

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

JAN 20 2012
J. Randle

1 LAW OFFICES OF ANGELINA VENEGAS
2 ANGELINA VENEGAS, ESQ. (SBN 220737)
3 8605 Santa Monica Blvd. #19898
4 Los Angeles, CA 90069
5 Tel: (323) 966-5960
6 Fax: (323) 686-5190

7 Attorneys for Plaintiff
8 ROBERT CRUZ

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

10 **FOR THE COUNTY OF RIVERSIDE**

1200945

11 ROBERT CRUZ, an Individual, d/b/a R.) CASE NO. 510
12 CRUZ CONCRETE,)
13 Plaintiff,) **COMPLAINT FOR DAMAGES**
14 vs.) 1. OPEN BOOK ACCT./ MONEY OWED
15 HUNTER CONSULTING, INC., a) 2. FRAUD
16 California Corporation, d/b/a HCI) 3. UNFAIR BUSINESS PRACTICES
17 ENVIRONMENTAL & ENGINEERING) 4. INTENTIONAL INFLICTION OF
18 SERVICE, and Does 1-10, inclusive,) EMOTIONAL DISRESS
19 Defendants.) JURY TRIAL DEMANDED

20 Plaintiff Robert Cruz hereby alleges as follows:

21 **PARTIES AND VENUE**

- 22 1. Plaintiff Robert Cruz (hereinafter "PLAINTIFF") is and at all relevant times was an
23 individual and sole proprietor doing business as R. Cruz Concrete (Contractor's License
24 #939569) in the City of Riverside, Riverside County, California.
- 25 2. PLAINTIFF is informed and believes, and on that basis alleges, that defendant HUNTER
26 CONSULTING, INC., d/b/a HCI ENVIRONMENTAL & ENGINEERING hereinafter "HCI") is
27 and at all relevant times was a California corporation (California Corporation # C2201286) doing
28 business in the City of Corona, Riverside County, California. At all relevant times herein, and as
further alleged below, PLAINTIFF communicated with and contracted with Charles Robert Guy

1 (hereinafter "GUY"), Chief Operating Officer at HCI. Plaintiff is informed and believes, and on
2 that basis alleges, that GUY, as Chief Operating Officer, has the power to bind HCI.

3 3. The true names and capacities, whether individual, corporate, associate or otherwise, of
4 defendants DOES 1 through 10, inclusive, are unknown to PLAINTIFF at this time, who
5 therefore sues said defendants pursuant to Code of Civil Procedure Section 474. PLAINTIFF
6 will, with leave of court if required, amend this Complaint (the "Complaint") to show the true
7 names and capacities of DOES 1 through 10, inclusive, when the same have been ascertained.

8 **SPECIFIC FACTS RELEVANT TO ALL CAUSES OF ACTION**

9 4. On or about July 25, 2011, the City of Banning (hereinafter "City") experienced an oil
10 spill of approximately 300 gallons at 553 E. Ramsey Street, Banning, which also migrated to
11 adjacent areas, which required emergency response and remediation ("Ramsey Spill"). The City
12 hired HCI as its environmental remediation contractor. On or about July 26 or 27, 2011, GUY
13 asked PLAINTIFF to serve as his subcontractor for the Ramsey Spill, starting "immediately,"
14 and PLAINTIFF agreed to do so after explaining he would have to pull persons and equipment
15 off of other jobs. GUY asked PLAINTIFF before the job began what his "not to exceed" ceiling
16 would be, and GUY agreed to that ceiling, and PLAINTIFF did not exceed that ceiling, and in
17 fact eventually invoiced well below that ceiling. The Ramsey Spill project lasted seven or eight
18 days and PLAINTIFF and his crew were onsite for five of those days (July 28, 2011 – August 2,
19 2011).

20 5. On August 17, 2011, PLAINTIFF billed HCI a total of \$77,338.92 for the project,
21 including labor and equipment. (**Exhibit 1. 08.17.11 Invoice #2042, for \$77,338.92**). HCI
22 made two partial payments on July 29, 2011 (\$20,000.00) and October 25, 2011 (\$5,000.00), but
23 as late as December 14, 2011, a balance existed of \$52,338.92.

