more of their predecessors during the GCC/Tri State Class Period, the GCC/Great Lakes Class Period, and the GCC/Siouxland Class Period. Defendant VandeBrake acted with the actual or apparent authority of Defendants GCC (including Alliance) and VS Holding when carrying out the conduct and statements alleged in this Complaint.

24. Defendant Kent Robert Stewart ("Stewart") is an individual citizen of the State of Iowa who was an owner, officer, director and/or employee of Defendant Great Lakes during the GCC/Great Lakes Class Period. Defendant Stewart acted with the actual or apparent authority of Defendant Great Lakes when carrying out the conduct and statements alleged in this Complaint.

25. Additional persons not named as Defendants herein are known to have participated as co-conspirators with the Defendants and have performed acts in furtherance of the conspiracy. These persons include: (i) Cody Harris and Doug Patrick, who were employees and/or officers of Defendant Siouxland during the GCC/Siouxland Class Period, and who acted with the actual or apparent authority of Defendant Siouxland when carrying out the conduct and statements alleged in this Complaint; and (ii) Lee Konz, David Bierman and Ryan Lake, who were employees and/or officers of Defendant GCC, including its predecessor Alliance, during the GCC/Tri State Class Period, the GCC/Great Lakes Class Period, and the GCC/Siouxland Class Period, and who acted with the actual or apparent authority of Defendant GCC (including

Alliance) when carrying out the conduct and statements alleged in this Complaint. Other persons, firms and corporations not named as Defendants herein may have participated as co-conspirators with the Defendants, and may have performed acts in furtherance of the conspiracy.

## TRADE AND COMMERCE

26. During all or part of the Class Periods, Defendants produced and/or sold Ready-Mix Concrete in a continuous and uninterrupted flow of interstate commerce to purchasers in the United States, including without limitation purchasers in the States of Iowa, Minnesota, South Dakota, and Nebraska. These business activities substantially affected interstate trade and commerce. Moreover, the Ready-Mix Concrete produced and sold by Defendants is comparable to and interchangeable with the Ready-Mix Concrete produced and/or sold by their competitors.

## READY-MIX CONCRETE CHARACTERISTICS

27. Ready-Mix Concrete is a compound of cement, water, aggregates and sometimes additives such as fibers, mesh, and chemical admixtures. Cement, and sometimes fly ash, slag or silica, is mixed with water to make a binding medium into which sand, gravel, rocks or other aggregates are embedded. Ready-Mix Concrete remains in a fluid state for several hours, during which time it can be transported to customers, placed, molded and formed. Ready-Mix Concrete hardens over time into a strong and durable material.

28. Different types of cement, cementitious materials and aggregates affect the performance and cost of Ready-Mix Concrete, and make up the largest raw material cost for the production of Ready-Mix Concrete. Admixtures in the form of fibers, mesh, chemicals and powders are added to Ready-Mix Concrete to modify the fluid characteristics, slump, setting properties, cure time, finished properties, finished strength, density and appearance of the final product.

29. Ready-Mix Concrete is manufactured in batch plants. Ready-Mix Concrete ingredients are sometimes mixed in the batch plant and sometimes mixed in mixing or agitator trucks. Ready-Mix Concrete can be batched by the plant according to several mix designs and customer specifications. Ready-Mix Concrete is typically delivered to customers in mixing trucks or agitator trucks.

30. The foregoing product characteristics of Ready-Mix Concrete are true of all of the Ready-Mix Concrete manufactured and sold by each of the Defendants before, during and after the respective Class Periods alleged in this Complaint.

31. The production, delivery, use, and fluid and finished characteristics of Ready-Mix Concrete are subject to well-established industry and governmental standards intended to ensure the consistency, predictability, reliability and uniformity of Ready-Mix Concrete. Standards for Ready-Mix Concrete are propounded and published by ASTM International, the American Concrete Institute, and state agencies such as the Iowa and South Dakota Department of Transportation and the Nebraska Department of Roads.

32. The common standards applicable to Ready-Mix Concrete are known and consistently relied upon and applied by the Defendants, engineers, architects, designers, builders, quality control specialists and others. All of the Ready-Mix Concrete manufactured and sold by each of the Defendants before, during and after the respective Class Periods alleged in this Complaint conformed to, or was intended to conform to, these common industry and governmental standards.

33. Ready-Mix Concrete, including the Ready-Mix Concrete manufactured and sold by each of the Defendants before, during and after the respective Class Periods alleged in this Complaint, is and was used principally in commercial, agricultural, governmental, and

residential construction projects, including sidewalks, driveways, foundations, walls, bridges, roads, slabs, tunnels, highways, and livestock confinement structures. The common standards applicable to Ready-Mix Concrete applied to all of the uses of the Ready-Mix Concrete sold by the Defendants.

34. Because of common industry and governmental standards, Ready-Mix Concrete, including the Ready-Mix Concrete manufactured and sold by each of the Defendants before, during and after the respective Class Periods alleged in this Complaint, is and was highly interchangeable and homogeneous. Ready-Mix Concrete is a commodity, which is interchangeable across manufacturers. Although construction projects can be bid under various concrete specifications, all of the Defendants have the equipment and expertise to meet these specifications. Each Defendant is and was capable of manufacturing, delivering and selling each of the Ready-Mix Concrete mixes designed manufactured, delivered and sold by each of the other Defendants.

35. The interchangeability of the Ready-Mix Concrete sold by Defendants is also demonstrated by the fact that the Defendants sometimes purchase Ready-Mix Concrete from one another. These purchases are established by transaction data produced by the Defendant companies. According to Peter Brewin, Vice President of Ready-Mix and Aggregates for Defendant GCC's parent company GCC of America and a Rule 30(b)(6) designee for Defendant GCC, it is common practice in the industry for competitors to purchase Ready-Mix Concrete from one another in the event of emergencies due to equipment failure and plant shutdowns.

36. When products offered by different suppliers are viewed as interchangeable by the purchaser, it creates an environment more conducive for the suppliers to unlawfully agree on the price for the product, and in turn to effectively monitor and enforce agreed-upon prices.

37. Because of its unique characteristics, there are few if any economic substitutes for Ready-Mix Concrete, making demand for Ready-Mix Concrete highly inelastic. "Elasticity" is a term used to describe the sensitivity of supply and demand to changes in one or the other. For example, demand is said to be "inelastic" if an increase in the price of a product results in only a small (if any) decline in the quantity sold of that product. In other words, customers have nowhere to turn for alternative, cheaper products of similar grade or quality, and so continue to purchase despite a price increase.

38. Because Ready-Mix Concrete is a major and necessary component of commercial, governmental, agricultural and residential construction, a small but significant, non-transitory increase in the price of Ready-Mix Concrete will not cause purchasers to switch to a different construction material, even if such a material is available and compatible with the needs of a given construction job. Moreover, Ready-Mix Concrete of a particular strength or mix was often already specified as the material of choice by the architect, engineer or customer before the Defendants were asked to compete for a given project.

39. The U.S. Department of Justice (DOJ) has challenged a merger in the Ready-Mix Concrete industry because it concluded that demand for Ready-Mix Concrete is highly inelastic: "a small but significant post-acquisition increase in the price of ready mix concrete that meets the bid specifications would not cause the purchasers of ready mix concrete for large projects to substitute another building material in sufficient quantities, or to utilize a supplier of ready mix concrete [who would otherwise not be considered a competitor for the business] with sufficient frequency so as to make such a price increase unprofitable." Am. Compl. ¶ 21, Dkt. No. 7, *U.S v. Cemex, S.A.B. de C.V.*, Case. No. 07-cv-00640 (D.D.C. May 2, 2007).

40. The product characteristics of Ready-Mix Concrete, including the common ingredients and manufacturing process of the product, the applicability of common industry and governmental standards to the product, the interchangeability and homogeneity of the product, the lack of substitutes for the product, and the inelasticity of demand for the product, substantially furthered the ability of the Defendants to effectively conspire, by setting prices, rigging bids and allocating territories, in the sale of Ready Mix-Concrete to the members of the respective Classes.

## PRODUCT MARKET AND PRICING

41. The standardized, interchangeable and homogeneous character of Ready-Mix Concrete has resulted in a well-defined and common product market among the Defendants and their customers. For example, the Defendants' price sheets include mixes and mix categories, alternative aggregates, chemical admixtures, fibers, seasonal charges and off-hour delivery charges that are substantially identical. Further, the Defendants have all used common terminology to refer to mixes and mix categories, *inter alia,* in statements made to the Federal Bureau of Investigation ("FBI"), in statements made to the DOJ, in statements made to the Inspector General of the United States Department of Transportation ("DOT"), during testimony in the criminal proceedings and in depositions in this case, within their bids and other price proposals made to customers, and within their internal references to contract, bid and quote prices.

42. Each of the Defendants, internally and in their price sheets, bids and quotes, identifies the Ready-Mix Concrete mixes or categories of mixes that they sell using common terminology, including "3000," "3500," "4000," "C-4," "C-4 WRC15," "M-4" or "Spencer paving mix." Numbers such as "4000" refer to the finished compressive strength of the Ready-

Mix Concrete in terms of pounds per square inch or "psi." Other names, such as "C-4," "M-4," "C-4 WRC15," and "Spencer paving mix" refer to specific mix designs required by governmental authorities.

43. The largest share of Ready-Mix Concrete sold by the Defendants falls into just a few mixes or mix categories. For example, during the period of 2006 through 2009, 4000psi Ready-Mix Concrete accounted for 69.2% of the sales volume of GCC (including Alliance), 41% of Great Lakes' sales volume, 54.6% of Siouxland's sales volume and 66.7% of Tri-State's sales volume.

44. Further, only two or three mixes or mix categories account for the great majority of all sales by the Defendants. For the period of 2006 through 2009, 4000psi, C-4, C-4WR and 3500psi Ready-Mix Concrete accounted for 92.8% of the sales volume of GCC (including Alliance), 76.2% of the sales volume of Great Lakes, and 74.9% of the sales volume of Siouxland. For Tri-State, 4500psi, 4000psi and 3500psi accounted for 92.3% of sales volume.

45. According to statements made to the FBI, DOJ and DOT, and during testimony in the criminal proceedings and in depositions in this case, the price of the most commonly sold Ready-Mix Concrete, 4000psi, was understood and used by Defendants and their employees as a reference from which the prices of most or all other mixes could be determined. Thus, if one Defendant knew that another Defendant was offering 4000psi at a particular price, it could determine the price offered by the other Defendant for most or all other mixes.

46. According to statements made to the FBI, DOJ and DOT, and during testimony in the criminal proceedings and in depositions in this case, increases in the price of all mixes of Ready-Mix Concrete could be and were expressed in a single dollar amount. Thus, if one Defendant communicated to another Defendant or a customer that the original Defendant was

increasing prices by $5.00 for a given year, it was understood by the second Defendant or customer that this meant a $5.00 increase for the base price of all mixes.

47. According to statements made to the FBI, DOJ and DOT, and during testimony in the criminal proceedings and in depositions in this case, the prices for mixes or mix categories that were stated on Defendants' price sheets were used as a starting point when Defendants and their employees determined negotiated or discounted prices to offer in bids, quotes, annual contracts and other pricing. Further, at various times during the Class Periods some or all Defendants offered standard discounts from the prices for mixes or mix categories that were stated on their price sheets to certain categories of purchasers or for certain uses.

48. The common price sheets used by the Defendants to announce list prices for common mixes, mix categories, additives and additional charges were created by all Defendants on an annual basis during the first quarter. Rarely, revised price sheets were created during the year to account for price changes. Most or all Defendants provided their price sheets to their known customers, by mailing to customer lists and/or by hand delivery to larger customers. Price sheets were provided to potential customers by all Defendants upon request. Price sheets were used by dispatchers and other employees of all Defendants to determine list prices or standardized discount prices, and were posted or available at all plants.

49. The product market and pricing practices were common and highly structured among all Defendants. The common price sheets, the common product mixes, the small number of mixes accounting for the great majority of Defendants' sales volume, the common reference point for mix prices, the common method of expressing price increases, and the common practice of determining negotiated and discounted prices by reference to price sheet prices all substantially furthered the ability of the Defendants to effectively conspire, by setting prices and

rigging bids, in the sale of Ready-Mix Concrete to the members of the respective Classes, and to monitor and enforce their collusive agreements.

## MARKET CONCENTRATION

50. Concentration in a particular industry facilitates the operation of a price-fixing conspiracy because it makes it easier to coordinate behavior among co-conspirators, and at the same time it makes it more difficult for customers to avoid the effects of collusive behavior. The Ready-Mix Concrete industry in the area of northwest Iowa, northeast Nebraska, southeast South Dakota, and Southwest Minnesota served by the Defendants (collectively the "Northwest Iowa region") was highly concentrated throughout the Class Periods, with the Defendants manufacturing the vast majority the Ready-Mix Concrete purchased in the region. The Defendant companies possessed market power in the Northwest Iowa region, such that they were able to substantially influence or control the price of Ready-Mix Concrete sold.

