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**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF KERN**

DAMMION MYLES, an individual, on
behalf of himself and on behalf of all
persons similarly situated,

Plaintiff,

vs.

BUILDERS CONCRETE, INC., a
California Corporation; VIKING
READY MIX CO., INC., a California
Corporation; and DOES 1 through 50,
inclusive,

Defendants

Case No. BCV-20-102375

**DECLARATION OF NORMAN
BLUMENTHAL IN SUPPORT OF MOTION
FOR FINAL APPROVAL OF CLASS
SETTLEMENT**

Hearing Date: October 23, 2023
Hearing Time: 8:30 a.m.
*[Hearing scheduled by Order dated July 10, 2023
at paragraph 14]*

Judge: Hon. Bernard Barmann, Jr.
Courtroom: Div. H

Action Filed: October 9, 2020
Trial Date: Not Set

1 I, NORMAN B. BLUMENTHAL, declare as follows:

2 1. I am the managing partner of the law firm of Blumenthal Nordrehaug Bhowmik De
3 Blouw LLP, counsel of record for Plaintiffs Dammion Myles (“Plaintiff”) in this matter. As such, I am
4 fully familiar with the facts, pleadings and history of this matter. The following facts are within my
5 own personal knowledge, and if called as a witness, I could testify competently to the matters stated
6 herein. This declaration is being submitted in support to the motion for final approval of the class
7 settlement filed by Plaintiff.

8 2. Over the course of the litigation, a number of attorneys in my firm have worked on this
9 matter. Their credentials are reflected in the Blumenthal Nordrehaug Bhowmik De Blouw LLP firm
10 resume, a true and correct copy of which is attached hereto as Exhibit #1. Some of the major cases our
11 firm has undertaken are also set forth in Exhibit #1. The bulk of the attorneys involved in this matter
12 at Blumenthal Nordrehaug Bhowmik De Blouw LLP have had substantial class litigation experience
13 in the areas of employment class actions, unfair business practices and other complex litigation. The
14 attorneys at my firm have extensive experience in cases involving labor code violations and overtime
15 claims. Class Counsel has litigated similar wage and hour class and/or PAGA cases against other
16 employers on behalf of employees, including cases against Cigna, HealthNet, See’s Candies, Securitas,
17 Okta, Advanced Home Health, El Pollo Loco, Total Renal, Panda Express, Walt Disney Resorts,
18 Pharmaca, Nortek Security, California Fine Wine, Solarcity, Walgreens, Space Exploration, Union
19 Bank, Verizon, Apple, Wells Fargo, Kaiser, Universal Protection Services, and California State
20 Automobile Association. Class Counsel have been approved as experienced class counsel during
21 contested motions in state and federal courts throughout California. It is this level of experience which
22 enabled the firm to undertake the instant matter and to successfully combat the resources of the
23 defendants and their capable and experienced counsel. Class Counsel have participated in every aspect
24 of the settlement discussions and have concluded the settlement is fair, adequate and reasonable and
25 in the best interests of the Class.

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1 3. Summary of the Proposed Settlement.

2 (a) A true and correct copy of the Class Action and PAGA Settlement Agreement (the
3 "Agreement") between the parties is attached hereto as Exhibit #2.¹ Plaintiff and Defendants Builders
4 Concrete, Inc. and Viking Ready Mix Co., Inc. ("Defendants") reached a full and final settlement of
5 the above-captioned action, which is embodied in the Agreement filed concurrently with the Court.
6 As consideration for this Settlement, the Gross Settlement Amount is Nine Hundred Seventy-Five
7 Thousand Dollars (\$975,000) (the "Gross Settlement Amount"). (Agreement at ¶ 1.25). Under the
8 Settlement, the Gross Settlement Amount consists of the following elements: (1) payment of the
9 Individual Class Payments to the Participating Class Members; (2) Class Counsel Fees Payment and
10 Class Counsel Litigation Expenses Payment; (3) Administration Expenses Payment; (4) the Class
11 Representative Service Payment to Plaintiff; and (5) the PAGA Penalties payment. (Agreement at ¶
12 1.25.)

13 (b) The Gross Settlement Amount does not include the employer's share of payroll taxes which
14 will be separately paid by Defendant. (Agreement at ¶ 3.1.) The Gross Settlement Amount shall be
15 all-in with no reversion to Defendant. (Agreement at ¶ 3.1.)

16 (c) Within twenty-one (21) days of the Effective Date, Defendants shall deposit the Gross
17 Settlement Amount with the Administrator. (Agreement at ¶ 4.3.) The distribution of Individual Class
18 Payments to Participating Class Members along with the other Court-approved distributions shall be
19 made by the Administrator within fourteen (14) days after Defendants fully fund the Gross Settlement
20 Amount. (Agreement at ¶ 5.1.)

21 (d) The amount remaining in the Gross Settlement Amount after the deduction of
22 Court-approved amounts for Individual PAGA Payments, the LWDA PAGA Payment, Class
23 Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses
24 Payment, and the Administration Expenses Payment (called the "Net Settlement Amount") shall be
25 allocated to Class Members as their Individual Class Payments. (Agreement at ¶¶ 1.31 and 3.2.)
26 \$25,000 will be allocated from the Net Settlement Amount to the FCRA Class so at least \$100 will be
27

28 ¹ Capitalized terms are defined in the Agreement.

1 paid to each of the 216 FCRA Class Members, whose share of the \$25,000 payment shall be split
2 equally between the Participating Class Members for the FCRA Class. The balance of the Net
3 Settlement Amount will be allocated to the Participating Class Members for the California Class who
4 will be paid based on the number of workweeks worked during the California Class Period. An
5 Individual Class Payment for the California Class is calculated by (a) dividing the Net Settlement
6 Amount (less the \$25,000 allocated to the FCRA Class) by the total number of Workweeks worked by
7 all Participating California Class Members during the California Class Period and (b) multiplying the
8 result by each Participating California Class Member's Workweeks. (Agreement at ¶ 3.2(e).)
9 Workweeks were based on Defendants' records; however, Class Members had the right to challenge
10 the number of Workweeks.

11 (e) Class Members were sent the Court approved Class Notice using the procedure approved
12 by the Court by mailing the notice packets after updating class members' addresses using the National
13 Change of Address database and, for any notice packets returned as undeliverable, re-mailing such
14 notices to any forwarding address provided or updated address located. (Agreement at ¶ 8.5, Ex. A.)
15 Class Members were provided with the opportunity to exclude themselves or "opt out" if they did not
16 want to participate in the settlement. (Agreement at ¶ 8.5 (c), Ex. A.) All Aggrieved Employees,
17 including those who submit an opt-out request, will still be paid their allocation of the PAGA Penalties
18 and will remain subject to the release of the Released PAGA Claims regardless of their request for
19 exclusion. (Agreement at ¶¶ 6.3 and 8.5(d).) The Class Notice also advised Class Members of their
20 right to object to the Settlement and/or dispute their workweeks. (Agreement at ¶¶ 8.6 and 8.7, Ex. A.)

21 (f) A Participating Class Member must cash his or her Individual Class Payment check within
22 180 days after it is mailed. (Agreement at ¶ 5.2.) Any settlement checks not cashed within 180 days
23 will be voided and any funds represented by such checks to the California Controller's Unclaimed
24 Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the
25 requirements of California Code of Civil Procedure Section 384. (Agreement at ¶ 5.4.)

26 (g) ILYM Group was appointed as the Administrator. (Preliminary Approval Order at ¶ 11.)
27 From the Gross Settlement Amount, The Administrator will be paid for settlement administration in
28 an amount not to exceed \$13,000. (Agreement at ¶ 3.2(c); Preliminary Approval Order at ¶ 11.) The

1 final amount for Administration Expenses Payment will be set forth in the forthcoming declaration of
2 the Administrator.

3 (h) Subject to Court approval, the Agreement provides for Class Counsel to be awarded a sum
4 not to exceed one-third of the Gross Settlement Amount, as the Class Counsel Fees Payment.
5 (Agreement at ¶ 3.2(b).) Class Counsel will also be allowed to apply separately for an award of Class
6 Counsel Litigation Expenses Payment in an amount not to exceed \$33,000. (Agreement at ¶ 3.2(b).)
7 Subject to Court approval, the Agreement provides for a payment of no more than \$10,000 to the
8 Plaintiff as the Class Representative Service Payment. (Agreement at ¶ 3.2(a).) In support of this
9 separate motion for attorneys' fees, reimbursement of expenses and service award, Class Counsel is
10 providing evidentiary support, for these requests, including lodestar.

