

EXHIBIT A

EXHIBIT A

United States District Court
for the District of Arizona
January 22, 2010
Motion Hearing Minutes

Minute Entry - Civil

Case No. CV 09-2546-PHX-JAT

Title: National Labor Relations Board v. Cemex, Inc.

MINUTE ENTRY before Judge James A. Teilborg. Court Reporter: David German

Appearances: Mara-Louis Anzalone, Chris J. Doyle and Paul R. Irving for Petitioner.
Arthur T. Carter for Respondent.

1:35 p.m. Continuation of motion hearing of 12/7/2009 re: [1] Motion to Enforce
Subpoena.

As to the following Items, as set forth in [28] Joint Document and Production Costs
Statement, the Court rules as follows:

- Item #1 - Respondent's objection is overruled (Documents showing profit or loss margins of each of the Facilities since 1/1/2006)
- Item #2 - Respondent's objection is sustained - (Dispatch logs for work performed, including Command data)
- Item #3 - Respondent's objection is sustained- (Documents relating or referring to any decision to dispatch any of Respondent's trucks or ready-mix product to a particular jobsite)
- Item #4 - Respondent's objection is sustained- Documents relating or referring to any decision to assign a job order to a particular Facility)
- Item #5 - Respondent's objection is sustained - (Payroll records for union and non-union facilities operated)
- Item #6 - Respondent's objection is sustained - (Work schedules)
- Item #7 - Respondent's objection is sustained - (Documents that identify the number and identity of employees assigned to batch, deliver or pour ready-mix from any of Respondent's Facilities, by individual job order)
- Item #8 - Respondent's objection is sustained - (Job tickets or work orders)
- Item #9 - Respondent's objection is sustained - (Contracts with customers for work to be performed)

- Item #10 - Respondent's objection is sustained - (Such documents as will show the

nature, identity and volume of work assigned to each of Respondent's Arizona Facilities)

- Item #11 - Respondent's objection is sustained - (Such documents as will show the following with respect to jobs performed by Respondent's Represented and Non-Represented Employees: (a) geographical location of the job; (b) type and amount of work performed; (c) facility from which product was supplied; (d) dollar amount of the job; (e) individuals responsible for obtaining the work order; (f) manner in which dispatch of truck and product to a particular jobsite was determined; (g) manner to which the assignment of the job order to a particular Respondent facility was determined; (h) individuals responsible for interacting with the client in question

The Court takes under advisement the Petitioner's oral request for the Court to review the protective order as to whether or not the title is in conflict with the order.

Time in Court: 1 hr 25 min.

CASE ASSIGNED TO:

Hon. James A. Teilborg, Judge

EXHIBIT B

EXHIBIT B

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IN THE UNITED STATES DISTRICT COURT

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FOR THE DISTRICT OF ARIZONA

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NATIONAL LABOR RELATIONS BOARD,

No. 2:09-cv-2546-PHX-JAT

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Plaintiff,

AMENDED ORDER (amending Order at Doc. # 25)

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vs.

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CEMEX, INC.,

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Defendant.

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Pending before the Court is National Labor Relations Board's ("NLRB") application pursuant to §11(2) of the National Labor Relations Act, 29 U.S.C. § 161(2) for compliance on the part of CEMEX, Inc. ("CEMEX") with a subpoena duces tecum dated September 4, 2009 (Doc. # 1). The Court held an initial hearing on December 7, 2009. On the basis of the December 7 hearing and the arguments contained in the parties' moving papers, the Court will address in part the issues presented by NLRB's application. The remaining issues will be considered at the January 22, 2010, hearing. In short, in this Order the Court will address CEMEX's request for a protective order and to seal the discovery documents, reserving argument and determination on the remaining issue of whether the Court should enforce the September 4, 2009, subpoena duces tecum.

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1 **I. BACKGROUND**

2 On June 30, 2009 the NLRB's General Counsel issued and served on CEMEX a
3 Fourth Amended Consolidated Complaint and a notice of hearing charging CEMEX with
4 violating various statutes for, *inter alia*, diverting work from its union-represented employees
5 to its non-unionized workforce and closing two of its unionized facilities. The NLRB
6 contends CEMEX's conduct was undertaken based on its employees' union activities. (Doc.
7 #2). On September 4, 2009, the NLRB issued a subpoena duces tecum to CEMEX's
8 Custodian of Records. (Doc. #2, Ex. A). Upon CEMEX's refusal to produce documents the
9 NLRB took action in this Court on October 5, 2009 for the enforcement of the September 4,
10 2009 subpoena duces tecum against CEMEX.

11 **II. CEMEX's REQUEST FOR PROTECTIVE ORDER AND TO SEAL**
12 **DOCUMENTS**

13 **A. Protective Order Is Granted**

14 CEMEX claims it needs a protective order with regards to Items 23 and 28 because
15 those documents contain competitively and financially sensitive information, and also
16 contain customer information.¹

17 "[T]he public can gain access to litigation documents and information produced
18 during discovery unless the party opposing disclosure shows 'good cause' why a protective
19 order is necessary." *Phillips v. General Motors Corp.*, 307 F.3d 1206, 1210 (9th Cir. 2002).
20 The district court is allowed to override the presumption of public access where "good cause"
21 is shown. FED.R.CIV.P. 26(c); *Phillips*, 307 F.3d at 1210. "For good cause to exist, the party
22 seeking protection bears the burden of showing specific prejudice or harm will result if no
23 protective order is granted." *Phillips*, 307 F.3d at 1210-11. "Broad allegations of harm,
24 unsubstantiated by specific examples or articulated reasoning do not satisfy the Rule 26(c)
25 test." *Beckman Indus., Inc. v. Int'l Ins. Co.*, 966 F.2d 470, 476 (9 Cir. 1992) (quotation

26
27 ¹The ALJ found good cause for granting a protective order regarding the profit/loss
28 statements and the customer information as to Item 23; however, denied the request to seal
the documents.

1 omitted). The Court will balance the public and private interests to decide if a protective
2 order is necessary if particularized harm is found. *Phillips*, 307 F.3d at 1211.

3 CEMEX has a substantial interest in protecting the confidentiality of their customer
4 lists and profit/loss statements from the general public, and more specifically, their
5 competitors and potential competitors. If this information were allowed to be public,
6 CEMEX could suffer considerable harm with competitors potentially undercutting
7 CEMEX's prices to all of their customers with very little effort. Some of the harmful
8 information requested would include customer name, volume bought, price, and place of
9 delivery. Furthermore, CEMEX claims if the information was public, labor unions would
10 use it to bargain against CEMEX. Accordingly, CEMEX has provided specific examples and
11 articulated reasoning as to why there would be harm absent a protective order.

12 CEMEX's showing of good cause is stronger when balanced against the public's
13 interest to documents during the discovery process. The right to inspect and copy judicial
14 records is generally "justified by the interest of citizens in keeping a watchful eye on the
15 workings of public agencies" and "understanding the judicial process." *Kamakana v. City
16 and County of Honolulu*, 447 F.3d 1172, 1178-79 (9th Cir. 2006) (citations and quotations
17 omitted). However, "[t]he public has less of a need for access to court records attached only
18 to non-dispositive motions because those documents are often 'unrelated, or only tangentially
19 related, to the underlying cause of action.'" *Id.* at 1179 (quotation omitted).

20 Therefore, given CEMEX's considerable need for protection of commercially
21 sensitive information and the public's relatively low need for access to documents produced
22 during discovery, the balance weighs in favor of issuing a protective order as to Item 23 and
23 28. It is important to note that the documents produced during discovery might never make
24 it onto any type of dispositive motion, or be admitted into evidence at trial.