51. The manufacture and sale of Ready-Mix Concrete in Northwest Iowa during the Class Periods was dominated by Defendants GCC (including Alliance), Great Lakes, Tri-State and Siouxland. Before and during the Class Periods the concentration of suppliers of Ready-Mix Concrete in Northwest Iowa increased as a result of mergers and acquisitions. Additionally, certain Defendants actively engaged in the process of eliminating competition within the area, and blocking entry from outside competition, through acquisitions. The effect of this concentration was enhanced by the partial cross-ownership of some of the Defendants by certain individuals, and the cross-purchasing of materials between Defendants or their parent or affiliated companies.

52. In April 2005, two of the largest suppliers of Ready-Mix Concrete in the Northwest Iowa region, "Joe's" and "Russell's," consolidated their operations, formally merging

in January 2006 to form Alliance Concrete, Inc., the predecessor to Defendants GCC and VS Holding. Russell's Ready Mix, Inc. was founded by Defendant VandeBrake's grandfather and was owned by members of the VandeBrake family. Prior to the merger, Russell's owned Ready-Mix Concrete plants in Orange City, Le Mars, Sheldon, Hartley, Moville, Cherokee, Storm Lake, Ida Grove and Holstein. Joe's Ready Mix, Inc. was founded by Arlon Sandbulte and was owned by members of the Sandbulte family. Prior to the merger, Joe's owned Ready-Mix plants in Sioux Center, Le Mars, Hawarden, Akron, Sanborn and Sibley in Iowa, and Beresford, South Dakota.

53. At the time of the merger to form Alliance Ready Mix, Inc., the owners of Joe's and Russell's believed that the merger would result in the benefits of a more concentrated market. For example, the owners of Joe's and Russell's believed that the merger would allow them to obtain higher prices for Ready-Mix Concrete while reducing capital and operational costs, and these were some of the reasons for the merger. Further, the owners of Joe's and Russell's believed that the merger would result in a combined company that would be a more attractive target for purchasers than separate companies, and that the combined company would be more valuable in a sale than if Joe's and Russell's were sold separately.

54. Following the merger to create Alliance Concrete, Inc., Alliance purchased two more plants. In July 2007, Alliance purchased plants in Lake Park and Spencer from Ryan Lake and Mark Jensen [operating as Lake Ready-Mix]. The purchase of the Lake Park and Spencer plants was for the express purpose of consolidating the market and keeping an outside competitor from entering the market. According to an October 2007 internal communication to the vice president of GCC of America, Defendant GCC's parent corporation, "the primary motivating factor in the purchase (of the Lake Park and Spencer plants) was to stop American/Oldcastle's

attempt to enter Alliance's territory in this fashion." The same communication contemplated closing the Spencer plant if demand did not make it profitable to operate.

55. Following the merger, Alliance also constructed a new Ready-Mix Concrete plant in Sergeant Bluff, which serves the Sioux City area. With this new plant and the acquisition of the Lake Park and Spencer plants, Alliance owned twenty-one Ready-Mix Concrete plants in the Northwest Iowa region. Alliance's assets were acquired by Grupo Cementos de Chihuahua, a multi-national cement company, in January 2008, resulting in GCC Alliance, Inc. After the purchase of Alliance, GCC increased the efficiency of its consolidated operations by closing four plants.

56. Defendant Siouxland is wholly owned by Lyman Richey Corporation, which is wholly owned by Ash Grove Cement Company. Until June 2008, Defendant Siouxland owned one plant in South Sioux City, Nebraska, serving the Sioux City area. In June 2008, Siouxland purchased three plants from Mark Jensen: Standard Ready-Mix in Sioux City, Maurice Concrete and Supply in Maurice, and Ludey's Ready Mix in Vermillion, South Dakota.

57. Prior to the sale of the Jensen plants to Siouxland, Mark Jensen also owned a 50% interest in Lake Ready Mix. At the time that Jensen was considering the sale of his plants and his interest in Lake Ready-Mix, Defendant VandeBrake again displayed the interest of Defendant GCC (then operating as Alliance) in consolidating the sale of Ready-Mix Concrete in Northwest Iowa in the hands of a limited number of suppliers, those who were conspiring or would conspire to fix the price of Ready-Mix Concrete.

58. In a January 2007 internal email from Ash Grove District Sales Manager Ernie Peterson to Ash Grove executive Pat Gorup, Peterson wrote that VandeBrake was "very, very interested in obtaining the Spencer plant if you are successful in buying Standard R/M [referring

to the Jensen plants]. He worries about American getting their hands on this one and creating another price war. He would like to discuss the possibilities with you."

59. A handwritten note by VandeBrake from this time period relates to his discussions with Pat Gorup concerning the possibility of purchasing Jensen's plants. Defendant VandeBrake wrote: "Open to discuss anything involving getting Jensen out! & keeping American & Knife out of our market! Helping each other!?" (Emphasis in original). VandeBrake further suggested in his notes that, in exchange for Ash Grove's help in keeping American and Knife out of the market, Alliance would return the favor by purchasing additional cement from Ash Grove: "You help me keep competition out of lakes area & maybe helping in areas on return on your investment. I help you absorb purchase price. Also possibility to commit on cement tonnage."

60. The possible *quid pro quo* mentioned in Defendant VandeBrake's notes is also reflected in Peterson's email to Gorup, "Since we are in business for the common good of L/R [Lyman Richey] and Ash Grove, you should also be aware that [selling the Spencer plant to VandeBrake] would make a huge impact on his cement buying decisions for his western Iowa and new Sgt Bluff Plants. We currently sell cement to him at full Hawarden price … and he is seriously considering buying from us out of Louisville for his new plant in Sgt Bluff."

61. The understanding that purchasing cement from a competing company or its parent could favorably affect pricing in the Northwest Iowa Ready-Mix concrete market continued after GCC acquired Alliance. GCC executive Jerry Svennes, in a May 5, 2008 GCC Iowa Weekly Market Update to superiors, wrote, "Once Ash Grove completes its purchase of Standard Ready Mix … and due to the rather advantageous timing of our recent purchases of

cement from Ash Grove, we are hopeful that Ash Grove will reconsider its concrete pricing strategy for the Sioux City metro area."

62. Defendant Great Lakes was formed in July 1, 2004 with the merger of Northwest Ready-Mix Concrete, Inc. and Great Lakes Concrete. Throughout the GCC/Great Lakes Class Period, Defendant Great Lakes owned and operated plants in Estherville, Spirit Lake, Milford, Spencer and Ocheyedan. Defendant Stewart is the president and one-third owner of Defendant Great Lakes.

63. Defendant Tri-State is owned by Van Zee Enterprises, of which Defendant Chad Van Zee was an owner and general manager. Throughout the GCC/Tri-State Class Period, Tri-State owned and operated plants in Rock Valley and Larchwood, Iowa, and Canton and Beresford, South Dakota. According to a trade publication, Tri-State serves "about a 70-mile radius of Rock Valley."

64. Rapids Ready Mix, Inc. ("Rapids") is owned in part by Defendant Chad Van Zee. Defendant Rapids owned and operated a plant in Rock Valley, Iowa throughout the GCC/Tri-State Class Period. Rapids shares accounting, management, office, and materials acquisition services and personnel with Defendant Tri-State. Defendant Rapids uses the same suppliers as Tri-State, prices its products identically to Tri-State, and utilizes trucks and other equipment with Tri-State when necessary.

65. The concentration of suppliers of Ready-Mix Concrete in the Northwest Iowa region was further enhanced by cross-ownership among nearly all Defendant companies. For example, Norlyn VandeBrake, the father of Defendant VandeBrake, was the owner or part owner of Russell's Ready-Mix and its successor Alliance. Norlyn VandeBrake is also a one-third owner of Defendant Great Lakes. Brian Bosshart was also a part owner of Alliance, and is a

one-sixth owner of Defendant Great Lakes. Brian Bosshart previously was part owner of Consolidated Ready-Mix Incorporated, which was sold to Grupo Cementos de Chihuahua prior to the latter's purchase of Alliance in 2008. Dennis Rode is a one-sixth owner of Defendant Great Lakes and is or was on the board of directors of GCC.

66. Similarly, Rapids is owned by Defendant Van Zee with Michael Van Zee and Arlon Sandbulte. Arlon Sandbulte was a part owner of Joe's Ready-Mix prior to its merger with Russell's Ready-Mix to form Alliance, and a part owner of Alliance prior to its acquisition to form Defendant GCC.

67. In addition to these ownership interests, Arlon Sandbulte was a one-half owner of Lake Ready-Mix until December 2005. After Arlon Sandbulte sold his interest in Lake Ready-Mix, Mark Jensen, who owned Standard Ready-Mix, Ludey's Ready-Mix and Maurice Ready-Mix Concrete and Supply prior to their sale to Siouxland in June 2008, was a one-half owner of Lake Ready-Mix until its sale to Alliance in July 2007.

68. The partial cross-ownership of the majority of the Defendants' Ready-Mix Concrete plants, and of potential competitors of the Defendants, not only enhanced the very high concentration of Ready-Mix Concrete suppliers in the Northwest Iowa region, it ensured such concentration and dominance by limiting the ability of potential competitors to enter the market by purchasing existing plants. Cross-ownership also acted to suppress the incentive of the Defendant companies, and other cross-owned companies, to compete with one another, either on price or location, creating instead an incentive to limit competition in order to keep prices up and increase revenues for these owners regardless of which Defendant company received a particular job.

69. Moreover, as alleged below, cross-ownership created opportunities to conspire and to police and enforce conspiratorial agreements to fix prices, rig bids and allocate territories. Cross-ownership also contributed to a culture in the industry favoring what individual Defendants have identified as "good competition" over real competition, in which so-called competitors limit their price discounting so that they all make more money.

70. The Defendant companies also often relied upon other Defendant companies or their parent or affiliate corporations to supply raw materials. For example, since 2006 Defendant Tri-State purchased cement from Ash Grove (owner of Defendant Siouxland) and possibly Dacotah (owned by GCC's parent corporation). Valley Sand & Gravel, which is owned by Defendant Tri-State's parent Van Zee Enterprises, supplied aggregate to GCC. GCC has also purchased aggregate from Defendant Great Lakes and cement from Ash Grove. Defendant Great Lakes has purchased cement from GCC's parent corporation, and has purchased hauling services from Van Zee Enterprises. As illustrated by the communications between Defendant VandeBrake and Ash Grove, set forth above, the reliance among Defendant companies and their parent or affiliate corporations for raw materials and services created opportunities to influence prices and to conspire to suppress competition.

## GEOGRAPHIC MARKET AND COMPETITION

71. The highly concentrated market in which the Defendant companies were the dominant suppliers of Ready-Mix Concrete was geographically well-defined by the delivery ranges of the Defendants' plants. Competition from suppliers outside this geographic market did not substantially affect the ability of the Defendants to exert control over the price of Ready-Mix Concrete in their geographic market, because the limited delivery range of these potential competitors made them few in number, and because many of these potential competitor

companies were owned by companies and individuals who also owned, in whole or in part, the majority of the Defendant companies. These potential competitors therefore did not have an incentive to compete aggressively on price or territory.

72. Ready-Mix Concrete plants have a limited delivery range for both technical and economic reasons. Because of its setting properties, Ready-Mix Concrete is a perishable product that must be delivered to its destination in specially designed trucks within a limited amount of time. According to ASTM International standards, Ready-Mix Concrete must be discharged no later than 1 1/2 hours after either the water is mixed with the cement and aggregates or the cement is mixed with the aggregates, or before the drum on a rotating drum truck completes 300 revolutions, unless the purchaser waives these requirements. In hot weather or other conditions that could cause the Ready-Mix Concrete to set more quickly, ASTM International standards permit the purchaser to require discharge before 1 1/2 hours elapse.

73. Delivery range may also be affected by economic factors related to transportation costs and downtime of equipment. Thus, a supplier may assess the profitability of a particular delivery distance by reference to fuel costs and the cost of lost use of plant and trucks resulting from longer delivery and return times.

74. Evidence obtained in this case to date indicates a delivery range for Ready-Mix Concrete in the Northwest Iowa region substantially greater than the admittedly conservative range of 15 miles used by the DOJ during the criminal sentencing proceedings for Defendants VandeBrake and Stewart. According to Lee Konz, a salesman employed by GCC and its predecessors, the hauling range for Ready-Mix Concrete in Iowa is about 25 miles and in South Dakota as high as 50 miles. Eric Sieh, a Rule 30(b)(6) designee for Defendant Siouxland, testified that a driving time of approximately 40 minutes allowed for delivery from 27 to 30

miles from a plant. Within transaction data produced by Defendants Siouxland and GCC, deliveries of 35, 36 and 50 miles were recorded.