24 6. On December 14, 2011, PLAINTIFF and GUY discussed the outstanding balance with
25 the following result: GUY provided PLAINTIFF with a check that day for only \$33,588.92,
26 which was reduced by \$18,750.00, and GUY stated it would be the last sum that PLAINTIFF
27 would receive. GUY'S sole reason for providing PLAINTIFF with a sum less than the balance
28 owed, was that the City had reduced HCI'S invoice on the work pertinent to PLAINTIFF.

1 PLAINTIFF and GUY began to argue. GUY then told PLAINTIFF: "My business is bigger
2 than yours, I'll bury you," and "I know you need the money 'cause you haven't worked and you
3 just got a house and had a baby." PLAINTIFF was distressed, anxious, and frustrated with
4 GUY's statements and being wrongfully withheld money that he had earned and relied upon
5 receiving; PLAINTIFF was further distressed with GUY's extremely threatening words and
6 demeanor, and particularly when he said the words, "I'll bury you."

7 7. Therefore, on or about January 5, 2011 PLAINTIFF called the City to confirm the
8 invoice reduction and to investigate the reason(s), if any, regarding why the invoice reduction
9 was deemed necessary. What he found out was completely incongruent with GUY's
10 representations: Duane Burk, City Director of Public Works told PLAINTIFF on January 5,
11 2011 that the City *never* reduced HCI's invoice, at all. The City provided PLAINTIFF with
12 copies of all HCI invoices and City payments, and other project documents, specific to the
13 Ramsey Spill. Any person can obtain a copy of these documents through a Public Records Act
14 request.

15 8. PLAINTIFF reviewed the City documents for "Project #F30000, Account 700-5040-
16 380.3311" that evidenced HCI was paid in full, without reduction, a total amount of
17 \$1,809,791.00, out of the City's insurance fund, including a check for \$1,306,494.98 issued by
18 the City on November 20, 2011. PLAINTIFF also calculated how much HCI billed the City for
19 the work that only PLAINTIFF (and no other subcontractor) did with the following result: HCI
20 billed the City \$222,985.04 for PLAINTIFF'S \$77,338.04 worth of labor and equipment for five
21 days. That means that HCI profited \$145,646.12 for mark-up only for PLAINTIFF'S invoice.
22 PLAINTIFF also noticed that with regard to the work that PLAINTIFF (and no other
23 subcontractor) did, HCI billed more hours (including overtime and double-time) and also billed
24 for services not rendered by PLAINTIFF (nor any other subcontractor). That reality is
25 dramatically different from GUY's position that the City had reduced HCI's invoice on the work
26 pertinent to PLAINTIFF.

27 9. PLAINTIFF is further informed and believes and thereon alleges that HCI, through its
28 officers, directors and managing agents, had knowledge of GUY's wrongful conduct set forth

1 above and allowed said wrongful conduct to occur and continue to occur, thereby ratifying said
2 wrong conduct, with a conscious disregard to the affects of GUY'S wrongful conduct on
3 PLAINTIFF. Specifically, GUY through HCI bills hours not worked and services not rendered
4 to customers and withholds money owed to subcontractors, and when pressed for payment by
5 those subcontractors. he invents falsehoods to support non-payment, all in the name of profit and
6 greed.

7 10. When GUY learned that PLAINTIFF had communicated with the City, GUY further
8 threatened PLAINTIFF that he had better cease all communication with the City, and that
9 PLAINTIFF "better not ruin his relationship with the City." That threat pairs with City
10 Resolution NO. 2011-92 dated November 8, 2011, which appropriated the City funds that
11 amended the project budget for the Ramsey Spill; the Resolution includes the statement that HCI
12 performed work for the City in the past.

13 11. PLAINTIFF has suffered and will continue to suffer mental anguish, stress, anxiety, and
14 degradation, as a result of GUY's wrongful and tortuous treatment in a sum no less than \$20,000.

15 **FIRST CAUSE OF ACTION: OPEN BOOK ACCOUNT/ MONEY OWED**

16 [Against HCI and Does 1-10, Inclusive]

17 PLAINTIFF realleges and incorporates herein by reference each and every allegation
18 contained in paragraphs 1 through 11, inclusive, as set forth above.