25 **B. Sealing Documents is Premature**

26 **1. In General**

27 CEMEX argues that they need the additional protection of having the documents
28 sealed. However, this Court disagrees, and finds that putting the documents under seal would

1 be premature. *See, e.g.*, LRCiv 5.6 (“The Court generally will not enter an order that gives
2 advance authorization to file documents under seal that are designated . . . under a protective
3 order or confidentiality agreement.”). Since the case is still in the discovery stages, many of
4 the documents produced will be “unrelated, or only tangentially related, to the underlying
5 cause of action.” *Kamakana*, 447 F.3d at 1179. “Materials unearthed during discovery . . .”
6 are private and not a part of the judicial record, which are “public documents almost by
7 definition, and the public is entitled to access by default.” *Id.* at 1180 (citation omitted).
8 Therefore, sealing documents that are already subject to a protective order at the discovery
9 stage is unnecessary.

10 If the court were to add the additional protection of a seal, “once the [sealed
11 discovery] documents [were] made part of a dispositive motion [e.g., a summary judgment
12 motion ruled upon by the court] . . . they [would] lose their status of being raw fruits of
13 discovery,’ and no longer enjoy protected status ‘without some overriding interests in favor
14 of keeping the discovery documents under seal.” *Foltz v. State Farm Mut. Auto. Ins. Co.*,
15 331 F.3d 1122, 1136 (9th Cir. 2003) (quotation omitted). After losing status as a sealed
16 document, in order to keep it sealed when attached to a dispositive motion or when admitted
17 to the trial record, it will have to meet the “compelling reasons” standard. *Kamakana*, 447
18 F.3d at 1179. Without more, a “good cause” showing will not satisfy the “compelling
19 reasons” test. *Id.* at 1180. Because this Court finds sealing the discovery documents
20 premature, it does not address whether CEMEX has “compelling reasons” for protection
21 under seal.

22 **2. Freedom of Information Act (“FOIA”)**

23 CEMEX also argues that additional protection above a protective order is needed
24 because the information is subject to the FOIA. (Doc. #7 at 9). CEMEX claims not having
25 the documents sealed would leave open the possibility that the unions or any competitor
26 could request the information, essentially eviscerating the protection of the confidential
27 information. *Id.* The NLRB argues that an FOIA request for documents is too speculative
28 and an insufficient reason to seal the documents. (Doc. #10 at 6).

1 This Court agrees with the NLRB that the *potential* for an FOIA request is insufficient
2 to require the sealing of the documents. There is no guarantee that an FOIA request will be
3 encountered in the present case. Furthermore, the “FOIA provisions offer sufficient
4 protection for [CEMEX] during the period . . . which charging parties may seek information
5 from their files.” *E.E.O.C. v. AON Consulting, Inc.*, 149 F.Supp.2d 601, 609 (S.D. Ind.
6 2001). CEMEX is required to receive notice of such requests for commercially sensitive
7 information so that they have an opportunity to object to its disclosure. *See* 5 U.S.C. §
8 552(b)(4); 29 C.F.R. § 1610.19; *AON Consulting*, 149 F.Supp.2d at 609. In addition to the
9 notice requirement, the protective order language requires the NLRB to return the documents
10 fifteen (15) days after the close of the record.

11 Therefore, for the reasons stated above, the Court denies CEMEX’s request to seal the
12 documents.

13 **III. JOINT DOCUMENT AND PRODUCTION COSTS STATEMENT**

14 The Court will set argument on the remaining issue for January 22, 2010, at 1:30 PM.
15 The Court will not revisit the protective order and sealing issues.

16 The parties shall jointly prepare and file by January 15, 2010, a statement of each of
17 NLRB’s requests currently before the Court, organized as follows:

18 1. A description of the item or category of items requested and rationale and
19 anticipated need for the item(s).

20 A. The objection or objections by defendant to the request and rationale for
21 each objection. If the objection includes length of time needed to respond to
22 the request, or additional cost incurred in responding to the request (in the
23 event the Court decides to shift the burden of cost to the NLRB), the
24 respondent shall specify how much time or cost is anticipated.

25 B. If the respondent proposes an alternative source of the information sought,
26 then Plaintiff shall specify in detail why the alternative is unacceptable and
27 will not substantially suffice for the purpose requested.

28 2. Next item, etc.

1 Accordingly,

2 **IT IS ORDERED** that National Labor Relations Board's application pursuant to
3 §11(2) of the National Labor Relations Act (Doc. # 1) is granted in part, denied in part, and
4 Ordered to remain pending for further resolution at the January 22, 2010, hearing.

5 **IT IS FURTHER ORDERED** that CEMEX's Motion for Leave to File Sur-Reply
6 (Doc. # 14) is denied.

7 **IT IS FURTHER ORDERED** setting oral argument on the remaining issues as
8 discussed above for January 22, 2010, at 1:30 PM in Courtroom 503, 401 West Washington
9 Street, Phoenix, AZ 85003. To assist the court reporter, the parties shall prepare and bring
10 to the oral argument a Table of Authorities, in alphabetical order, which includes all of the
11 authorities on which the parties will rely at oral argument. The Table of Authorities shall not
12 exceed the scope of the parties pleadings.

13 **IT IS FURTHER ORDERED** that the parties shall jointly prepare and file the
14 document above referenced on or before January 15, 2010.

15 The Court enters the following with respect to the Protective Order discussed above:

16 **IT IS ORDERED** that documents produced by CEMEX to Counsel for General
17 Counsel that are marked "Confidential" shall only be disclosed to the ALJ and the court
18 reporter, Counsel for General Counsel and its staff, and witnesses who are under oath and
19 actually testifying about such Confidential Information in the underlying proceeding.
20 Confidential Information produced by CEMEX shall be secured and maintained by Counsel
21 for General Counsel in a manner so as to avoid disclosure of its contents to any persons not
22 identified herein. All witnesses who are shown such Confidential Information during their
23 testimony are hereby ordered to maintain such information in confidence and to not disclose
24 the contents of such Confidential Information outside their testimony in this proceeding.

25 **IT IS FURTHER ORDERED** that Confidential Information introduced in these
26 proceedings shall not be disclosed to or discussed with the Charging Party Unions or their
27 agents or representatives. Specifically, Counsel for General Counsel and witnesses in these
28 proceedings are hereby precluded from disclosing Confidential Information to or discussing

1 Confidential Information with the Charging Party Unions, their agents or their
2 representatives. Further, the Charging Party Unions and any competitors shall be excluded
3 from the hearing at times when the Confidential Information is being discussed.

4 **IT IS FINALLY ORDERED** that this Order will continue to be binding throughout
5 and after the final disposition of this action. All Confidential Information shall be used only
6 for the prosecution and/or defense of this action. Within fifteen days (15) after the close of
7 the record, Counsel for General Counsel shall return all Confidential Information and any
8 copies thereof (including summaries and excerpts) to CEMEX's Counsel.