75. Also according to this transaction data, during the period of 2006 through 2009, 5,130 transactions by Defendant GCC (or its predecessor) and 3,468 transactions by Defendant Siouxland were associated with scheduled travel times ranging from 31 to 70 minutes. Under the assumptions stated by Eric Sieh, this would suggest a substantial number of deliveries in excess of 30 miles.

76. According to a 1975 Federal Trade Commission assessment of Ready-Mix Concrete supply in Kansas City – which can be assumed to have had significantly more traffic and other travel limitations than any area in the Northwest Iowa region – the "effective marketing area" for Ready-Mix Concrete was up to 25 miles from a plant. *See*, Federal Trade Commission, Ash Grove Cement Co., Docket No. 8785, *Order, Opinion, etc.*, June 24, 1975, at 59-60.

77. Using a conservative delivery range of 20 miles from any of the Defendant companies' plants, it is apparent that almost every Defendant plant was able to deliver Ready-Mix Concrete to locations that could also be served by at least one plant operated by another Defendant company. Thus, in instances where the delivery location was known at the time prices for Ready-Mix Concrete were offered to potential customers, Defendant companies would be expected – in the absence of a conspiracy regarding prices or territory – to compete with at least one other Defendant company on the basis of price.

78. However, the effect of delivery range on the ability of the Defendant companies to compete on price – in the absence of collusion in the form of price-fixing, bid rigging and territorial allocation – is lessened by two significant factors. First, many of the purchasers of

Ready-Mix Concrete in the Defendants' geographic market are contractors who are not geographically fixed in one location. Instead, they service projects and purchase materials throughout the region. Second, most or all of the Defendants offered annual price quotes, derived from their price sheet or list prices, to their larger purchasers without knowing and without regard to the location of the plant from which the Ready-Mix Concrete would be delivered.

79. Thus, for significant purchasers the Defendant companies often priced their products without knowing if the ultimate purchase would be in a location in which delivery ranges overlapped with competitors. In the absence of collusion on prices, this would create an incentive for each Defendant company to price competitively when offering such prices. In the presence of such collusion, it created an incentive for each Defendant company to price in accordance with the conspiratorial agreement when offering such prices.

80. Delivery range also limited the ability of Ready-Mix Concrete companies from outside the Northwest Iowa region to compete with the Defendant companies. Using the same 20-mile range for delivery, it is apparent that only a limited number of outside company plants could sell Ready-Mix Concrete for delivery in a location serviced by the Defendant companies. These companies include American, Midwest, Brandon Materials, United Concrete and Concrete Materials Co.

81. Other "outside" companies that otherwise might have been competitors with the Defendant companies did not have an incentive to compete because they were owned by companies and individuals who also owned, in whole or in part, the majority of the Defendant companies. For example, much of the region of southwest Minnesota that borders the northern edge of the Northwest Iowa region is serviced by GCC Consolidated. During the Class Periods,

this company was owned by Brian Bosshart, a one-sixth owner of Defendant Great Lakes, and then by the parent corporation of Defendant GCC. As stated by Peter Brewin, a Rule 30(b)(6) designee for Defendant GCC, GCC would not be expected compete with its affiliate GCC Consolidated.

82. Similarly, the parts of Iowa and Nebraska bordering the southern and western edges of the Northwest Iowa region are serviced largely by Gerholdt Concrete. Gerholdt is owned by Lyman-Richey and Ash Grove, the parent companies of Defendant Siouxland. Gerholdt would also lack an incentive to compete with Siouxland in these border locations. Further, the presence of Rapids and Lakes Ready-Mix, respectively cross-owned during all or part of the Class Periods, in locations near Tri-State and Great Lakes plants would minimize the effect of potential outside competition.

83. The well-defined geographic market serviced by the plants of the Defendant companies, when coupled with the near complete supplier concentration held by the Defendant companies and the limited ability and incentive of outside companies to compete in the region, provided the Defendants with the ability to effectively sustain or raise the price of Ready-Mix Concrete in their service areas through collusion on prices, bids and territory. These factors also permit the Court to identify and certify Plaintiff Classes composed of direct purchasers from specific Defendant company plants, and further permit the Plaintiffs to determine impact and damages in a manner common to members of the proposed Classes that excludes sales from plants potentially capable of monopoly pricing or potentially subject to outside competition.

## DEFENDANTS' GUILTY PLEAS AND LENIENCY AGREEMENT

84. On April 26, 2010, Defendant VandeBrake was charged by the United States of America in an Information filed in the United States District Court for the Northern District of

Iowa in *United States of America v. Steven Keith Vande Brake a/k/a Steve Vande Brake*, Criminal Case No. CR10-4025 MWB, with violations of Section One of the Sherman Act, 15 U.S.C. § 1. On May 4, 2010, Vande Brake entered a plea of guilty to these charges pursuant to a plea agreement with the DOJ. VandeBrake's plea was accepted by the Court and he has been convicted of the charged offenses pursuant to his plea agreement.

85. Defendant VandeBrake has admitted under oath that individually and on behalf of Defendant GCC and its predecessor Alliance, he entered into and engaged in a combination and conspiracy with employees of Defendants Tri-State, Great Lakes and Siouxland to suppress and eliminate competition by fixing prices and rigging bids for sales of Ready-Mix Concrete by, *inter alia*: (i) engaging in discussions concerning price increases for the conspirators' price lists for Ready-Mix Concrete; (ii) agreeing during those discussions to raise prices on their respective price lists for Ready-Mix Concrete; (iii) engaging in discussions concerning project bids for sales of Ready-Mix Concrete; (iv) agreeing during those discussions to submit rigged bids for sales of Ready-Mix Concrete at collusive and noncompetitive prices; (v) submitting bids and selling Ready-Mix Concrete at collusive and noncompetitive prices; and (vi) accepting payment for sales of Ready-Mix Concrete at collusive and noncompetitive prices.

86. In Defendant VandeBrake's plea agreement he agreed to the following factual basis:

> For each count, . . . the defendant [VandeBrake] participated in a conspiracy with another company . . . the primary purpose of which was to set agreed-upon prices, to set agreed-upon price increases, and/or to submit non-competitive and rigged bids for ready-mix concrete sold in the Northern District of Iowa and elsewhere. During conversations between the co-conspirators, agreements were reached to set agreed-upon prices, to set agreed-upon price increases, and/or to submit non-competitive and rigged bids for ready-mix concrete to be sold in the Northern District of Iowa and elsewhere.

87. On May 6, 2010, Defendant Stewart was charged by the United States of America in an Information filed in the United States District Court for the Northern District of Iowa in *United States of America v. Kent Robert Stewart a/k/a Kent Stewart*, Criminal Case No. CR10-4028 DED, with violations of Section One of the Sherman Act, 15 U.S.C. § 1. On May 24, 2010, Stewart entered a plea of guilty to these charges pursuant to a plea agreement with the DOJ. Stewart's plea was accepted by the Court and he has been convicted of the charged offenses pursuant to his plea agreement.

88. Stewart has admitted under oath to entering and engaging in a combination and conspiracy with Defendant GCC and its predecessor Alliance to suppress and eliminate competition by fixing prices and rigging bids for sales of Ready-Mix Concrete by, *inter alia*: (i) engaging in discussions concerning project bids for sales of Ready-Mix Concrete; (ii) agreeing during those discussions to submit rigged bids at collusive and noncompetitive prices to customers; (iii) submitting bids and selling Ready-Mix Concrete at collusive and noncompetitive prices; and (iv) accepting payment for sales of Ready-Mix Concrete at collusive and noncompetitive prices.

89. In Defendant Stewart's plea agreement he agreed to the following factual basis:

> During the relevant period [as early as January 2008 and continuing until as late as August 2009], the defendant participated in a conspiracy with other persons and another entity engaged in the manufacture and sale of ready-mix concrete, the primary purpose of which was to fix prices and submit non-competitive, rigged bids for ready-mix concrete sold in the Northern District of Iowa. In furtherance of the conspiracy, the defendant engaged in discussions with representatives of another ready-mix concrete company. During such discussions, agreements were reached regarding the submission of non-competitive and rigged bids for ready-mix concrete to be sold in the Northern District of Iowa.

90. As alleged below, Defendant Stewart also engaged in a price-fixing and territorial allocation conspiracy with Defendant GCC and its predecessor Alliance for at least the years 2006 through 2009.

91. On or about November 29, 2010, Defendant Van Zee was charged by the United States of America in an Information filed in the United States District Court for the Northern District of Iowa in *United States of America v. Chad Van Zee*, Criminal Case No. CR-10-4108 MWB, with violations of Section One of the Sherman Act, 15 U.S.C. § 1. On December 6, 2010, Van Zee entered a plea of guilty to these charges pursuant to a plea agreement with the DOJ.

92. Defendant Van Zee has admitted under oath to entering and engaging in a combination and conspiracy with Defendant GCC and its predecessor Alliance Concrete, Inc. to suppress and eliminate competition by fixing prices for sales of Ready-Mix Concrete by, *inter alia*: (i) engaging in discussions to fix prices for sales of Ready-Mix Concrete; (ii) agreeing during those discussions to sell Ready-Mix Concrete at collusive and noncompetitive prices to customers; and (iii) accepting payment for sales of Ready-Mix Concrete at collusive and non-competitive prices.

93. In Defendant Van Zee's plea agreement he agreed to the following factual basis:

> During the relevant period [as early as January 2006 and continuing until as late as August 2009], the defendant participated in a conspiracy with Steven Keith VandeBrake, an executive of company B (and its predecessor entity), a company engaged in the sale of ready-mix concrete, the primary purpose of which was to fix prices for ready-mix concrete sold in the Northern District of Iowa. In furtherance of the conspiracy, the defendant engaged in meetings and conversations with VandeBrake. During such meetings and conversations, agreements were reached regarding the price of ready-mix concrete to be sold by their respective companies in the Northern District of Iowa.

94. As alleged below, Defendant Tri-State also participated in a territorial allocation conspiracy from at least 2006 through 2009.

95. Defendant Siouxland has confirmed in its Answer (Dkt. No. 152) that it engaged in antitrust violations and that it is the "antitrust leniency applicant" pursuant to § 213 of the Antitrust Criminal Penalty Enhancement and Reform Act of 2004 ("ACPERA"), P.L. 108-237, 118 Stat. 666, 15 U.S.C. note. (Siouxland Ans., ¶¶ 1-3, 40-42, 47-50, p. 9). In order to participate in the DOJ Leniency Program, an applicant must confess to illegal antitrust activity. *See*, U.S.D.O.J., Antitrust Div., Corporate Leniency Policy, at http://justice.gov/atr/public/guidelines/0091.htm.

96. Defendant Siouxland's Answer (Dkt. No. 152) states as follows:

> Siouxland admits that . . . it had conversations with Alliance Concrete Company about which company would have priority in discussions with certain customers. Siouxland further admits that those discussions violated § 1 of the Sherman Act. . . . Siouxland admits that as a result of its conversations with Alliance Concrete, certain customers paid higher prices on identifiable jobs for a limited period of time.

(Siouxland Ans. ¶¶ 1-3.)

97. As alleged below, Siouxland also engaged in conspiratorial discussions and a price-fixing conspiracy with Defendant GCC from at least June 2008 through 2009.

## THE GCC / TRI-STATE CONSPIRACY

98. From before 2006 through August 2009, Defendant VandeBrake was the President of Alliance Concrete, Inc. and Sales Manager of its successor GCC Alliance, Inc. Defendant VandeBrake had and exercised full and final authority over all pricing decisions for Ready-Mix Concrete sold by GCC. Defendant VandeBrake exercised final authority for prices of Ready-Mix Concrete, additives and related charges that were stated on price sheets, stated in bids, stated in quotes or otherwise offered to customers or applied to sales by GCC.

99. From before 2006 through at least 2009, Defendant Van Zee was the President of Defendant Tri-State. Defendant Van Zee had and exercised full and final authority over all pricing decisions for Ready-Mix Concrete sold by Tri-State. Defendant Van Zee exercised final authority for prices of Ready-Mix Concrete, additives and related charges that were stated on price sheets, stated in bids, stated in quotes or otherwise offered to customers or applied to sales by Tri-State. Defendant Van Zee also had and exercised full and final authority over all pricing decisions for Ready-Mix Concrete sold by Rapids in its location adjacent to Tri-State. Defendant Van Zee also managed the business operations of Defendant Tri-State.

100. From at least 2006 through 2009, Defendants VandeBrake and Van Zee engaged in discussions concerning the prices that their respective companies would charge for Ready-Mix Concrete, and reached specific agreements setting such prices. During this time period, Defendants VandeBrake and Van Zee engaged in discussions before each of their respective companies, Defendants GCC and Tri-State, issued their annual price sheets. Typically, Defendant VandeBrake told Defendant Van Zee the prices or price increases that would be reflected on GCC's price sheets, and Defendant Van Zee agreed that the prices on the price sheets of Tri-State would reflect the same prices or price increases.

