

PRIVATE ATTORNEYS GENERAL ACT (LABOR CODE § 2698 ET SEQ.)
SETTLEMENT AGREEMENT

Esquivel v. MCI, Inc. dba Martinez Construction, Inc., and David Joseph Martinez, Los Angeles County Superior Court Case No. 20STCV14663 (the “Action”)

IT IS HEREBY STIPULATED AND AGREED by and among the undersigned Parties, subject to the approval of the Court, that the settlement of this action shall be memorialized by and subject to the following terms and conditions. Capitalized terms used herein shall have the meanings set forth in Article I or elsewhere in this Private Attorneys General Act (Labor Code § 2698 *et seq.*) Settlement Agreement (“Agreement”).

This Agreement is made by and between Defendants MCI, Inc. dba Martinez Construction, Inc., and David Joseph Martinez (“Defendants”) and Plaintiff Douglas Esquivel (“Plaintiff”), for themselves and on behalf of the State of California, (Defendants and Plaintiff as defined herein, are sometimes collectively referred to as the “Parties.”) Subject to the Court’s subsequent approval of the Settlement, this Agreement shall be effective once fully executed by the Parties.

The Parties agree that the Action shall be, and hereby is, ended, settled, resolved, and concluded by agreement of Defendants to pay the sum of Forty-Nine Thousand, Five Hundred Dollars and Zero Cents (\$49,500.00), to resolve the Action, including Plaintiff’s claim pursuant to the Private Attorneys General Act (the “PAGA Claim”), which shall be inclusive of Plaintiff’s Counsel’s attorneys’ fees and costs, Plaintiff’s Service Award, and the settlement administrator’s fees, as well as Plaintiff’s individual claims.

Article I.

Definitions.

Section 1.01 Definitions.

Unless otherwise defined herein, the following terms used in this Agreement shall have the meanings ascribed to them as set forth below:

- (a) “Action” shall refer to the lawsuit entitled: *Esquivel v. MCI, Inc. dba Martinez Construction, Inc., David Joseph Martinez*, Los Angeles County Superior Court Case No. 20STCV14663.
- (b) “Aggrieved Employees” is defined all individuals who worked for Defendant MCI, Inc. dba Martinez Construction, Inc. (“MCI”) in California at any time from February 11, 2019 to the Effective Date of this Agreement.
- (c) “Court” means the Superior Court for the State of California, Los Angeles County.
- (d) “Counsel for Defendants” is:
 - Usama Kahf, Esq.
 - Ashton M. Riley, Esq.
 - FISHER & PHILLIPS LLP
 - 2050 Main Street, Suite 1000
 - Irvine, CA 92614
 - Phone: (949) 851-2424, Fax: 949) 851-0152
 - Email: ukahf@fisherphillips.com
 - Email: ariley@fisherphillips.com
- (e) “Effective Date” means the date the Court enters the order approving the Settlement as described in this Agreement.
- (f) “Gross Settlement Amount” refers to the Forty-Nine Thousand, Five Hundred Dollars and Zero Cents (\$49,500.00), which shall be paid by Defendants to fund the Settlement, and from which all settlement payments for the Net Settlement Amount, Court approved attorneys’ fees and costs, Plaintiff’s Service Award, the consideration for Plaintiff’s settlement of his individual claims, as well as the Settlement Administration Costs shall be paid.

(g) “Net Settlement Amount” means the total sum available for payment of PAGA penalties to the Aggrieved Employees and the LWDA after deducting Plaintiff’s Counsel’s fees and costs, the costs of administration, Plaintiff’s service award and individual settlement payment, collectively referenced in Section 3.01(a-d), from the Gross Settlement Amount.

(h) “Plaintiff’s Counsel” is:

Payne Nguyen, LLP
Cody Payne, Esq.
Kim Nguyen, Esq.
136 Main Street, Suite A
El Segundo, CA 90245
Telephone: (310) 360-9882
Facsimile: (310) 928-7469
Email: cody@paynellp.com; kim@paynellp.com

(i) “Release Period” means February 11, 2019 to the Effective Date of this Agreement.