11 (i) Subject to Court approval, Twenty-Five Thousand Dollars (\$25,000) will be paid from the
12 Gross Settlement Amount for PAGA penalties under the California Private Attorneys General Act
13 ("PAGA"), Cal. Labor Code Section 2698, *et seq.* Pursuant to the express requirements of Labor Code
14 § 2699(i), the PAGA Penalties shall be allocated as follows: 75% (\$18,750) shall be allocated to the
15 Labor Workforce Development Agency ("LWDA") as its share of the civil penalties and 25% (\$6,250)
16 allocated to the Individual PAGA Payments to be distributed to the Aggrieved Employees based on the
17 number of their respective PAGA Pay Periods. (Agreement at ¶ 3.2(d).) As set forth in the
18 accompanying proof of service, the LWDA has been served with this motion and the Agreement.

19 (j) The Settlement is fair, adequate and reasonable to the class and should be finally approved
20 for the same reasons the Court granted preliminary approval of the Settlement, agreeing that the
21 settlement is "fair, adequate and reasonable". (Preliminary Approval Order at ¶ 3.) In sum, the
22 Settlement valued at Nine Hundred Seventy-Five Thousand Dollars (\$975,000) is an excellent result
23 for the Class. This result is particularly favorable in light of the fact that liability was far from certain
24 in light of the defenses asserted by Defendants. Given the complexities of this case and the defenses
25 asserted, along with the uncertainties of proof at trial and appeal, the proposed settlement is fair,
26 reasonable and adequate, and should be finally approved.

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1 4. Procedural status of the settlement - In accordance with the Preliminary Approval
2 Order dated July 10, 2023 ("Preliminary Approval Order"), the approved Class Notice has been
3 disseminated to the Class. The reaction of the Class unequivocally supports approval of the Settlement.
4 On August 14, 2023, the Administrator mailed the Court-approved Class Notice to the Class Members,
5 which provided each class member with the terms of the Settlement, including notice of the claims at
6 issue and the financial terms of the settlement, including the attorneys' fees, costs, and service awards
7 that were being sought, how individual settlement awards would be calculated, and the specific,
8 estimated payment amount to that individual. In disseminating the notices, the Administrator followed
9 the notice procedures authorized by the Court in its Preliminary Approval Order. Currently, there have
10 been no objections and no opt-outs, and while the notice process is ongoing until October 13, 2023, the
11 final results will be provided to the Court in advance of the final approval hearing in the declaration
12 of the Administrator.

13
14 5. Description of Plaintiffs' claims - The Action generally alleges that Plaintiff and other
15 Class Members were not provided all minimum wages and overtime compensation and at the correct
16 rate, were not provided and/or paid for meal and rest periods, were not reimbursed for reasonable
17 business expenses, were not provided accurate itemized wage statements, were not paid used sick pay
18 at the correct rate, and were not provided compliant FCRA disclosures and/or authorizations. The
19 Action seeks unpaid wages, penalties, attorney fees, litigation costs, and any other equitable or legal
20 relief allegedly due and owing to Plaintiff and the other Class Members by virtue of the foregoing
21 claims.

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23 6. Procedural History of the Litigation

24 (a) On October 1, 2020, Plaintiff filed with the LWDA and served on Defendants a notice
25 under Labor Code section 2699.3 identifying the alleged Labor Code violations to recover civil
26 penalties on behalf of Aggrieved Employees for various Labor Code violations ("PAGA Notice"). On
27 October 9, 2020, Plaintiff filed a class action against Defendants Builders Concrete Inc., Concrete
28 Holding Company of California, Inc, Viking Ready Mix Co., Inc., and National Ready Mixed Concrete

1 Co. in the Superior Court of the State of California, County of Kern (the "Myles Class Action"). This
2 class action Complaint asserted class claims against Defendant for: (1) unfair competition in violation
3 of Cal. Bus & Prof. Code §§ 17200, et seq.; (2) failure to pay minimum wages in violation of California
4 Labor Code §§ 1194, 1197 & 1197.1; (3) failure to pay overtime wages in violation of California Labor
5 Code §§ 510, 1194 & 1198; (4) failure to provide required meal periods in violation of California Labor
6 Code §§ 226.7 and 512; (5) failure to provide required rest periods in violation of Cal. Labor Code §§
7 226.7 and 512; (6) failure to reimburse employees for required expenses in violation of California
8 Labor Code § 2802; (7) failure to provide accurate itemized wage statements in violation of California
9 Labor Code § 226; and (8) failure to provide wages when due in violation of California Labor Code §§
10 201, 202 and 203. On July 28, 2021, Plaintiff filed a First Amended Class Action Complaint, adding
11 two causes of action for violations of FCRA. On August 27, 2021, the four defendants removed the
12 First Amended Class Action Complaint to the United States District Court for the Eastern District of
13 California. On November 11, the four defendants filed a Motion for Judgment on the Pleadings
14 ("MJOP") as to Plaintiff's allegations against Defendants Concrete Holding Company of California, Inc,
15 Viking Ready Mix Co., Inc., and National Ready Mixed Concrete Co., which the Court granted on June
16 28, 2022 with leave for Plaintiff to file a Second Amended Class Action Complaint. On July 21, 2022,
17 Plaintiff filed a Second Amended Class Action Complaint. On January 30, 2023, Plaintiff and
18 Defendants filed a Stipulation to remand matter to state court, which the Court granted on February 15,
19 2023.

20 (b) On December 10, 2020, Plaintiff filed a Complaint in the Superior Court of the State of
21 California, County of Kern seeking civil penalties under the Labor Code Private Attorneys General Act
22 of 2004 ("PAGA") against Defendants (the "Myles PAGA Action"). The Myles PAGA Action alleged
23 one cause of action for Civil Penalties Pursuant to Labor Code § 2699, et seq. for violations of Labor
24 Code §§ 201, 202, 203, 204 et seq., 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1,
25 1198, 2750.3 et seq., 2802, California Code of Regulations, Title 8, Section 11040, Subdivision
26 5(A)-(B), and the applicable Wage Order(s)

27 (c) As part of the Settlement, the Parties stipulated to the filing of an amended Consolidated
28 Class Action and Representative Action Complaint that consolidates the Myles PAGA Action into the

1 first-filed Myles Class Action in state court. The Consolidated Class Action and Representative Action
2 Complaint dismisses Concrete Holding Company of California, Inc. and National Ready Mixed
3 Concrete Co., leaving only Defendants Builders Concrete Inc. and Viking Ready Mix Co., Inc. as the
4 only remaining Defendants. The amended Consolidated Class Action and Representative Action
5 Complaint also clarifies the basis for all claims, causes of action, and theories of liability addressed
6 during the mediation. The Consolidated Class Action and Representative Action Complaint shall be
7 the operative complaint and is referred to as the Operative Complaint.

8 (d) Over the course of litigation, the Parties engaged in the investigation of the claims,
9 including production of documents, class data, and other information, allowing for the full and
10 complete analysis of liabilities and defenses to the claims in the Action. Plaintiff obtained informal
11 discovery, which included the production and analysis of relevant documents. The information for
12 mediation obtained by Plaintiff included: (1) data concerning the class; (2) payroll data for the class;
13 (3) Defendant's wage and hour policies and job descriptions; (4) the employment file for the Plaintiff;
14 and, (5) samples of wage statements provided by Defendants. As such, Class Counsel received the data
15 and information for the Class, which was sufficient for Plaintiff's expert to prepare the valuations of
16 the claims for the Class.

17 (e) Class Counsel has extensive experience in litigating wage and hour class actions in
18 California. The Parties have vigorously litigated the Actions since inception. During the course of
19 litigation, the Parties each performed analysis of the merits and value of the claims. Plaintiff engaged
20 in formal discovery and obtained the production of thousands of pages of documents. Plaintiff and
21 Defendant have engaged in substantial research and investigation in connection with the Action. Class
22 Counsel has thoroughly analyzed the value of the claims during the prosecution of this Action and
23 utilized an expert to perform an analysis of the data and valuation of the claims.

24 (f) Plaintiff and Defendant agreed to discuss resolution of the Action through a mediation.
25 Prior to mediation, the Parties engaged in the above investigation and the exchange of documents and
26 information in connection with the Action. On June 24, 2021, the Parties participated in an all-day
27 mediation with mediator David Rottman, Esq., a respected mediator of wage and hour representative
28 and class actions. The matter did not resolve at this first mediation. December 7, 2022, the Parties

1 participated in a second all-day mediation presided over by Louis Marlin, Esq., a respected mediator
2 of wage and hour representative and class actions. Following the mediation, each side, represented by
3 its respective counsel, were able to agree to settle the Action based upon a mediator's proposal which
4 was memorialized in the form of a Memorandum of Understanding. The Parties then negotiated the
5 final terms of the settlement as set forth in the Agreement. At all times, the negotiations were arm's
6 length and contentious.