101. Defendants VandeBrake and Van Zee reached agreements concerning the price sheet, list or base prices, or the increase of such prices, to be charged by their respective companies, including Tri-State and GCC, during 2006, 2007, 2008 and 2009. Defendants VandeBrake and Van Zee agreed to increase their price sheet, list or base prices by $5.00 in 2006, $5.00 in 2007, $5.00 in 2008 and $10.00 in 2009.

102. In 2009, Defendants VandeBrake and Van Zee modified their original agreement after Van Zee told VandeBrake that he could not get the agreed-upon $10.00 price increase from

his customers. Defendants VandeBrake and Van Zee therefore agreed to coordinate the increase in prices for their respective companies' price sheet, list or base prices in varying amounts according to certain geographic zones. Van Zee prepared and delivered to VandeBrake a zone map reflecting the price coordination to which they had agreed in the various zones.

103. In 2006, 2007, 2008 and 2009, Defendants VandeBrake and Van Zee prepared, or instructed others under their supervision and control to prepare, price sheets and/or internal price lists for GCC and Tri-State that reflected the price increases to which they had agreed. In 2009, Defendants VandeBrake and Van Zee prepared, or instructed others under their supervision and control to prepare, price sheets and/or internal price lists for GCC and Tri-State that reflected the amended zone pricing to which they had agreed. The price sheets and internal price lists reflecting their agreement were provided to customers and employees of their respective companies to be used for determining the price of the Ready-Mix Concrete they sold or offered for sale. In 2009, Defendants VandeBrake and Van Zee also provided their employees with copies of the zone map reflecting the pricing to which they had agreed, to be used by these employees when setting and offering prices for customers.

104. The price sheets and internal price lists reflecting their agreement, including the 2009 zone map, were used by Defendants VandeBrake and Van Zee, as well as by the employees under their supervision and control, to set actual and offered prices for Ready-Mix Concrete for customers who paid the base, list or price sheet price. The price sheets and internal price lists reflecting their agreement, including the 2009 zone map, were also used by Defendants VandeBrake and Van Zee, as well as by the employees under their supervision and control, as a starting point to set actual and offered prices in the form of annual contract or quote prices,

specific price quotes, bid prices, structured discount prices and other negotiated or discounted prices.

105. Defendants Van Zee and VandeBrake engaged in communications at least two or three times each year during 2006 through 2009 to discuss whether their agreements on prices and price increases were being successfully implemented in prices offered to and/or paid by customers. According to Lee Konz, a salesman for GCC and its predecessor Alliance, the VandeBrake and Van Zee families had been friends for years, and at times golfed and vacationed together. These social relationships would have provided additional opportunities to discuss and monitor the implementation of their agreements on prices and price increases.

106. Defendants Van Zee and VandeBrake were each also able to monitor the prices being offered by the other's company for Ready-Mix Concrete from information provided to them by customers and prospective customers. In January 2006, an Alliance price sheet was faxed from Alliance's Sioux Center facility to the offices of Tri-State's sister company, Rapids.

107. The delivery territories of several of the plants of Defendant Tri-State, and several of the plants of Defendant GCC, substantially overlap. In addition, Defendants Tri-State and GCC share very high or complete levels of market concentration and market power for the supply of Ready-Mix Concrete delivered from several of their respective plants. Defendants Tri-State and GCC are therefore able to collectively control the price of Ready-Mix Concrete sold from these plants, because customers do not have the ability to seek a more competitive price from alternative suppliers.

108. According to Lee Konz, Defendants Tri-State and GCC also observed a long-standing agreement to limit sales of Ready-Mix Concrete into one another's territories. Konz believes that this agreement had been in place since the time that the grandfathers of Defendants

VandeBrake and Van Zee were running their respective companies. This agreement enhanced the ability of Defendants Tri-State and GCC to collectively control the price of Ready-Mix Concrete sold from plants subject to the territorial agreement because it further reduced the ability of customers to at least seek a more competitive price from alternative suppliers.

109. Additionally, customers who received annual price quotes or contracts from Defendants Tri-State and GCC were offered prices that were derived from an agreed starting point, or reflected agreed increases, as a result of the conspiracy, regardless of the location to which such Ready-Mix Concrete was to be delivered. Because Defendants Tri-State and GCC share very high or complete levels of market concentration and market power for the supply of Ready-Mix Concrete from the GCC Hawarden, Orange City, Sioux Center and Sheldon plants and the Tri-State Rock Valley plant, customers who received annual price quotes or contracts also would not be able to seek a competitive price from another supplier.

110. The agreement between Defendants VandeBrake and Van Zee to coordinate their prices and price increases for Ready-Mix Concrete was implemented by their respective companies. The price sheets of Defendants Tri-State and GCC, from which all prices were obtained or derived, reflect substantial "parallel pricing" in the actual net prices offered and/or annual net price increases. Evidencing the implementation and impact of the price sheet agreement, comparison of Tri-State's and GCC's (or its predecessors') price sheets during 2006 to 2009 show identical pricing for 3000, 3500 and 4000 mix types in 2006, identical increases for M-4 between 2007 and 2008, and identical increases in the prices of each of 3000, 3500, 4000 and M-4 from 2008 to 2009.

111. Further, the transaction data provided by Defendants Tri-State and GCC indicate that the actual prices paid by customers for most plants were parallel in that they were identical

or moved together. For example, the data indicate that prices for 4000 PSI Ready-Mix Concrete sold from GCC's Hawarden, Orange City, Sheldon, and Sioux Center plants are correlated with prices for the same product from Tri-State's plants. This correlation confirms the co-movement of prices paid to Defendants GCC and Tri-State from these plants, and indicates that these plants compete in the same geographic market.. This correlation also indicates that, when Defendants GCC and Tri-State entered into conspiratorial agreements on their prices, these agreements had a systematic and class-wide impact on prices actually paid by members of the GCC/Tri-State Class.

112. Direct purchasers of Ready-Mix Concrete from the GCC Hawarden, Orange City, Sioux Center and Sheldon plants and the Tri-State Rock Valley plant were substantially impacted by the conspiracy between Defendants VandeBrake and Van Zee on behalf of their respective companies to fix prices and allocate territories. These purchasers paid substantially more for Ready-Mix Concrete than they would have in the absence of the conspiracy, and suffered antitrust injury to their business or property.

## THE GCC / GREAT LAKES CONSPIRACY

113. From before 2006 through at least 2009, Defendant Stewart was the President of Defendant Great Lakes. Defendant Stewart had and exercised full and final authority over all pricing decisions for Ready-Mix Concrete sold by Great Lakes. Defendant Stewart exercised final authority for prices of Ready-Mix Concrete, additives and related charges that were stated on price sheets, stated in bids, stated in quotes or otherwise offered to customers or applied to sales by Great Lakes. Defendant Stewart also managed the business operations of Defendant Great Lakes.

114. Beginning in 2006 and continuing through 2009, Defendants VandeBrake and Stewart engaged in ongoing discussions concerning the need to "keep prices up" and the prices that their respective companies would charge for Ready-Mix Concrete, and reached specific agreements setting such prices or price increases for some or all of those years. From or before 2006 through 2009, Defendants VandeBrake and Stewart engaged in ongoing discussions concerning the territories in which their respective companies would sell Ready-Mix Concrete, and reached agreements allocating such territories between the companies. In at least 2008 and 2009, Defendant VandeBrake, individually and through other GCC employees, and Defendant Stewart engaged in ongoing discussions concerning the prices to be offered by their respective companies for certain bids, and reached agreements concerning which company would submit the anticipated winning bid and the prices their respective companies would offer in such bids.

115. According to Defendant Stewart's first statements to federal investigators, he and Defendant VandeBrake first began discussing the prices their respective companies charged for Ready-Mix Concrete in 2006. Defendant VandeBrake's existing agreement with Defendant Van Zee to fix prices at this time indicates that Defendant VandeBrake would have an interest, incentive and willingness to discuss "keeping prices up" with Defendant Stewart. It is highly likely that VandeBrake would seek agreements on prices or price increases from Defendant Stewart during the period of 2006 through 2009 because doing so would allow GCC to successfully maintain the price increases to which VandeBrake had agreed with Defendant Van Zee for this time period with customers seeking delivery in areas where GCC competed with Great Lakes. The price increases to which Defendant VandeBrake agreed with Defendant Van Zee were included on price sheets that applied to the GCC plants competing with Great Lakes plants.

116. In statements to federal investigators, GCC salesman Ryan Lake identified an email he sent to Defendant VandeBrake, his superior, in January 2008 in which he referenced an agreement between GCC and Defendant Stewart regarding prices. According to Lake, he knew that Defendants VandeBrake and Stewart were already talking about prices at that time and that they wanted to keep Ready-Mix Concrete prices up. Lake understood that Defendants VandeBrake and Stewart had an agreement to keep prices up.

117. In statements to federal investigators, Lake stated that he understood that GCC and Great Lakes had agreed to raise their price sheet prices by $5.00 in 2008. Lake stated that Defendant VandeBrake informed him that he wanted to increase prices for 2008 by $5.00, and that Defendant Great Lakes was going to have a $5.00 increase as well. Lake stated that he did not know if the price sheets for Great Lakes and GCC were going to be identical but that the increase was going to be the same. Lake stated that from his conversations with Defendant VandeBrake he was under the impression that VandeBrake was talking to Defendant Stewart about prices.

118. In statements to federal investigators in January 2010, Defendant Stewart admitted that he had conversations with Defendant VandeBrake regarding the 2008 and 2009 price sheets of their respective companies. According to the summary of this interview, it is not clear that these discussions were limited to 2008 and 2009: “Stewart stated that the defendant [VandeBrake] would call him and ask where they should be with respect to the direction pricing was headed on annual price lists, and they would have a conversation on whether they would go up, down, or stay the same. In addition, Stewart stated that the defendant [VandeBrake] would tell him where he would be on his prices, and Stewart would respond that he would be in the same range.”

119. In statements to federal investigators, Defendant VandeBrake stated that he engaged in discussions with Defendant Stewart regarding the prices to be charged by Defendants GCC and Great Lakes in 2009, and that these discussions occurred around the same time that he was having similar discussions with Defendant Van Zee. VandeBrake stated that he reached an agreement with Defendant Stewart that their respective companies would increase the prices on their price sheets by $10.00 for 2009.

120. The pricing by Defendants GCC and Great Lakes support the existence of agreements between Defendants VandeBrake and Stewart to coordinate their prices or price increases for Ready-Mix Concrete from 2006 through 2009. The price sheets of Defendants Great Lakes and GCC, from which all prices were obtained or derived, reflect substantial "parallel pricing" in the annual net price increases. For example, examination of Great Lakes' and GCC's 2009 price sheets confirms that the pricing for each of 3000, 3500 and 4000 base mixes was identical between the two Defendants. Also noteworthy is that not only did Great Lakes increase its delivered prices by an amount to match GCC's price sheet, but that, between 2008 and 2009, Great Lakes shifted the breakdown between the material and haul components in a way that matched GCC's. Doing so required increasing Great Lakes' haul charge from $25 per cubic yard to $36 per cubic yard. Furthermore, analysis shows that, for 3000, 3500 and 4000 mixes, between 2006 and 2007, Great Lakes and GCC each increased its sheet price by the same increment as the other.

121. Further, the transaction data provided by Defendants Great Lakes and GCC indicate that the actual prices paid by customers for most plants were parallel in that they were identical or moved together. For example, the data indicate that prices for 4000 PSI Ready-Mix Concrete sold from GCC's Hartley, Lake Park, Sanborn, Sibley, Spencer plants are correlated

with prices for the same product from Great Lakes' Spencer, Spirit Lake, Ocheyedan, and Milford plants. This correlation confirms the co-movement of prices paid to Defendants GCC and Great Lakes from these plants, and indicates that these plants compete in the same geographic market. This correlation also indicates that, when Defendants GCC and Great Lakes entered into conspiratorial agreements on their prices, these agreements had a systematic and class-wide impact on prices actually paid by members of the GCC/Great Lakes Class.

122. From 2006 through 2009, Defendants VandeBrake and Stewart prepared, or instructed others under their supervision and control to prepare, price sheets and/or internal price lists for GCC and Great Lakes that reflected the price increases to which they had agreed. The price sheets and internal price lists reflecting their agreement were provided to customers and employees of their respective companies to be used for determining the price of the Ready-Mix Concrete they sold or offered for sale.

123. The price sheets and internal price lists reflecting their agreements were used by Defendants VandeBrake and Stewart, as well as by the employees under their supervision and control, to set actual and offered prices for Ready-Mix Concrete for customers who paid the base, list or price sheet price. The price sheets and internal price lists reflecting their agreement were also used by Defendants VandeBrake and Stewart, as well as by the employees under their supervision and control, as a starting point to set actual and offered prices in the form of annual contract or quote prices, specific price quotes, bid prices, structured discount prices and other negotiated or discounted prices.

