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7
8 Attorneys for Plaintiffs

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF SAN DIEGO-CENTRAL DIVISION

11 ALVAN RAMIREZ, individually and on)
12 behalf of himself and others similarly)
13 situated,)

14 Plaintiffs,)

15 vs.)

16 KOLOA PACIFIC CONSTRUCTION)
17 INC., a California corporation; KERRY)
18 D. VINCI, an individual; ERNEST H.)
19 GRABBE, JR., an individual; and DOES)
20 1 through 50 inclusive)

21 Defendants.)

Case No.: 37-2020-00026391-CL-OE-CTL

Judge: Hon. Keri Katz
Dept.: C-74

22 **NOTICE OF RULING**

23 Compl. Filed: July 28, 2020
24 Trial Date: NA
25 Disc. Cutoff: NA

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1 TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:

2 PLEASE TAKE NOTICE that on **September 21, 2022**, the Honorable Judge
3 Keri Katz in the above referenced Court granted Plaintiffs' Motion to Approve the
4 PAGA Settlement, a court conformed true and correct copy of which is attached
5 hereto and marked as **Exhibit 1**.

6
7 Dated: September 28, 2022

Law Office of
Thomas D. Rutledge

8
9 By: Thomas D. Rutledge
10 /s/Thomas D. Rutledge
11 Attorney for the Plaintiffs, *et al.*

Exhibit 1

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO-CENTRAL DIVISION

ALVAN RAMIREZ, individually and on
behalf of himself and others similarly
situated,

Plaintiffs,

vs.

KOLOA PACIFIC CONSTRUCTION
INC., a California corporation; KERRY
D. VINCI, an individual; ERNEST H.
GRABBE, JR., an individual; and DOES
1 through 50 inclusive

Defendants.

Case No.: 37-2020-00026391-CL-OE-
CTL

Judge: Hon. Keri Katz
Dept.: C-74

**~~PROPOSED~~ ORDER GRANTING
APPROVAL OF PAGA
SETTLEMENT AND ENTERING
JUDGMENT, AWARDING
ATTORNEY'S FEES AND COSTS**

~~PROPOSED~~ ORDER

WHEREAS, on July 15, 2022, Plaintiff Ramirez individually and on behalf of himself and others similarly situated (collectively, the “Plaintiffs”) in the above referenced action, via counsel, applied before this Court for an Order to Approve the parties’ PAGA Settlement and for the dismissal of class claims and Defendant Ernest H. Grabbe, Jr. without prejudice; and

WHEREAS, the Application was unopposed by Defendants.

After considering the papers filed in support of said application, and the Court record as a whole, IT IS HEREBY ORDERED that the Court GRANTS Plaintiffs’ Application to Approve the parties’ PAGA Settlement and request for the dismissal of class claims and Defendant Ernest H. Grabbe, Jr. without prejudice.

The Court finds the settlement is fair, adequate, and reasonable for the Aggrieved Employees as defined in Exhibit 1 attached to the Declaration of Thomas D. Rutledge filed in support of the foregoing application.

- The settlement was reached through arm’s-length bargaining (not through fraud or collusion);
- Plaintiffs’ Counsel’s investigations and discovery were sufficient to allow Plaintiffs’ Counsel and the Court to act intelligently;
- Plaintiffs’ Counsel, Thomas D. Rutledge, is well experienced in employee representative action litigation;
- The case was complex and there was a certain amount of risk of appeals after lengthy litigation if the case did not resolve in the manner in which it resolved; and
- The settlement amount represents a fair and reasonable settlement of the claims asserted in relationship to the potential risks of continuing to litigate the matter.

The Court further finds that the requested attorneys’ fees, costs, and litigation

1 expenses are reasonable.

2 Accordingly, IT IS FURTHER ORDERED as follows:

3 1. The Court approves the settlement of the above-captioned action as set
4 forth in the Settlement Agreement and each of its releases and other terms, as fair,
5 just, reasonable, and adequate.

6 2. The parties shall comply with all aspects of the Settlement Agreement, a
7 copy of which is attached hereto as Exhibit 1.

8 3. Defendants shall pay all nonexempt employees Defendants employed
9 (former and current) in the State of California during the "PAGA Period" of "August
10 11, 2019 to August 14, 2020, inclusive."

11 4. The remaining claims, including class claims in Plaintiffs' operative
12 Complaint are dismissed without prejudice.

13 5. Defendant Ernest H. Grabbe, Jr. is dismissed without prejudice.

14 6. The Court hereby enters a Judgment in this case.

15 **IT IS SO ORDERED.**

16 Dated: 09/21/2022
17 _____



Hon. Keri Katz
Judge of the Superior Court of California
County of San Diego

Exhibit 1

1 Thomas D. Rutledge (SBN 200497)
2 Attorney-at-Law
3 113 West G Street, Suite 231
4 San Diego, California 92101
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6 thomasrutledgelaw@gmail.com

7 Attorneys for Plaintiffs

8 Additional Counsel on Following Page

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN DIEGO, CENTRAL DISTRICT

11 ALVAN RAMIREZ, an individual in
12 his representative capacity on behalf of
13 all Aggrieved Employees;

14 Plaintiffs,

15 v.