(j) “Released Claims” mean any and all claims relating to any and all facts and claims asserted in the Action or any other claims, under PAGA, that could have been asserted in the Action based on the facts alleged, including but not limited to claims for (1) constructive wrongful termination, (2) retaliation (California Labor Code §§ 98.6 and 1102.5), (3) violation of Labor Code §§ 510 and 1198 (unpaid overtime), (4) violation of California Labor Code §§ 1194, 1197 and 1197.1 (unpaid minimum wages), (5) violation of California Labor Code § 226.7 (unpaid rest period premiums), (6) violation of California Labor Code §§ 226.7 and 512(a) (unpaid meal period premiums), (7) violation of California Labor Code § 226(a) (failure to provide accurate wage statements), (8) violation of California Labor Code §§ 201, 202 and 203 (final wages not timely paid), (9) violation of California Labor Code § 2802, (10) violation of California Business and Professions Code § 17200, *et seq.*, (11) failure to provide personnel records, and (12) PAGA penalties for failure to: (a) pay all

earned minimum wage compensation, (b) pay all earned overtime compensation, (c) pay premium pay for meal period violations, (d) pay premium pay for rest period violations, (e) pay all wages at end of employment, (f) timely pay all wages owed during employment, (g) reimburse for incurred business expenses, (h) furnish complete, accurate, itemized wage statements, and (i) maintain accurate records relating to work periods, meal periods, total daily hours, hours per pay period, and applicable pay rates.

(k) “Released Parties” means Defendants and their present and former officers, directors, employees, shareholders, agents, trustees, representatives, attorneys, insurers, reinsurers, parent companies, subsidiaries, divisions, affiliates, predecessors, successors, assigns, as well as any individual or entity that could be alleged to be jointly liable with Defendants.

(l) “Settlement Administrator” refers to Phoenix Settlement Administrators.

(m) “Settlement” or “Agreement” refers to the settlement of the Action and the PAGA Claim reached by the Parties.

Article II.

Background.

Section 2.01 Background.

(a) On February 11, 2020, Plaintiff notified Defendants via certified mail and the California Labor and Workforce Development Agency via online submission of alleged violations of the California Labor Code.

(b) On April 16, 2020, Plaintiff filed the Action in the Superior Court of the State of California for the County of Los Angeles.

(c) Subsequently, the Parties engaged in an extensive investigation along with informal discovery, including an exchange of documents and information pertaining to the PAGA

Claim. Defendants also provided Plaintiff's counsel with documentation pertaining to its financial hardship imposed due to the current COVID-19 pandemic.

Article III.

Approval and Implementation of Settlement.

Section 3.01 Allocation of the Gross Settlement Amount.

The Parties will cooperate in obtaining through written stipulation or unopposed motion or *ex parte* application, if required, an Order from the Court approving the payment of the Gross Settlement Amount as follows:

(a) **Plaintiff's Attorneys' Fees.**

Plaintiff's Counsel may request and be paid up to 45% of the Gross Settlement Amount, or Twenty Two Thousand Two Hundred, Seventy-Five Dollars and Zero Cents (\$22,275.00) for attorneys' fees ("Plaintiff's Attorney's Fees.") If Plaintiff's counsel's request for 45% of the Gross Settlement Amount is not approved and/or is reduced by the Court, any amount not approved and/or reduced by the Court will be included in the Net Settlement Amount to be paid to the Aggrieved Employees. Defendants agree not to oppose a fee request by Plaintiff's counsel in the foregoing amount.

(b) **Litigation Costs.**

Plaintiff's Counsel may request up to One Thousand One Hundred Sixty Dollars and Twenty-One Cents (\$1,160.21) of the Gross Settlement Amount as reimbursement for expenses incurred in the Action ("Litigation Costs.") If Plaintiff's counsel's request for reimbursement of Litigation Costs is not approved and/or is reduced by the Court, any amount not approved and/or reduced by the Court will be included in the Net Settlement Amount to be paid to Aggrieved

Employees. Defendants agree not to oppose a request for reimbursement of Litigation Costs not exceeding the foregoing amount.

(c) Administration Costs.

Plaintiff's counsel may request up to One Thousand Dollars and Zero Cents (\$1,000.00) of the Gross Settlement Amount as payment to the Settlement Administrator for costs incurred by the Settlement Administrator in connection with the Settlement, including mailing of the Notice of PAGA Settlement described herein ("Settlement Administration Costs"). To the extent the Settlement Administration Expenses exceed this amount, they shall be paid from the Gross Settlement Amount; to the extent they fall below this amount, they shall be included in the Net Settlement Amount to be paid to the Aggrieved Employees.