9 Amended *nunc pro tunc* effective 21st day of December, 2009.

10 DATED this 1st day of February, 2010.

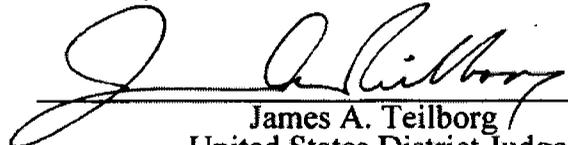
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12 _____
13 James A. Teilborg
14 United States District Judge
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EXHIBIT C

EXHIBIT C

**UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION 28**

| | | |
|------------------------------------|---|------------------------|
| CEMEX, INC. | § | Case Nos.: 28-CA-22165 |
| | § | 28-CA-22169 |
| Employer, | § | 28-CA-22220 |
| | § | 28-CA-22313 |
| and | § | 28-CA-22409 |
| | § | 28-CA-22534 |
| GENERAL TEAMSTERS (EXCLUDING | § | 28-CA-22267 |
| MAILERS), STATE OF ARIZONA, LOCAL | § | 28-CA-22419 |
| UNION NO. 104, AN AFFILIATE OF THE | § | |
| INTERNATIONAL BROTHERHOOD OF | § | |
| TEAMSTERS | § | |
| | § | |
| Charging Party, | § | |
| | § | |
| and | § | |
| | § | |
| INTERNATIONAL UNION OF OPERATING | § | |
| ENGINEERS LOCAL 428, AFL-CIO | § | |
| | § | |
| Charging Party | § | |

**ORDER GRANTING RESPONDENT'S MOTION FOR PROTECTIVE ORDER AND SEALING OF THE
RECORD WITH RESPECT TO DOCUMENTS PRODUCED AND MARKED AS CONFIDENTIAL**

Respondent, CEMEX, Inc. ("Respondent") has filed a Motion For Protective Order and Sealing of the Record with Respect to Documents Produced and Marked as Confidential. Respondent's Motion concerns confidential commercial and financial business information to be produced by Respondent in response to a subpoena duces tecum issued by Counsel for General Counsel, including profit and loss statements and reports concerning the type and amount of work Respondent has performed for specific customers ("Confidential Information").

The undersigned Administrative Law Judge finds that, for good cause shown, and consistent with Rule 26(c) of the Federal Rules of Civil Procedure, which provides for the

issuance of a Protective Order to protect and control the production and use of confidential or trade secret information, Respondent's Motion should be granted as follows:

1. Documents produced by Respondent to Counsel for General Counsel that are marked "Confidential" shall only be disclosed to the undersigned and the court reporter, Counsel for General Counsel and its staff, and witnesses who are under oath and actually testifying about such Confidential Information in this proceeding. Confidential Information produced by Respondent shall be secured and maintained by Counsel for General Counsel in a manner so as to avoid disclosure of its contents to any persons not identified herein. All witnesses who are shown such Confidential Information during their testimony are hereby ordered to maintain such information in confidence and to not disclose the contents of such Confidential Information outside their testimony in this proceeding.

2. Confidential Information introduced in these proceedings shall not be disclosed to or discussed with the Charging Party Unions or their agents or representatives. Specifically, Counsel for General Counsel and witnesses in these proceedings are hereby precluded from disclosing Confidential Information to or discussing Confidential Information with the Charging Party Unions, their agents or their representatives. Further, the Charging Party Unions and members of the public shall be excluded from the hearing at times when the Confidential Information is being discussed.

3. Confidential Information introduced in these proceedings shall be filed under Seal, and the record shall be appropriately designated as Sealed by the court reporter with respect to such Confidential Information, as well as any testimony regarding such Confidential Information.

4. This Order will continue to be binding throughout and after the final disposition of this action. All Confidential Information shall be used only for the prosecution and/or defense of this action. Within fifteen days (15) after the close of the record, Counsel for General Counsel shall return all Confidential Information and any copies thereof (including summaries and excerpts) to Respondent's Counsel.

Ordered this ____ day of _____, 2009.

Administrative Law Judge

EXHIBIT D

EXHIBIT D

SUBPOENA DUCES TECUM

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Custodian of Records
CEMEX, Inc.

To ~~4646 East Van Buren, Suite 250~~
Phoenix, AZ 85008

As requested by Counsel for the General Counsel, Chris J. Doyle

whose address is 2600 North Central Avenue, Suite 1800 Phoenix, Arizona 85004
(Street) (City) (State) (ZIP)

YOU ARE HEREBY REQUIRED AND DIRECTED TO APPEAR BEFORE _____

an Administrative Law Judge

of the National Labor Relations Board

at the Hearing Room, National Labor Relations Board, 2600 North Central Avenue, Suite 1800

in the City of Phoenix, Arizona

on the 20th day of July 20 10 at 9: 00 (a.m.) (~~p.m.~~) or any adjourned

or rescheduled date to testify in CEMEX, Inc.

Cases 28-CA-22165 et al.

(Case Name and Number)

And you are hereby required to bring with you and produce at said time and place the following books, records, correspondence, and documents:

See attachment

In accordance with the Board's Rules and Regulations, 29 C.F.R. Section 102.31(b) (unfair labor practice proceedings) and/or 29 C.F.R. Section 102.66(c) (representation proceedings), objections to the subpoena must be made by a petition to revoke and must be filed as set forth therein. Petitions to revoke must be received within five days of your having received the subpoena. 29 C.F.R. Section 102.111(b) (3). Failure to follow these regulations may result in the loss of any ability to raise such objections in court.

Under the seal of the National Labor Relations Board, and by direction of the Board, this Subpoena is

B - 567446

Issued at **Phoenix, Arizona**

this 6th day of July 20 10



Lesfer A. Neltzer

NOTICE TO WITNESS. Witness fees for attendance, subsistence, and mileage under this subpoena are payable by the party at whose request the witness is subpoenaed. A witness appearing at the request of the General Counsel of the National Labor Relations Board shall submit this subpoena with the voucher when claiming reimbursement.

PRIVACY ACT STATEMENT

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the info **Exhibit D** assist the National Labor Relations Board (NLRB) in processing representation and/or unfair labor practice proceedings and related proceedings or li routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain the request. Disclosure of this information to the NLRB is mandatory in that failure to supply the information may cause the NLRB to seek enforcement of the subpoena in federal court.

Re: Cemex, Inc.
Cases 28-CA-22165, 28-CA-22169,
28-CA-22220, 28-CA-22313,
28-CA-22409, 28-CA-22534,
28-CA-22267, 28-CA-22419,
28-CA-22699, 28-CA-22711,
28-CA-22726, 28-CA-22823,
28-CA-22894 and 28-CA-22967

DEFINITIONS AND INSTRUCTIONS

A. "Document" or "documents" means, in any language, any written, recorded, filmed, stored, or graphic matter, whether produced or reproduced on paper, cards, tapes, film, electronic facsimile, computer storage device, or any other media, including, but not limited to, memoranda, notes, electronic-mail, minutes, records, telephone contacts, notice of disciplinary actions, photographs, correspondence, telegrams, diaries, bookkeeping entries, financial statements, tax returns, checks, check stubs, reports, studies, charts, graphs, statements, notebooks, handwritten notes, applications, agreements, books, pamphlets, periodicals, appointment calendars, records or recordings of oral conversations, employment forms, originals and all copies which are different in any way from the original, whether by interlineation, receipt, stamp, notations, indication of copies sent or received, or otherwise, and drafts. The terms include all graphic or records and representations of any kind, including without limitation photographs, charts, graphs, microfiche, microfilm, videotape recordings, motion pictures and electronic, mechanical or electrical records or recordation of any kind including without limitation electronic mail communications, computer disks, computer input or output, computer hard drive files, tapes, cassettes, disks and recordings.

B. "Correspondence" includes, but is not limited to, letters, memoranda, notes, tapes of telephone conversations or personal conversations, telegraphs, reports, teletype messages, electronic-mail, interoffice communications, fax transmissions, recordings of conversations and telefax communications.

C. "Respondent" refers to Cemex, Inc., its officers, employees, agents, representatives, accountants, attorneys, trustees, successors and assigns, and the officers, employees, agents, representatives, accountants, attorneys, trustees, successors and assigns of any entity that it owns, controls or manages.

D. "Rinker" refers to Rinker Materials Corporation, its officers, employees, agents, representatives, accountants, attorneys, trustees, successors and assigns, and the officers, employees, agents, representatives, accountants, attorneys, trustees, successors and assigns of any entity that it owns, controls or manages.

E. "Teamsters Union" refers to the General Teamsters (Excluding Mailers), State of Arizona, Local Union No. 104, an affiliate of the International Brotherhood of Teamsters, its officers, agents, and representatives.