16 KOLOA PACIFIC CONSTRUCTION
17 INC., a California corporation; KERRY
18 D. VINCI, an individual; ERNEST H.
19 GRABBE, JR., an individual; and
20 DOES 1-10

21 Defendants.

) Case No.: 37-2020-00026391-CL-OE-
) CTL

) Hon. Keri Katz
) Department: C-74

) **JOINT STIPULATION OF PAGA
) SETTLEMENT AND RELEASE**

) Comp. Filed: July 28, 2020
) Trial Date: NA
) Disc. Cutoff: NA

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Attorneys for Defendant

IT IS HEREBY STIPULATED AND AGREED by and between Plaintiff Alvan Ramirez (“Representative Plaintiff”) on behalf of himself, the “Aggrieved Employees” as defined herein, and the State of California on the one hand, and Defendants Koloa Pacific Construction Inc., Kerry D. Vinci, and Ernest H. Grabbe, Jr., on the other hand (collectively “the Defendants”), subject to Court approval pursuant to California Labor Code § 2699(1)(2), that the settlement of this Action (as defined herein) shall be effectuated subject to the following terms and conditions:

I. SUMMARY OF SETTLEMENT TERMS.

Under the terms of the Settlement, Defendant will pay the Gross Settlement Amount of \$110,000 (“Gross Settlement Amount”), a non-reversionary sum, in exchange for the full and final settlement and release of any and all claims, known or unknown, by the Representative Plaintiff individually, and on behalf of the Aggrieved Employees and the State of California that were made, or that could have been made pursuant to the Private Attorney General Act, California Labor Code §§ 2698, *et seq.* (“PAGA”) based on the same or similar facts alleged in the operative Complaint in this action (“Action”) specific only to Plaintiffs’ Labor Code §§ 226 and 226.3 claims, and subject to the terms and conditions outlined in this Joint Stipulation of Settlement and Release (“Settlement Agreement”).

Per the PAGA and subject to Court approval, 75% of the Gross Settlement Amount (approx. \$49,218) is payable to the Labor Workforce Development Agency (“LWDA”), 25% is payable to the Aggrieved Employees (approx. \$16,406), 1/3 is payable to Plaintiffs’ Counsel (\$36,667), \$3,855 is payable to Plaintiffs’ Counsel for

1 costs. There is no reversion of funds to the Defendants.

2 In exchange for the consideration contained herein and in a separate settlement
3 and release agreement in which Defendants agree to pay Plaintiff Ramirez an
4 additional \$15,000 to resolve his individual claims against the Defendants,
5 Representative Plaintiff agrees to dismiss all claims alleged in the operative
6 Complaint with prejudice, as discussed below.

7 **II. DEFINITIONS.**

8 As used in this Joint Stipulation of Settlement and Release, the following terms
9 shall have the meanings specified below:

10 1. “Action” means this lawsuit and the operative Complaint in the matter
11 entitled *Ramirez v. Koloa Pacific Construction Inc.*, SDSC Case No.: 37-2020-
12 00026391-CL-OE-CTL, LWDA Case No. LWDA-CM-802075-20.

13 2. “Aggrieved Employees” means all nonexempt employees Defendants
14 employed (former and current) in the State of California during the “PAGA Period,”
15 as defined above.

16 3. “Complaint” means the operative Third Amended Complaint in the
17 Action.

18 4. “Counsel for Defendants” or “Defense Counsel” means Christopher W.
19 Olmsted and Jennifer P. Suberlak of/for Ogletree, Deakins, Nash, Smoak & Stewart,
20 P.C., 4370 La Jolla Village Drive, Suite 990, San Diego, CA 92122.

21 5. “Court” means the Superior Court of California, San Diego County in
22 which the Action is currently pending.

23 6. “Current Aggrieved Employee” means an employee who is currently
24 employed by Defendant Koloa Pacific Construction Inc.

25 7. “Distributable Amount” or “Net Settlement Amount” means the amount
26 that is distributable to the Aggrieved Employees, and equals the Gross Settlement
27 Amount of \$110,000, less Plaintiffs’ Counsel’s Fees and Costs, and payment to the
28 California Labor & Workforce Development Agency (“LWDA”).

1 8. “Effective Date” means the date of entry of Order granting approval of
2 this Settlement Agreement.

3 9. “Former Aggrieved Employee” means an employee no longer working
4 for the Defendant Koloa Pacific Construction Inc. but who worked for Defendant
5 Koloa Pacific Construction Inc. at some point during the PAGA period.

6 10. “Gross Settlement Amount” means the total amount of \$110,000
7 Defendants shall pay pursuant to the terms of this Settlement Agreement.

8 11. “Notice of Settlement” means the form to be prepared by the parties and
9 sent to the Aggrieved Employees after the Court approves the terms contained in the
10 Settlement Agreement and attached hereto as **Exhibit 1**.

11 12. “Notice Returns” means envelopes containing the Notice of Settlement
12 to Aggrieved Employees that were mailed to Aggrieved Employees but were
13 undelivered and returned by the U.S. Postal Service.

14 13. “Order” means the order entered by the Court pursuant to the terms set
15 forth in this Settlement Agreement finally and fully giving effect to the terms
16 contained in this Settlement Agreement and dismissing the Action with prejudice.

17 14. “PAGA Period” means from August 11, 2019 to August 14, 2020,
18 inclusive.

19 15. “Plaintiffs’ Counsel” means Thomas D. Rutledge, Esquire, 113 West G
20 Street, Suite 231, San Diego, California 92101, Telephone No.: (619) 886-7224.

21 16. “Plaintiffs’ Counsel’s Costs” means the amount Plaintiffs’ Counsel
22 incurred in the Action on behalf of the Representative Plaintiff and Aggrieved
23 Employees including, but not limited to, future costs incurred in securing approval of
24 this Settlement Agreement.

25 17. “Plaintiffs’ Counsel’s Fees” means the amount payable from the Gross
26 Settlement Amount to Plaintiffs’ Counsel for all past and future attorneys’ fees
27 incurred by Plaintiffs’ Counsel in the Action on behalf of the Representative Plaintiff
28 and the Aggrieved Employees including, but not limited to, future attorneys’ fees

1 incurred in securing approval of this Settlement Agreement equal to 1/3 of the Gross
2 Settlement.

3 18. “Qualifying Workweeks” means an approximation of the number of
4 weeks worked by any Aggrieved Employee during and within the PAGA Period,
5 calculated as set forth below.