7 (g) Although a settlement has been reached, Defendants deny any liability or wrongdoing of
8 any kind associated with the claims alleged in the Actions and further deny that, for any purpose other
9 than settlement, the Actions are appropriate for class and/or representative treatment. Defendants
10 contend, among other things, that they have properly classified and compensated the Class Members
11 and complied at all times with the California Labor Code, applicable Wage Order, and all other laws
12 and regulations. Further, Defendants contend that class certification is inappropriate for any reason
13 other than for settlement. Plaintiff contends that Defendants violated California wage and hour laws.
14 Plaintiff further contends that the Action is appropriate for class certification on the basis that the
15 claims meet the requisites for class certification. Without admitting that class certification is proper,
16 Defendants have stipulated that the above Class may be certified for settlement purposes only.
17 (Agreement at ¶ 2.20.) The Parties agree that certification for settlement purposes is not an admission
18 that class certification is proper. Further, the Agreement is not admissible in this or any other
19 proceeding as evidence that the Class could be certified absent a settlement. Solely for purposes of
20 settling the Action, the Parties stipulate and agree that the requisites for establishing class certification
21 with respect to the Class are satisfied.

22 (h) Class Counsel has conducted a thorough investigation into the facts of the class action.
23 Over the course of more than two years, Class Counsel diligently evaluated the Class Members' claims
24 against Defendants. Prior to the settlement negotiations, counsel for Defendants provided Class
25 Counsel with access to necessary information for the Class. In addition, Class Counsel previously
26 negotiated settlements with other employers in actions involving nearly identical issues and analogous
27 defenses. Based on the foregoing data and their own independent investigation, evaluation and
28 experience, Class Counsel believes that the settlement with Defendants on the terms set forth in the

1 Agreement is fair, reasonable, and adequate and is in the best interest of the Class in light of all known
2 facts and circumstances, including the risk of significant delay, defenses asserted by Defendants, and
3 potential appellate issues.

4
5 7. History of Settlement Discussions

6 (a) This Settlement is the result of extensive and hard-fought litigation as well as negotiations
7 before an experienced and well-respected mediator. Defendants have expressly denied and continue
8 to deny any wrongdoing or legal liability arising out of the conduct alleged in the Action. Plaintiff and
9 Class Counsel have determined that it is desirable and beneficial to the Class to resolve the Released
10 Class Claims of the Class in accordance with this Settlement. Class Counsel are experienced and
11 qualified to evaluate the class claims, the viability of the defenses asserted, and the risks and benefits
12 of trial and settlement, and Class Counsel are experienced in wage and hour employment law class
13 actions, as Class Counsel has previously litigated and certified similar claims against other employers.

14 (b) The Parties attended an arms-length mediation session with Louis Marlin, Esq., a respected
15 and experienced mediator of wage and hour class actions, in order to reach this Settlement. In
16 preparation for the mediation sessions, Defendants provided Class Counsel with necessary information
17 for the members of the Class, including time data, payroll data and data concerning the composition
18 of the Class. Plaintiff analyzed the data with the assistance of damages expert, Berger Consulting
19 Group, and prepared and submitted a mediation brief and damage valuation to the Mediator.
20 Following this mediation, the Parties reached an agreement to settle the Action, which was
21 memorialized in the form of a Memorandum of Understanding.

22 (c) From February 2023 to April 2023, the Agreement and exhibits thereto were drafted,
23 finalized and executed, and then was presented to this Court on for preliminary approval. The Order
24 granting preliminary approval was entered by this Court on July 10, 2023.

25 (d) Plaintiffs and Class Counsel believe that this settlement is fair, reasonable and adequate.
26 In my judgment as experienced Class Counsel, this Settlement should be finally approved.

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1 8. The outcome of this case would have been uncertain and fraught with risks.

2 (a) Here, a number of defenses asserted by Defendants present serious threats to the claims of
3 the Plaintiff and the other Class Members. Defendants asserted that Defendants' practices complied
4 with all applicable Labor laws. Defendants argued that all work time was properly paid for and that
5 there was no overtime owed. Defendants contended that its meal and rest period policies fully
6 complied with California law. Defendants also argued that employees subject to a CBA could not bring
7 many of the claims because of CBA preemption under Labor Code § 514, and Defendants also asserted
8 exemptions applicable to the construction industry. As to expense reimbursement, Defendants
9 contended that it did not fail to provide reimbursement for necessary business expenses and that there
10 were no such expenses that had not already been reimbursed or that claimed expenses were incurred
11 voluntarily and/or for the convenience of employees and is therefore not required reimbursement.
12 Defendants argued that the decisions in *Brinker v. Superior Court*, 53 Cal. 4th 1004 (2012), *Lockheed*
13 *Martin Corp. v. Superior Ct.*, 29 Cal. 4th 1096, 1108 (2003), and *Salazar v. See's Candy Shops Inc.*,
14 64 Cal.App.5th 85 (2021), weakened Plaintiff's claims, on liability, value, and class certifiability as to
15 the meal and rest period claims. Defendants also argues that based on its facially lawful practices, they
16 acted in good faith and without willfulness, which if accepted would negate the claims for waiting time
17 penalties and/or inaccurate wage statements. As to the background check claim, Defendants argued
18 that the forms complied with FCRA in all respects. *Coleman v. Kohl's Dep't Stores, Inc.*, 2015 U.S.
19 Dist. LEXIS 135746, *17 (N.D. Cal. 2015) (holding a release in a separate document does not violate
20 FCRA); *Luna v. Hansen & Adkins Auto Transp., Inc.*, 2018 U.S. Dist. LEXIS 100055, *18-*19 & n.6
21 (C.D. Cal. 2018). Finally, the court may find remitter/reduction of the statutory damages appropriate.
22 *See e.g. Klingensmith v. Max & Erma's Restaurants, Inc.*, 2007 U.S. Dist. LEXIS 81029, 2007 WL
23 3118505, at *5 (E.D.Pa. 2007). If successful, Defendants' defenses could eliminate or substantially
24 reduce any recovery to the Class. While Plaintiff believe that these defenses could be overcome,
25 Defendants maintains these defenses have merit and therefore present a serious risk to recovery by the
26 Class.

27 (b) There was also a significant risk that, if the Actions were not settled, Plaintiff would be
28 unable to obtain class certification and thereby not recover on behalf of any employees other than

1 himself. Defendants argued that the individual experience of each putative class member varied with
2 respect to the claims. Defendants could also contest class certification by arguing injury and good faith
3 were case-by-case determinations that precluded class certification. Plaintiff is aware of other cases
4 where class certification of similar claims was denied. *See e.g. Cacho v. Eurostar, Inc.*, 43 Cal. App.
5 5th 885 (2019) (denying certification of rest break claims). Finally, even if class certification was
6 successful, as demonstrated by the California Supreme Court decision in *Duran v. U.S. Bank National*
7 *Assn.*, 59 Cal. 4th 1 (2014), there are significant hurdles to overcome for a class wide recovery even
8 where the class has been certified. While other cases have approved class certification in wage and
9 hour claims, class certification in this action would have been hotly disputed and was by no means a
10 foregone conclusion.

11 (c) As demonstrated by the decision in *Duran*, the complexities and duration of further
12 litigation cannot be overstated. There is little doubt that Defendants would post a bond and appeal in
13 the event of an adverse judgment. A post-judgment appeal by Defendants would have required many
14 more years to resolve, assuming the judgment was affirmed. If the judgment was not affirmed in total,
15 then the case could have dragged on for years after the appeal. The benefits of a guaranteed recovery
16 today outweigh an uncertain result three or more years in the future. Plaintiff and Class Counsel
17 recognize the expense and length of a trial against Defendants through possible appeals which could
18 take at least another two or three years. Class Counsel also have taken into account the uncertain
19 outcome, the risk of litigation, especially in complex actions such as this one. Class Counsel are also
20 mindful of and recognize the inherent problems of proof under, and alleged defenses to, the claims
21 asserted in the Action. Moreover, post-trial motions and appeals would have been inevitable. Costs
22 would have mounted and recovery would have been delayed if not denied, thereby reducing the benefits
23 of an ultimate victory. Plaintiff and Class Counsel believe that the Settlement confers substantial
24 benefits upon the Class. Based upon their evaluation, Plaintiff and Class Counsel have determined that
25 the Settlement set forth in the Agreement is in the best interest of the Class.