(d) Service Fees.

Plaintiff's counsel may request up to Fourteen Thousand Dollars and Zero Cents (\$14,000.00) of the Gross Settlement Amount for Plaintiff. This sum includes a Nine Thousand Dollars and Zero Cents (\$9,000) payment for the general release of his individual claims and Five Thousand Dollars and Zero Cents (\$5,000.00) as payment to Plaintiff for service fees and the settlement of his individual claims (collectively "Service Fees") made payable directly to Plaintiff Douglas Esquivel and reported on an IRS Form 1099 issued by MCI to Plaintiff Douglas Esquivel. If this request is not approved or is reduced by the Court, any amount not approved and/or reduced will be included in the Net Settlement Amount to be paid to the Aggrieved Employees.

(e) Net Settlement Amount.

The Net Settlement Amount shall be determined by deducting Plaintiff's Attorney's Fees, Litigation Costs, Settlement Administration Costs, and Service Fees as set

forth in section 3.01(a), (b), (c) and (d) from the Gross Settlement Amount. The Net Settlement Amount shall be distributed as set forth below in section 3.04(b).

The Parties agree to use their best efforts to expedite the preparation and submission of the settlement documents. The Parties further agree to fully cooperate in the drafting and/or filing of any further documents or filings reasonably necessary to be prepared or filed and shall take all steps that may be requested by the Court relating to, or that are otherwise necessary to the approval and implementation of the payment of PAGA penalties as described in this Agreement.

Section 3.02 Court Approval.

The Parties will seek the Court's approval of the PAGA settlement and the payment of penalties as described in this Agreement by way of a stipulation or unopposed motion or *ex parte* application to be filed by Plaintiff's Counsel or as directed by the Court. Plaintiff's Counsel will lodge this Agreement with the Court for its approval. Pursuant to Labor Code section 2699(1)(2), Plaintiff also will submit a copy of this Agreement to the Labor and Workforce Development Agency at the same time it is submitted to the Court. The Court's approval of the payment of the Gross Settlement Amount as described in this Agreement shall be embodied in a written Order.

Section 3.03 Notice to Aggrieved Employees.

(a) Notice.

Notice shall be provided to the Aggrieved Employees in the following manner:

- (1) No later than twenty-one (21) days after the Court approves this Settlement, Defendants shall provide the Settlement Administrator with a list of all Aggrieved Employees ("Aggrieved Employees List"). The Aggrieved Employees List shall state the first name and last name in separate columns for each Aggrieved Employee; the last known home

address for each Aggrieved Employee; each Aggrieved Employee's social security number, and each Aggrieved Employee's respective number of pay periods worked for Defendants during the Release Period.

- (2) The Settlement Administrator shall utilize the United States National Change of Address ("NCOA") database and also perform an *Accurint* or similar skip tracing process to determine the best most recent addresses for the Aggrieved Employees prior to mailing the notices and settlement checks.
- (3) No later than thirty (30) days after the Funding Completion Date as defined in Section 3.04(a), below, the Settlement Administrator shall mail the Notice of PAGA Settlement (attached hereto as Exhibit "A") together with a settlement payment to all Aggrieved Employees by first-class United States mail, postage prepaid, with directions to the Postmaster to forward the Notice of PAGA Settlement and return all undeliverable Notices to the Settlement Administrator. For each Notice of PAGA Settlement that is returned as undeliverable, the Settlement Administrator shall promptly attempt to locate the Aggrieved Employee by performing an additional skip trace and shall re-mail the Notice and settlement check no later than ten (10) days following receipt of the undeliverable Notice.

Section 3.04 Settlement Payment Procedures.

(a) Deposit of Gross Settlement Amount with Settlement Administrator.