6 19. “Redirected Notice” means a second Notice of Settlement to Current or
7 Former Aggrieved Employees mailed to a new or different address for an Aggrieved
8 Employee that was obtained because of a Notice Return.

9 20. “Released Claims” means any and all claims, debts, liabilities, demands,
10 obligations, guarantees, costs, expenses, attorneys’ fees, damages, and civil penalties
11 that are recoverable under the PAGA based on Plaintiffs’ Labor Code §§ 226 and
12 226.3 claims asserted in the operative Complaint, and is inclusive of all attorneys’
13 fees and costs from August 11, 2019 to August 14, 2020, inclusive.

14 21. “Released Parties” include Defendants, and their past, present, and future
15 parents, affiliates, subsidiaries, successors in interest, merged parties, divisions,
16 predecessors, successors, partners, joint venturers, affiliated organizations,
17 shareholders, insurers, reinsurers and assigns, and each of their past, present and
18 future officers, directors, trustees, agents, employees, attorneys, contractors,
19 representatives, benefits plans sponsored or administered by Defendants, divisions,
20 units, and branches, and any other persons or entities acting on behalf of or in concert
21 with any of the foregoing.

22 22. “Representative Plaintiff” means Alvan Ramirez and his
23 representative(s), heir(s), assign(s), attorney(s), and/or insurer(s).

24 23. “Settlement Agreement” means this Joint Stipulation of Settlement and
25 Release, including any attached exhibits.

26 24. “Settlement Payment(s)” refers to the payment(s) to any Aggrieved
27 Employees Employee pursuant to the terms of this Settlement Agreement.
28

1 **III. BACKGROUND & REASONS FOR SETTLEMENT.**

2 On July 28, 2020, the named Plaintiff filed an individual action only Complaint
3 in the Superior Court of the State of California, County of San Diego seeking a court
4 order to obtain his personnel file and related remedies. Upon receipt and review of
5 Plaintiff's file, Plaintiffs' Counsel and the Representative Action Plaintiff concluded
6 it was in his and the best interest of the Aggrieved Employees to pursue a
7 representative action.

8 On August 11, 2020, Plaintiffs filed a "PAGA notice" (notice alleging
9 violations of the California Labor Code subject to civil penalties) with the Labor and
10 Workforce Development Agency concerning the Defendants. Likewise, on August
11 11, 2020 (before Defendants filed a responsive pleading to the original Complaint),
12 the Representative Action Plaintiff via counsel filed an amended Complaint asserting
13 wage and hour representative PAGA and class action claims.

14 On October 19, 2020, Plaintiffs filed a Second Amended Complaint. On
15 November 27, 2020, Plaintiffs filed an amended PAGA notice with the LWDA. On
16 November 30, 2020, Plaintiffs filed a Third Amended Complaint, the operative
17 Complaint.

18 Based on the foregoing, Plaintiffs maintain that Plaintiffs have exhausted their
19 administrative remedies with the LWDA. The LWDA has given no notice to the
20 parties of their intent to take this case over and prosecute the claims alleged herein.

21 In their pleadings, the Representative Plaintiff seeks PAGA only civil penalties,
22 interest, costs, and attorneys' fees on the basis of their PAGA allegations that, among
23 other things, Defendants failed to pay Aggrieved Employees for all overtime wages,
24 prevailing wages, minimum wages, regular wages, meal and rest break premiums,
25 failed to provide accurate wage statements, failed to timely pay all wages upon
26 discharge, and violated the PAGA. Defendants deny each and every one of the
27 allegations asserted in the operative Complaint and assert they have no liability for
28 the claims of the Representative Plaintiff, the Aggrieved Employees, or the State of

1 California.

2 Plaintiffs' counsel has analyzed the facts and law during the prosecution of this
3 Action. During settlement discussions, Defendants produced a 20% random sampling
4 of Aggrieved Employees' payroll records, average rate of pay Aggrieved Employees
5 earned, the title and job descriptions of Aggrieved Employees, the Defendant' wage
6 and hour policies in effect during the PAGA period, information concerning public
7 works jobs the Defendants worked on, among other things requested by Plaintiffs'
8 Counsel. Considering all this information, Plaintiffs' counsel is able to make a
9 determination of the potential case value and in conjunction with other relevant
10 factors, including most importantly the Defendants' vehement claims they have done
11 nothing wrong on a class action basis.

12 Representative Plaintiff and Defendants, through their counsel, engaged in
13 extensive and meaningful discussions about the factual and legal strengths and
14 weaknesses of the claims and defenses. On June 16, 2021, the parties appeared before
15 Mr. Anthony Pantoni, Esquire, a private mediator during which time the parties
16 discussed the merits of Plaintiffs' claims, the evidence in support and lack of evidence
17 thereof, and following an all-day endeavor, the parties agreed to accept the mediator's
18 proposal.

19 Plaintiffs' Counsel's review of the random sampling Defendants provided
20 demonstrate there are a large number of obstacles to obtaining class certification. The
21 prevailing wage/overtime claims, for example, affected less than three people,
22 meaning the element of numerosity is absent. Plaintiffs' meal and rest break claims
23 were hotly contested with Defendants arguing too many individual inquiries would
24 surface making class certification impossible and that regardless all Aggrieved
25 Employees took their breaks at the same time. There was virtually no evidence
26 demonstrating that Defendants failed to maintain records inasmuch as there was
27 ample evidence showing Defendants kept careful records of Aggrieved Employees'
28 working hours.

1 Representative Plaintiff and Plaintiffs' Counsel, however, maintain their Labor
2 Code §§ 226 and 226.3 PAGA claims are viable. The Representative Plaintiff and
3 Plaintiffs' Counsel concluded, after taking into account the disputed factual and legal
4 issues involved in the Action, the risks and substantial expenses involved in the
5 further prosecution of this case, reasonably sufficient benefits to be received pursuant
6 to the compromise and settlement of the Action, as set forth in this Settlement
7 Agreement, that settlement on the terms set forth herein is in the best interest of
8 Representative Plaintiff and the Aggrieved Employees is fair and reasonable.
9 Recognizing the risk, Defendants agree to pay almost full value for the release of
10 these claims. In exchange, the Representative Plaintiff agrees to dismiss all class
11 claims and the remaining PAGA claims without prejudice subject to Court approval.