26 (d) The Settlement in this case is fair, reasonable and adequate considering Defendants'
27 defenses to Plaintiff's claims. As set forth in the Declaration of Kyle Nordrehaug filed in support of
28 preliminary approval which discussed the value of the class claims in detail, the Gross Settlement

1 Amount compares favorably to the value of the claims. Excluding the Background Class Amount
2 valued at \$25,000 total (discussed below), for the 338 California Class Members who collectively
3 worked 44,513 Workweeks, the Gross Settlement Amount provides a value of \$2,810 per Class
4 Member and \$21 per Workweek and the Net Settlement Amount provides an average recovery of
5 \$1,609.46 per Class Member and a recovery of \$12.22 per Workweek. The calculations to compensate
6 for the amount due to the Class Members at the time this Settlement was negotiated were calculated
7 by Plaintiff's expert, Berger Consulting Group, in advance of mediation. As to the Class whose claims
8 are at issue in this Action, Plaintiff used an expert to analyze the data and determine the potential
9 unpaid wages for the employees. For the California Class, the maximum value of the claim for unpaid
10 wages due to the alleged miscalculation of the regular rate was potentially \$70,789, the maximum value
11 of the claim for unpaid wages due to off the clock work was potentially \$1,209,990, the maximum
12 potential damages for unpaid meal premiums were estimated to be \$2,960,477 based upon an alleged
13 100% violation rate and after credit for meal premiums paid but excluding employees subject to a CBA
14 for whom this claim is preempted, the maximum potential rest period damages were estimated to be
15 \$4,839,960 based upon the same alleged 100% violation rate, and the maximum potential damages for
16 failure to provide expense reimbursement were calculated to be \$295,680. In total, the damages for the
17 Class were calculated to have a maximum potential total value of \$9,376,896. In addition, Plaintiff
18 calculated that the maximum value of the potential waiting time penalties were between \$451,860 and
19 \$735,964, depending on the predicate violation, and the maximum value of the potential wage statement
20 penalties were \$1,348,250.² Consequently, the Gross Settlement Amount represents more than 10%
21 of the potential maximum damages at issue for the California Class in this case, assuming these
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23
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25 ² While Plaintiff alleged claims for statutory penalties pursuant to Labor Code Sections 203 and
26 226, at mediation Plaintiff recognized that these claims were subject to additional, separate defenses
27 asserted by Defendants, including, a good faith dispute defense as to whether any wages were owed
28 given Defendants' position that Plaintiff were properly compensated and classified. *See Nordstrom
Commission Cases*, 186 Cal. App. 4th 576, 584 (2010) ("There is no willful failure to pay wages if the
employer and employee have a good faith dispute as to whether and when the wages were due.").

1 amounts could all be proven in full at trial.³ The above maximum calculations should then be adjusted
2 in consideration for both the risk of class certification and the risk of establishing class-wide liability
3 on all claims. Defendants dispute Plaintiff's estimates and believes the amount Plaintiff can recover
4 for the Class, if anything at all, is actually much lower. Given the amount of the Settlement as
5 compared to the potential value of the claims, the Settlement is most certainly fair and reasonable.⁴ As
6 to the FCRA Class, FCRA provides for statutory damages of \$100 to \$1,000 per willful violation. 15
7 U.S.C. § 1681n. This means the maximum value of the FCRA claim for the 216 individuals in the
8 FCRA Class is between \$21,600 and \$216,000. A comparison of approved FCRA settlements
9 involving similar facts further confirms the reasonableness of this Settlement. The Court in *Pietras v.*
10 *Sentry Ins. Co.*, 513 F. Supp. 2d 983, 985 (N.D. Ill 2007), "cited eighteen cases, which settled for an
11 average of \$34.59 per class member." Similarly, in *Bailes v. Lineage Logistics, LLC*, 2016 U.S. Dist.
12 LEXIS 110943 (D. Kan 2016), the District Court approved a FCRA class settlement which provided
13 for a fund of \$149,205 for a class of 3,430, which correlates to \$43.50 per person. In *Feist v. Petco*
14 *Animal Supplies, Inc.*, 2018 U.S. Dist. LEXIS 98686 (S.D. Cal. 2018), Judge Marilyn Huff granted
15 preliminary approval to an FCRA class settlement of \$1.2 million for a class of 37,000, which equates
16 to \$32.43 per person. Here, the Settlement allocation of \$115 per FCRA Class Member is certainly fair
17 and reasonable given the prior approved FCRA settlements and the defenses asserted by Defendants.

18
19 ³ Because the PAGA claim does not provide a recovery to the Class, Plaintiff did not included the
20 PAGA claim in this discussion of the class claim valuation. The PAGA claim is addressed in the Decl.
Nordrehaug at ¶ 33 filed in support of Plaintiff Preliminary Approval Motion.

21 ⁴ See e.g. *Glass v. UBS Fin. Servs.*, 2007 U.S. Dist. LEXIS 8476 (N.D. Cal. 2007) (approving a
22 settlement where the settlement amount constituted approximately 25% of the estimated overtime
23 damages for the class); *Stovall-Gusman v. W.W. Granger, Inc.*, 2015 U.S. Dist. LEXIS 78671, at *12
24 (N.D. Cal. 2015) (granting final approval where "the proposed Total Settlement Amount represents
approximately 10% of what class might have been awarded had they succeeded at trial."); *Dunleavy*
v. Nadler (In re Mego Fin. Corp. Sec. Litig.), 213 F.3d 454, 459 (9th Cir. 2000) (approving settlement
25 which represented "roughly one-sixth of the potential recovery"); *Stovall-Gusman v. W.W. Granger,*
Inc., 2015 U.S. Dist. LEXIS 78671, at *12 (N.D. Cal. 2015) (granting final approval where "the
26 proposed Total Settlement Amount represents approximately 10% of what class might have been
awarded had they succeeded at trial."); *Viceral v. Mistras Grp., Inc.*, 2016 WL 5907869 (N.D. Cal.
27 2016) (approving wage and hour class action settlement amounting to 8.1% of full verdict value); *Ma*
v. Covidien Holding, Inc., 2014 WL 2472316, (C.D. Cal. 2014) (approving wage and hour class action
28 settlement worth "somewhere between 9% and 18%" of full verdict value).

1 (e) In sum, the Settlement is a fair and reasonable result, and provides the Class with a
2 significant recovery, particularly when viewed in light of the fact that Defendants asserted serious and
3 substantial defenses. The maximum and average class member allocations will be detailed in the
4 forthcoming declaration of the Administrator to be filed after the October 13, 2023 Response Deadline.
5 Given the complexities of this case, the defenses, along with the uncertainties of proof and appeal, the
6 proposed Settlement is fair, reasonable and adequate, and should be finally approved.

7 (f) It is impossible to predict with certainty whether, under the facts of this case, Plaintiff would
8 prevail against the Defendants' factual and legal defenses. While Plaintiff and Class Counsel believe
9 in the merits of the claims, Defendants have asserted real and substantial defenses to these claims and
10 to class certification. Settlement in this case clearly benefits the Class when measuring the strengths
11 of Plaintiff's case and the risk of establishing class wide liability and damages.

12 I declare under penalty of perjury under the laws of the State of California that the foregoing
13 is true and correct. Executed this 26th day of September, 2023, at San Diego, California.