Fifteen (15) days after the Effective Date, or November 15, 2020, whichever is later, Defendants shall deposit the first of three (3) payments of Sixteen Thousand, Five Hundred Dollars and Zero Cents (\$16,500.00) of the Gross Settlement Amount with the Settlement Administrator. On December 15, 2020, or Thirty (30) days after the first payment, whichever is later, Defendants

shall deposit the second of three (3) payments Sixteen Thousand, Five Hundred Dollars and Zero Cents (\$16,500.00) of the Gross Settlement Amount with the Settlement Administrator. On January 15, 2021, or Thirty (30) days after the second payment, whichever is later, Defendants shall deposit the third and final of three (3) payments Sixteen Thousand, Five Hundred Dollars and Zero Cents (\$16,500.00) of the Gross Settlement Amount with the Settlement Administrator (the “Funding Completion Date”).

(b) PAGA Payments.

The total sum available for payment of PAGA penalties (the “Net Settlement Amount”) shall be calculated by deducting Plaintiff’s Attorney’s Fees, Litigation Costs, Settlement Administration Costs, and Service Fees, collectively referenced in Section 3.01(a), (b), (c) and (d), from the Gross Settlement Amount.

The Net Settlement Amount of Eleven Thousand Sixty Four Dollars and Seventy-Nine Cents (\$11,064.68) will be allocated and paid as follows: 75% or Eight Thousand Two Hundred Ninety Eight Dollars and Fifty-One Cents (\$8,298.51) of the payment will be paid to the LWDA. The remaining 25% or Two Thousand Seven Hundred Sixty Six Dollars and Seventeen Cents (\$2,766.17) will be divided by the total pay periods worked for MCI by all Aggrieved Employees during the Release Period to yield the “Employee Settlement Share Value.” Each Aggrieved Employee shall be paid their individual total pay periods worked for Defendants during the Release Period multiplied by the Employee Settlement Share Value.

The payments to the LWDA and Aggrieved Employees shall be made by the Settlement Administrator no later than thirty (30) days after the Funding Completion Date.

All Aggrieved Employees who cash their settlement check may receive an IRS Form 1099 for their portion of the settlement, if deemed required by the Settlement Administrator (in compliance with IRS guidelines).

The settlement checks issued to Aggrieved Employees shall remain valid for one hundred eighty (180) days. Any settlement checks remaining uncashed after one hundred eighty (180) days shall be sent to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code section 1500 et seq., for the benefit of that Aggrieved Employee. The Parties agree that this disposition results in no “unpaid residue” under California Civil Procedure Code section 384, as the entire Net Settlement will be paid out to Aggrieved Employees. Therefore, Defendants will not be required to pay any interest on said amount. In the event that an Aggrieved Employee’s Individual Settlement Payment is sent to the Controller of the State of California, the terms of the final judgment and the Release of Claims will nevertheless be binding upon that Aggrieved Employee.

(c) Plaintiff’s Attorneys’ Fees, Litigation Costs and Service Fees Payment.

No later than thirty (30) days after the Funding Completion Date, the Settlement Administrator shall pay the court approved Plaintiff’s Attorneys’ Fees and Litigation Costs to Plaintiff’s Counsel and shall pay the court approved Service Fees to Plaintiff.

Any Plaintiff’s Attorneys’ Fees or Litigation Costs awarded to Plaintiff’s Counsel and Service Fees awarded to Plaintiff by the Court shall be deducted from the Gross Settlement Amount for the purpose of determining the Net Settlement Amount. The “future” aspect of these amounts include, without limitation, all time and expenses expended by Plaintiff’s Counsel in defending the Settlement and securing Approval of the Agreement (including any appeals therein). There will be no additional charge of any kind to the Aggrieved Employees or request for additional consideration from Defendants for such work. This amount shall include all attorneys’

fees, litigation costs, and service fees, which Plaintiff and/or Plaintiff's Counsel could claim under any legal theory whatsoever.

(d) Settlement Administrator Expenses.

Upon completion of the Settlement Administrator's duties under the Agreement, the Settlement Administrator shall pay itself its actual costs in administering the settlement, up to the \$1,000.00 allocated to it for Settlement Administration Expenses.

Section 3.05 Order Approving Settlement and Judgment.

Plaintiff and Defendants will jointly submit, with the documents asking the Court to approve the settlement and this Agreement, an order and judgment based on the Settlement to be entered by the Court granting approval of the PAGA penalties and retaining jurisdiction over all matters relating to the administration, consummation, enforcement, and interpretation of the terms of this Agreement and closing the case after submission of proof by the administrator of the payment of all funds enumerated in the Settlement.