19 12. As of December 14, 2011, HCI became indebted to PLAINTIFF on an open book
20 account for money due in the sum of \$18,750.00. No part of said sum has been paid, although
21 demand has been made and refused, and \$18,750.00 remains due and unpaid from HCI to
22 PLAINTIF, plus interest thereon at the legal rate.

23 **SECOND CAUSE OF ACTION: FRAUD**

24 [Against HCI and Does 1-10, Inclusive]

25 PLAINTIFF realleges and incorporates herein by reference each and every allegation
26 contained in paragraphs 1 through 12, inclusive, as set forth above.

27
28

1 13. On December 14, 2011, when GUY provided PLAINTIFF with a check for \$33,588.92
2 and stated it would be the last sum that PLAINTIFF would receive, GUY explained that the
3 reason it was reduced was that "the City reduced the invoice on your work." The check was
4 insufficient by \$18,750.00 to cover PLAINTIFF'S outstanding balance owed by HCI. GUY
5 knew that the above representation was false when he made it and he made it recklessly and
6 without regard for the truth. GUY intended for PLAINTIFF to rely on his representation
7 regarding the City reduction and PLAINTIFF did in fact reasonably rely on said representation
8 until he spoke with Duane Burk, City Director of Public Works and reviewed the City
9 documents. As a result of GUY'S fraud herein alleged, PLAINTIFF suffered the injury and
10 damages herein alleged and incorporated by reference.

11 **THIRD CAUSE OF ACTION: UNFAIR BUSINESS PRACTICES**

12 **[Against HCI and Does 1-10, Inclusive]**

13 PLAINTIFF realleges and incorporates herein by reference each and every allegation
14 contained in paragraphs 1 through 13, inclusive, as set forth above.

15 14. California Business and Professions Code, Section 17200, et seq. prohibits unfair
16 competition in the form of any unlawful, deceptive or fraudulent business practice. The acts and
17 practices described in this Complaint and prohibited by state law constitute unlawful, unfair and
18 fraudulent business practices and unfair competition under the meaning of California Business
19 and Professions Code, Section 17200, et seq.

20 15. Through the course of the misrepresentation described above, GUY and HCI engaged in
21 fraudulent conduct against PLAINTIFF. The violations of these laws serve as unlawful business
22 practices for purposes of Business and Professions Code, Section 17200 et seq. and remedies are
23 provided therein under Business and Professions Code Section 17203. As a proximate result of
24 the aforementioned acts, HCI received and continues to hold ill-gotten gains belonging to
25 PLAINTIFF. Business and Professions Code Section 17203 provides that the Court may restore
26 to any person in interest any money or property that may have been acquired by means of such
27 unfair competition and order restitution. PLAINTIFF is entitled to restitution pursuant to
28

1 Business and Professions Code Sections 17203 and 17208 for the outstanding balance on
2 PLAINTIFF'S account, as it has been clearly paid in full, from the City to HCI.

3 16. In order to prevent HCI from profiting and benefiting from HCI's wrongful and illegal
4 acts, an order requiring HCI to pay restitution to PLAINTIFF is appropriate and necessary.

5 17. PLAINTIFF has taken it upon himself to enforce these laws and lawful claims. There is
6 a financial burden incurred in pursuing this action and it would be in the interests of justice to
7 penalize HCI by forcing HCI to pay attorneys fees in this action. Therefore, attorney fees are
8 appropriate pursuant to Code of Civil Procedure, Section 1021.5.

9 **FOURTH CAUSE OF ACTION: INTENTIONAL INFLECTION OF**
10 **EMOTIONAL DISTRESS**

11 **[Against HCI and Does 1-10, Inclusive]**

12 PLAINTIFF realleges and incorporates herein by reference each and every allegation
13 contained in paragraphs 1 through 17, inclusive, as set forth above.

14 18. GUY, during the scope of his employment as Chief Operating Officer for HCI, and in
15 carrying out the above described acts, acted in an extreme and outrageous manner, and
16 intentionally and with reckless disregard for PLAINTIFF'S welfare inflicted severe emotional
17 distress on PLAINTIFF and his family. GUY acted with improper and evil motive amounting to
18 malice.

19 19. As a direct and proximate result of GUY's conduct, PLAINTIFF was injured in his health
20 and wellbeing, which caused him to suffer and will continue to suffer mental anguish, stress,
21 anxiety, and degradation, in a sum no less than \$20,000, in an amount to be proven at trial.