14 /s/ Norman B. Blumenthal
15 Norman B. Blumenthal
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District of California, Case No. 09-cv-1736; Francisco v. Diebold, U.S. District Court, Southern District of California, Case No. 09-cv-1889; Friend v. Wellpoint, Los Angeles Superior Court, Case No. BC345147; Frudakis v. Merck Sharp & Dohme, U.S. District Court, Central District California, Case No. SACV 11-00146; Fulcher v. Olan Mills, Inc., U.S. District Court, Northern District of California, Case No. 11-cv-1821; Gabisan v. Pelican Products, U.S. District Court, Southern District California, Case No. 08 cv 1361; Galindo v. Sunrun Installation Services Inc., San Diego County Superior Court, Case No. 37-2015-00008350-CU-OE-CTL; Gallagher v. Legacy Partners Commercial, Santa Clara County Superior Court, Case No. 112-cv-221688; Ghattas v. Footlocker Retail, Inc., U.S. District Court Central District of California, Case No. CV 13-0001678 PA; Gibson v. World Savings, Orange County Superior Court, Case No. 762321; Goerzen v. Interstate Realty Management, Co., Stanislaus County Superior Court, Case No. 679545; Gomez v. Enterprise Rent-A-Car, U.S. District Court, Southern District of California, Case No. 3:10-cv-02373; Gordon v. Wells Fargo Bank, U.S. District Court, Southern District of California, Case No. 3:11-cv-00090; Grabowski v. CH Robinson, U.S. District Court, Southern District of California, Case No. 10-cv-1658; Gross v. ACS Compiq Corporation, Orange County Superior Court, Case No. 30-2012-00587846-CU-OE-CXC; Gripenstraw v. Buffalo Wild Wings, U.S. District Court, Eastern District of California, Case No. 12-CV-00233; Gruender v. First American Title, Orange County Superior Court, Case No. 06 CC 00197; Guillen v. Univision Television Group, Inc. & Univision Management Co., San Francisco County Superior Court, Case No. CGC-12-526445; Gujjar v. Consultancy Services Limited, Orange County Superior Court, Case No. 30-2010-00365905; Gutierrez v. Five Guys Operations, LLC, San Diego County Superior Court, Case No. 37-2012-00086185-CU-OE-CTL; Handler v. Oppenheimer, Los Angeles Superior Court, Civil Action No. BC343542; Harley v. Tavistock Freebirds, LLC, Sacramento County Superior Court, Case No. 34-2014-00173010; Harrington v. Corinthian Colleges – Class Certification Granted, Orange Superior Court; United States Bankruptcy Court District of Delaware; Harvey v. PQ Operations, Inc., Los Angeles County Superior Court, Case No. BC497964; Henshaw v. Home Depot U.S.A., United States District Court, Central District of California, Case No. SACV10-01392; Heithold v. United Education Institute, Orange County Superior Court, Case No. 30-2013-00623416-CU-OE-CXC; Hibler v. Coca Cola Bottling, Settled U.S. District Court, Southern District of California, Case No. 11cv0298; Hildebrandt v. TWC Administration LLC & Time Warner NY Cable, LLC, U.S. District Court, Central District of California, Case No. ED-cv-13-02276-JGB; Hopkins v. BCI Coca-Cola Bottling Company of Los Angeles, United states District Court, Central District of California; U.S. Court of Appeals 9th Circuit; Howard v. Southern California Permanente Medical Group, Los Angeles Superior Court, Case No. BC586369; Hughes v. Parexel International, Los Angeles County Superior Court, Case No. BC485950; Hurley v. Comcast of California/Colorado/Texas/Washington, Inc., Sonoma County Superior Court, Case No. SCV-253801; Irving v. Solarcity Corporation, San Mateo County Superior Court, Case No. CIV525975; Jacobs v. Nu Horizons - Settled Santa Clara County Superior Court, Case No. 111cv194797; Jefferson v. Bottling Group LLC (Pepsi) - Class Certification Granted, Orange County Superior Court, Case No. 30-2009-0018010; Jones v. E*Trade Mortgage, U.S. District Court, Southern District California Case No. 02-CV-1123 L (JAH); Kennedy v. Natural Balance - Dismissal Reversed on Appeal, San Diego Superior Court, Case No. 37-2007-00066201; Keshishzadeh v. Arthur J. Gallagher Service Co., U.S. District Court, Southern District of California, Case No. 09-cv-0168; Kinney v. AIG Domestic Claims / Chartis, U.S. District Court, Central District of California, Case No. 8:10-cv-00399; Kizer v. Tristar Risk Management, Orange County Superior Court, Case No. 30-2014-00707394-CU-OE-CXC; Kleinberg v. Reeve Trucking Company, Inc., San Diego County Superior Court, Case No. 37-2015-00001601-CU-OE-CTL; Kove v. Old Republic Title, Alameda County Superior Court, Case No. RG09477437; Krellcom v. Medley Communications, Inc., San Diego County Superior Court, Case No. 37-2013-00050245-CU-OE-CTL; Ladd v. Extreme Recovery, LP, Contra Costa County Superior Court, Case No. MSC11-02790; Langille v. EMC, U.S. District Court, Southern District of California, Case No. 09-cv-0168; Lawson v. Marquee Staffing, Los Angeles County Superior Court, Case No. 37-2012-00103717-

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Navajo Express, Inc. – San Bernardino County Superior Court, Case No. CIVDS1613846; Lara v. Commercial Protective Service, Inc. – Los Angeles County Superior Court, Case No. BC648921; Picos v. Culinart of California, Inc. – San Diego County Superior Court, Case No. JCCP 4892; Samaniego v. A&I Transport, Inc. – Santa Cruz County Superior Court, Case No. 16CV01894; Bailey v. Romanoff Floor Covering, Inc. – U.S. District Court, Eastern District of California, Case No. 17-CV-00685-TLN-CMK; Aguirre v. Bitech, Inc. – Sacramento County Superior Court, Case No. 34-2016-002022; Phillips v. DI Overnite LLC – San Diego County Superior Court, Case No. 37-2016-00016800-CU-OE-CTL; Jacob v. Pride Transport, Inc. – Santa Cruz County Superior Court, Case No. 16CV1337; Bennett v. Heartland Express, Inc. of Iowa – San Diego County Superior Court, Case No. 37-2016-00015056-CU-OE-CTL; Stapf v. Mercer Health & Benefits Administration LLC – Los Angeles County Superior Court, Case No. BC643007; Armstrong v. Ruan Transport Corporation – San Bernardino County Superior Court, Case No. CIVDS1605897; Geiger v. Floyd’s 99-California LLC – Orange County Superior Court, Case No. 30-2016-00874943-CU-OE-CXC; Mondrian v. Trius Trucking, Inc. – Fresno County Superior Court, Case No. 16CECG01501; Johnson v. Fedex Office and Print Services, Inc. – Alameda County Superior Court, Case No. RG17856291; Rios v. Pacific Western Bank – San Diego County Superior Court, Case No. 37-2016-00038083; Sanders v. Old Dominion Freight Lines, Inc. – San Diego County Superior Court, Case No. 37-2016-00030725-CU-OE-CTL; Taylor v. Gardner Trucking, Inc. – San Bernardino County Superior Court, Case No. CIVDS1614280; Couture v. Wal-Mart Associates, Inc. – U.S. District Court, Eastern District of California, case No. 16-CV-02202-VC; Bertuol v. AHMC Anaheim Regional Medical Center LP – Orange County Superior Court, Case No. 30-2017-00899024-CO-OE-CXC; Espinoza v. Prime Communications of California, LLC – San Mateo County Superior Court, Case No. 16CIV01563; Archuletta v. Tidy Services, Inc. – Orange County Superior court, Case No. 30-2016-008611892-CU-OE-CXC; Puccini v. Earthbound Farm, LLC – Santa Clara County Superior Court, Case No. 17CV308643; Vikram v. First Student Management, LLC – U.S. District Court, Northern District of California, Case No. 17-CV-04656-KAW; Blair v. Ashley Distribution Services, LTD. – U.S. District Court, Central District of California, Case No. 17-CV-01427-JAK-SP; Richardson v. Service Staffing, LLC – Orange County Superior Court, Case No. 30-2017-00899039-CU-OE-CXC; Coffin v. Certified Freight Logistics, Inc. – San Diego County Superior Court, Case No. 37-2016-00036523-CU-OE-CTL; Encarnacion v. S.A.S. Services Group, Inc. – San Diego County Superior Court, Case No. 37-2017-00026726-CU-OE-CTL; Vasquez v. Golden State Overnight Delivery Service, Inc. – Alameda County Superior Court, Case No. RG17862924; Karr v. Tristar Managed Care, Inc. – Contra Costa Superior Court, case No. MSC17-00650; Gouveia v. Central Cal Transportation – San Joaquin County Superior Court, Case No. STK-CV-UOE-2017-0001765; Miranda v. Genex Services, LLC – U.S. District Court, Northern District of California, Case No. 17-CV-01438-JD; Spears v. Health Net of California, Inc. – Sacramento County Superior Court, Case No. 34-2017-00210560; Martinez v. Geil Enterprises, Inc. – Fresno County Superior Court, Case No. 17CECG01879; McComack v. Marriott Ownership Resorts, Inc. – U.S. District Court, Southern District of California, Case No. 17CV1663 BEN WVG; Velasco v. Lemonade Restaurant Group, LLC – Los Angeles County Superior Court, Case No. BC672235; Smith v. Personnel Services, Inc. – U.S. District Court, Northern District of California, Case NO. 17-CV-03594-SK; Gabriel v. Kuni SDA, LLC – San Diego County Superior Court, Case No. 37-2017-000251191-CU-OE-CTL; Miller v. Mattress Firm, Inc. – Santa Clara County Superior Court, Case No. 17CV313148; Provost v. Yourmechanic, Inc. – San Diego County Superior Court, Case No. 37-2017-00024056-CU-OE-CTL; Zirpolo v. UAG Stevens Creek II, Inc. – Santa Clara County Superior Court, Case No. 17CV313457; Salazar v. Aids Healthcare Foundation – San Diego County Superior Court, Case No. 37-2017-00033482-CU-OE-CTL; Knipe v. Amazon.com, Inc. – San Diego County Superior Court, Case No. 37-2017-00029426-CU-OE-CTL; Erwin v. Caremeridian, LLC – Fresno County Superior Court, Case No. 17CECG03048; Davis v. Cox Communications California, LLC – U.S. District Court, Southern District of California, Case No. 16-CV-00989-BAS-BLM; Lara v. RMI International, Inc. – Los Angeles County Superior Court, Case No. BC597695; Harper v. C.R. England, Inc. – U.S. District Court, Utah Central