124. Defendants Stewart and VandeBrake engaged in communications throughout the year during 2006 through 2009 to discuss whether their agreements on price increases were being successfully implemented in prices offered to and/or paid by customers. Defendants

Stewart and VandeBrake were each also able to monitor the prices being offered by the other's company for Ready-Mix Concrete from information provided to them by customers and prospective customers.

125. The delivery territories of several of the plants of Defendants Great Lakes and GCC substantially overlap. In addition, Defendants Great Lakes and GCC share very high or complete levels of market concentration and market power for the supply of Ready-Mix Concrete delivered from several of their respective plants. Defendants Great Lakes and GCC are therefore able to collectively control the price of Ready-Mix Concrete sold from these plants because customers do not have the ability to seek a more competitive price from alternative suppliers.

126. Evidence supports the conclusion that Defendants VandeBrake and Stewart also agreed to territorial allocations for the delivery of Ready-Mix Concrete sold from their companies' respective plants for the period of 2006 through 2009. This time period is consistent with Defendant Stewart's statements to federal investigators that he and Defendant VandeBrake first began discussing the prices their respective companies charged for Ready-Mix Concrete in 2006. It is also consistent with evidence supporting the conclusion that Defendants Tri-State and GCC had a long-standing agreement to allocate territory. It is also highly likely that VandeBrake would seek agreements on territorial allocation from Defendant Stewart during the period of 2006 through 2009 because doing so would allow GCC to successfully maintain the price increases to which he had agreed with Defendant Van Zee for this time period with customers seeking delivery in areas where GCC would otherwise compete with Great Lakes.

127. Defendant Stewart first engaged in attempted territorial allocation several years earlier. According to Ryan Lake, when he first opened Lakes Ready-Mix he was visited by the

owners of Defendant Great Lakes, Norlyn VandeBrake, Brian Bosshart and Defendant Stewart. The owners of Great Lakes first offered to purchase Lakes Ready-Mix at cost. When Ryan Lake refused to sell, the owners of Great Lakes then suggested that he should "stay in Lake Park." Defendant Stewart had therefore already displayed a willingness to attempt to avoid the effects of competition by discussing with competitors the idea of staying within their own geographic areas.

128. In statements to federal investigators, Defendant Stewart has admitted that in 2007, in response to observing Alliance Concrete pouring near a Great Lakes plant, he obtained a plat map showing Ocheyedan Township from the County recorder and approached his co-owner Norlyn VandeBrake. Stewart stated that he asked Norlyn VandeBrake to tell his son, Defendant VandeBrake, to keep out of Great Lakes' area. When Norlyn VandeBrake refused to do so, Defendant Stewart met with Defendant VandeBrake to complain about GCC's breach of his expectations, and to discuss each of their respective companies staying in their respective areas. Defendant Stewart's reaction to the Alliance delivery, his decision to obtain maps to make his point and his effort to have Norlyn VandeBrake discuss compliance with Defendant VandeBrake all support the conclusion that an agreement concerning territorial allocation between GCC (then Alliance) and Great Lakes already existed before 2007.

129. In statements to federal investigators, Defendant Stewart admitted that he and Defendant VandeBrake had an agreement concerning the geographic area in which their respective companies would deliver Ready-Mix Concrete, and that the two agreed to stay out of each other's back yards and stay in their respective "historic areas." The idea that such territories would be "historic" supports the conclusion that territorial allocation agreements had been in place for an extended period of time.

130. In statements to federal investigators, Defendant VandeBrake admitted to a territorial understanding with Defendant Great Lakes that the company with the plant closest to the job would get the sale. He further stated that this territorial understanding was at least in part a result of the partial common ownership by Norlyn VandeBrake of both Defendants GCC and Great Lakes. This cross-ownership – identified by Defendant VandeBrake as an incentive to allocate territories – existed since 2004.

131. Additionally, customers who received annual price quotes or contracts from Defendants Great Lakes and GCC were offered prices that were derived from an agreed starting point, or reflected agreed increases, as a result of the conspiracy, regardless of the location to which such Ready-Mix Concrete was to be delivered. Because Defendants Great Lakes and GCC share very high or complete levels of market concentration and market power for the supply of Ready-Mix Concrete from the GCC Hartley, Lake Park, Sanborn, Sibley and Spencer plants, and the Great Lakes Northwest, Spencer and Spirit Lake plants, customers who received annual price quotes or contracts also would not be able to seek a competitive price from another supplier.

132. Defendants VandeBrake and Stewart enforced the territorial and price agreements between their respective companies through bid rigging during at least 2008 and 2009. Defendant Stewart and Defendant VandeBrake, individually and through GCC employees Ryan Lake and Lee Konz, engaged in regular and ongoing discussions with one another concerning bids for specific projects. During these discussions, Defendants VandeBrake and Stewart agreed to allocate successful bids for approximately 12 to 15 projects. During these bid rigging discussions, Defendants VandeBrake and Stewart agreed which of their respective companies

would submit the anticipated successful bid and at what price or prices, and the price or prices that would be bid by the anticipated losing party.

133. By rigging bids, Defendants Stewart and VandeBrake could enforce their existing agreements regarding pricing and territories, collectively meet their shared goal of "keeping prices up," and "swap" larger projects. Bid rigging allows parties to a price-fixing or territorial agreement to deter cheating on the agreement on particularly lucrative projects that might otherwise reward cheating.

134. Defendants VandeBrake and Stewart rigged bids or attempted to rig bids for at least the following projects: May City Water Treatment Plant, Sidewalks and City Lighting in Milford, Dickenson County Courthouse Parking, Arnold's Park Paving, Bay Harbor Tunnel, Spencer West Side CDBG Storm Sewer, Spencer/Lincoln School, East Okoboji Beach, Sibley Airport, 19th Street Spirit Lake, Clay County, and Spencer Hospital Parking.

135. Direct purchasers of Ready-Mix Concrete from the GCC Hartley, Lake Park, Sanborn, Sibley and Spencer plants, and the Great Lakes Northwest, Spencer and Spirit Lake plants, were substantially impacted by the conspiracy between Defendants VandeBrake and Stewart on behalf of their respective companies to fix prices and allocate territories, and their enforcement of those agreements through bid-rigging. These purchasers paid substantially more for Ready-Mix Concrete than they would have in the absence of the conspiracy, and suffered antitrust injury to their business or property.

## THE GCC / SIOUXLAND CONSPIRACY

136. From March 2001 to December 7, 2009, Douglas Patrick was General Manager of Defendant Siouxland. Doug Patrick's supervisor was Pat Gorup, who during the GCC/Siouxland Class Period was President and CEO of Siouxland's parent Lyman Richey, and who was

promoted in September 2010 to Executive Vice President of Lyman Richey's parent Ash Grove. From before 2006 through December 7, 2009, Patrick had and exercised full and final authority over all pricing decisions for Ready-Mix Concrete sold by Siouxland. Patrick exercised final authority for prices of Ready-Mix Concrete, additives and related charges that were stated on price sheets, stated in bids, stated in quotes or otherwise offered to customers or applied to sales by Siouxland.

137. From March 2001 to December 7, 2009, Cody Harris was Plant Manager of Defendant Siouxland. Patrick was the direct supervisor of Harris. From before 2006 through December 7, 2009, Harris's responsibilities included sales of Ready-Mix Concrete by Defendant Siouxland. With the supervision of Patrick, Harris determined the pricing of Ready-Mix Concrete sold by Siouxland and prepared bids, quotes, annual contract prices and other prices for Ready-Mix Concrete by Defendant Siouxland.

138. From 2001 until June 2008, Defendant Siouxland owned and operated one plant in South Sioux City, Nebraska, which served the Sioux City area. In June 2008, Siouxland acquired Standard Ready Mix, Inc. in Sioux City, Ludey's Ready Mix in Vermillion, South Dakota, and Maurice Concrete and Supply in Maurice, Iowa. The Standard, Maurice and Ludey's plants were purchased from Mark Jensen. Patrick had and exercised full and final authority over all pricing decisions for Ready-Mix Concrete sold by the Standard, Maurice and Ludey's plants after their purchase.

139. Beginning in June 2008, Patrick began engaging in meetings and discussions with Defendant VandeBrake concerning the prices that their respective companies would charge for Ready-Mix Concrete, and reached specific agreements setting such prices. During these

discussions, Patrick and Defendant VandeBrake agreed that they needed to "get prices up" or "keep prices up."

140. After June 2008, Defendant VandeBrake and Patrick engaged in discussions before each of their respective companies, including Defendants GCC and Siouxland, issued their annual price sheets for 2009, and reached an agreement concerning the increase in prices for Ready-Mix Concrete for their respective companies' 2009 price sheets.

141. In statements to federal investigators, Patrick and Defendant VandeBrake have admitted that they had an agreement regarding increases of the 2009 price sheet prices for Defendants Siouxland and GCC. In an electronic calendar entry prepared by Defendant VandeBrake as a note to himself, and obtained by federal investigators, Defendant VandeBrake confirmed long-running conspiratorial discussions with Patrick and the existence of a conspiracy with Siouxland:

> Thought about this! 07' there was no price fixing because [CW-1 (Patrick)] wanted to run or make Mark J. Sell out! 08' we did talk but So. Land took all the work! (Show job list) 09' we talked but again other than the watertreatment plant which [CW-1 (Patrick)] to stay off of and I low balled it! So. Land took all the work! There was a conspiracy but it didn't work!

142. In 2009, Defendant VandeBrake and Patrick prepared, or instructed others under their supervision and control to prepare, price sheets and/or internal price lists for GCC and Siouxland that reflected the price increases to which they had agreed. The price sheets and internal price lists reflecting their agreement were provided to customers and employees of their respective companies to be used for determining the price of the Ready-Mix Concrete they sold or offered for sale.

143. The price sheets and internal price lists reflecting their agreement were used by Defendant VandeBrake and Patrick, as well as by the employees under their supervision and

control, to set actual and offered prices for Ready-Mix Concrete for customers who paid the base, list or price sheet price. The price sheets and internal price lists reflecting their agreement were also used by Defendant VandeBrake and Patrick, as well as by the employees under their supervision and control, as a starting point to set actual and offered prices in the form of annual contract or quote prices, specific price quotes, bid prices, structured discount prices and other negotiated or discounted prices.

144. Defendant VandeBrake and Patrick engaged in additional communications during 2009 to discuss whether their agreements on prices and price increases were being successfully implemented in prices offered to and/or paid by customers. Defendant VandeBrake and Patrick were each also able to monitor the prices being offered by the other's company for Ready-Mix Concrete from information provided to them by customers and prospective customers.

145. The pricing by Defendants GCC and Siouxland support the existence of agreements between Defendant VandeBrake and Patrick to coordinate their prices or price increases for Ready-Mix Concrete for 2009. The transaction data provided by Defendants Siouxland and GCC indicate that the actual prices paid by customers for most plants were parallel in that they were identical or moved together. For example, the data indicate that prices for 4000 PSI Ready-Mix Concrete sold from GCC's Le Mars North, Le Mars South, Remsen, Akron, Moville, and Sergeant Bluff plants are correlated with prices for the same product from Siouxland's Sioux City, 11th Street, and South Sioux City plants. This correlation confirms the co-movement of prices paid to Defendants GCC and Siouxland from these plants, and indicates that these plants compete in the same geographic market. This correlation also indicates that, when Defendants GCC and Siouxland entered into conspiratorial agreements on their prices,

these agreements had a systematic and class-wide impact on prices actually paid by members of the GCC/Siouxland Class.

146. The delivery territories of several of the plants of Defendants Siouxland and GCC substantially overlap. In addition, Defendants Siouxland and GCC share very high or complete levels of market concentration and market power for the supply of Ready-Mix Concrete delivered from several of their respective plants. Defendants Siouxland and GCC are therefore able to collectively control the price of Ready-Mix Concrete sold from these plants because customers do not have the ability to seek a more competitive price from alternative suppliers.

147. Additionally, customers who received annual price quotes or contracts from Defendants Siouxland and GCC were offered prices that were derived from an agreed starting point, or reflected agreed increases, as a result of the conspiracy, regardless of the location to which such Ready-Mix Concrete was to be delivered. Because Defendants Siouxland and GCC share very high or complete levels of market concentration and market power for the supply of Ready-Mix Concrete from the GCC Le Mars North, Le Mars South, Remsen, Akron, Moville and Sergeant Bluff plants, and the Siouxland 11th Street, South Sioux City, and Sioux City plants, customers who received annual price quotes or contracts also would not be able to seek a competitive price from another supplier.

148. Defendant VandeBrake and Patrick enforced and enhanced the price agreement between their respective companies through bid rigging from around or before June 2008 until March 2009. Siouxland plant manager Cody Harris also engaged in bid rigging with Defendant VandeBrake during late 2008 and early 2009, acting under the supervision and control of Patrick.

149. During late 2008 Defendant VandeBrake, Patrick and Harris met to discuss “getting prices up” or “keeping prices up,” and further to discuss a bid-rigging arrangement.