12 Similarly, Defendants concluded there are benefits associated with settling the
13 Action. After taking into account the disputed factual and legal issues involved in the
14 Action, the expense and burden of protracted litigation, and their desire to put the
15 controversy to rest, Defendants believe this settlement is in Defendants' best interests
16 and is fair and reasonable. In particular, Defendants are concerned the future costs
17 and expenses involved in continuing the Action are substantial and Defendants
18 choose to eliminate any further expenses, attorneys' fees, and risks via the Settlement
19 Agreement.

20 By signing below, Defendants warrant and represent that Defendants provided
21 Plaintiffs a true and correct random sampling of 20% of Aggrieved Employees'
22 payroll records before private mediation. Defendants also warrant and represent that
23 Defendants employed about 66 Aggrieved Employees who worked approximately
24 1100 workweeks during The PAGA Period. By this Agreement and based on
25 Defendants' representations, the parties estimate the gross payout before expenses is
26 about \$100 per pay period (\$110,000/1100) and the net amount is \$60 per pay period
27 (\$65,624/1100). The parties also estimate that the approximate payout to the State of
28 California via the LWDA shall be \$49,218 and the Aggrieved Employees shall

1 receive approximately \$249 per employee, including payment to the Representative
2 Plaintiff. Defendants further warrant and represent that, with the assistance of
3 counsel, they have conducted a review of their wage and hour policies and practices
4 to address the issues raised in this lawsuit to ensure they are in full compliance with
5 all wage and hour laws currently.

6 **IV. PAGA SETTLEMENT APPROVAL & IMPLEMENTATION**
7 **PROCEDURE.**

8 This Settlement Agreement contemplates (1) entry of an Order granting
9 approval of the Settlement and dismissing the Action with Prejudice (“Order”); (2)
10 the mailing of a Notice of Settlement and Settlement Payments to all Aggrieved
11 Employees; (3) providing Settlement Payments to all Aggrieved Employees; and (4)
12 the mailing of a Notice of Settlement and Settlement Payments to the California
13 LWDA. Proceeds from any uncashed checks after the expiration of 180 days shall be
14 sent to the LWDA.

15 **A. Approval of the PAGA Settlement.**

16 As soon as practicable, Plaintiffs’ Counsel will submit this Settlement
17 Agreement to the Court for its approval. Such submission will include such motions,
18 pleadings, and evidence that may be required for the Court to determine if this
19 Settlement Agreement is fair, adequate, and reasonable as required by California
20 Labor Code § 2699(l)(2). Such submission will also include a Notice of Settlement
21 for the Court’s approval, a copy of which is attached hereto as **Exhibit 1**.

22 If the Settlement Agreement fails to be approved or otherwise fails to be
23 consummated for any reason whatsoever, then Defendants retains all rights previously
24 available to it, and any provisional approval of the Settlement Agreement, or the
25 adoption of any procedure herein, shall be undone and the parties shall be restored to
26 their pre-settlement status as if no settlement had been reached and no decisions were
27 made pursuant to it, except as otherwise expressly provided herein. In that event,
28 nothing in this Settlement Agreement or other papers or proceedings related to the

1 Settlement Agreement shall be used as evidence or argument by any party or
2 Aggrieved Employee.

3 **B. Cooperation.**

4 The Parties agree to cooperate fully with each other to accomplish the terms
5 and requirements of this Settlement Agreement, including but not limited to, the
6 execution of such documents and taking such other action as may reasonably be
7 necessary to implement the terms of this stipulated Settlement Agreement.

8 **C. Approval of Stipulation.**

9 By submitting this Settlement Agreement, the Representative Plaintiff, via
10 Plaintiffs' Counsel, respectfully requests the Court to approve this Settlement
11 Agreement. Upon granting approval of the settlement contained herein, the Court
12 shall also enter an Order dismissing with prejudice all claims and implementing the
13 Releases contained herein as to Representative Plaintiff and all Aggrieved Employees
14 and the State of California. The Releases contained herein shall become effective
15 concurrently with the issuance of the Court's Order granting approval subject to
16 Defendants' compliance with making all payments required by this Agreement.

17 **D. Notice of Settlement by Mail.**

18 The Defendants shall, within sixty (60) days from the Effective Date, mail the
19 Notice of Settlement and Settlement Payments via First-Class mail using the U.S.
20 Postal Service to the most recent address known for each Current and Former
21 Aggrieved Employee. If any Notices of Settlement are returned with a forwarding
22 address, Defendants will re-mail the Notice of Settlement and/or Settlement Payment
23 to the Aggrieved Employee whose notice was returned.

24 If any Notice of Settlement mailed to Aggrieved Employees is returned as
25 having been undelivered by the U.S. Postal Service, the Defendants shall use
26 reasonable efforts to locate an address correction from such Aggrieved Employee(s),
27 and send a Redirected Notice to the new or different address within seven days. The
28 Defendants shall, via Defense Counsel, provide Plaintiffs' Counsel monthly updates

1 as to the status of mailing until the completion of all mailing.

2 **E. Declaration of Compliance.**

3 As soon as practicable, the Defendants shall, via Defense Counsel, provide
4 Plaintiffs' Counsel a declaration attesting to completion of the notice and payment
5 process set forth above, including an explanation of efforts to resend Notice Returns,
6 a summary of claims paid, and checks cashed and uncashed. Counsel shall keep this
7 declaration for their records in the event of an audit from the LWDA for no more than
8 five years.