Division, Case No. 16-CV-00906-DB; Mrazik v. C.H. Robinson Company – U.S. District Court, Central District of California, Case No. 12-CV-02067-CAS-PLA; Horn v. Rise Medical Staffing, LLC – U.S. District Court, Eastern District of California, Case No. 2:17-cv-01967-MCE-KJN; Pasallo v. GSG Protective Services CA Inc. – San Diego Superior Court, Case No. 37-2018-00037611-CU-OE-CTL; Smith v. Pacific Personnel Services, Inc. – U.S. District Court, Northern District of California, Case No. 17-cv-03594-SK; Terrado v. Accredited Debt Relief, LLC – San Diego Superior Court, Case No. 37-2018-00014181-CU-OE-CTL; Escobedo v. Pacific Western Bank – Los Angeles Superior Court, Case No. BC682686; Wade v. Automobile Club of Southern California – Orange County Superior Court, Case No. 30-2017-00960268-CU-OE-CXC; Montano v. American Automobile Association of Northern California – Contra Costa County Superior Court, Case No. CIVMSC18-01539; Perez v. Summit Interconnect, Inc. – Orange County Superior Court, Case No. 30-2018-00995403-CU-OE-CXC; Wolleson v. Gosch Imports, Inc. – Riverside County Superior Court, Case No. RIC170356; Banuelos v. Ortho Mattress, Inc. – Orange County Superior Court, Case No. 30-2020-01161304-CU-OE-CXC; Castellanos v. Miller Automotive Group, Inc. – Los Angeles County Superior Court, Case No. BC699211; Tressler v. Spoonful Management, LLC – Los Angeles County Superior Court, Case No. BC71940; Delph v. Employee Retention Services, LLC – San Diego County Superior Court, Case No. 37-2018-00007885; Romero v. May Trucking Company – U.S. District Court, Central District of California, Case No. 5:17-cv-02166-JGB-SHK; Miranda v. Genex Services, LLC – San Bernardino County Superior Court, Case No. CIVDS1700779; Moore v. Zirx Transportation Services, Inc. – Los Angeles County Superior Court, Case No. CGC-18-566655; Sottile v. Motion Recruitment Partners – Santa Clara County Superior Court, Case No. 18CV321677; Shahbazian v. Fast Auto Loans, Inc. – U.S. District Court, Central District of California, Case No. 2:18-cv-03076-ODW-KS; Salazar v. Johnson & Johnson Consumer Inc. – Los Angeles County Superior Court, Case No. BC702468; Conti v. L’Oreal USA S/D, Inc. – U.S. District Court, Eastern District of California, Fresno, Case No. 1:19-CV-00769-LJO-SKO; Mercado v. Security Industry Specialists, Inc. – Santa Clara County Superior Court, Case No. 17CV320059; Vikili v. Dignity Health – San Francisco County Superior Court, Case No. CGC-18-569456; Bagby v. Swissport SA, LLC – Los Angeles County Superior Court, Case No. BC691058; Henry v. Motion Entertainment Group, LLC – San Francisco County Superior Court, Case No. CGC18565643; Dandoy v. West Coast Convenience, LLC – Alameda County Superior Court, Case No. HG20051121; Lanuza v. AccentCare, Inc. – San Francisco County Superior Court, Case No. CGC-18-565521; Thomas v. Easy Driving School, LLC – San Diego County Superior Court, Case No. 37-2018-00047639-CU-OE-CTL; Erickson v. Erickson – Contra Costa County Superior Court, Case No. MSC18-00307; Martin v. Menzies Aviation (USA) Inc. – San Francisco County Superior Court, Case No. CGC-18-566072; Mortimer v. Healthsouth Bakersfield Rehabilitation Hospital, LLC – Kern County Superior Court, Case No. BCV-18-102761; Alcaraz v. Red Lion Hotels Corporation – San Francisco County Superior Court, Case No. CGC-18-570310; Calhoun v. Total Transportation and Distribution, Inc. – San Diego County Superior Court, Case No. 37-2018-00058681-CU-OE-CTL; Rataul v. Overton Security Services, Inc. – Alameda County Superior Court, Case No. RG18891882; Beltran v. Compass Bank – San Diego County Superior Court, Case No. 37-2019-00024475-CU-OE-CTL; Kirshner v. Touchstone Golf, LLC – San Diego County Superior Court, Case No. 37-2018-00028865-CU-OE-CTL; Pizarro v. The Home Depot, Inc. – U.S. District Court for the Northern District of Georgia-Atlanta Division; Hatanaka v. Restore Rehabilitation, LLC – San Diego County Superior Court, Case No. 37-2018-00034780-CU-OE-CTL; Faria v. Carriage Funeral Holdings, Inc. – Contra Costa County Superior Court, Case No. MSC18-00606; Ontiveros v. Baker Concrete Construction, Inc. – Santa Clara County Superior Court, Case No. 18CV328679; Morales v. Redlands Automotive Services, Inc. – San Bernardino County Superior Court, Case No. CIVDS1807525; Ramirez v. Carefusion Resources, LLC – U.S. District Court, Southern District of California; Amster v. Starbucks Corporation – San Bernardino Superior Court, Case No. CIVDS1922016; Kutzman v. Derrel’s Mini Storage, Inc. – U.S. District, Eastern District of California, Case No. 1:18-cv-00755-AWI-JLT; Marks v. Universal Propulsion Company, Inc. – Solano County Superior Court, Case No. FCS051608; Martinez v. Geil Enterprises,

Inc. – Fresno County Superior Court, Case No. 17CECG01480; Teniente v. Cirrus Asset Management, Inc. – Los Angeles County Superior Court, Case No. 20STCV16302; Blackshear v. California Fine Wine & Spirits LLC – Sacramento County Superior Court, Case No. 34-2018-00245842; Warnick v. Golden Gate America West LLC – Los Angeles County Superior Court, Case No. BC714176; Bennett v. Dnata Aviation USA, Inc. – San Francisco County Superior Court, Case No. CGC-18-566911; George v. PF Stockton Fitness LLC – Sacramento County Superior Court, Case No. 34-2019-00261113-CU-OE-GDS; Oshana v. Farmers and Merchants Bank of Central California – Stanislaus County Superior Court, Case No. CV-19-003427; Vasquez v. Packaging Corporation of America – U.S. District Court, California Central District, Case No. 2:19-cv-01935-PSG-PLA; Palomino v. Zara USA Inc. – Orange County Superior Court, Case No. 30-2018-00992682-CU-OE-CXC; Simmons v. Joe & The Juice LA, LLC – San Francisco County Superior Court; Pacia v. CIM Group, L.P. – Los Angeles County Superior Court, Case No. BC709666; Flores v. Plastic Express – Los Angeles County Superior Court, Case No. BC71971; Madera v. William Warren Properties, Inc. – Orange County Superior Court, Case No. 30-2019-01055704-CU-OE-CXC; Hernandez v. Quality Custom Distribution – Orange County Superior Court, Case No. 30-2018-01010611-CU-OE-CXC; Arango v. Schlumberger Technology Corporation – Orange County Superior Court, Case No. 30-2019-01056839-CU-OE-CXC; Dandoy v. West Coast Convenience, LLC – Alameda County Superior Court, Case No. HG20051121; Ramirez v. J E H Enterprises, Inc. – San Francisco County Superior Court, Case No. CGC-19-574691; Sullen v. First Service Residential California, LLC – San Francisco County Superior Court, Case No. CGC-19-575131; Valentino v. East Bay Tire Co. – Solano County Superior Court, Case No. FCS053067; Murphy v. Rockler Retail Group, Inc. – Sacramento Superior Court, Case No. 34-2019-00251220; Shahbazian v. Onewest Bank – Los Angeles County Superior Court, Case No. 19STCV23722; Bruemmer v. Tempur Retail Stores LLC – Marin County Superior Court, Case No. CIV1803646; Antonios v. Interface Rehab, Inc. – Orange County Superior, Case No. 30-2019-01067547-CU-OE-CXC; Tavallodi v. DC Auto, Inc. – San Bernardino, Case No. CIVDS1833598; Miranda v. The Lloyd Pest Control Co. – San Diego County Superior Court, Case No. 37-2018-00052510-CU-OE-CTL; Soenardi v. Magnussen Imports, Inc. – Santa Clara County Superior Court, Case No. 18CV340003; Thai v. Team Industrial Services, Inc. – Los Angeles County Superior Court, Case No. 19STCV21953; Castillo v. A.J. Kirkwood & Associates, Inc. – Los Angeles County Superior Court, Case No. 19STCV04435; Moss v. Jabil Inc. – Alameda County Superior Court, Case No. HG20050536; Billosillo, Jr. v. Crown Energy Services, Inc. – San Diego County Superior Court, Case No. 37-2018-00058254-CU-OE-CTL; Tarkington v. Freetime, Inc. – San Diego County Superior Court, Case No. 37-2019-00011473-CU-OE-CTL; McIntyre v. J.J.R. Enterprises, Inc. – Sacramento County Superior Court, Case No. 34-2019-00251220; Bucur v. Pharmaca Integrative Pharmacy, Inc. – San Diego County Superior Court, Case No. 37-2019-00009409-CU-OE-CTL; Batin v. McGee Air Services, Inc. – Santa Clara County Superior Court, Case No. 19CV347733; Terry v. McGee Air Services, Inc. – King County Superior Court of Washington, Case No. 19-2-3321-5 KNT; Weiss v. Niznik Behavioral Health Resources, Inc. – San Diego County Superior Court, Case No. 37-2019-00039441-CU-OE-CTL; Cavada v. Inter-Continental Hotels Group, Inc. – U.S. District Court, Southern District of California, Case No. 3:19-cv-01675-GPC-AHG; Lesevic v. Spectraforce Technologies, Inc. – U.S. District Court, Northern District of California, Case No. 5:19-cv-03126-LHK; Mutchler v. Circle K Stores, Inc. – San Diego County Superior Court, Case No. 37-2020-00016331-CU-OE-CTL; Azima v. CSI Medical Group – Santa Clara County Superior Court, Case No. 19CV345450; Porras v. Baypointe Enterprises, LLC – Los Angeles County Superior Court, Case No. 19STCV31015; Mitchell v. Mack Trucking, Inc. – San Bernardino County Superior Court, Case No. CIVDS1928334; Watts v. T.R.L. Systems, Incorporated – Orange County Superior Court, Case No. 30-2019-01102457-CU-OE-CXC; Price v. DMSD Restaurants Inc. – San Diego County Superior Court, Case No. 37-2019-00024062-CU-OE-CTL; Jacobs v. Nortek Security & Control LLC – San Diego County Superior Court, Case No. 37-2019-0019735-CU-OE-CTL; Gonzalez v. Hub International Midwest – San Bernardino County Superior Court, Case No. CIVDS1900463; Cisneros v. Bluepearl California, Inc. – San Mateo Superior Court, Case No. 19-