Article IV.

Limitations On Use Of This Settlement.

Section 4.01 No Admission.

Defendants deny liability for any claims alleged by Plaintiff on his own behalf or on behalf of the State of California and any of its agencies, including but not limited to the Department of Industrial Relations, Division of Labor Standards Enforcement, and Labor Workforce and Development Agency, and the Aggrieved Employees upon any claim or cause of action. This Agreement does not constitute, and is not intended to constitute, an admission by Defendants as to the merits, validity, or accuracy of any of the allegations or claims asserted, or those that could have been asserted, against Released Parties in the Action.

Nothing in this Agreement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the course of the negotiations leading to this Agreement, is intended by the Parties to constitute, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in this case or any other judicial, arbitral, administrative, investigative or other forum or proceeding as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. The Parties themselves agree not to introduce, use, or admit this Agreement, directly or indirectly, in this case or any other judicial, arbitral, administrative, investigative or other forum or proceeding, as purported evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity, or for any other purpose. Notwithstanding the foregoing, this Agreement may be used in any proceeding before the Court that has as its purpose the interpretation, implementation, or enforcement of this Agreement or any orders or judgments of the Court entered in connection with the Agreement.

None of the documents produced or created by Plaintiff or the Aggrieved Employees in connection with the claims procedures or claims resolution procedures constitute, and they are not intended to constitute, an admission by Defendants of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity.

Section 4.02 Non-Evidentiary Use.

Neither this Agreement nor any of its terms shall be offered or used as evidence by any of the Parties, or their respective counsel in the Action or in any other action or proceeding; provided, however, this shall not prevent this Agreement from being used, offered, or received in evidence in any proceeding to enforce, construe, or finalize this Agreement and to secure its approval by the Court.

Section 4.03 Nullification.

- (a) If the Court should for any reason refuse to approve the Settlement of the Action as detailed in this Agreement, including but not limited to the payment of PAGA penalties as described in this Agreement, then (a) this Agreement shall be considered null and void, (b) neither this Agreement nor any of the related negotiations or proceedings shall be of any force or effect, and (c) all Parties to this Agreement shall stand in the same position, without prejudice, as if the Agreement had been neither entered into nor filed with the Court.
- (b) If the Court does not approve the Settlement of the Action as detailed in this Agreement, including but not limited to the payment of PAGA penalties as described in this Agreement, the Parties agree to meet and confer to address the Court's concerns.
- (c) Invalidation of any material portion of this Agreement shall invalidate this Agreement in its entirety unless the Parties shall subsequently agree in writing that the remaining provisions shall remain in full force and effect.

Article V.

Limited Release and Waiver of Claims.

Section 5.01 Aggrieved Employees' Release of PAGA Claims.

Upon the final approval by the Court of this Settlement, Plaintiff and each Aggrieved Employee, shall fully release and forever discharge Released Parties from the Released Claims that arose during the Release Period.

Section 5.02 General Release by Plaintiff Only.

In addition to the release made in Section 5.01, Plaintiff make the additional following general release of all claims, known or unknown. Plaintiff releases Released Parties from all

claims, demands, rights, liabilities and causes of action of every nature and description whatsoever, known or unknown, asserted or that might have been asserted, whether in tort, contract, or for violation of any state or federal statute, rule or regulation arising out of, relating to, or in connection with any act or omission by or on the part of any of the Released Parties. (The release set forth in this Section 5.02 shall be referred to hereinafter as the "General Release.")

With respect to the General Release, Plaintiff stipulates and agrees that, upon the Effective Date, Plaintiff shall be deemed to have expressly waived and relinquished, to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the California Civil Code, or any other similar provision under federal or state law, which provides:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS, WHICH THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, AND THAT IF KNOWN BY HIM OR HER WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASING PARTY.

Accordingly, if the facts relating in any manner to this Agreement are found hereafter to be other than or different from the facts now believed to be true, the release of claims contained herein shall be effective as to all unknown claims.

Notwithstanding the foregoing provisions, the General Release by Plaintiff does not constitute a waiver of any claims that cannot by law be waived, including claims for workers' compensation, disability insurance, or unemployment insurance.

