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Attorney for: CONCRETE WASHOUT SYSTEMS, INC.

**UNITED STATES DISTRICT COURT**  
**EASTERN DISTRICT OF CALIFORNIA - SACRAMENTO DIVISION**

CONCRETE WASHOUT SYSTEMS, )  
INC., a California corporation, )

Plaintiff, )

-- vs. -- )

TERRELL MORAN, INC., TMI SERVICES )  
TRUCKS & EQUIPMENT RENTALS LLC, )  
TMI CONCRETE WASHOUT TRUCKS & )  
EQUIPMENT RENTALS LLC, TERRELL )  
MORAN, TODD TERMINI, and Does 1 - )  
100, )

Defendants. )

**Case No.:**

**COMPLAINT FOR DAMAGES  
FOR BREACH OF CONTRACT  
AND PATENT INFRINGEMENT;  
PRELIMINARY AND  
PERMANENT INJUNCTIONS**

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CONCRETE WASHOUT SYSTEMS, INC. [“CONCRETE WASHOUT”], plaintiff  
in the above-captioned matter, and for its Complaint against defendants TERRELL  
MORAN, INC., TMI SERVICES TRUCKS & EQUIPMENT RENTALS LLC, TMI  
CONCRETE WASHOUT TRUCKS & EQUIPMENT RENTALS LLC, TERRELL  
MORAN, TODD TERMINI, and Does 1 -100, herein alleges as follows:

**NATURE AND BASIS OF ACTION**

1  
2 1. This is a civil action in which CONCRETE WASHOUT asserts against  
3 defendants TERRELL MORAN, INC., TMI SERVICES TRUCKS & EQUIPMENT  
4 RENTALS LLC, TMI CONCRETE WASHOUT TRUCKS & EQUIPMENT RENTALS  
5 LLC, TERRELL MORAN, TODD TERMINI, and Does 1 - 100, claims for damages for  
6 breach of contract, and for patent infringement, injunctive relief, and recovery of its costs  
7 and attorneys' fees.  
8

9  
10 **PARTIES**

11 1. CONCRETE WASHOUT is a corporation incorporated under the laws of the  
12 State of California and maintains its principal place of business in Sacramento, Sacramento  
13 County, California.  
14

15 2. Upon information and belief, defendant TERRELL MORAN, INC., is a  
16 corporation established under the laws of Louisiana, and maintains its principal place of  
17 business at Gonzales, Louisiana.  
18

19 3. Upon information and belief, defendant TMI SERVICES TRUCKS &  
20 EQUIPMENT RENTALS LLC ["TMI SERVICES"], is a limited liability company  
21 established under the laws of the state of laws of Louisiana, and maintains its principal  
22 place of business at Denham Springs, Louisiana.  
23

24 4. Upon information and belief, defendant TMI CONCRETE WASHOUT  
25 TRUCKS & EQUIPMENT RENTALS LLC ["TMI CONCRETE"] is a limited liability  
26 company established under the laws of the state of laws of Louisiana, and maintains its  
27 principal place of business at Denham Springs, Louisiana.  
28



1 (“EPA”), as well as the local water quality control agencies, officials and others. In 1992,  
2 the EPA addressed the problem of pollution created by concrete washout by issuing  
3 guidelines for its disposal.

4 9. Following the issuance of the EPA guidelines, many companies tried to  
5 develop best practices management to comply with the EPA guidelines. The most  
6 commonly approved practice has been the onsite washout pit that includes an area lined  
7 with plastic and bordered with hay bales. This type of disposal is messy and imperfect, as  
8 the hay bales and plastic break down and create the potential of allowing hazardous  
9 washout to escape. The washout pit also does not provide a solution for washout from  
10 concrete pump trucks. Moreover, after dumping concrete waste into the pit, the washout  
11 materials then have to be broken down, excavated, and disposed of by the contractor,  
12 which is all-in-all, a costly and inefficient process.

13 10. Violations of EPA and state regulations can result in penalties from \$10,000  
14 per day to as high as \$27,500 per day, as well as \$10 per gallon of discharge into the  
15 waterways.