22 20. As a further result of GUY's conduct, as alleged hereinabove, PLAINTIFF has incurred
23 and will continue to incur medical and related expenses. The full amount of these expenses is
24 unknown to PLAINTIFF at this time. PLAINTIFF will seek leave to amend this Complaint to
25 state the amount when it becomes known to PLAINTIFF, or according to proof at time of trial.

26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PRAYER

WHEREFORE, PLAINTIFF prays judgment against defendants, and each of them as follows:

- 1. For the principal sum of \$18,750.00;
- 2. For interest on the principal sum of \$18,750.00 at the legal rate;
- 3. For an order of restitution of \$18,750.00 and interest at the legal rate;
- 4. For general damages, including damages for pain and suffering and mental and emotional distress not less than \$20,000.00 in an amount to be proved at trial;
- 5. For special damages;
- 6. For punitive and exemplary damages according to proof;
- 7. For costs of suit incurred herein;
- 8. For reasonable attorney fees; and,
- 9. For such other and further relief as the Court may deem just and proper.

DATED: January 20, 2012 LAW OFFICES OF ANGELINA VENEGAS

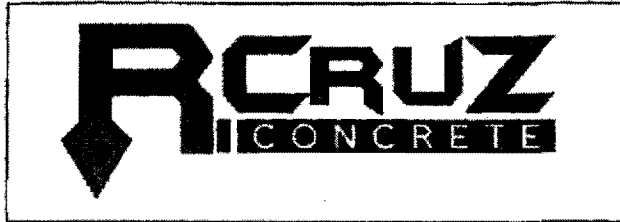
By: *Angelina Venegas*
ANGELINA VENEGAS, ESQ.
Attorneys for Plaintiff
ROBERT CRUZ

JURY DEMAND

PLAINTIFF demands a trial by jury.

DATED: January 20, 2012 LAW OFFICES OF ANGELINA VENEGAS

By: *Angelina Venegas*
ANGELINA VENEGAS, ESQ.
Attorneys for Plaintiff
ROBERT CRUZ



Revised

18845 Van Buren Blvd. # A9
 Riverside, Ca 92508
 LICENSE # 939569

BILL TO: Hci Enviromental & Engineering
Address: 114 Business Center Dr.
City, State, Zip: Corona, Ca 92880
Job: 553 E. Ramsey St. Banning, Ca
Phone: 1-951-532-9979 fax: 1-951-280-0118
Email: cshoup@hcienv.com --rguy@hcienv.com

DATE 8-17-2011	INVOICE# 2042
PO#	BID#
JOB#	START DATE# COMPLETED

DESCRIPTION	QTY	RATE	AMOUNT
		ER + 25%	
1.MINI EX,LOADER.BACK HOE	106.5 HRS		\$13,440.00
2.LABOR ON JOB	161 HRS		\$12,480.00
3.1/4 TON RIP RAP IMPORTED ON JOB	246.03 TON		\$9,671.92
4.SAW CUTT EXISTING CONCRETE			\$1,375.000
5.SET UP AND PUMP CONCRETE FOR DRAINAGE			\$1,720.00
6.INSTALL AND EPOXY HOOKS IN CONCRETE	4		\$540.00
7.FORM AND INSTALL 1/2 #4 REBAR FOR DRAIN GRATE			\$1,250.00
8.REMOVE AND HAUL AWAY ANY EXTRA CONCRETE			\$600.00
9.IMPORT CONCRETE SLURRY FOR DRAINAGE	90		\$33,750.00
10.DEMOLITION W/JACK HAMMER			\$2,512.00
		TOTAL	\$77,338.92
10% DEPOSIT 20% MATERIALS = 30%		DEPOSIT	\$20,000.00
10% NON REFUNDABLE AFTER 72 HRS		BALANCE	\$57,338.92