CIV-05707; Garcia v. Gallagher Basset Services – San Bernardino Superior Court, Case No. CIVDS2004140; Callow v. Adventist Health System/West – Placer County Superior Court, Case No. SCV0043607; Dominguez v. Kimco Facility Services, LLC – Los Angeles County Superior Court, Case No. 19STCV37592; Searles v. Robert Heath Trucking, Inc. – Los Angeles County Superior Court, Case No. 19STCY30808; Rangel v. Pioneer Hi-Bred international, Inc. – Yolo County Superior Court, Case No. CV-19-1797; Ivon v. Sinclair Television of California, Humboldt County Superior Court, Case No. DR190699; Williams v. Henkels & McCoy, Inc. – San Bernardino County Superior Court, Case No. CIVDS2003888; Cano v. Larry Green Chrysler Jeep Dodge, Inc. – Riverside County Superior Court, Case No. BLC1900184; Lopez v. Cepheid – Santa Clara County Superior Court, Case No. 19CV358827; Hernandez v. Quick Dispense, Inc. – Los Angeles County Superior Court, Case No. 19STCV29405; Lopez v. Lacoste USA, Inc. – San Bernardino County Superior Court, Case No. CIVDS1914626; Duhe v. Hospital Couriers Nevada, LLC – Contra Costa County Superior Court, Case No. MSC19-01377; Law v. Sequoia Equities, Incorporated – Contra Costa Superior Court, Case No. C19-01925; Dvorak v. Rockwell Collins, Inc. – San Diego County Superior Court, Case No. 37-2019-00064397-CU-OE-CTL; Noguera v. Metal Container Corporation – Riverside County Superior Court, Case No. RIC2003235; Leon v. Miller Event Management, Inc. – San Luis Obispo Superior Court, Case No. 19CV-0435; Leon v. Miller Event Management, Inc. – San Luis Obispo County Superior Court, Case No. 19CV-0435, Camacho-Bias v. Serve U Brands Inc. – Butte County Superior Court, Case No. 20CV00603; La Pietra v. Entertainment Partners Services, LLC – Los Angeles County Superior Court, Case No. 19STCV39529; Celis v. Theatre Box - San Diego, LLC – San Diego County Superior Court, Case No. ____; Ignacio v. Laboratory Corporation of America – U.S. District Court, California Central District, Case No. 2:19-cv-06079-AB-RAO; Kovnas v. Cahill Contractors LLC – Alameda County Superior Court, Case No. RG19037852; Hersh v. Mrs. Gooch's Natural Food – Los Angeles County Superior Court, Case No. 19STCV10444; Miller v. The Permanente Medical Group – Alameda County Superior Court, Case No. RG19045904; Vasquez v. Autoalert, LLC – Orange County Superior Court, Case No. 30-2019-01114549-CU-OE-CXC; Cavanaugh v. Morton Golf, LLC – Sacramento County Superior Court, Case No. 34-2019-00270176; Coley v. Monroe Operations, LLC – Alameda County Superior Court, Case No. RG20063188; Ramirez v. Sierra Aluminum Company – U.S. District Court, California Central District Court, Case No. 5:20-cv-00417-JGB-KK; Marrero v. Stat Med, P.C. – Alameda County Superior Court, Case No. HG19043214; Enriquez v. Solari Enterprises, Inc. – Los Angeles County Superior Court, Case No. 20STCV11129; Craig v. Hometown Heart – San Francisco County Superior Court, Case No. CGC-20-582454; Lopez v. Hy0Lang Electric California, Inc. – San Diego County Superior Court, Case No. 37-2020-00012543-CU-OE-CTL; Heuklom v. Clara Medical Group, P.C. – San Francisco County Superior Court, Case No. CGC-20-585918; Dominguez v. Lifesafer of Northern California – Monterey County Superior Court, Case No. 20CV002586; Kiseleva v. Totalmed Staffing Inc. – U.S. District Court, California Northern District, Case No. 5:19-cv-06480; Vires v. Sweetgreen, Inc. – Santa Clara County Superior Court, Case No. 20CV365918; Kim v. Wireless Vision, LLC – San Bernardino County Superior Court, Case No. CIVDS2000074; Senoren v. Air Canada Corporation – Los Angeles County Superior Court, Case No. 20STCV13942; Clark v. Quest Diagnostics Incorporated – San Bernardino County Superior Court, Case No. CIVDS2018707; Green v. Shipt, Inc. – Los Angeles County Superior Court, Case No. 20STCV01001; Respass v. The Scion Group LLC – Sacramento County Superior Court, Case No. 34-2020-00285265; Jackson v. Decathlon USA LLC – Alameda County Superior Court, Case No. RG2003024; Avacena v. FTG Aerospace Inc. – Los Angeles County Superior Court, Case No. 20STCV28767; Perez v. Butler America, LLC – Los Angeles County Superior Court, Case No. 20STCV20218; Christensen v. Carter's Retail, Inc. – Orange County Superior Court, Case No. 30-2020-01138792-CU-OE-CXC; Astudillo v. Torrance Health Association, Inc. – Los Angeles County Superior Court, Case No. 20STCV18424; Hansen v. Holiday AI Management Sub LLC – Contra Costa County Superior Court, Case No. CIVMSC20-00779; Almahdi v. Vitamin Shoppe Industries Inc – Santa Clara County Superior Court, Case No. 20CV365150; Krisinda v. Loyal Source Government Services LLC – U.S. District Court, California

Southern District, Case No. 3:20-cv-879-LAB-NLS; Ettedgui v. WB Studio Enterprises Inc – U.S. District Court, California Central District, Case No. 2:20-CV-08053-MCS (MAAx); Fernandez v. Nuvision Federal Credit Union – Orange County Superior Court, Case No. 30-2020-01161691-CU-OE-CJC; Aviles v. UPS Supply Chain Solutions, Inc. – Riverside County Superior Court, Case No. RIC2000727; Alcocer v. DSV Solutions, LLC – San Bernardino Superior Court, Case No. CIVDS2010345; Wilson v. Wholesome Harvest Baking, LLC – U.S. District Court, California Northern District, Case No. 4:20-cv-05186-YGR; Gregory v. Verio Healthcare, Inc. – Los Angeles County Superior Court, Case No. 20STCV37254; Rose v. Impact Group, LLC – Orange County Superior Court, Case No. 30-2020-01141107-CU-OE-CXC; Monasterio v. Citibank, N.A. – San Mateo County Superior Court, Case No. 20-CIV-03650; Martinez-Lopez v. Medamerica, Inc. – San Diego County Superior Court, Case No. 37-2020-00034393-CU-OE-CTL; Cox v. PRB Management, LLC – Solano County Superior Court, Case No. FCS055514; Nash v. K. Hovnanian Companies, LLC – Riverside County Superior Court, Case No. RIC2003319; Kyler v. Harbor Freight Tools USA, Inc. – San Diego County Superior Court, Case No. 37-2020-00015828-CU-OE-CTL; Roberts v. Solantic Corporation – Los Angeles County Superior Court, Case No. 20STCV41117; Price v. Mistras Group, Inc. – Los Angeles County Superior Court, Case No. 20STCV22485; Macias v. ABM Electrical & Lighting Solutions, Inc. – San Diego County Superior Court, Case No. 37-2020-00024997-CU-OE-CTL; Basu-Kesselman v. Garuda Labs, Inc. – San Francisco County Superior Court, Case No. CGC-20-585229; Armstrong v. Prometric LLC – Los Angeles County Superior Court, Case No. 20STCV29967; Ashlock v. Advantis Medical Staffing, LLC – San Diego County Superior Court, Case No. 37-2020-00022305-CU-OE-CTL; Wilson v. WXI Global Solutions, LLC – Los Angeles County Superior Court, Case No. 20STCV25007; Gandhale v. Select Rehabilitation, LLC – Monterey County Superior Court, Case No. 20CV002240; Starvoice v. G4S Secure Solutions (USA) Inc. – San Diego County Superior Court, Case No. 37-2020-00029421-CU-OE-CTL; Mbise v. Axlehire, Inc. – Alameda County Superior Court, Case No. RG20067350; Points v. C&J Services, Inc. – Kern County Superior Court, Case No. BCV-20-102483; Marshall v. PHI Air Medical, LLC – Lassen County Superior Court, Case No. 62973; Jauregui v. Cytotec Engineered Materials, Inc. – Orange County Superior Court, Case No. 30-2020-01164932-CU-OE-CXC

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Dammion Myles (“Plaintiff”) and defendants Builders Concrete, Inc. and Viking Ready Mix Co., Inc. (“Defendants”). The Agreement refers to Plaintiff and Defendants collectively as the “Parties,” or individually as “Party.”