- E. “Operators Union” refers to the International Union of Operating Engineers, Local 428, AFL-CIO, its officers, agents, and representatives.
- G. “Former Rinker Employees” refers to all drivers, mechanics, equipment operators, plant operators, heavy duty mechanics, service persons, electricians, radio technicians and operator trainees employed by the Respondent in its Southern or Central Arizona District with respect to whose terms and conditions of employment Respondent currently recognizes either the Teamsters Union or Operators Union as the exclusive, collective-bargaining representative (including those who may not have actually been employed by Rinker but who have since come to be employed within the framework described above).
- H. “Legacy Cemex Employees” refers to all drivers, mechanics, equipment operators, plant operators, heavy duty mechanics, service persons, electricians, radio technicians and operator trainees employed by the Respondent in its Southern or Central Arizona District with respect to whose terms and conditions of employment Respondent does not recognize either the Teamsters Union or the Operators Union as collective-bargaining representative.
- I. “Respondent’s Southern District facilities” refers to the following union-operated facilities: Avra Valley, Cortero, Nogales and Oracle; and the following non-union operated facilities: Apex, Columbia and Pima; and other facilities considered by Respondent to be in its Southern District.
- J. “Respondent’s Central District facilities” refers to the following union-operated facilities: 7th Street, 19th Avenue, Apache Junction, Avondale, Bard Ranch, Beeline, Buckeye, Casa Grande, Coolidge, El Mirage, Florence, Glendale, Higley, Maricopa, Queen Creek, Sacaton and Sun City; and the following non-union operated facilities: Apache Junction, Bard Ranch, Baseline, Buckeye, Casa Grande, Coolidge, Deer Valley, Globe, Heber, Laveen, Mesa, Queen Creek, San Tan, Show Low, Sierra Vista, Sun City and West; and other facilities considered by Respondent to be in its Central District.
- K. “Respondent’s Facilities” refers to both Respondent’s Southern District facilities and Respondent’s Central District facilities.
- L. “Gomez Facility” refers to Respondent’s facility located at 5150 South 27th Avenue, Phoenix, Arizona.
- M. “Table Mesa Facility” refers to Respondent’s facility located in Black Canyon City, Arizona.
- N. “Nogales Facility” refers to Respondent’s facility located in Nogales, Arizona.
- O. “Any,” “each,” and “all” shall be read to be all inclusive and to require the production of each and every document responsive to the request in which such terms appear.

P. “And” and “or” and any other conjunction or disjunction used herein shall be read both conjunctively and disjunctively, so as to make the request inclusive rather than exclusive, and to require the enumeration of all information responsive to all or any part of each request in which any conjunction or disjunction appears.

Q. Whenever used herein, the singular shall be deemed to include the plural, and vice versa; the present tense shall be deemed to include the past tense and vice versa; the masculine shall be deemed to include the feminine and vice versa.

R. The term “person” means any natural person, corporation, partnership, proprietorship, association, organization, trust, joint venture, or group of natural persons or other organizations.

S. The terms “copy” or “copies” shall refer to exact and complete copies of original documents.

T. Copies may be produced in lieu of originals, provided that such copies are exact and complete copies of original documents and that the original documents be made available at the time of production for the purposes of verifying the accuracy of such copies. Any copies of original documents, which are different in any way from the original, whether by interlineations, receipt, stamp, notations, indication of copies sent or received, or otherwise, shall themselves be considered original documents and must be produced separately from the originals or copies of originals. To the extent any responsive documents exist in electronic format, electronic format of such documents may be produced in lieu of hard copies; whichever method (electronic or paper copies) provides the greatest degree of convenience to Respondent is acceptable.

U. Documents subpoenaed shall include all documents in Respondent’s physical possession, custody or control, and/or the physical possession, custody or control of Respondent’s present and/or former supervisors, agents, attorneys, accountants, advisors, investigators, and any other persons and companies directly or indirectly employed by, or connected with Respondent.

V. This request contemplates production of responsive documents in their entirety, without abbreviation or expurgation.

W. If any document responsive to any request herein was withheld from production on the asserted ground that it is privileged, identify and describe:

- a. the author;
- b. the recipient;
- c. the date of the original document; and
- d. the subject matter of the document.

X. If any document responsive to any request herein was, but no longer is, in Respondent’s possession, custody or control, identify the document (stating its date, author,

subject, recipients and intended recipients); explain the circumstances by which the document ceased to be in Respondent's possession, custody or control, and identify (stating the person's name, employer title, business address and telephone number, and home address and telephone number) all persons known or believed to have the document or a copy thereof in their possession, custody or control.

Y. If any document responsive to any request herein was destroyed, discarded, or otherwise disposed of for whatever reasons, identify the document (stating its date, author, addressee(s), receipts and intended recipients, title and subject matter); explain the circumstances surrounding the destruction, discarding or disposal of the documents, including the timing of the destruction, discharging or disposal of the document, and identify all persons known or believed to have the document or a copy thereof in their possession, custody or control.

Z. All documents produced pursuant to this subpoena should be organized by the subpoena paragraph that each document or set of documents is responsive to, and labels referring to that subpoena paragraph should be affixed to each document or set of documents.

AA. For any document requested in this subpoena, if the document uses a code, then all documents explaining the codes used in the document are subject to this subpoena.

BB. This subpoena specifically requests the described documents, wherever maintained.

CC. This request is continuing in character and if additional responsive documents come to Respondent's attention following the date of production, such documents must be promptly produced. If any responsive document produced pursuant to this subpoena exists in electronic format, the electronic format of such documents may be produced if such method of production is preferred by Respondent.

DD. The relevant time period for this subpoena, unless stated otherwise, is **January 1, 2007, to the present**. This period is sometimes referred to in the subpoena as the "relevant period."

DOCUMENTS REQUESTED

AGENCY AND SUPERVISORY STATUS

1. Documents, including, but not limited to, job descriptions, appraisals, bulletins, and memoranda, as will show the job titles and positions, general and specific duties, authority, responsibilities, wages, wage rates or salary, fringe benefits and work schedules of the following persons, including any changes or amendments thereto, and the dates of such changes, if any, of the following individuals:

- a. Jose Quintero
- b. Paul Mitchell
- c. Richard Lynaman
- d. Mike Cook
- e. Sharon Robertson
- f. Jimmie Shields
- g. Jaime Brown
- h. Individuals employed by Respondent with responsibility for Respondent's sales, marketing, client interaction, or dispatching functions with respect to Respondent's Facilities.

2. Documents, including, but not limited to, job appraisals and evaluations, disciplinary records, and personnel records, as will show whether the persons named or described above in Paragraph 1 evaluated the work performance, attendance, or conduct of any of Respondent's employees, made oral or written reports to Respondent of any alleged work rule violations by any of Respondent's employees, or recommended, imposed, made, or granted promotions, demotions, disciplinary actions, layoffs, recalls, transfers, work assignments, suspensions, terminations or any other changes or adjustments in the terms and conditions of employment of any of Respondent's employees.

3. Documents, including, but not limited to, those typed, e-mailed, signed, or written by or based in whole or in part on information provided or authorized by any of the persons named or described above in Paragraph 1 that:

- a. refers to the formulation or effectuation of any management or labor relations policies;
- b. refers to decisions made by one or more of the persons named or described above in Paragraph 1 and whom the decisions affect;

- c. shows that one or more of the persons named or described above in Paragraph 1 were involved in interviewing an applicant, recommending or approving an applicant for hire, or recommending or approving an employee transfer;
- d. shows that one or more of the persons named or described above in Paragraph 1 were involved in evaluating the work performance of an employee, or reviewing a completed employee evaluation form;
- e. shows that one or more of the persons named or described above in Paragraph 1 were involved in granting or recommending an employee for a wage increase or a promotion;
- f. memorializes a verbal warning or oral counseling to an employee, providing or recommending a written warning to an employee, or recommending or actually suspending or discharging an employee, and informing employees about their actual or potential discharge from employment; and,
- g. shows that one or more of the persons named or described above in Paragraph 1 were involved in assigning work to one or more employees, scheduling employee work, or directing or requesting that one or more employees work overtime or hours different from their normal schedules.