16 11. In response to the long-felt need for a solution to concrete waste water  
17 disposal, CONCRETE WASHOUT’s founder and CEO, Mark Jenkins (“Jenkins”),  
18 pioneered the field of concrete washout boxes. Jenkins developed a concrete washout  
19 container for receiving hardening concrete from a concrete truck or other concrete  
20 equipment for subsequent disposal in a substantially hardened condition. The container is  
21 designed for portability, having an open top, a bottom, two sides, and two ends with a  
22 watertight door at one end. The container is lined on its inner wall surfaces with a release  
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1 material to inhibit adhesion of the concrete washout material and further is designed with  
2 an internal taper to facilitate the removal of the hardened concrete washout. The container  
3 includes one or more skids to aid in guiding the portable container during loading and  
4 unloading from a separate transport vehicle.

5  
6 12. In 2003, Jenkins formed CONCRETE WASHOUT to market and license the  
7 concrete washout system he had designed. CONCRETE WASHOUT's systems quickly  
8 became a commercial success and its solution to the environmental threat that plagued the  
9 construction industry continues to be recognized and awarded accolades by industry and  
10 government associations, including the World of Concrete 2005 "Most Innovative Product  
11 Award", the National Ready-Mixed Concrete Association 2004 "Environmental Innovation  
12 Award", and the Sacramento Business Environmental Resource Center 2004 "Pollution  
13 Prevention Award", among others.

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16 **U.S. Patent No. 7,118,633**

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18 2. On October 10, 2006, the United States Patent and Trademark Office duly  
19 and lawfully issued United States Patent No. 7,118,633 ("the '633 Patent"), entitled  
20 "Concrete Washout Container and Method for Controlling Concrete Washout" to inventor  
21 Mark Jenkins. A true and correct copy of the '633 Patent is attached hereto as Exhibit B.

22 3. The '633 Patent is currently in full force and effect.

23  
24 4. All right, title, and interest in and to the '633 Patent have been assigned to  
25 CONCRETE WASHOUT, which is the sole owner of the '633 Patent.

26 5. The '633 Patent contains nine claims generally directed to a method for  
27 controlling concrete washout and related washout containers.  
28

1           6. In accordance with 35 U.S.C. § 282, the ‘633 Patent, and each and every  
2 claim thereof, is presumed to be valid.

3  
4                                   **U.S. Patent No. 7,121,288**

5           7. On October 17, 2006, the United States Patent and Trademark Office duly  
6 and lawfully issued United States Patent No. 7,121,288 (“the ‘288 Patent”), entitled  
7 “Concrete Washout Container” to inventor Mark Jenkins. A true and correct copy of the  
8 ‘288 Patent is attached hereto as Exhibit C.  
9

10           8. The ‘288 Patent is currently in full force and effect.

11           9. All right, title, and interest in and to the ‘288 Patent have been assigned to  
12 CONCRETE WASHOUT, which is the sole owner of the ‘288 Patent.  
13

14           10. The ‘288 Patent contains 36 claims generally directed to a washout container.

15           11. In accordance with 35 U.S.C. § 282, the ‘288 Patent, and each and every  
16 claim thereof, is presumed to be valid.  
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19                                   **U.S. Patent No. 7,124,767**

20           12. On October 24, 2006, the United States Patent and Trademark Office duly  
21 and lawfully issued United States Patent No. 7,124,767 (“the ‘767 Patent”), entitled  
22 “Concrete Washout Container” to inventor Mark Jenkins. A true and correct copy of the  
23 ‘766 Patent is attached hereto as Exhibit D.  
24

25           13. The ‘767 Patent is currently in full force and effect.

26           14. All right, title, and interest in and to the ‘767 Patent have been assigned to  
27 CONCRETE WASHOUT, which is the sole owner of the ‘767 Patent.  
28

1 15. The '767 Patent contains 14 claims generally directed to a washout container.