During late 2008 and early 2009, Defendant VandeBrake, individually and through GCC employee Lee Konz, engaged in discussions with Patrick and Harris concerning bids for specific projects. During these discussions, Defendant VandeBrake and Patrick and/or Harris agreed to allocate successful bids for approximately 15 to 18 projects. During these bid rigging discussions, Defendant VandeBrake and Patrick and/or Harris agreed which of their respective companies would submit the anticipated successful bid and at what price or prices, and the price or prices that would be bid by the anticipated losing party.

150. By rigging bids, Defendant VandeBrake and Patrick could enforce their existing agreement regarding pricing, collectively meet their shared goal of "keeping prices up," and "swap" larger projects. Bid rigging allows parties to a price-fixing agreement to deter cheating on the agreement on particularly lucrative projects that might otherwise reward cheating.

151. Defendant VandeBrake, individually and through GCC employee Konz, and Patrick and/or Harris rigged bids or attempted to rig bids for at least the following projects: Auger Cap Piles, Elk Point, SD; BPI Building Expansion, Dakota City, IA; Paving over Big Sioux River on Highway 3, Westfield, IA; Dakota Valley High School Addition, McCook Lake, SD; First Street and Lewis Boulevard; Floyd River Bridge; Nativity Church Parking, Sioux City, IA; Highway 20/Highway 77; Sioux City Animal Control Building; General Quote to Small Construction; South Sioux City Flood Drain; Warner Museum of Aviation and Transportation, Sgt. Bluff, IA; West 24th Reconstruction in Sioux City, IA; Whispering Creek, Sioux City, IA; Dordt College Residence Hall; Miranda Apartments, Dakota Dunes, SD; Washington and Clay Streets, Elk Point, SD; and Sioux City Wastewater Treatment.

152. Defendant Siouxland brought the bid-rigging activities of Siouxland and GCC to the attention of the DOJ in March 2009, pursuant to the DOJ's Corporate Antitrust Leniency

Program. Siouxland did not bring the price-fixing activities of Siouxland and GCC to the attention of the DOJ until October of 2009. The fixed 2009 price sheets of Siouxland were never withdrawn from use or from customers, and customers were never informed that the 2009 price sheets of Siouxland were the result of an antitrust conspiracy. Patrick and Harris remained employed by Siouxland until December 7, 2009.

153. Direct purchasers of Ready-Mix Concrete from the GCC Le Mars North, Le Mars South, Remsen, Akron, Moville and Sergeant Bluff plants, and the Siouxland 11th Street, South Sioux City, and Sioux City plants were substantially impacted by the conspiracy between Defendant VandeBrake and Patrick on behalf of their respective companies to fix prices, and their enforcement of those agreements through bid-rigging. These purchasers paid substantially more for Ready-Mix Concrete than they would have in the absence of the conspiracy, and suffered antitrust injury to their business or property.

**ADDITIONAL ALLEGATIONS REGARDING GCC AND VS HOLDING**

154. Each of the three conspiracies described above was a continuing conspiracy, and each of the co-conspirators benefitted from the continuing nature of the conspiracies.

155. In January 2008, the assets of Alliance were acquired by Grupo Cementos de Chihuahua, a multi-national cement company. Upon consummation of the sale, Alliance changed its name to VS Holding, Inc. VS Holding, Inc. is and was owned by the same shareholders who owned Alliance Concrete, Inc., including Defendant VandeBrake. VS Holding received the proceeds of the sale of the assets of Alliance, which were more than $80 million. These proceeds were distributed to the shareholders of VS Holding.

156. Alliance directly received the benefits of the three conspiracies described above in the form of artificially and unlawfully inflated prices for the Ready-Mix Concrete sold by the

company. The value of the assets of Alliance was also increased as a result of the three conspiracies described above. VS Holding and its shareholders received, in part, the fruits of the three conspiracies when they received the proceeds of the sale of the assets of Alliance.

157. Apart from the sale of its assets, VS Holding is one and the same as Alliance Concrete, Inc., has the same owners and officers as Alliance Concrete, Inc., is charged with the same knowledge as Alliance Concrete, Inc., and is charged with the same participation in the conspiracies as Alliance Concrete, Inc. By the terms of the sale of its assets to Grupo Cementos de Chihuahua, VS Holding retained the liabilities of Alliance Concrete, Inc.

158. VS Holding has never taken any affirmative action to withdraw from any of the three conspiracies described above. VS Holding never made a clean breast to authorities or communicated its withdrawal in a manner reasonably calculated to reach its co-conspirators. VS Holding never severed all ties to any of the conspiracies and their fruits, and has never acted affirmatively to defeat any of the conspiracies by confessing to and cooperating with authorities.

159. Because it set in motion all of the three conspiracies set forth above, never withdrew from any of the conspiracies but instead received and enjoyed the fruits of those conspiracies, and permitted the continuation of the conspiracies by actively concealing their existence, VS Holding is jointly and severally liable with other co-conspirators – including Defendants VandeBrake, Stewart, GCC, Tri-State, Great Lakes, and Siouxland (if appropriate cooperation is not provided to Plaintiffs pursuant to ACPERA) – for all damages caused by the conspiracies, both before and after the sale of assets to Grupo Cementos de Chihuahua.

160. Following the sale of the assets of Alliance to Defendant GCC, Defendant GCC possessed the same knowledge of the three conspiracies described above that was previously possessed by Alliance – including the knowledge and participation of Defendant VandeBrake

and co-conspirators Lee Konz, Ryan Lake and David Bierman. Defendant GCC retained most or all of the employees of Alliance, continued the same business activities as Alliance, and possessed most or all of the documents and records of Alliance.

161. Following the sale, Defendant VandeBrake and his unnamed co-conspirators, including but not limited to Lee Konz, Ryan Lake and David Bierman, continued to actively lead, facilitate and benefit from the three conspiracies described above on behalf of Defendant GCC. Defendant GCC has never taken any affirmative action to withdraw from any of the three conspiracies described above, and instead benefitted from the continuing nature of the conspiracies. GCC never made a clean breast to authorities or communicated its withdrawal in a manner reasonably calculated to reach its co-conspirators. GCC never severed all ties to any of the conspiracies and their fruits, and has never acted affirmatively to defeat any of the conspiracies by confessing to and cooperating with authorities.

162. Defendant GCC facilitated the successful continuation of the three conspiracies described above by engaging in secret meetings and communications with co-conspirators, acting to conceal the conspiracies and conspiratorial acts from customers and authorities, and providing – through its employees – false or materially incomplete information to authorities during the investigation.

163. Because it took actions necessary to ensure the continuation of all three of the conspiracies set forth above, permitted the continuation of the conspiracies by concealing their existence, and never withdrew from any of the conspiracies but instead received and enjoyed the fruits of those conspiracies, Defendant GCC is jointly and severally liable with other co-conspirators – including Defendants VandeBrake, Stewart, VS Holding, Tri-State, Great Lakes, and Siouxland (if appropriate cooperation is not provided to Plaintiffs pursuant to ACPERA) –

for all damages caused by the conspiracies, both before and after the sale of assets to Grupo Cementos de Chihuahua.

**FRAUDULENT CONCEALMENT**

164. Throughout the Class Period, Defendants and their co-conspirators intended to and did affirmatively and fraudulently conceal their wrongful conduct and the existence of their unlawful combination and conspiracy from Plaintiffs and other members of the Classes alleged herein, and intended that their communications with each other and their resulting actions be kept secret from Plaintiffs and other Class members.

165. Defendants' illegal price-fixing, bid-rigging and territorial conspiracies are, by their nature, inherently self-concealing, and the affirmative actions of the Defendants and their co-conspirators were wrongfully concealed and carried out in a manner that precluded detection. Defendants discussed and formed their anticompetitive agreements during secret meetings and conversations. No one other than the co-conspirators was invited to or present at these meetings or conversations. Defendants conducted these meetings and conversations in secrecy to prevent the discovery of their conspiracy by members of the Class.

166. Defendants Stewart and VandeBrake, as well as individuals designated to testify for the Defendants' companies, testified that they and their companies were aware that the price-fixing, bid-rigging and territorial allocations that were the subject of the three conspiracies were illegal and violated federal law. Defendants VandeBrake and Stewart, as well as co-conspirators, provided false and materially incomplete information to federal investigators during interviews, supporting the conclusion that they knew their activities were illegal and that they had an incentive to conceal the nature and extent of their activities. Siouxland employee Patrick

originally provided materially incomplete information to federal investigators, thereby concealing the price-fixing activities of Siouxland until October 2009.

167. The Defendants represented their price sheets, bids quotes and other prices, as well as delivery locations, to be the products of a free, open and competitive market. Defendant knew that their conspiratorial activities would not be successful if they were disclosed to their customers or others, and therefore actively concealed their existence.

168. By virtue of the fraudulent concealment by Defendant and their co-conspirators, the running of any statute of limitations has been tolled and suspended with respect to any claims that Plaintiffs and the other Class members have as a result of the unlawful contracts, combinations and conspiracies alleged in this Complaint. The GCC/Tri-State Class, GCC/Great Lakes Class and GCC/Siouxland Class may therefore assert and recover damages for their claims for activities of the Defendants throughout the Class Periods alleged herein.

169. Plaintiffs and members of the Classes could not have discovered the combination and conspiracy alleged herein at any earlier date by the exercise of reasonable due diligence, because of the deceptive practices and techniques of secrecy employed by Defendants and their co-conspirators to avoid detection of and affirmatively conceal their actions.

170. Based on the foregoing, customers of Defendants and their co-conspirators, including Plaintiffs and members of the Classes, were unaware that prices for Ready-Mix Concrete had been artificially raised and maintained as a result of the wrongful conduct as alleged in this Complaint until at least the filing of the criminal Information against defendant Vande Brake, and continued to pay artificially inflated prices thereafter until prices in the market adjusted to competitive levels.

## CLASS ACTION ALLEGATIONS

### A. The GCC/Tri-State Class.

171. The "GCC/Tri-State Class Period" means the period of time from January 1, 2006 through December 31, 2009.

172. Plaintiffs Audino, Brown, Waterman and Holtze bring this action on behalf of themselves and, under Federal Rule of Civil Procedure 23(b)(2) and (b)(3), as representatives of the following Class (hereafter the "GCC/Tri-State Class"):

> All Persons who purchased Ready-Mix Concrete at any time during the GCC/Tri-State Class Period directly from the GCC (or Alliance) Hawarden, Orange City, Sioux Center and Sheldon plants, or the Tri-State Rock Valley plant, but excluding Defendants, their co-conspirators, their respective predecessors, parents, subsidiaries, and affiliates, and federal government entities.

173. Plaintiffs Audino, Brown, Waterman and Holtze propose that they be appointed representatives of the GCC/Tri-State Class, and that Plaintiffs' counsel be appointed Class Counsel for the GCC/Tri-State Class.

174. According to the transaction data produced by GCC and Tri-State, the number of unique direct purchasers falling into the definition of the GCC/Tri-State Class is well in excess of 3,000. Therefore, the joinder of all GCC/Tri-State Class members is impracticable.

175. There are questions of law and fact common to the GCC/Tri-State Class, including the scope, duration, nature and impact of the conspiracy between Defendants Tri-State and GCC.

176. Plaintiffs Audino, Brown, Waterman and Holtze purchased Ready-Mix Concrete directly from the GCC (or Alliance) Hawarden, Orange City, Sioux Center and Sheldon plants, or the Tri-State Rock Valley plant, during the GCC/Tri-State Class Period, and suffered injury to their business and property as a result of the GCC/Tri-State Conspiracy. Plaintiffs Audino,

Brown, Waterman and Holtze therefore possess standing to represent members of the GCC/Tri-State Class.

177. Plaintiffs Audino, Brown, Waterman and Holtze are members of the GCC/Tri-State Class, and their claims are typical of the claims of Class members generally. The claims of Plaintiffs Audino, Brown and Waterman arise from the same conduct giving rise to the claims of the GCC/Tri-State Class, and the relief Plaintiffs Audino, Brown, Waterman and Holtze seek is common to the Class.

178. Plaintiffs Audino, Brown, Waterman and Holtze will fairly and adequately protect the interests of the GCC/Tri-State Class. The interests of Plaintiffs Audino, Brown, Waterman and Holtze coincide with, and are not antagonistic to, those of the Class.

179. Plaintiffs are represented by competent counsel experienced in the prosecution of class action antitrust litigation, including antitrust claims against Ready-Mix Concrete manufacturers, and will fairly and adequately represent the interests of the GCC/Tri-State Class.

180. Questions of law and fact common to all members of the GCC/Tri-State Class predominate over any questions affecting only individual class members. Predominating common questions include, without limitation:

a. whether Defendants Tri-State and GCC and their co-conspirators conspired to fix, raise, stabilize or maintain the price of Ready-Mix Concrete;

b. the mechanics, scope and extent of the conspiracy;

c. whether the conspiracy affected the prices of Ready-Mix Concrete paid by direct purchasers during the GCC/Tri-State Class Period;

d. the time period during which the conspiracy existed;

e. whether the conspiracy violated Section 1 of the Sherman Act;

f. whether the conspiracy caused injury to the business and property of members of the GCC/Tri-State Class;

g. whether members of the GCC/Tri-State Class are entitled to declaratory or injunctive relief;

h. the appropriate measure of damages sustained by members of the GCC/Tri-State Class; and

i. whether Defendants Tri-State and GCC and their co-conspirators affirmatively and fraudulently concealed the conspiracy.