Article VI.

Miscellaneous Provisions.

Section 6.01 Voluntariness.

This Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of any of the Parties, or of any other person, firm or other entity.

Section 6.02 Amendments.

The terms and provisions of this Agreement may be amended only by a written agreement that is both (a) signed by the Plaintiff and Defendants who executed this Agreement and (b) approved by the Court. Any waiver of any provision of this Agreement shall not constitute a waiver of any other provision of this Agreement unless expressly so indicated otherwise.

Section 6.03 Assignment.

None of the rights, commitments, or obligations recognized under this Agreement may be assigned by any Party, Aggrieved Employee, Plaintiff's Counsel, or Defense Counsel without the express written consent of each other Party and their respective counsel hereto. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties under this Agreement and shall not be construed to confer any right or to avail any remedy to any other person. Plaintiff expressly warrants that she has not transferred to any person or entity any right or cause of action, or claim released by this Agreement.

Section 6.04 Governing Law.

This Agreement shall be governed, construed, and interpreted, and the rights of the Parties shall be determined, in accordance with the laws of the State of California.

Section 6.05 Entire Agreement.

This Agreement contains the entire understanding of the Parties hereto with respect to the subject matter contained herein. This Agreement supersedes all prior agreements and understandings among the Parties hereto with respect to the settlement of the Action.

//

Section 6.06 Waiver of Compliance.

Any failure of any Party, and/or Plaintiff's Counsel hereto to comply with any obligation, covenant, agreement, or condition herein may be expressly waived in writing, to the extent permitted under applicable law, by the Party or Parties and their respective counsel hereto entitled to the benefit of such obligation, covenant, agreement, or condition. A waiver or failure to insist upon strict compliance with any representation, warranty, covenant, agreement, or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

Section 6.07 Counterparts.

This Agreement, and any amendments hereto, may be executed in any number of counterparts and any Party and/or their respective counsel hereto may execute any such counterpart, each of which when executed and delivered shall be deemed to be an original and all of which counterparts taken together shall constitute but one and the same instrument. A scanned or faxed signature shall be valid as an original signature. It shall not be necessary in making proof of this Agreement or any counterpart hereof to produce or account for any of the other counterparts.

Section 6.08 Attorneys' Fees and Costs.

Except as expressly provided herein, Defendants and Plaintiff shall each bear their own attorneys' fees and costs.

Section 6.09 Dispute(s).

Should any dispute(s) arise among the Parties or their respective counsel regarding the implementation or interpretation of this Agreement, Plaintiff's counsel and Defendants' counsel shall meet and confer in an attempt to reach a resolution. If the Parties are unable to reach a

resolution, they agree to submit any such dispute(s) to the Court. Except as expressly provided herein, this Agreement has not been executed in reliance upon any other written or oral representations or terms, and no such extrinsic oral or written representations or terms shall modify, vary or contradict its terms. In entering into this Agreement, the Parties agree that this Agreement is to be construed according to its terms and may not be varied or contradicted by extrinsic evidence. The Agreement will be interpreted and enforced under the laws of the State of California, both in its procedural and substantive aspects, without regard to its conflict of laws provisions. Any claim arising out of or relating to the Agreement, or the subject matter hereof, will be resolved solely and exclusively in the Superior Court of the State of California for the County of Los Angeles. The foregoing is only limited to disputes concerning this Agreement and in no way limits or negates the enforceability and effect of the underlying arbitration agreements signed by employees of Defendants, specifically including but not limited to Plaintiff, obligating them to arbitrate any and all claims on an individual (and not on a class or collective) basis.

Section 6.10 Drafting.

Plaintiff, on his own behalf and on behalf of the Aggrieved Employees, and Defendants participated in the negotiation and drafting of this Agreement and had available to them the advice and assistance of independent counsel. As such, neither Plaintiff nor Defendants may claim that any ambiguity in this Agreement should be construed against the other.

Section 6.11 Fair Settlement.

Plaintiff, Defendants, Plaintiff's Counsel, and Defendants' Counsel believe that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiation, taking into account all relevant factors, current and potential, and is consistent with public policy, and fully complies with applicable provisions of law.

Section 6.12 Binding.