9 **F. Sufficient Notice.**

10 Compliance with the procedures described in this Section shall constitute due
11 and sufficient notice to Aggrieved Employees of this Settlement Agreement, shall
12 satisfy the requirements of due process, and nothing further shall be required of the
13 Representative Plaintiff, Plaintiffs' Counsel, Defendants, or Counsel for Defendants
14 to provide additional notice of the Settlement Agreement, unless expressly ordered by
15 the Court.

16 **G. Formulas to Determine Payment, Distribution of Funds & Payment**
17 **of Funds.**

18 **1. General Terms of Settlement.**

19 On the Effective Date, Defendants shall tender payments directly to the
20 Aggrieved Employees and Plaintiffs' Counsel in the amounts determined pursuant to
21 this Settlement Agreement. From the Gross Settlement Amount, Defendants via
22 counsel shall pay Plaintiffs' Counsel or his assigns \$40,522 as Plaintiffs' Counsel
23 Fees and Costs, and \$49,218 to the LWDA. All payments shall be deemed penalties
24 and, thus no employer's taxes are due and payable from the Gross Settlement
25 Amount. Defendants shall issue Aggrieved Employees 1099's for their amount
26 received for the applicable tax year.

27 In summary, the amount from which the Aggrieved Employees may be paid,
28 also called the "Distributable Amount," is approximately:

Gross Settlement Amount:	\$110,000
Plaintiffs' Counsel Fees (minus):	(\$36,667)
Plaintiffs' Counsel Costs (minus):	(\$3,855)
Payment to the LWDA (minus):	(\$49,218)
Estimated Distributable Amount to Aggrieved Employees:	\$16,106

No funds will revert to Defendants from the Gross Settlement Amount.

Defendants shall pay any remaining proceeds from uncashed checks after the expiration of 180 days to the LWDA.

2. Formula for Determining the Value of the Claims for the Aggrieved Employees.

To fairly distribute the Settlement Payments to Aggrieved Employees, Plaintiffs' Counsel and Defense Counsel arrived at a formula designed to fairly determine each Aggrieved Employee's *pro rata* payment from the Distributable Amount, as allowed by PAGA, based on their length of service. The Distributable Amount will be divided amongst Aggrieved Employees pro-rata based on the number of a particular Aggrieved Employee's Qualifying Workweeks worked as compared to the total Qualifying Workweeks worked by the Aggrieved Employees as a whole. Each Aggrieved Employee's pro-rata Settlement Payment is calculated by dividing the Distributable Amount by the total number of Qualifying Workweeks of the Aggrieved Employees as a whole, to determine the monetary value of each Qualifying Workweek. To determine each Aggrieved Employee's Settlement Payment, the Defendants will then multiply the number of each Aggrieved Employee's Qualifying Workweeks, as calculated above, times the value of each Qualifying Workweek, as calculated above.

Mathematically, each Aggrieved Employee's payment is calculated as follows:
 Aggrieved Employee's Settlement Payment = (Distributable Amount) ÷ (total Qualifying Workweeks of all Aggrieved Employees as a whole) x (individual

1 Aggrieved Employees Employee's Qualifying Workweeks). Payments from the
2 Distributable Amount shall be made only to Aggrieved Employees, pursuant to the
3 manner provided in this Agreement and this section.

4 **H. Distribution of Settlement Payments.**

5 The Defendants will be responsible for distributing the Notice of Settlement
6 and Settlement Payments. The Defendants shall prepare, file, and send IRS Forms
7 1099s for Settlement Payments made to Aggrieved Employees and for all other
8 payments issued out of the Gross Settlement Amount. The Defendants shall not
9 disburse the settlement funds except as provided herein, as ordered by the Court, or as
10 agreed upon, in writing, by Counsel for Defendants and Plaintiffs' Counsel.

11 **I. Time for Disbursement.**

12 The Defendants shall issue all payments to Aggrieved Employees on the
13 Effective Date. Defendants shall issue Payment to Aggrieved Employees in the form
14 of a check issued for an amount calculated using the formulas contained in this
15 Settlement Agreement. Funds from any settlement checks remaining un-cashed after
16 one hundred eighty (180) calendar days after being issued to Aggrieved Employees
17 shall be distributed to the LWDA by the Settlement Administrator.

18 Aggrieved Employees will be bound by all the terms of this Settlement
19 Agreement, regardless of whether that Aggrieved Employee receives and cashes his
20 or her check for Settlement Payment.

21 **J. Joint and Several Liability.**

22 Each Defendant acknowledges that his/her/its liability for the Gross Settlement
23 Amount is joint and several.

24 **K. Circular 230 Disclaimer.**

25 Each party to this Settlement Agreement acknowledges and agrees that (1) no
26 provision of this Agreement, and no written communication or disclosure between or
27 among the parties or their attorneys and other advisers, is or was intended to be, nor
28 shall any such communication or disclosure constitute or be construed or be relied

1 upon as, tax advice within the meaning of United States Treasury Department
2 Circular 230 (31 CFR Part 10, as amended); (2) the Acknowledging Party (a) has
3 relied exclusively upon his, her or its own, independent legal and tax advisers for
4 advice (including tax advice) in connection with this Agreement, (b) has not entered
5 into this Agreement based upon the recommendation of any other party or any
6 attorney or advisor to any other party, and (c) is not entitled to rely upon any
7 communication or disclosure by any attorney or adviser to any other party to avoid
8 any tax penalty that may be imposed on the Acknowledging Party; and (3) no attorney
9 or adviser to any other party has imposed any limitation that protects the
10 confidentiality of any such attorney's or adviser's tax strategies (regardless of
11 whether such limitation is legally binding) upon disclosure by the Acknowledging
12 Party of the tax treatment or tax structure of any transaction, including any transaction
13 contemplated by this Agreement.