4. The minutes or other memorializations of each managers' or supervisors' meeting attended by any of the individuals named or described above in Paragraph 1, showing the name of each individual who attended the meeting, the dates of the meetings, and fully describing what was discussed at each such meeting.

5. Documents, including, but not limited to, contracts, invoices, vouchers, bills, checks, and purchase orders, as will show whether any of the individuals named or described above in Paragraph 1 obtained credit, authorized or made purchases, or entered into contracts on behalf of or as an agent of Respondent.

REQUESTS COMMON TO MULTIPLE ALLEGATIONS

6. Such documents, including, but not limited to, maps with mileage scales, maps depicting the locations of all of Respondent's Facilities, as will show the geographical proximity and driving distances between any and all of Respondent's Facilities.

7. Such documents as will show the management, administrative, and supervisory composition and hierarchy of Respondent's Arizona operations during the years 2006 through the present, including any changes thereto (and the dates of such changes).

8. Such documents as will show the following with respect to each of its Former Rinker Employees and Legacy Cemex Employees, including any changes thereto (and the dates of such changes):

- a. name
- b. date of hire
- c. job duties
- d. job location(s)
- e. shift assignment(s)
- f. equipment and/or vehicle(s) operated
- g. type of product manufactured and/or transported
- h. work clothes, uniforms, insignia and badges
- i. employee benefits eligibility
- j. education, training, and experience
- k. compensation, including the method of compensation for both regular and overtime work (e.g., salaried or hourly) and the salary or wage rates.

9. a. Documents, including, but not limited to, personnel guides, handbooks, and memoranda, as will show the Respondent's hiring procedures regarding the hiring of drivers, mechanics, equipment operators, plant operators, heavy duty mechanics, service persons, electricians, radio technicians and operator trainees into positions in Respondent's Southern or Central Arizona District with respect to which Respondent currently recognizes either the Teamsters Union or Operators Union as the exclusive, collective-bargaining representative, including, but not limited to, such procedures as all tests, forms, applications, references, immigration status processes, interviews, and procedures required of successful applicants.

b. Documents, including, but not limited to, personnel guides, handbooks, and memoranda, as will show the Respondent's hiring procedures regarding the hiring of drivers, mechanics, equipment operators, plant operators, heavy duty mechanics, service persons, electricians, radio technicians and operator trainees into positions in Respondent's Southern or Central Arizona District with respect to which Respondent does not currently recognize either the Teamsters Union or Operators Union as the exclusive, collective-bargaining representative, including, but not limited to, such procedures as all tests, forms, applications, references, immigration status processes, interviews, and procedures required of successful applicants.

10. Documents, including, but not limited to, job descriptions and any changes thereto, as will show the job description(s) of the Former Rinker Employees and the Legacy Cemex

Employees, including any amendments and modifications and the dates of such amendments or modifications.

11. For every Former Rinker Employee and Legacy Cemex Employee, documents as will show the names of each employee and that of his or her supervisor, the job titles of both individuals, the facility locations to which each individual is assigned, and dates during which a supervisor-employee relationship has existed, and any changes thereto (and the dates of such changes).

12. Copies of performance evaluations and performance appraisals issued to the Former Rinker Employees and the Legacy Cemex Employees.

13. Documents as will show the name of each individual employed by Respondent at or in connection with the operation of any of Respondent's Facilities as of January 1, 2009.

14. Documents as will show all persons employed by Respondent with the authority to establish, or in any manner control, labor relations policy with respect to either the Former Rinker Employees or the Legacy Cemex Employees.

15. Personnel records, including, but not limited to, job applications, payroll records, performance evaluations, disciplinary records, job training records, work assignment sheets, and attendance records, of any individual who has, during the relevant period, been both a Former Rinker Employee and a Legacy Cemex Employee.

16. Documents, including, but not limited to, notes, memoranda, e-mails, work assignment sheets, job orders, job tickets, and payroll records, as will show any interchange or transfer of employees between Respondent's union-operated Facilities and its non-union operated Facilities (i.e., from Former Rinker Employee status to status as Legacy Cemex Employees and vice-versa), including, but not limited to, the positions held by such individuals before and after such interchange or transfer, the locations and facilities involved, and the dates of the foregoing.

17. Documents, including, but not limited to, work assignment sheets, job orders, job tickets, and payroll records, as will show any contact between individuals employed at Respondent's union-operated Facilities and its non-union operated Facilities (i.e., contact between employees herein referred to as Former Rinker Employees and as Legacy Cemex Employees).

18. Minutes of meetings of Respondent's Board of Directors, or any individuals delegated by such body, that relate or refer to the Teamsters Union or the Operators Union.

19. Documents, including, but not limited to, notes, memoranda, e-mails, and correspondence, created or received by Respondent regarding the Teamsters Union or the Operators Union.

20. Documents, including, but not limited to, policy manuals, bulletins, memoranda, and notices, as will show Respondent's rules, regulations, guidelines, policies and/or procedures relating to document retention and/or destruction, and electronic data retention and/or destruction.

WORK DIVERSION, PLANT CLOSURE, AND LAYOFF ALLEGATIONS

21. Documents, including, but not limited to, job orders, work assignment documents, and invoices, as will show the following with respect to jobs performed by Former Rinker Employees and Legacy Cemex Employees at Respondent's Facilities:

- a. geographical location of the job(s);
- b. type and amount of work performed;
- c. the name of Respondent's facility from which the product delivered to or used at such jobs or jobsites was supplied;
- d. dollar amount of the job (i.e., amount charged to customer by Respondent for said job);
- e. the names, job titles, and office locations of individuals involved in or responsible for obtaining or generating the work orders for each particular job;
- f. manner in which the dispatch of truck, driver, and product to a particular jobsite was determined (and the identities of persons making such determinations);
- g. manner in which the assignment of the job order to a particular Respondent facility was determined (and the identities of persons making such determinations) (i.e., the manner in which Respondent determined that one of its facilities, as opposed to another, would provide and deliver product to a particular jobsite); and
- h. the names, job titles, and office locations of individuals responsible for interacting with the client in question, including, but not limited to, sales personnel, customer relations, marketing, accounting, accounts receivable, and other representatives of Respondent.

22. Documents, including but not limited to, employee handbooks, work rules, policy manuals, bulletins, memoranda, and notices, that reflect, refer to, or show Respondent's rules, regulations, guidelines, policies and/or procedures relating to the dispatching of work assignments to Respondent's Facilities.

23. Documents including, but not limited to, sales rosters, marketing rosters, and directories, as will show all persons employed by Respondent with responsibility for Respondent's sales, marketing, client interaction, or dispatching functions with respect to Respondent's Facilities.

24. Documents including, but not limited to, organizational charts, as will show Respondent's organizational hierarchy and structure for the following functions at Respondent's Facilities, including, but not limited to, the names and job classifications of the individuals with responsibilities in such functions, the work and office location at which such individuals work or to which they are assigned, and the respective geographic areas serviced by such persons:

- a. sales
- b. dispatch
- c. client relations
- d. mechanical maintenance
- e. vehicle and heavy equipment purchasing

25. Documents, including, but not limited to, payroll records, as will show the identity of all individuals employed by Respondent at one of its Facilities who have been laid off and/or recalled to work by Respondent since April 2, 2008.