2 16. In accordance with 35 U.S.C. § 282, the '767 Patent, and each and every  
3 claim thereof, is presumed to be valid.  
4

5 **U.S. Patent No. 7,364,627**

6 17. On April 29, 2008, the United States Patent and Trademark Office duly and  
7 lawfully issued United States Patent No. 7,364,627 (“the ‘627 Patent”), entitled “Method  
8 for Controlling Concrete Washout” to inventor Mark Jenkins. A true and correct copy of  
9 the ‘627 Patent is attached hereto as Exhibit E.  
10

11 18. The ‘627 Patent is currently in full force and effect.

12 19. All right, title, and interest in and to the ‘627 Patent have been assigned to  
13 CONCRETE WASHOUT, which is the sole owner of the ‘627 Patent.  
14

15 20. The ‘627 Patent contains 13 claims generally directed to a washout container.

16 21. In accordance with 35 U.S.C. § 282, the ‘627 Patent, and each and every  
17 claim thereof, is presumed to be valid.  
18

19 **PLAINTIFF’S PATENT RIGHTS**

20 22. CONCRETE WASHOUT is the exclusive owner of the ‘633 Patent, the ‘288  
21 Patent, the ‘767 Patent and the ‘627 Patent.  
22

23 23. CONCRETE WASHOUT has expended enormous amounts of resources and  
24 has established itself as an industry leader and pioneer with regard to the safe, responsible,  
25 and environmentally friendly alternative to the old worksite concrete washouts.  
26 CONCRETE WASHOUT has advertised and promoted its name and its patented concrete  
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1 washout systems that control, capture, and contain all concrete washout waste water and  
2 material.

3 24. CONCRETE WASHOUT is an industry leader as a result of its enormous  
4 investment in its name, reputation, and in advertising and promoting its concrete washout  
5 systems, including the systems described in the claims of the four patents identified above.  
6 As a result of the efforts of CONCRETE WASHOUT and the tremendous success of its  
7 business operations and assets including, but not limited to, the patented assets described  
8 above, CONCRETE WASHOUT has earned an exceptional reputation for delivering  
9 quality concrete washout systems.  
10

11  
12 25. CONCRETE WASHOUT has invested heavily in research and development  
13 of its concrete washout systems, as well as in manufacturing, marketing and promoting its  
14 product.

15  
16 26. CONCRETE WASHOUT has expanded the nationwide and international use  
17 of its concrete washout systems by licensing independent companies to purchase its  
18 concrete washout system containers and to use those concrete washout containers in a  
19 rental business conducted by that independent company.

20  
21 27. CONCRETE WASHOUT exercises strict control over the purchase, use, and  
22 transfer of its concrete washout system containers by requiring every purchaser of the  
23 concrete washout system container to execute a written license ["Licensing Agreement"]  
24 that restricts the licensee's use and transfer of the concrete washout system containers.

25  
26 28. Every purchase of CONCRETE WASHOUT's concrete washout system is  
27 conditioned upon obtaining a license from the patent holder.  
28



1 29. CONCRETE WASHOUT does not sell its concrete washout system to any  
2 person or entity unless they first execute a Licensing Agreement with CONCRETE  
3 WASHOUT.

4 30. CONCRETE WASHOUT does not permit any of its authorized  
5 manufacturers to sell its concrete washout system to any person or entity unless they first  
6 execute a Licensing Agreement with CONCRETE WASHOUT.  
7

8 31. Furthermore, CONCRETE WASHOUT does not permit the purchaser to  
9 transfer the concrete washout container to any other person or entity except in compliance  
10 with the terms of the written Licensing Agreement.  
11

12 32. CONCRETE WASHOUT does not allow unlicensed persons or entities to  
13 use CONCRETE WASHOUT's concrete washout system containers.  
14

15 33. CONCRETE WASHOUT's income is derived from licensing entities to use  
16 the concrete washout system containers.