14 **V. LIMITATIONS ON USE OF THIS SETTLEMENT.**

15 **A. No Admission.**

16 Neither the acceptance nor the performance by Defendants of the terms
17 contained in this Settlement Agreement or any of the related negotiations or
18 proceedings is or shall be claimed to be, construed as, or deemed a precedent or an
19 admission by Defendants of the truth of any allegations in the Complaint or any
20 amended complaint, which are explicitly denied.

21 **B. Non-Evidentiary Use.**

22 Neither this Settlement Agreement, its terms, nor any statements or conduct in
23 the negotiation or drafting of it, shall be offered or used as evidence by the
24 Representative Plaintiff, any Aggrieved Employees, Defendants, or its or their
25 respective counsel, in the Action, except as is reasonably necessary to effectuate its
26 purpose and terms, including enforcement of the Settlement Agreement in the event
27 of breach by any party as provided herein. This Settlement Agreement may be used
28 by Defendants and/or the Released Persons to prove or defend against any claim

1 released herein by any Aggrieved Employee in any judicial, quasi-judicial,
2 administrative or governmental proceeding.

3 **C. Nullification.**

4 If the Court for any reason does not approve this Settlement Agreement, this
5 Settlement Agreement shall be considered null and void and all parties to this
6 Settlement Agreement shall stand in the same position, without prejudice, as if the
7 Settlement Agreement had been neither entered into nor filed with the Court.

8 **VI. RELEASE**

9 **A. Aggrieved Employees.**

10 Upon the approval by the Court of this Settlement Agreement and by operation
11 of the Settlement Agreement's terms, and except as to such rights or claims as may be
12 created by this Settlement Agreement, all Aggrieved Employees, fully release and
13 discharge the Released Persons from all Released Claims, whether known or
14 unknown during the PAGA Period.

15 **B. Representative Plaintiff's Personal Release.**

16 Upon the approval by the Court of this Settlement Agreement and in
17 consideration for the promises set forth in this Agreement and in a separate individual
18 settlement agreement, Representative Plaintiff does hereby -- for himself and for his
19 heirs, representatives, attorneys, executors, administrators, successors, and assigns --
20 release, acquit, and forever discharge Defendants and the Releasees from any and all
21 actions, cause of actions, obligations, costs, expenses, damages, penalties, losses,
22 claims, liability, suits, debts, demands, and benefits (including attorneys' fees and
23 costs), of whatever character, in law or in equity, known or unknown, suspected or
24 unsuspected, matured or unmatured, of any kind or nature whatsoever, now existing
25 or arising in the future, based on any act, omission, event, occurrence, or non-
26 occurrence from the beginning of time to the date of execution hereof, including but
27 not limited to any claims or causes of action arising out of or in any way relating to
28 Representative Plaintiff's employment with Defendant, and any other claims which

1 have been or could have been made in Representative Plaintiff's original and
2 amended complaints and this Action.

3 Representative Plaintiff and Defendants agree this release of claims includes,
4 but is not limited to, claims for breach of any implied or express contract or covenant;
5 claims for promissory estoppel; claims of entitlement to any pay, including
6 commissions; claims of wrongful denial of insurance and employee benefits; claims
7 for wrongful termination, retaliatory discharge or public policy violations of whatever
8 kind or nature, defamation, invasion of privacy, fraud, misrepresentation, emotional
9 distress or other common law or tort matters; claims for any penalties; claims of
10 harassment, retaliation or discrimination based on race, color, religion, sex, sexual
11 orientation, national origin, ancestry, physical or mental disability, medical condition,
12 marital status, age, or any other protected status under federal, state, or local law;
13 claims under the California Labor, Government, Business and Professions, and Health
14 and Safety Codes; claims based upon the California Constitution; claims under the
15 Fair Labor Standards Act, 29 U.S.C. §§ 201, *et seq.*; claims under the Fair Credit
16 Reporting Act, 15 U.S.C. §§ 1681, *et seq.*; claims under the California Investigative
17 Consumer Reporting Agencies Act, as well as California Civil Code §§ 1786, *et seq.*;
18 claims under the California Consumer Credit Reporting Agencies Act, California
19 Civil Code §§ 1785, *et seq.*; claims based on any federal, state or governmental
20 statute, regulation or ordinance, including, without limitation, the California
21 Confidentiality of Medical Information Act, the California Fair Employment &
22 Housing Act, the California Unfair Competition Law, disputed claims under the
23 California Wage Orders, the California Family Rights Act, the Age Discrimination in
24 Employment Act ("ADEA"), the Older Workers Benefits Protection Act
25 ("OWBPA"), Title VII of the Civil Rights Act, the Americans With Disabilities Act,
26 the Labor Management Relations Act, and the Family Medical Leave Act, all as
27 amended. Representative Plaintiff further agrees he will not serve as putative class or
28 collective action representatives in any future action purporting to bring any of these

1 released claims against any of the Releasees.

2 Excluded from this release are any claims for breach of this Settlement
3 Agreement and any claims that cannot be waived by law, including but not limited to
4 the right to participate in an investigation conducted by, the Equal Employment
5 Opportunity Commission and/or the California Department of Fair Employment and
6 Housing, workers' compensation benefits, and unemployment insurance payments.
7 Representative Plaintiff waives, however, his right to any monetary recovery or other
8 relief should any agency pursue claims on Representative Plaintiff's behalf that arose
9 on or before the date of this Settlement Agreement.