This Agreement shall bind and inure to the benefit of the Parties hereto and to their respective successors, assigns, legatees, heirs, and personal representatives.

Section 6.13 Continuing Jurisdiction.

The Court shall retain exclusive and continuing equity jurisdiction of this Action over all Parties and Aggrieved Employees to interpret and enforce the terms, conditions and obligations of this Agreement.

Section 6.14 Enforcement Action.

In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties arising out of that other Party's or Parties' breach of this Agreement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

Section 6.15 Issuance of Form 1099; No Representation of Taxability.

An IRS Form 1099 will be issued by Defendants and to Plaintiff and to Plaintiff's counsel to reflect the respective portions of the Gross Settlement Amount. Plaintiff understands and agrees that he is responsible for payment of any taxes which are required to be paid to the State of California, the United States Government, or any other entity as a result of this settlement. Plaintiff acknowledges and agrees that Releasees have not warranted or represented how the U.S. Internal Revenue Service or other governmental taxing authorities will treat the payment described above for tax purposes, and agrees that no further payment of money to Plaintiff from Releasees will be due in the event that the payment or the release of claims embodied in this Agreement, or any

portion thereof, is found by a government taxing authority to be, or to result in, additional taxable income to Plaintiff. Plaintiff agrees that, in the event that any federal, state or local agency takes the position that taxes should have been withheld from amounts paid pursuant to this Agreement, Plaintiff will be solely responsible for payment of any such alleged tax obligations and will indemnify and hold Releasees harmless from any resulting tax liability, interest, attorneys' fees, or penalty associated therewith. Plaintiff hereby agrees to indemnify Releasees from any and all manner of liability if any should be imposed on them regarding the payment to Plaintiff under this Agreement specified above, including but not limited to any interest, attorneys' fees, penalties, and costs related to such payment. Upon Plaintiff's receipt of written notification from Releasees that such liability has been imposed by any of those governmental entities and the amount thereof, Plaintiff agrees that he shall fully remit such monies to the demanding entity within thirty (30) days from his receipt of such notification. Plaintiff further agrees to give Releasees written notice within ten (10) days of the time any demand for payment of taxes is received by Plaintiff from any governmental agency in connection with this payment, and further, Plaintiff will provide a confirmation that he will honor his obligations under this Paragraph.

Article VII.

Confidentiality

Section 7.01 Confidentiality.

Plaintiff and his Counsel agree that they have not and will not publish the Agreement. In response to any inquiries Plaintiff will state that "the case was resolved and it was resolved confidentially." Plaintiff's Counsel shall not report the Agreement or its content in any medium or in any publication, shall not post or report anything regarding the claims of Plaintiff or the Aggrieved Employees on their website, and shall not contact any reporters or media regarding the Agreement or its content. However, Plaintiff's attorneys are authorized to make a limited

disclosure to the Court and the LWDA for the purposes of obtaining the approval of the Settlement. This disclosure is limited to court filings and electronic submission of settlement documents to the LWDA and neither Plaintiff nor her counsel or representatives are permitted to disseminate or publish, distribute, or discuss the information provided to the Court in those filings outside the filings themselves and any hearing held on those filings, unless ordered otherwise by the Court.

IN WITNESS WHEREOF, the Parties have executed this Agreement on the date set forth below.

APPROVED AND ACCEPTED.

Dated: 08/15/2020

By: *Douglas Esquivel*
Douglas Esquivel

Dated: 8/17/20

MCI, Inc. dba Martinez Construction, Inc.

By: *[Signature]*
Printed Name: **David Martinez**
Title: **Owner**

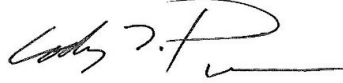
Dated: 8/17/20

By: *[Signature]*
David Joseph Martinez

**APPROVED AS TO FORM AND
ATTORNEY OBLIGATIONS ONLY**

Dated: August 15, 2020

PAYNE NGUYEN, LLP



By _____

Cody Payne
Attorneys for Plaintiff
Douglas Esquivel

Dated: August 17, 2020

FISHER & PHILLIPS LLP



By _____

USAMA KAHF
ASHTON M. RILEY
Attorneys for Defendants
MCI, Inc. dba Martinez Construction, Inc.
and David Joseph Martinez