26. Such documents, including, but not limited to, payroll records, work assignment sheets, notes, memoranda, and e-mails, as will show the identity of individuals who perform maintenance and repair work on the vehicles used by Respondent's drivers in Respondent's operation of its Facilities, and the location(s) where such work is performed.

27. a. Documents, including but not limited to, employee handbooks, work rules, policy manuals, bulletins, memoranda, and notices, that reflect, refer to or show Respondent's rules, regulations, guidelines, policies and/or procedures relating to Former Rinker Employees in effect at any time during the last three years, including, but not limited to, Respondent's rules, regulations, guidelines, policies and/or procedures relating to assignment of work between and among Respondent's Facilities.

b. Documents, including but not limited to, employee handbooks, work rules, policy manuals, bulletins, memoranda, and notices, that reflect, refer to or show Respondent's rules, regulations, guidelines, policies and/or procedures relating to Legacy Cemex Employees in effect at any time during the last three years, including, but not limited to, Respondent's rules, regulations, guidelines, policies and/or procedures relating to assignment of work between and among Respondent's Facilities.

28. Documents as will show the identity of the individuals responsible for assigning work, including, but not limited to, work such as the delivery of product to customers, between and among Respondent's Facilities.
29. Documents, including, but not limited to, meeting agendas, notes, and minutes, as will show what was discussed, what was said and by whom, and any information otherwise disseminated during all meetings or conversations by or among Respondent's managers, supervisors, agents, or officers regarding the following:
- a. shutting down Respondent's Avra Valley, Casa Grande, and Nogales facilities;
 - b. operating Respondent's Oracle facility by using Legacy Cemex Employees.
30. Documents including, but not limited to, internal memoranda, minutes, emails, and directives, relating, referring to, or as will show any decision by Respondent to shut down Respondent's Avra Valley, Casa Grande, or Nogales facilities, or to operate its Oracle facility by using Legacy Cemex Employees, including, but not limited to, such documents as will show the identity of the individuals who made this decision and any documents relied on by such individuals in making this decision.
31. Documents including, but not limited to, meeting agendas, notes, and meeting minutes, as will show what was discussed, what was said and by whom, and any information otherwise disseminated, during the meetings or conversations regarding the decisions described above in paragraph 30.
32. Documents showing the profits and/or losses, by month or quarter, of each of Respondent's Facilities since January 1, 2006.
33. Documents as will show the clients and jobsites services by each of Respondent's Facilities, by week, including, but not limited to, "Command" data and/or other dispatch logs for work performed, or dispatched from, any of Respondent's Facilities.
34. Documents, including, but not limited to, "Command" data and/or other dispatch logs, that relate or reference any decision to dispatch Respondent's vehicles or products from one of Respondent's Facilities to a jobsite.
35. Documents, including, but not limited to "Command" data and/or other dispatch logs, that relate or reference the decision to assign any job order to any of Respondent's Facilities.
36. Documents as will show the total number of hours worked, by job classification, per month, at each of Respondent's Facilities, including, but not limited to, work schedules and payroll records.
37. Documents, including, but not limited to, work orders and delivery shipment sheets, as will show the amount of product shipped from each facility, per month.

38. a. Documents including, but not limited to, work records, time sheets, and electronic payroll documents, that identify, by respective job order, the names and positions of employees assigned to batch, deliver, and/or pour product (i.e., ready-mix, etc.) from each of Respondent's Facilities.

b. Documents as will identify the facility to which the persons described above in paragraph 38(a) were assigned at the time such work was performed.

39. Job tickets or work orders for each of Respondent's Facilities.

40. Documents, including, but not limited to, contract proposals, contract bids, contracts, applications, and agreements, submitted or agreed to, by Respondent, as will show:

- a. the performance of services by Respondent;
- b. the names, addresses, and telephone numbers of customers for whom all such services were performed;
- c. the address, county, and state where all such services were performed;
- d. the dates on which all such services were performed and on which such services were completed; and
- e. the total cost, to the customer, for the performance of all such services.

ACCRETION ALLEGATIONS

41. Documents including, but not limited to, payroll records, internal memoranda, and other business records, that relate or refer to the operation of the Respondent's Facilities by either Respondent or Rinker, including, but not limited to:

- a. an organizational chart showing the names, positions, functions, and authority of managers, supervisors, agents, or officers within the operation;
- b. the number of employees employed at each of Respondent's Facilities;
- c. the type of business engaged in;
- d. the geographic area serviced by each of Respondent's Facilities, including any changes to such geographic coverage and the dates thereof;
- e. the name(s) and title(s) of individual(s) who keep accounting records, corporate records, federal and state tax returns, and other business records, and the business address(es) where all such records are kept;

- f. the name(s), title(s), and business address(es) of the operation's principal accountant, principal bookkeeper, and principal payroll preparer;
- g. the name(s) and title(s) of individual(s) who bids and/or negotiates work for the operation, including, but not limited to, by performing sales and marketing functions;
- h. the place and manner by which advertisement for customers and business occurs;
- i. the place and manner by which recruitment of new hires occurs;
- j. the number of employees, identified by job title or craft position, employed in the operation per pay period;
- k. the knowledge, skills, abilities, and/or education possessed by each driver, mechanic, equipment operator, plant operator, heavy duty mechanic, service person, electrician, radio technician and operator trainee in the operation;
- l. the equipment, included, but not limited to, trucks and tools, used by employees in the operation;
 - i. documents, including, but not limited to, photographs or brochures, as well show the changes to the external appearance of the trucks and equipment used in the operation, if any, and the dates of such changes;
 - ii. the logos used on trucks, equipment, stationary, employee uniforms, and any changes thereto, and the dates of such changes
- m. the name(s) and title(s) of individual(s) who establish and/or manage employee and labor relations policy for the operation;
- n. the wage rate and compensation program for the operation's employees, including, but not limited to, wage rates and fringe benefits; and
- o. a complete copy of any employee and labor relations policy that applies to the operation's employees, including, but not limited to, employee handbooks, and any changes or amendments thereto.

42. Documents including, but not limited to, payroll records, as identify, by name and title or position:

- a. those employees, by names and job title or craft position, who transferred between Respondent and Rinker, and the transfer date(s) of such employees, including the projects of Respondent and Rinker on which these employees were working at the time of the transfer.

- b. those employees, identified by job title or craft position, of Respondent who are, or have been, employees of Rinker.
 - c. any of Respondent's managers, supervisors, agents, or officers who worked for Rinker, and the date(s) of employment;
 - d. any of Respondent's managers, supervisors, agents, or officers who are, or were, authorized to supervise Former Rinker employees, and the date(s) of authorization;
 - e. any of Respondent's managers, supervisors, agents, or officers who performed a supervisory function for Rinker, and the date(s) and project(s) where such supervision occurred;
 - f. any individual(s) employed by Respondent who were at any time employed by Rinker, and the date(s) of employment.
43. Documents, including, but not limited to, all contracts, leases or other agreements, including employment agreements, subcontracts, purchase and sales agreements, notes, loans, and security agreements, that relate or refer to the acquisition of Rinker by Respondent.
44. Documents that relate or refer to the post-merger integration (PMI) between Respondent and Rinker and/or any of the subjects set forth in Paragraphs 41 or 42, above, including, but not limited to, correspondence, to and from the Teamsters Union and such documents describing or referencing any meeting between Respondent and representatives of the Teamsters Union regarding such subjects.
45. Documents as relate or refer to the "tools and disciplines [Respondent has] successfully used over the past two decades to integrate new acquisitions" referred to in Lorenzo H. Zambrano's September 18, 2008 e-mail entitled, "CEMEX PMI."
46. Documents, including, but not limited to, studies and reports, as relate or refer to Respondent's plans or goals regarding the "integration" of any of the Facilities owned or previously owned by Rinker which were prepared or used during the period from one year prior to the acquisition of the Rinker facilities to the present.
47. Documents, including, but not limited to, studies and reports, as will show the criteria and methods used by Respondent for measuring and evaluating the degree of integration between Respondent's facilities owned pre-merger with those owned by Rinker pre-merger.
48. Documents, including, but not limited to, meeting notes, memoranda, invoices, e-mails, and correspondence, as will show any changes or adjustments made by Respondent to the facilities, property, trucks, and equipment acquired from Rinker, and the dates of the foregoing.