17 34. If unauthorized persons or entities use CONCRETE WASHOUT's  
18 proprietary containers, that use diminishes the value of CONCRETE WASHOUT's  
19 proprietary rights.  
20

21 **DEFENDANTS' CONDUCT**

22 35. On April 4, 2007, plaintiff and defendant TERRELL MORAN, INC., entered  
23 into a written Licensing Agreement for the Concrete Washout Systems containers. A true  
24 and correct copy of the Licensing Agreement is attached hereto as Exhibit A, and  
25 incorporated herein.  
26  
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28

1           36. Pursuant to that Licensing Agreement, defendant TERRELL MORAN, INC.,  
2 purchased twenty-one (21) concrete washout system containers from plaintiff and its  
3 authorized manufacturer and proceeded to use those containers to conduct a concrete  
4 washout business.

5           37. Also pursuant to that Licensing Agreement, defendant TERRELL MORAN,  
6 INC., agreed to pay the sum of \$4,510 per month to CONCRETE WASHOUT during the  
7 first year, increasing to \$6,958 per month during the second year, increasing to \$12,231  
8 per month during the third year, and increasing by the amount of the Consumer Price  
9 Index (CPI) for each subsequent year.  
10

11           38. Defendant TERRELL MORAN, INC., failed to make the required licensing  
12 fee payments, and on August 15, 2008, CONCRETE WASHOUT gave written notice to  
13 defendant TERRELL MORAN, INC., that CONCRETE WASHOUT was terminating the  
14 Licensing Agreement, Exhibit A, due to TERRELL MORAN, INC.'s failure to pay its  
15 licensing fees as required by the Licensing Agreement.  
16

17           39. Pursuant to the Licensing Agreement, defendant TERRELL MORAN, INC.,  
18 was prohibited from selling or transferring ownership of the concrete washout system  
19 containers without written consent from plaintiff CONCRETE WASHOUT.  
20

21           40. Pursuant to the Licensing Agreement, upon termination TERRELL MORAN,  
22 INC., was obligated to continue paying the monthly license fee until one of the following  
23 occurred: (1) Decommissioning the concrete washout containers by removing them from  
24 service and scrapping them; (2) Returning the concrete washout containers to an address  
25 provided by CONCRETE WASHOUT; or, (3) By selling the concrete washout containers  
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1 to a CONCRETE WASHOUT licensee who pays an equal or greater license fee to  
2 CONCRETE WASHOUT.

3 41. Defendant TERRELL MORAN, INC., did not avail itself of any of the  
4 prescribed methods for terminating the payment of the monthly license fee described in  
5 the Licensing Agreement, but instead, on information and belief, defendants TERRELL  
6 MORAN, INC., and TERRELL MORAN sold the concrete washout containers in  
7 February 2012, to defendants TMI SERVICES, TMI CONCRETE, and TODD TERMINI.  
8

9 42. On August 14, 2012, plaintiff CONCRETE WASHOUT sent a letter by  
10 Certified Mail to defendant TMI SERVICES demanding that defendant immediately cease  
11 and desist from using the patented concrete washout containers to collect concrete  
12 washout.  
13

14 43. Defendant TMI SERVICES responded by sending a letter dated September  
15 12, 2012, signed by Attorney Jack W. Riffle of the Riffle Law Firm, wherein defendants  
16 denied that they used any equipment covered by plaintiff CONCRETE WASHOUT's  
17 patents, including concrete washout containers with ramps or liners.  
18

19 44. On September 13, 2013, a representative of plaintiff CONCRETE  
20 WASHOUT requested that defendant TODD TERMINI, at the email address  
21 [todd@tmiconcrete.com](mailto:todd@tmiconcrete.com), provide a quote for supplying ramped bins for concrete washout.  
22 Defendant TODD TERMINI replied by email on September 13, 2013, and quoted the  
23 price of \$430 per bin in the Baton Rouge area and \$450--\$500 outside that area.  
24

25 45. On October 1, 2013, plaintiff CONCRETE WASHOUT sent a letter by  
26 Certified Mail to defendants TODD TERMINI, TMI CONCRETE, and TMI SERVICES,  
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1 demanding that defendants immediately cease and desist from using the patented concrete  
2 washout containers to collect concrete washout.