181. A class action is superior to any other available method for the fair and efficient adjudication of the claims of the GCC/Tri-State Class. Indeed, it is the only realistic method for litigating the large number of claims at issue herein. Class treatment will permit a large number of similarly-situated persons to prosecute their common claims in a single forum simultaneously and efficiently. There are no difficulties likely to be encountered in the management of this lawsuit that would preclude its maintenance as a class action, and no superior alternative exists for the fair and efficient adjudication of the controversy.

182. The Tri-State and GCC Defendants and their co-conspirators have acted on grounds generally applicable to the GCC/Tri-State Class, thereby making final injunctive relief appropriate with respect to the Class as a whole.

**B. The GCC/Great Lakes Class.**

183. The "GCC/Great Lakes Class Period" means the period of time from January 1, 2006 through December 31, 2009.

184. Plaintiff Brown brings this action on behalf of itself and, under Federal Rule of Civil Procedure 23(b)(2) and (b)(3), as representative of the following Class (hereafter the "GCC/Great Lakes Class"):

> All Persons who purchased Ready-Mix Concrete at any time during the GCC/Great Lakes Class Period directly from the GCC Hartley, Lake Park, Sanborn, Sibley and Spencer plants, and the Great Lakes Northwest, Spencer and Spirit Lake plants, but excluding Defendants, their co-conspirators, their respective predecessors, parents, subsidiaries, and affiliates, and federal government entities.

185. Plaintiff Brown proposes that it be appointed representative of the GCC/Great Lakes Class, and that Plaintiffs' counsel be appointed Class Counsel for the GCC/Great Lakes Class.

186. According to the transaction data produced by GCC and Great Lakes, the number of unique direct purchasers falling into the definition of the GCC/Great Lakes Class is in excess of 2,900. Therefore, the joinder of all GCC/Great Lakes Class members is impracticable.

187. There are questions of law and fact common to the GCC/Great Lakes Class, including the scope, duration, nature and impact of the conspiracy between Defendants Great Lakes and GCC.

188. Plaintiff Brown purchased Ready-Mix Concrete directly from the GCC (or Alliance) Lake Park and Sibley plants, and the Great Lakes Northwest, Spencer and Spirit Lake plants, during the GCC/Great Lakes Class Period, and suffered injury to its business and property as a result of the GCC/Great Lakes Conspiracy. Plaintiff Brown therefore possess standing to represent members of the GCC/Great Lakes Class.

189. Plaintiff Brown is a member of the GCC/Great Lakes Class, and its claims are typical of the claims of Class members generally. The claims of Plaintiff Brown arise from the

same conduct giving rise to the claims of the GCC/Great Lakes Class, and the relief Plaintiff Brown seeks is common to the Class.

190. Plaintiff Brown will fairly and adequately protect the interests of the GCC/Great Lakes Class. Plaintiff Brown's interests coincide with, and are not antagonistic to, those of the Class.

191. Plaintiffs are represented by competent counsel experienced in the prosecution of class action antitrust litigation, including antitrust claims against Ready-Mix Concrete manufacturers, and will fairly and adequately represent the interests of the GCC/Great Lakes Class.

192. Questions of law and fact common to all members of the GCC/Great Lakes Class predominate over any questions affecting only individual class members. Predominating common questions include, without limitation:

a. whether Defendants Great Lakes and GCC and their co-conspirators conspired to fix, raise, stabilize or maintain the price of Ready-Mix Concrete;

b. the mechanics, scope and extent of the conspiracy;

c. whether the conspiracy affected the prices of Ready-Mix Concrete paid by direct purchasers during the GCC/Great Lakes Class Period;

d. the time period during which the conspiracy existed;

e. whether the conspiracy violated Section 1 of the Sherman Act;

f. whether the conspiracy caused injury to the business and property of members of the GCC/Great Lakes Class;

g. whether members of the GCC/Great Lakes Class are entitled to declaratory or injunctive relief;

h. the appropriate measure of damages sustained by members of the GCC/Great Lakes Class; and

i. whether Defendants Great Lakes and GCC and their co-conspirators affirmatively and fraudulently concealed the conspiracy.

193. A class action is superior to any other available method for the fair and efficient adjudication of the claims of the GCC/Great Lakes Class. Indeed, it is the only realistic method for litigating the large number of claims at issue herein. Class treatment will permit a large number of similarly-situated persons to prosecute their common claims in a single forum simultaneously and efficiently. There are no difficulties likely to be encountered in the management of this lawsuit that would preclude its maintenance as a class action, and no superior alternative exists for the fair and efficient adjudication of the controversy.

194. The Great Lakes and GCC Defendants and their co-conspirators have acted on grounds generally applicable to the GCC/Great Lakes Class, thereby making final injunctive relief appropriate with respect to the Class as a whole.

**C. The GCC/Siouxland Class.**

195. The "GCC/Siouxland Class Period" means the period of time from July 1, 2009 through December 31, 2009.

196. Plaintiffs Audino, Sioux City Engineering, Le Mars, Brown and Holtze bring this action on behalf of themselves and, under Federal Rule of Civil Procedure 23(b)(2) and (b)(3), as representatives of the following Class (hereafter the "GCC/Siouxland Class"):

> All Persons who purchased Ready-Mix Concrete at any time during the GCC/Siouxland Class Period directly from the GCC Le Mars North, Le Mars South, Remsen, Akron, Moville and Sergeant Bluff plants, and the Siouxland 11th Street, South Sioux City, and Sioux City plants, but excluding Defendants, their co-conspirators, their respective predecessors, parents, subsidiaries, and affiliates, and federal government entities.

197. Plaintiffs Audino, Sioux City Engineering, Le Mars, Brown and Holtze propose that they be appointed representatives of the GCC/Siouxland Class, and that Plaintiffs' counsel be appointed Class Counsel for the GCC/Siouxland Class.

198. According to the transaction data produced by GCC and Siouxland, the number of unique direct purchasers falling into the definition of the GCC/Siouxland Class is well in excess of 900. Therefore, the joinder of all GCC/Siouxland Class members is impracticable.

199. There are questions of law and fact common to the GCC/Siouxland Class, including the scope, duration, nature and impact of the conspiracy between Defendants Siouxland and GCC.

200. Plaintiffs Audino, Sioux City Engineering, Le Mars, Brown and Holtze purchased Ready-Mix Concrete directly from the GCC Le Mars North, Le Mars South, Remsen, Akron, Moville and Sergeant Bluff plants, or the Siouxland 11th Street, South Sioux City, and Sioux City plants, during the GCC/Siouxland Class Period, and suffered injury to their business and property as a result of the GCC/Siouxland Conspiracy. Plaintiffs Audino, Sioux City Engineering, Le Mars, Brown and Holtze therefore possess standing to represent members of the GCC/Siouxland Class.

201. Plaintiffs Audino, Sioux City Engineering, Le Mars, Brown and Holtze are members of the GCC/Siouxland Class, and their claims are typical of the claims of Class members generally. The claims of Plaintiffs Audino, Sioux City Engineering, Le Mars, Brown and Holtze arise from the same conduct giving rise to the claims of the GCC/Siouxland Class, and the relief Plaintiffs Audino, Sioux City Engineering, Le Mars, Brown and Holtze seek is common to the Class.

202. Plaintiffs Audino, Sioux City Engineering, Le Mars, Brown and Holtze will fairly and adequately protect the interests of the GCC/Siouxland Class. The interests of Plaintiffs Audino, Sioux City Engineering, Le Mars, Brown and Holtze coincide with, and are not antagonistic to, those of the Class.

203. Plaintiffs are represented by competent counsel experienced in the prosecution of class action antitrust litigation, including antitrust claims against Ready-Mix Concrete manufacturers, and will fairly and adequately represent the interests of the GCC/Siouxland Class.

204. Questions of law and fact common to all members of the GCC/Siouxland Class predominate over any questions affecting only individual class members. Predominating common questions include, without limitation:

a. whether Defendants Siouxland and GCC and their co-conspirators conspired to fix, raise, stabilize or maintain the price of Ready-Mix Concrete;

b. the mechanics, scope and extent of the conspiracy;

c. whether the conspiracy affected the prices of Ready-Mix Concrete paid by direct purchasers during the GCC/Siouxland Class Period;

d. the time period during which the conspiracy existed;

e. whether the conspiracy violated Section 1 of the Sherman Act;

f. whether the conspiracy caused injury to the business and property of members of the GCC/Siouxland Class;

g. whether members of the GCC/Siouxland Class are entitled to declaratory or injunctive relief;

h. the appropriate measure of damages sustained by members of the GCC/Siouxland Class;

i. whether Defendants Siouxland and GCC and their co-conspirators affirmatively and fraudulently concealed the conspiracy; and

j. whether Defendant Siouxland is entitled to limited liability pursuant to ACPERA as a leniency applicant.

205. A class action is superior to any other available method for the fair and efficient adjudication of the claims of the GCC/Siouxland Class. Indeed, it is the only realistic method for litigating the large number of claims at issue herein. Class treatment will permit a large number of similarly-situated persons to prosecute their common claims in a single forum simultaneously and efficiently. There are no difficulties likely to be encountered in the management of this lawsuit that would preclude its maintenance as a class action, and no superior alternative exists for the fair and efficient adjudication of the controversy.

206. The Siouxland and GCC Defendants and their co-conspirators have acted on grounds generally applicable to the GCC/Siouxland Class, thereby making final injunctive relief appropriate with respect to the Class as a whole.

**COUNT I: GCC/TRI-STATE CONSPIRACY**
**(Against GCC, VS Holding, VandeBrake, Tri-State and Van Zee)**

207. Plaintiffs Audino, Brown, Waterman and Holtze incorporate all foregoing allegations as though set forth verbatim herein.

208. Count I is brought by Plaintiffs Audino, Brown, Waterman and Holtze on behalf of the GCC/Tri-State Class, against Defendants GCC, VS Holding, VandeBrake, Tri-State, and Van Zee for damages caused by the GCC/Tri-State Conspiracy.

209. Throughout the GCC/Tri-State Class Period, Defendants GCC, VS Holding, VandeBrake, Tri-State, and Van Zee and their co-conspirators engaged in a continuing

combination and conspiracy in unreasonable restraint of trade and commerce in Ready-Mix Concrete in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

210. This combination and conspiracy consisted of agreements, understandings and concerted action between Defendants GCC, VS Holding, VandeBrake, Tri-State, and Van Zee and their co-conspirators, the substantial objective of which was to raise and maintain at artificially high levels the prices of Ready-Mix Concrete.

211. For the purpose of forming and effectuating their combination and conspiracy, Defendants GCC, VS Holding, VandeBrake, Tri-State, and Van Zee and their co-conspirators did those things which they combined and conspired to do, including, among other things, discussing, forming and implementing agreements to raise and maintain at artificially high levels the prices for Ready-Mix Concrete and to allocate territories for the sale of Ready-Mix Concrete.

212. Throughout the GCC/Tri-State Class Period, Defendants GCC, VS Holding, VandeBrake, Tri-State, and Van Zee and their co-conspirators conspired to and did set agreed-upon prices, set agreed-upon price increases, and allocate geographic territories for Ready-Mix Concrete sold by them in the Northern District of Iowa and elsewhere.

213. Throughout the GCC/Tri-State Class Period, Defendants GCC, VS Holding, VandeBrake, Tri-State, and Van Zee and their co-conspirators had a unity of purpose or common design and understanding, and a meeting of the minds in an unlawful arrangement.

214. As a result of the combination and conspiracy between Defendants GCC, VS Holding, VandeBrake, Tri-State, and Van Zee and their co-conspirators, the prices of Ready-Mix Concrete paid by Plaintiffs Audino, Brown, Waterman and Holtze and GCC/Tri-State Class members were artificially sustained or increased.

215. The conduct of Defendants GCC, VS Holding, VandeBrake, Tri-State, and Van Zee and their co-conspirators was undertaken for the purpose and with the specific intent of raising and maintaining prices of Ready-Mix Concrete and eliminating competition, in *per se* violation of Section 1 of the Sherman Act.

216. As a result of the combination and conspiracy between Defendants GCC, VS Holding, VandeBrake, Tri-State, and Van Zee and their co-conspirators, Plaintiff Audino, Brown, Waterman and Holtze, and the GCC/Tri-State Class suffered injury to their business and property.