49. As to any facility or property acquired from Rinker that Respondent has closed, eliminated, or placed on inactive status, documents, including, but not limited to, accountants reports, financial statements, audits, studies, and reports as will show the reasons therefore and the dates on which such facilities or properties were closed or removed from active status.

INDEPENDENT SECTION 8(a)(1) ALLEGATIONS

50. Documents, including, but not limited to, notes, memoranda, and e-mails, describing or referencing any meetings Nicole Styles had with employees on or about September 8, 2009.

51. Documents, including, but not limited to, notes, memoranda, and e-mails, describing or referencing any meetings Michael Haynes had with employees on or about September 8, September 12, and September 24, 2009.

52. Documents, including, but not limited to, notes, memoranda, and e-mails describing or referencing any meetings Mike Dillon and Joe Simpson had with employees on or about March 22, 2010.

53. Documents, including, but not limited to, announcements, work rules, and memoranda, that will show the following policies or rules of Respondent, including the date(s) Respondent promulgated such policies or rules, the date(s) Respondent promulgated any changes or amendments to these policies or rules, and the manner in which Respondent informed its employees of these policies or rules or any changes or amendments thereto:

- a. limitations on employees' discussions about unions on Respondent's property;
- b. limitations on anyone distributing union literature on Respondent's property; and
- c. limitations placed on employees discussing disciplinary meetings.

54. A copy of Respondent's Arizona Operations Work Rules, and any changes or amendments thereto, and documents showing the dates of such changes, if any.

SECTION 8(a)(3) ALLEGATIONS

55. The complete personnel and related files of Jeff Varnadoe (Varnadoe), Renee Clark (Clark) and Cecilia Perez (Perez).

56. Documents pertaining to or referencing any of the following, including, but not limited to, all records pertaining to any investigation conducted, witness or other statements (regardless of language), notes, memoranda, e-mails, and disciplinary forms:

- a. the written warnings issued to Varnadoe on or about September 11 and 21, 2009;

- b. Varnadoe's suspension on about September 24, 2009; and
- c. Varnadoe being placed on six-month probation on about October 1, 2009.

57. Documents, including, but not limited to, notes, memoranda, e-mails, and disciplinary forms, as will identify those instances in which Respondent has disciplined in any manner any employee for the same or similar reasons that Varnadoe was disciplined, suspended, or placed on six-month probation, as referenced above in Paragraph 56, including, but not limited to, the failure to identify an oil leak or engaging in inappropriate conduct, and for each such instance, documents as will show:

- a. the employee's name, job title, home address, and telephone number;
- b. specific discipline received;
- c. date discipline was issued; and
- d. the name and job title of the person responsible for issuing such discipline.

58. Documents, including, but not limited to, notes, memoranda, letters, correspondence, and e-mails, which describe or reference the communications between Respondent's managers, supervisors, agents, or officers and Varnadoe regarding the written warnings issued to Varnadoe on about September 11 and 21, 2009, Varnadoe's suspension on about September 24, 2009, and/or Varnadoe being placed on six-month probation on about October 1, 2009, and/or the basis for any of these actions.

59. Documents, including, but not limited to, notes, memoranda, letters, correspondence and e-mails, which describe or reference the communications between or among Respondent's managers, supervisors, agents, or officers regarding written warnings issued to Varnadoe on about September 11 and 21, 2009, Varnadoe's suspension on about September 24, 2009, and/or Varnadoe being placed on six-month probation on about October 1, 2009, and/or the basis for any of these actions.

60. Documents, including, but not limited to, job descriptions, as will show the job duties and/or assignments for powder-train drivers.

61. Documents, including, but not limited to, notes, e-mails, memoranda, letters, and correspondence, as will show whether powder-train drivers who perform walk-through pre-trip vehicle inspections without any supervision, and instances of the foregoing.

62. Documents, including, but not limited to, notes, e-mails, memoranda, letters, correspondence, and disciplinary forms, as will show communications between Respondent's managers, supervisors, agents, or officers and Varnadoe regarding Varnadoe performing walk-through pre-trip vehicle inspections.

63. Documents, including, but not limited to, notes, e-mails, memoranda, letters, and correspondence, as will show communications between or among Respondent's managers, supervisors, agents, or officers regarding Varnadoe performing walk-through pre-trip vehicle inspections.

64. Documents, including, but not limited to, memoranda and discipline forms, pertaining to or referencing the oral warning issued to Clark on about September 12, 2009, including, but not limited to, all documents pertaining to any investigation, witness or other statements, notes, memoranda, e-mails, and disciplinary forms.

65. Documents, including, but not limited to, notes, e-mails, memoranda, disciplinary notices, letters, correspondence, and disciplinary forms, as will show the instances in which Respondent has disciplined in any employee for the same or similar reasons that Clark was disciplined, including, but not limited to, violating Respondent's non-solicitation policy, and for each such instance, such documents as will show:

- a. the employee's name, job title, home address, and telephone number;
- b. specific discipline received;
- c. date discipline was issued; and
- d. the name and job title of the person responsible for issuing such discipline.

66. Documents, including, but not limited to, e-mails, memoranda, letters, discipline forms, correspondence, and disciplinary forms, as will show communications between Respondent's managers, supervisors, agents, or officers and Clark regarding the oral warning issued to Clark on about September 12, 2009.

67. Documents, including, but not limited to, e-mails, memoranda, letters, discipline forms, and correspondence, as will show communications between or among Respondent's managers, supervisors, agents, or officers regarding the unwarranted oral warning issued to Clark on about September 12, 2009, and/or the basis for this action.

68. Regarding Respondent's decision not to rehire Perez on or about September 26, 2008:

- a. documents, including, but not limited to, e-mails, memoranda, letters, and correspondence, as will show communications between or among Respondent's managers, supervisors, agents, or officers;
- b. such documents that reference or describe the reasons for Respondent's decision;
- c. such documents that Respondent used or relied upon in making its decision; and

- d. the name(s) and title(s) of individuals who recommended and/or decided to eliminate such positions.

SECTION 8(a)(5) ALLEGATIONS

69. Documents, including, but not limited to, correspondence, to and from the Teamsters Union regarding or related to requests to recognize and/or bargain with it as the exclusive, collective-bargaining representative of the Legacy Cemex Employees, from June 15, 2009, to the present.

70. Documents, including, but not limited to, correspondence to and from the Teamsters Union, regarding any of the following:

- a. Respondent's failure to apply articles or sections of any collective-bargaining agreement between Rinker and the Teamsters Union to the Legacy Cemex Employees; and
- b. Teamsters Union requests that Respondent apply the articles or sections of any collective-bargaining agreement between Rinker and the Teamsters Union to the Legacy Cemex Employees.