WE ARE PLEASED TO SUBMIT THE ABOVE QUOTATION FOR YOUR CONSIDERATION, SHOULD YOU PLACE AN ORDER, BE ASSURED IT WILL RECEIVE OUR PROMPT ATTENTION. THIS IS SUBJECT TO THE CONDITIONS OF OUR CREDIT APPLICATION AND IS VALID FOR 30 DAYS. THEREAFTER IT IS SUBJECT TO CHANGE WITHOUT NOTICE. FAX COPY DEEMED TO BE LEGAL EQUIVILANT OF ORIGINAL, ALL PAST DUE ACCOUNTS SUBJECT TO 1 1/2 MONTHLY FINANCE CHARGE IN THE EVENT OF LEGAL ACTION IS REQUIRED TO EFFECT COLLECTION. A \$35.00 SERVICE CHARGE WILL BE ADDED TO ALL RETURNED CHECKS. FUTURE PAYMENTS MUST BE MADE IN THE FORM OF CASH OR MONEY ORDER. BUYER WILL BE FINANCIALLY RESPONSIBLE FOR ALL DEBTS INCURRED IN THE COLLECTION OF OUTSTANDING BALANCES.

If you have any questions concerning this quotation, contact Robert Cruz via phone or email at:

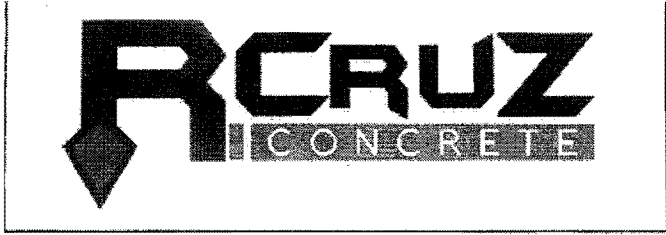
RCRUZCONCRETE@GMAIL.COM
 Cell: 1-888-986-RCRUZ (7278)

Accepted By: _____ Date: _____
 Print Name: _____ Title: _____

THANK YOU FOR YOUR BUSINESS!
RCRUZCONCRETE.COM



DESCRIPTION OF WORK	UNIT	AMOUNT
:BANNING OIL SPILL WORK:		
:THURSDAY JULY 28TH :		
1.MINI EX	12 HRS	
2.BACK HOE	12 HRS	
3.LOADER	12 HRS	
4.LABOR 1	11.5 HRS	
5.LABOR 2	11.5 HRS	
6.LABOR 3	11.5 HRS	
7.FOREMAN	13 HRS	
:FRIDAY JULY 29TH :		
8.MINI EX	13.5 HRS	
9.BACK HOE	13.5 HRS	
10.LOADER	13.5 HRS	
11.LABOR 1	10.5 HRS	
12.LABOR 2	10.5 HRS	
13.LABOR 3	10.5 HRS	
14.FOREMAN	14 HRS	
:SATURDAY JULY 30TH :		
15.LOADER	7.5 HRS	
16.MINI EX	7.5 HRS	
17.FOREMAN	4 HRS	
:MONDAY AUGUST 1ST :		
18.MINI EX	7.5 HRS	
19.LOADER	7.5 HRS	
20.LABOR 1	8 HRS	
21.LABOR 2	8 HRS	
22.LABOR 3	8 HRS	
23.FOREMAN	8 HRS	
:TUESDAY AUGUST 2ND :		
24.LABOR 1	8 HRS	
25.LABOR 2	8 HRS	
26.LABOR 3	8 HRS	
27.FOREMAN	8 HRS	



DESCRIPTION OF WORK	UNIT	AMOUNT
28. REMOVE ALL CONTAMINATED DIRT FROM SITE		
29. PUT ALL CONTAMINATED DIRT INTO EXISTING BINS		
30. GRADE AREA FOR ¼ TON RIP RAP		
31. GRADE N/SIDE FIELD FOR ACCESS TO SITE		
32. SAW CUTT AND REMOVE CONCRETE AS NEEDED		
33. IMPORT ¼ TON RIP RAP FOR DRAINAGE	246 .03 TONS	
34. PLACE ALL ¼ TON RIP RAP FOR DRAINAGE		
35. IMPORT CONCRETE FOR ¼ TON RIP RAP	90YDS	
36. CONCRETE SLURRY ¼ TON RIP RAP IN PLACE		
37. USE CONCRETE PUMP FOR SLURRY		
38. CLEAN UP JOB SITE WHEN FINISHED		
39. PUT ALL DIRT AND WOOD CHIPS BACK IN PLACE		