10 For the purpose of implementing a full and complete release, the
11 Representative Plaintiff expressly acknowledges that the general release he gives
12 pursuant to this Agreement is intended to include in its effect, without limitation,
13 claims that he did not know or suspect to exist at the time of execution hereof,
14 regardless of whether the knowledge of such claims, or the facts upon which they
15 might be based, would materially have affected the settlement of this matter, and that
16 the consideration given under this Agreement is also for the release of those claims
17 and contemplates the extinguishment of any such unknown claims. In furtherance of
18 this Settlement, Representative Plaintiff waives any rights he may have under
19 California Civil Code § 1542 (and other similar statutes and regulations). Civil Code
20 § 1542 states:

21 **A GENERAL RELEASE DOES NOT EXTEND TO**
22 **CLAIMS THAT THE CREDITOR OR RELEASING**
23 **PARTY DOES NOT KNOW OR SUSPECT TO EXIST**
24 **IN HIS OR HER FAVOR AT THE TIME OF**
25 **EXECUTING THE RELEASE AND THAT, IF**
26 **KNOWN BY HIM OR HER, WOULD HAVE**
27 **MATERIALLY AFFECTED HIS OR HER**
28 **SETTLEMENT WITH THE DEBTOR OR RELEASED**

1 **PARTY.**

2 **VII. MISCELLANEOUS PROVISIONS.**

3 **A. Amendments.**

4 Material terms and provisions of this Settlement Agreement may be amended
5 only by a written agreement, which is both (1) signed by the Representative Plaintiff,
6 Plaintiffs' Counsel, Defendants, and Counsel for Defendants and (2) approved by the
7 Court. Nonmaterial amendments or modifications to this Agreement, however, may
8 be made in writing between Plaintiffs' Counsel and Defendants' Counsel without the
9 need to obtain signatures from the represented parties.

10 **B. Jurisdiction of the Court to Enforce Terms of Agreement.**

11 The Parties stipulate and agree that the Court will retain jurisdiction to enforce
12 the terms of this Settlement Agreement following approval of the Settlement
13 Agreement, pursuant to California Code of Civil Procedure § 664.6. The Parties agree
14 to the exclusive jurisdiction of the Court to enforce the terms and conditions
15 contained herein.

16 **C. No Inducements.**

17 Representative Plaintiff and Defendants acknowledges they are entering this
18 Settlement Agreement voluntarily act without duress or undue pressure or influence
19 of any kind or nature whatsoever and that neither the Representative Plaintiff nor
20 Defendants have relied on any promises, representations or warranties regarding the
21 subject matter hereof other than as set forth in this Settlement Agreement.

22 **D. No Prior Assignment.**

23 The parties hereto represent, covenant, and warrant they have not, directly or
24 indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or
25 encumber to any person or entity any portion of any liability, claim, demand, action,
26 cause of action or rights herein released and discharged except as set forth herein.
27 Any Released Claims made by any Aggrieved Employees during the PAGA period
28 are deemed covered and released by the individual Aggrieved Employee(s) making

1 the claim under the terms set forth herein. Any Aggrieved Employees covered by this
2 Settlement Agreement will be barred from proceeding with any such claim.

3 **E. Counterparts.**

4 This Settlement Agreement, and any amendments hereto, may be executed in
5 any number of counterparts, each of which when executed and delivered shall be
6 deemed to be an original and all of which taken together shall constitute one and the
7 same instrument. Signatures obtained via facsimile, or copies of signatures, shall be
8 deemed valid as if they were inked originals. This Settlement Agreement will become
9 effective on the date when the last person signs and dates it.

10 **F. Declaration from Defendant's Person Most Qualified.**

11 The parties acknowledge that Plaintiffs agreed to settle this case for the amount
12 stated herein based on Defendant's unsworn representations. Parties therefore agree
13 this agreement is contingent upon Defendant providing a sworn declaration from
14 Defendant's Person Most Qualified within the meaning of Code of Civil Procedure §
15 2025.230 to the satisfaction of Plaintiffs' Counsel that will verify the total number of
16 pay periods that Aggrieved Employees worked during the PAGA Period, and provide
17 any other information Plaintiffs' Counsel believe is reasonably necessary to verify
18 Defendants' representations before this Agreement is presented to the Court for
19 approval. This sworn declaration shall be kept and maintained confidential by
20 Plaintiffs' Counsel for no more than five years and is available for Court *in camera*
21 inspection at the Court's behest.

22 **IN WITNESS WHEREOF**, the parties hereto execute this Settlement
23 Agreement and have caused this Settlement Agreement to be executed by their duly
24 authorized representatives.

25 Representative Plaintiff

26
27 Dated: _____

28 _____
ALVAN RAMIREZ, individually and
for Aggrieved Employees

Exhibit 1

Cover Letter

<<Mailing Date>>

To: <<First Name>><<Last Name>>
<<Address>>
<<City>> <<State>> <<Zip>>

Re: *Ramirez v. Koloa Pacific Construction Inc.*
SDSC Case No.: 37-2020-00026391-CL-OE-CTL
LWDA Case No. LWDA-CM-802075-20

Dear <<First Name>><<Last Name>>:

Please find enclosed a check in the amount of <<amount of payment>> (“Individual Settlement Check”). This check is your payment from the settlement of a lawsuit entitled *Ramirez v. Koloa Pacific Construction Inc.*, SDSC Case No.: 37-2020-00026391-CL-OE-CTL (“Lawsuit”), pending in the Superior Court of California for the County of San Diego (“Court”).

The lawsuit was filed by Alvan Ramirez (“Plaintiff”), a former employee of Koloa Pacific Construction Inc. (“The Company”), on behalf of the State of California with respect to himself and other alleged aggrieved employees, to seek recovery of civil penalties pursuant to the California Private Attorneys General Act of 2004, California Labor Code section 2698, *et seq.* (“PAGA”). Plaintiff alleged that The Company violated multiple provisions of the California Labor Code and Industrial Welfare Commission Wage Orders by failing to properly pay minimum, overtime, and reporting time wages, provide compliant meal and rest periods and associated premium pay, timely pay wages during employment, timely pay wages upon termination, provide compliant wage statement, and keep requisite payroll records. The Company denies these allegations and denies any wrongdoing of any kind associated with these allegations.