**COUNT II: GCC/GREAT LAKES CONSPIRACY**
**(Against GCC, VS Holding, VandeBrake, Great Lakes and Stewart)**

217. Plaintiff Brown incorporates all foregoing allegations as though set forth verbatim herein.

218. Count II is brought by Plaintiff Brown on behalf of the GCC/Great Lakes Class, against Defendants GCC, VS Holding, VandeBrake, Great Lakes and Stewart, for damages caused by the GCC/Great Lakes Conspiracy.

219. Throughout the GCC/Great Lakes Class Period, Defendants GCC, VS Holding, VandeBrake, Great Lakes and Stewart and their co-conspirators engaged in a continuing combination and conspiracy in unreasonable restraint of trade and commerce in Ready-Mix Concrete in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

220. This combination and conspiracy consisted of agreements, understandings and concerted action between Defendants GCC, VS Holding, VandeBrake, Great Lakes and Stewart and their co-conspirators, the substantial objective of which was to raise and maintain at artificially high levels the prices of Ready-Mix Concrete.

221. For the purpose of forming and effectuating their combination and conspiracy, Defendants GCC, VS Holding, VandeBrake, Great Lakes and Stewart and their co-conspirators did those things which they combined and conspired to do, including, among other things, discussing, forming and implementing agreements to: (i) raise and maintain at artificially high levels the prices for Ready-Mix Concrete, (ii) allocate territories for the sale of Ready-Mix Concrete, and (iii) submit non-competitive and rigged bids.

222. Throughout the Class Period, Defendants GCC, VS Holding, VandeBrake, Great Lakes and Stewart and their co-conspirators conspired to and did set agreed-upon prices, set agreed-upon price increases, and submit non-competitive and rigged bids for Ready-Mix Concrete sold by them in the Northern District of Iowa and elsewhere.

223. Throughout the GCC/Great Lakes Class Period, Defendants GCC, VS Holding, VandeBrake, Great Lakes and Stewart and their co-conspirators had a unity of purpose or common design and understanding, and a meeting of the minds in an unlawful arrangement.

224. As a result of the combination and conspiracy between Defendants GCC, VS Holding, VandeBrake, Great Lakes and Stewart and their co-conspirators, the prices of Ready-Mix Concrete paid by Plaintiff Brown and GCC/Great Lakes Class members were artificially sustained or increased.

225. The conduct of Defendants GCC, VS Holding, VandeBrake, Great Lakes and Stewart and their co-conspirators was undertaken for the purpose and with the specific intent of raising and maintaining prices of Ready-Mix Concrete and eliminating competition, in *per se* violation of Section 1 of the Sherman Act.

226. As a result of the combination and conspiracy between Defendants GCC, VS Holding, VandeBrake, Great Lakes and Stewart and their co-conspirators, Plaintiff Brown and the GCC/Great Lakes Class suffered injury to their business and property.

**COUNT III: GCC/SIOUXLAND CONSPIRACY**
**(Against GCC, VS Holding, VandeBrake and Siouxland)**

227. Plaintiffs Audino, Sioux City Engineering, Le Mars, Brown and Holtze incorporate all foregoing allegations as though set forth verbatim herein.

228. Count III is brought by Plaintiffs Audino, Sioux City Engineering, Le Mars, Brown and Holtze on behalf of the GCC/Siouxland Class, against Defendants GCC, VS Holding, VandeBrake and Siouxland, for damages caused by the GCC/Siouxland Conspiracy.

229. Throughout the GCC/Siouxland Class Period, Defendants GCC, VS Holding, VandeBrake and Siouxland and their co-conspirators engaged in a continuing combination and conspiracy in unreasonable restraint of trade and commerce in Ready-Mix Concrete in violation of Section 1 of the Sherman Act, 15 U.S.C. § 1.

230. This combination and conspiracy consisted of agreements, understandings and concerted action between Defendants GCC, VS Holding, VandeBrake and Siouxland and their co-conspirators, the substantial objective of which was to raise and maintain at artificially high levels the prices of Ready-Mix Concrete.

231. For the purpose of forming and effectuating their combination and conspiracy, Defendants GCC, VS Holding, VandeBrake and Siouxland and their co-conspirators did those things which they combined and conspired to do, including, among other things, discussing, forming and implementing agreements to: (i) raise and maintain at artificially high levels the prices for Ready-Mix Concrete, and (ii) submit non-competitive and rigged bids.

232. Throughout the Class Period, Defendants GCC, VS Holding, VandeBrake and Siouxland and their co-conspirators conspired to and did set agreed-upon prices, set agreed-upon price increases, and submit non-competitive and rigged bids for Ready-Mix Concrete sold by them in the Northern District of Iowa and elsewhere.

233. Throughout the GCC/Tri-State Class Period, Defendants GCC, VS Holding, VandeBrake and Siouxland and their co-conspirators had a unity of purpose or common design and understanding, and a meeting of the minds in an unlawful arrangement.

234. As a result of the combination and conspiracy between Defendants GCC, VS Holding, VandeBrake and Siouxland and their co-conspirators, the prices of Ready-Mix Concrete paid by Plaintiffs Audino, Sioux City Engineering, Le Mars, Brown and Holtze, and GCC/Siouxland Class members were artificially sustained or increased.

235. The conduct of Defendants GCC, VS Holding, VandeBrake and Siouxland and their co-conspirators was undertaken for the purpose and with the specific intent of raising and maintaining prices of Ready-Mix Concrete and eliminating competition, in *per se* violation of Section 1 of the Sherman Act.

236. As a result of the combination and conspiracy between Defendants GCC, VS Holding, VandeBrake and Siouxland and their co-conspirators, Plaintiffs Audino, Sioux City Engineering, Le Mars, Brown and Holtze, and the GCC/Siouxland Class suffered injury to their business and property.

## REQUEST FOR RELIEF

WHEREFORE, Plaintiffs request:

**A. For the GCC/Tri-State Class:**

1. That the Court determine that this action may be maintained as a class action under Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the GCC/Tri-State Class, that the Court determine that Plaintiffs Audino, Brown, Waterman and Holtze are adequate and appropriate representatives of the GCC/Tri-State Class, that the Court designate the undersigned Interim Co-Lead Counsel as counsel for the GCC/Tri State Class;

2. That the Court adjudge and decree that Defendants GCC, VS Holding, VandeBrake, Tri-State and Van Zee and their co-conspirators engaged in an unlawful combination and conspiracy in violation of Section 1 of the Sherman Act;

3. That Defendants GCC, VS Holding, VandeBrake, Tri-State and Van Zee and their respective affiliates, successors, transferees, assignees and the officers, directors, partners, agents and employees thereof, and all other persons acting or claiming to act on their behalf, be restrained from, in any manner:

a) continuing, maintaining or renewing any contract, combination or conspiracy alleged herein, or engaging in any other contract, combination or conspiracy having a similar purpose or effect, and adopting or following any practice, plan, program or device having a similar purpose or effect;

b) communicating or causing to be communicated to any other person engaged in the production, distribution or sale of any product that

Defendants GCC, VS Holding and Tri-State also produce, distribute or sell, including Ready-Mix Concrete, information concerning prices or other terms or conditions of any such product, except to the extent necessary in connection with a *bona fide* sales transaction between parties to such communications;

4. That the Court adjudge and decree that Defendants GCC, VS Holding, VandeBrake, Tri-State and Van Zee are jointly and severally liable to Plaintiffs Audino, Brown, Waterman and Holtze and the GCC/Tri-State Class for three-fold the damages resulting from their conduct;

5. That the Court enter judgment for Plaintiffs Audino, Brown, Waterman and Holtze and the GCC/Tri-State Class against Defendants GCC, VS Holding, VandeBrake, Tri-State and Van Zee and each of them, jointly and severally, for three times the amount of damages sustained by Plaintiffs Audino, Brown, Waterman and Holtze, and the Class, together with the costs and expenses of this action, including reasonable attorneys' fees, all as allowed by law;

6. That Plaintiffs Audino, Brown, Waterman and Holtze and the GCC/Tri-State Class be awarded pre-judgment and post-judgment interest at the highest rate allowed by law; and

7. That the Court grant such additional and further relief as may be deemed just and proper.

**B. For the GCC/Great Lakes Class:**

1. That the Court determine that this action may be maintained as a class action under Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the GCC/Great Lakes Class, that the Court determine that Plaintiff Brown is an adequate and appropriate representative of the GCC/Great Lakes Class, that the Court designate the undersigned Interim Co-Lead Counsel as counsel for the GCC/Great Lakes Class;

2. That the Court adjudge and decree that Defendants GCC, VS Holding, VandeBrake, Great Lakes and Stewart and their co-conspirators engaged in an unlawful combination and conspiracy in violation of Section 1 of the Sherman Act;

3. That Defendants GCC, VS Holding, VandeBrake, Great Lakes and Stewart and their respective affiliates, successors, transferees, assignees and the officers, directors, partners, agents and employees thereof, and all other persons acting or claiming to act on their behalf, be restrained from, in any manner:

a) continuing, maintaining or renewing any contract, combination or conspiracy alleged herein, or engaging in any other contract, combination or conspiracy having a similar purpose or effect, and adopting or following any practice, plan, program or device having a similar purpose or effect;

b) communicating or causing to be communicated to any other person engaged in the production, distribution or sale of any product that Defendants GCC, VS Holding and Great Lakes also produce, distribute or sell, including Ready-Mix Concrete, information concerning prices or

other terms or conditions of any such product, except to the extent necessary in connection with a *bona fide* sales transaction between parties to such communications;

4. That the Court adjudge and decree that Defendants GCC, VS Holding, VandeBrake, Great Lakes and Stewart are jointly and severally liable to Plaintiff Brown and the GCC/Great Lakes Class for three-fold the damages resulting from their conduct;

5. That the Court enter judgment for Plaintiff Brown and the GCC/Great Lakes Class against Defendants GCC, VS Holding, VandeBrake, Great Lakes and Stewart and each of them, jointly and severally, for three times the amount of damages sustained by Plaintiff Brown and the Class, together with the costs and expenses of this action, including reasonable attorneys' fees, all as allowed by law;

6. That Plaintiff Brown and the GCC/Great Lakes Class be awarded pre-judgment and post-judgment interest at the highest rate allowed by law; and

7. That the Court grant such additional and further relief as may be deemed just and proper.

**C. For the GCC/Siouxland Class:**

1. That the Court determine that this action may be maintained as a class action under Rule 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure on behalf of the GCC/Siouxland Class, that the Court determine that Plaintiffs Audino, Sioux City Engineering, Le Mars, Brown and Holtze are adequate and appropriate representatives of the GCC/Siouxland Class, that the Court designate the undersigned Interim Co-Lead Counsel as counsel for the GCC/Siouxland Class;

2. That the Court adjudge and decree that Defendants GCC, VS Holding, VandeBrake and Siouxland and their co-conspirators engaged in an unlawful combination and conspiracy in violation of Section 1 of the Sherman Act;

3. That Defendants GCC, VS Holding, VandeBrake and Siouxland and their respective affiliates, successors, transferees, assignees and the officers, directors, partners, agents and employees thereof, and all other persons acting or claiming to act on their behalf, be restrained from, in any manner:

a) continuing, maintaining or renewing any contract, combination or conspiracy alleged herein, or engaging in any other contract, combination or conspiracy having a similar purpose or effect, and adopting or following any practice, plan, program or device having a similar purpose or effect;

b) communicating or causing to be communicated to any other person engaged in the production, distribution or sale of any product that Defendants GCC, VS Holding and Siouxland also produce, distribute or sell, including Ready-Mix Concrete, information concerning prices or other terms or conditions of any such product, except to the extent necessary in connection with a *bona fide* sales transaction between parties to such communications;

4. That the Court adjudge and decree that Defendants GCC, VS Holding, VandeBrake and Siouxland are jointly and severally liable to Plaintiffs Audino, Sioux City Engineering, Le Mars, Brown and Holtze, and the GCC/Siouxland Class for three-fold the damages resulting from their conduct;

5. That the Court enter judgment for Plaintiffs Audino, Sioux City Engineering, Le Mars, Brown and Holtze, and the GCC/Siouxland Class against Defendants GCC, VS Holding, VandeBrake and Siouxland and each of them, jointly and severally, for three times the amount of damages sustained by Plaintiffs Audino, Sioux City Engineering, Le Mars, Brown and Holtze, and the Class, together with the costs and expenses of this action, including reasonable attorneys' fees, all as allowed by law;

6. That Plaintiffs Audino, Sioux City Engineering, Le Mars, Brown and Holtze, and the GCC/Siouxland Class be awarded pre-judgment and post-judgment interest at the highest rate allowed by law; and

7. That the Court grant such additional and further relief as may be deemed just and proper.

**DEMAND FOR JURY TRIAL**

Pursuant to Rule 38(a) of the Federal Rules of Civil Procedure, Plaintiffs demand a jury trial as to all issues triable by a jury.

Dated: March 29, 2011

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on March 29, 2011, a copy of the foregoing document was filed electronically. Notice of this filing will be sent to counsel of record by operation of the Court's electronic filing system.

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