71. Documents, including, but not limited to, notes, memoranda, correspondence, and e-mails that memorialize or reference any communications and correspondence between or among Respondent's managers, supervisors, agents, or officers concerning any of the following:

- a. Respondent's decision to close its Nogales Facility;
- b. Respondent's decision to subcontract or assign work belonging to or normally performed by employees represented (or claimed as being represented) by the Teamsters Union at the Nogales, Arizona, facility to employees not affiliated with the Teamsters Union;
- c. Respondent's decision to subcontract or assign work belonging to or normally performed by employees represented (or claimed as being represented) by the Operators Union at Respondent's Gomez and Table Mesa Facilities to employees not affiliated with the Operators Union;
- d. Respondent's decision to apply policies to the Legacy Cemex Employees, including, but not limited to, policies entitled "CEMEX Arizona Operations Progressive Discipline," "CEMEX Arizona Operations Work Rules," and "CEMEX Arizona Operations Attendance Policy;"
- e. Respondent's decision to meet with its Legacy Cemex Employees, represented by the Teamsters Union, to discuss the posting of hours worked, during the period of March 22, 2010 to the present;

- f. Respondent's decision to meet with its Legacy Cemex Employees, represented by the Operators Union, to discuss Respondent's disciplinary policy, during the period of January 18, 2010 to the present;
- g. Respondent's decision to use truck-based camera equipment as a basis for disciplinary action for its Legacy Cemex Employees; and
- h. Respondent's decision to prohibit its Legacy Cemex Employees from possessing and/or using cellular phones on Respondent's property.

72. Regarding the subjects described in Paragraph 71, such documents, including, but not limited to, notes, memoranda, correspondence, e-mails, that will show the following:

- a. the date(s) on which Respondent decided to implement any of the decisions described;
- b. any studies, reports, or other documents relating to any of the decisions described; and
- c. the name(s) and title(s) of any person who recommended, provided input for, and/or made any of the decisions described.

73. Documents, including, but not limited to, letters, correspondence, and e-mails that will show Respondent's efforts to notify, or its decision not to notify, the Teamsters Union and the Operators Union, regarding the acts described above in Paragraph 71.

74. Documents, including, but not limited to, bargaining notes, correspondence, and other records as will show the dates Respondent bargained with the Teamsters Union and the Operators Union over any of the decisions described above in Paragraph 71.

75. For the period from January 18, 2010, to the present, documents, including, but not limited to, notes, memoranda, and e-mails, describing or referencing any meetings Respondent's managers, supervisors, agents, or officers had with its Legacy Cemex Employees, represented by the Operators Union, regarding Respondent's disciplinary policy, including, but not limited to, the dates of and participants at such meetings, what was said by whom, and any agreements reached at said meetings.

76. For the period from March 22, 2010, to the present, documents, including, but not limited to, notes, memoranda, and e-mails, describing or referencing any meetings Respondent's managers, supervisors, agents, or officers had with its Legacy Cemex Employees, represented by the Teamsters Union, regarding the posting of hours worked, including, but not limited to, the dates of and participants at such meetings, what was said by whom, and any materials distributed at said meetings.

77. For the period from March 1, 2010, to the present, documents, including, but not limited to, mail logs, that reveal receipt of mail from the Teamsters Union to Respondent.

78. a. For the period from March 1, 2010, to the present, documents, including, but not limited to, correspondence authored by the Teamsters Union or the Respondent and documents reflecting communications between or among Respondent's managers, supervisors, agents, and employees, which reference or relate to any request by the Teamsters Union for information regarding the total number of weekly hours worked by Ready-Mix drivers for the month of February 2010.

b. Documents, including, but not limited to, correspondence, emails, and messages, submitted by the Teamsters Union seeking the following information:

i. all termination slips from January 1st, 2008 to present for employees at the Respondent's Cortaro, Avra Valley and Nogales facilities;

ii. "[a]ny and all reports, including pictures from the Accident Review Committee concerning Alejandro [Flores] and all written notes regarding his termination";

iii. "[c]opies of all warnings issued to bargaining unit employees for same since 11/3/07";

iv. [a]ll disciplinary notice, ERA's, files and documents of any kind whatsoever that related to discipline assessed against [Flores] on or about 11/3/08";

v. "[a] copy of [Flores'] entire personnel file, including all materials kept by field Supervisor."

vi. Any and all information pertaining to work performed by the following trucks listed below on January 15th and 16th, 2009, but not limited to invoices/trip tickets with each delivery for each truck, all payroll hours worked per truck, how many trips each truck made, and mileage that occurred on each truck: Truck No.'s: 2953, 2954, 1924, 2971, 2962 & 2975;

vii. "[t]he weekly hours total for Redi-Mix Drivers, for the month of February, at the following plants; [Seventh] Street Plant, 19th Avenue Plant, Beeline Plant, Sacaton Plant.";

viii. the information set forth in the letter, a copy of which has been admitted into evidence in this matter as General Counsel's Exhibit 2 in this matter.

EXPERT TESTIMONY

79. Documents as will show the names, addresses, and contact information for any consultants, advisors, experts, or other individual or entity, which Respondent hired, used, or relied upon in any way, to assist Respondent in the presentation of its defense in this matter.

80. For each individual/entity described above in Paragraph 79, such documents as will show any agreement or contract entered into between Respondent and the identified individual/entity.

81. For each individual/entity described above in Paragraph 79, such documents as will show all correspondence between Respondent and that individual/entity relating to any of the allegations contained in the Complaint in this matter, or to any of Respondent's affirmative defenses.

82. For each individual/entity described above in Paragraph 79, such documents, databases, or other material Respondent provided to such individual/entity, relating to any of the allegations contained in the Complaint in this matter, or to any of Respondent's affirmative defenses.

83. For each individual/entity described above in Paragraph 79, such documents, including, but limited to, reports, opinions, models, compilations of data, or backpay estimates, prepared or produced by any such individual/entity relating to any of the allegations contained in the Complaint in this matter, or to any of Respondent's affirmative defenses.

84. The curriculum vitae for all witnesses Respondent plans to call as an expert witness in this matter.

85. Books, articles, treatises, or other items written or edited by any individual Respondent plans to call as an expert witness in this matter, or, to the extent that such books or other materials are not in the possession of Respondent, the true and accurate citation or reference to said books and materials.

86. Documents, including, but not limited to books, treatises, journal articles, reports, or studies, which have been reviewed or relied upon by any person Respondent plans to call as an expert witness, or, to the extent that such books or other materials are not in the possession of Respondent, the true and accurate citation or reference to said books and materials.

SPECIAL REMEDIES

87. Documents, including, but not limited to, e-mail policies, that describe the scope and extent of Respondent's ability to communicate with its employees through electronic means, including, but not limited to, electronic mail and intranet.

IN LIEU OF PROVIDING THE RECORDS AND DOCUMENTS REQUESTED HEREIN, PROVIDED NOTICE IS RECEIVED BY COUNSEL FOR THE GENERAL COUNSEL NO LATER THAN 4:15 P.M., JULY 14, 2010, RESPONDENT MAY MAKE THEIR RECORDS AND DOCUMENTS REQUESTED HEREIN AVAILABLE AT THE OFFICE OF THE NATIONAL LABOR RELATIONS BOARD, 2600 N. CENTRAL AVENUE,

SUITE 1800, PHOENIX, ARIZONA, 85004,, NO LATER THAN 4:15 P.M. ON JULY 16, 2010, TO AN AGENT OR AGENTS OF THE NATIONAL LABOR RELATIONS BOARD FOR HIS, HER, OR THEIR INSPECTION, COPYING, AND USE IN CONNECTION WITH THESE PROCEEDINGS. PROVIDED FURTHER, THAT SUCH RECORDS AND DOCUMENTS REQUESTED HEREIN WILL NOT BE REQUIRED TO BE PRODUCED AT THE HEARING IN THIS MATTER IF THE RESPONDENT AND COUNSEL FOR THE GENERAL COUNSEL ARRIVE AT A STIPULATION WITH REGARD TO THE INFORMATION CONTAINED THEREIN AND SUCH STIPULATION IS RECEIVED IN EVIDENCE BY THE ADMINISTRATIVE LAW JUDGE HEARING THIS MATTER.