A settlement was reached between Plaintiffs and The Company, on behalf of Plaintiffs, the State of California, and the following aggrieved employees: all current and former hourly-paid or non-exempt employees who worked for The Company in the State of California from August 11, 2019 to and including August 14, 2020 (“Aggrieved Employees”).

On <<Effective Date>>, the settlement was approved by the Court, with a portion to be paid to the State of California and a portion to be paid to the Aggrieved Employees. You are receiving a portion of the settlement (the enclosed Individual Settlement Check) because you have been identified as an Aggrieved Employee. Your Individual Settlement Check is based on the total number of pay periods that you were issued a wage statement by The Company during the period from August 11, 2019 to and including August 14, 2020. Records reflect that you had <<#>> pay periods in that time. The Individual Settlement Check is considered to be 100% penalties, which will be reported on an IRS Form 1099. You are responsible for paying any and all taxes that may be due as a result of any payment issued to you under the settlement and should consult a tax advisor regarding the tax consequences of such payment.

By way of the settlement, you are deemed to fully release and forever discharge the Released Parties from the Released Claims. The “Released Parties” means The Company and its past, present, and future parents, affiliates, subsidiaries, divisions, units, branches, partners, joint ventures, predecessors, successors, successors-in-interest, merged parties, assigns, administrators, consultants, subcontractors, boards of trustees, boards of directors, officers, trustees, directors, partners, agents, managers, members, shareholders, employees, contractors, representatives, attorneys, fiduciaries, insurers, co-insurers, reinsurers, accountants, auditors, advisors, benefits plans sponsored or administered by Defendant, personal representatives, spouses, heirs, executors, associates, members of their immediate families, and all persons acting under, by, through, or in concert with any of them. The “Released Claims” means any and all known and unknown claims, losses, damages, interest, liabilities, causes of action, civil complaints, arbitration demands or suits for civil penalties under PAGA, California Labor Code Section 2698, *et seq.*, that are based upon or arise from the factual allegations in the Operative Complaint and/or Notice to the LWDA, arising during and/or with respect to the period from August 11, 2019 to and including August 14, 2020, for violation of and/or based on, but not limited to, California Labor Code §§ 226 and 226.3, and all claims for attorneys’ fees and costs and statutory interest in connection therewith.

Your Individual Settlement Check is valid for 180 calendar days from the date of issuance, and if you do not cash, deposit, or otherwise negotiate the check within the 180-day timeframe, your Individual Settlement Check will be cancelled and the funds will be transmitted to the California Labor Workforce Development Agency.

Do not call or write the Court or Office of the Clerk of the Court to ask questions about the settlement. If you have any questions concerning the settlement, you may contact the following:

Law Offices of Thomas D. Rutledge
Thomas D. Rutledge, Esq.
113 West G, Suite 231
San Diego, California 92101
Telephone: (619) 886-7224
thomasrutledgelaw@gmail.com

Counsel for the Plaintiffs

And/or

Christopher W. Olmsted
christopher.olmsted@ogletree.com
Jennifer P. Suberlak
jennifer.suberlak@ogletree.com
OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.
4370 La Jolla Village Drive, Suite 990
San Diego, CA 92122
Telephone: 858-652-3100
Facsimile: 858-652-3101

Counsel for The Company

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Dated: _____

Defendant Koloa Pacific Constr. Inc.

For Defendant Koloa Pacific
Construction Inc.

Dated: _____

Kerry D. Vinci, individually and as a
corporate representative

Dated: _____

Ernest H. Grabbe, Jr., individually and
as a corporate representative

1 authorized representatives.

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4 Dated: 10/26/2021

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7 Dated: 10/21/21

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14 Dated: _____

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Representative Plaintiff



ALVAN RAMIREZ, individually and
for Aggrieved Employees

Defendant Koloa Pacific Constr. Inc.



For Defendant Koloa Pacific
Construction Inc.



Kerry D. Vinci, individually and as a
corporate representative

Ernest H. Grabbe, Jr., individually and
as a corporate representative

48160755.2

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

I, THOMAS D. RUTLEDGE, the undersigned, am employed in the County of San Diego, State of California; I am over the age of 18 and not a party to the within action; my business address is 16956 Via de Santa Fe, Suite 1847, Rancho Santa Fe, California 92091-4606.

On September 28, 2022, I served the foregoing document(s) described as:

NOTICE OF RULING

on the interested parties to this action by placing a copy thereof enclosed in a sealed envelope addressed as follows: **See Attached List.**

☒ **(BY MAIL)** I am readily familiar with the business practice for collection and processing of correspondence for mailing with the United States Postal Service. This correspondence was deposited with the United States Postal Service this same day in the ordinary course of business at our Firm's office address in San Diego, California.

☐ **(BY E-MAIL via E-file)** I am readily familiar with the business practice for collection and processing of correspondence for emailing with the Court authorized third-party vendor. This correspondence was sent via email via this third-party vendor pursuant to the vendor's policies and practices.

☐ **(BY OVERNIGHT DELIVERY SERVICE)** I served the foregoing document by Federal Express, an express service carrier which provides overnight delivery, as follows. I placed true copies of the foregoing document in sealed envelopes or packages designated by the express service carrier, addressed to each interested party as set forth above, with fees for overnight delivery paid or provided for.

☐ **(BY PERSONAL SERVICE)** I caused such envelope to be delivered by hand to the offices of the above named addressee(s).

☐ **(BY FACSIMILE)** I caused such documents to be delivered via facsimile to the offices of the addressee(s) at the following facsimile number:

Executed September 28, 2022, at San Diego, California.

I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

THOMAS D. RUTLEDGE
/s/THOMAS D. RUTLEDGE

SERVICE LIST

Christopher W. Olmsted
Jennifer P. Suberlak
Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
4370 La Jolla Village Drive, Suite 990
San Diego, California 92122

Attorneys for Defendants