3 46. On February 19, 2014, a representative of plaintiff CONCRETE WASHOUT  
4 traveled to Louisiana to investigate whether defendants were using the patented concrete  
5 washout containers to collect concrete washout. Plaintiff's representative observed, and  
6 took photographs showing that defendants were using plaintiff's patented concrete  
7 washout containers, including ramps and liners, to collect concrete washout.  
8

9 47. Plaintiff is informed and believes that and thereon alleges that defendants  
10 TODD TERMINI, TMI CONCRETE, and TMI SERVICES continue to operate the  
11 concrete washout business using the patented containers obtained from defendant  
12 TERRELL MORAN, INC., and will continue to do so unless restrained by an order from  
13 this Court.  
14

15  
16 **FIRST CAUSE OF ACTION**  
17 **(Breach of Contract)**

18 48. This cause of action includes paragraphs 1 through 47, as set forth above.

19 49. Plaintiff CONCRETE WASHOUT has performed all of its obligations under  
20 the Licensing Agreement.  
21

22 50. Defendants TERRELL MORAN, INC., and TERRELL MORAN breached  
23 the Licensing Agreement by failing to pay the monthly license fees, and by transferring  
24 the concrete washout bins to a third party without the consent of plaintiff.  
25

26 51. There is now owing and unpaid to CONCRETE WASHOUT from defendant  
27 TERRELL MORAN, INC., license fees in the total amount of \$81,952 as of August 15,  
28

1 2008, together with the additional sum of \$466,186 for the period September 2008  
2 through March 2014, and that amount increases by the sum of \$6,958 per month,  
3 thereafter, plus interest from August 15, 2008.

4 52. As a proximate result of defendant TERRELL MORAN, INC.'s breach of the  
5 Licensing Agreement, plaintiff has been damaged in the amount of \$548,138 as of March  
6 5, 2014, and that amount increases by the sum of \$6,958 per month, thereafter, plus  
7 interest from August 15, 2008.  
8

9 53. The Licensing Agreement provides in its relevant portions, as follows.

10 E.(1) If any party to this Agreement brings legal action to enforce the provisions of  
11 this Agreement, the prevailing party in any such litigation shall be entitled to  
12 recover costs including reasonable attorney's fees.  
13

14 54. Plaintiff CONCRETE WASHOUT has found it necessary to hire an attorney  
15 to enforce the provisions of its Licensing Agreement and is entitled to recover reasonable  
16 attorney's fees.  
17

18  
19 **SECOND CAUSE OF ACTION**  
20 **(Patent Infringement)**

21 55. This cause of action includes paragraphs 1 through 54, as set forth above.

22 56. Plaintiff has not given consent nor granted a new license to defendants to use  
23 plaintiff's patented concrete washout systems containers.

24 57. Defendants TODD TERMINI, TMI CONCRETE, and TMI SERVICES's  
25 use of plaintiff's patented concrete washout systems containers without consent or a valid  
26 license from plaintiff infringes plaintiff's patent rights.  
27  
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**REQUEST FOR JUDGMENT**

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2  
3 WHEREFORE, plaintiff CONCRETE WASHOUT SYSTEMS, INC., prays for  
4 judgment against defendants as follows:

5 First Cause of Action against defendant TERRELL MORAN, INC., and TERRELL  
6 MORAN:

- 7  
8 1. For damages for breach of contract in the sum of \$548,138, and that amount  
9 be increased by the sum of \$6,958 per month, thereafter, plus interest from  
10 August 15, 2008.

11  
12  
13 Second Cause of Action against defendants TODD TERMINI, TMI CONCRETE,  
14 TMI SERVICES, TERRELL MORAN, INC., and TERRELL MORAN:

- 15 2. For damages for patent infringement, and,  
16 3. That such amounts be tripled.

17  
18  
19 Third Cause of Action against defendants TODD TERMINI, TMI CONCRETE,  
20 and TMI SERVICES:

- 21 4. For a temporary and permanent injunction prohibiting defendants from using  
22 the patented concrete washout systems containers to collect concrete  
23 washout.  
24