1. DEFINITIONS

In addition to other terms defined in this Agreement, the terms below have the following meaning in this Agreement:

- 1.1. “Action” collectively means the Plaintiff’s lawsuits alleging wage and hour violations against Defendants captioned: (1) *Dammion Myles v. Builders Concrete, Inc., et al.*, Case No. BCV-20-102375 (previously Case No. 1:21-cv-01309-DAD BAK) (“Myles Class Action”), initiated on October 9, 2022 and (2) *Dammion Myles v. Builders Concrete, Inc., et al.*, Case No. BCV-20-102905 (“Myles PAGA Action”), initiated on December 10, 2020, which will be consolidated with the Myles Class Action.
- 1.2. “Administrator” means ILYM Group, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval.
- 1.4. “Aggrieved Employees” means all individuals who were employed by Defendants in California and classified as a non-exempt employee at any time during the PAGA Period.
- 1.5. “California Class Period” means the period of time from April 1, 2018 through March 14, 2023.
- 1.6. “Class” means both the California Class and the FCRA Class, as defined herein. The California Class is defined as all individuals who were employed by Defendants in California and classified as a non-exempt employee at any time during the California Class Period (the “California Class”). The FCRA Class is defined all individuals who applied for employment or were employed by Defendants in the United States for whom background checks were run during the FCRA Class Period (the “FCRA Class”).
- 1.7. “Class Counsel” means Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit

Bhowmik, Nicholas J. De Blouw, Jeffrey S. Herman, and Sergio J. Puche of Blumenthal Nordrehaug Bhowmik De Blouw LLP.

- 1.8. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts to be paid to Class Counsel for fees and expenses, respectively, as approved by the Court, to compensate Class Counsel for their legal work in connection with the Action, including their pre-filing investigation, their filing of the Action, all related litigation activities, all Settlement work, all post-Settlement compliance procedures, and related litigation expenses billed in connection with the Action.
- 1.9. “Class Data” means Class Member identifying information in Defendants’ possession including the Class Member’s name, last-known mailing address, Social Security number, email address (if known and available to Defendant), number of Workweeks and PAGA Pay Periods for those in the California Class, and whether the Class Member is a member of the FCRA Class.
- 1.10. “Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non- Participating Class Member who qualifies as an Aggrieved Employee).
- 1.11. “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members by use of available email addresses, phone numbers, social security numbers, credit reports, LinkedIn and Facebook.
- 1.12. “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to Class Members in English with a Spanish translation in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.
- 1.13. “Class Notice Packet” means the Class Notice to be provided to the Class Members by the Administrator in the form set forth as Exhibit A to this Agreement (other than formatting changes to facilitate printing by the Administrator).
- 1.14. “Class Period” means the California Class Period (defined above) for the California Class and the FCRA Class Period (defined below) for the FCRA Class.
- 1.15. “Class Representative” means the named Plaintiff in the Operative Complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.16. “Class Representative Service Payment” means the service payment made to the Plaintiff as Class Representative in order to compensate for initiating the Action,

performing work in support of the Action, undertaking the risk of liability for Defendants' expenses, and for the general release of all claims by the Plaintiff.

- 1.17. "Court" means the Superior Court of California, County of Kern.
- 1.18. "Defendants" means Builders Concrete, Inc. and Viking Ready Mix Co., Inc..
- 1.19. "Defense Counsel" means Spencer C. Skeen, Jesse C. Ferrantella and Cameron O. Flynn of Ogletree, Deakins, Nash, Smoak & Stewart, P.C.
- 1.20. "Effective Date" means the date by when both of the following have occurred the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members objects to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or (c) if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- 1.21. "FCRA" means the Fair Credit Reporting Act.
- 1.22. "FCRA Class Period" means the period of time from October 9, 2015 through March 14, 2023.
- 1.23. "Final Approval" means the Court's order granting final approval of the Settlement substantially in the form attached hereto as Exhibit C to this Agreement and incorporated by reference into this Agreement.
- 1.24. "Final Approval Hearing" means the Court's hearing on the Motion for Final Approval of the Settlement to determine whether to approve finally and implement the terms of this Agreement and enter the Judgment.
- 1.25. "Gross Settlement Amount" means Nine Hundred Seventy-Five Thousand Dollars (\$975,000) which is the total amount to be paid by Defendants as provided by this Agreement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment and the Administrator's Expenses. This Gross Settlement Amount is an all-in amount without any reversion to Defendants, with no claim forms required, and excludes any employer payroll taxes, if any, due on the portion of the Individual Class Payments allocated to wages which shall not be paid from the Gross Settlement and shall be the separate additional obligation of Defendants.
- 1.26. "Individual Class Payment" means, for the California Class, the Participating Class

Member's pro rata share of the Net Settlement Amount calculated according to the number of Workweeks worked during the Class Period; and for the FCRA Class, the Participating Class Member's share of the \$25,000 payment allocated to the FCRA Class, which shall be split equally between the Participating Class Members for the FCRA Class.

- 1.27. "Individual PAGA Payment" means the Aggrieved Employee's pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked during the PAGA Period.
- 1.28. "Judgment" means the judgment entered by the Court based upon Final Approval substantially in the form attached hereto as Exhibit C to this Agreement and incorporated by reference into this Agreement.
- 1.29. "LWDA" means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.30. "LWDA PAGA Payment" means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).
- 1.31. "Net Settlement Amount" means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The Net Settlement Amount is to be paid to Participating Class Members as Individual Class Payments.
- 1.32. "Non-Participating Class Member" means a Class Member who opts out of the Class Settlement by submitting a valid and timely Request for Exclusion to the Administrator.
- 1.33. "Operative Complaint" means the operative amended Consolidated Class Action and Representative Action Complaint that consolidates the PAGA Action into the first-filed Class Action in state court.
- 1.34. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendants for at least on day during the PAGA Period.
- 1.35. "PAGA Period" means the period of time from October 1, 2019 through March 14, 2023.
- 1.36. "PAGA" means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).
- 1.37. "PAGA Notice" means the Plaintiff's October 1, 2020 and subsequent letters to Defendants and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).

- 1.38. "PAGA Penalties" means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$6,250) and the 75% to LWDA (\$18,750) in settlement of PAGA claims.
- 1.39. "Participating Class Member" means a Class Member who does not submit a valid and timely Request for Exclusion.
- 1.40. "Plaintiff" means Dammion Myles, the named plaintiff in the Action.
- 1.41. "Preliminary Approval" means the Court's Order Granting Preliminary Approval of the Settlement, substantially in the form attached hereto as Exhibit B to this Agreement and incorporated by this reference herein.
- 1.42. "Released Class Claims" means as follows: for California Class Members, all non-FCRA claims that were alleged, or reasonably could have been alleged, based on the factual allegations stated in the Operative Complaint which occurred during the California Class Period; and for FCRA Class Members, all FCRA claims that were alleged, or reasonably could have been alleged, based on the background check factual allegations stated in the Operative Complaint which occurred during the FCRA Class Period. Except as expressly set forth in this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, Class Claim claims outside of the Class Period, or FCRA Claims outside of the FCRA Class Period. California Class Members may also be FCRA Class Members, in which case those California Class Members (who are also FCRA Class Members) would also release all FCRA claims that were alleged, or reasonably could have been alleged, based on the background check factual allegations stated in the Operative Complaint which occurred during the FCRA Class Period.
- 1.43. "Released PAGA Claims" means a release from the LWDA, the State of California and Aggrieved Employees of all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the factual allegations stated in the Operative Complaint and the PAGA Notice, which occurred during the PAGA Period. The Released PAGA Claims do not include other PAGA claims, claims for wrongful termination, discrimination, unemployment insurance, disability and worker's compensation, or PAGA Claims outside of the PAGA Period.
- 1.44. "Released Parties" means: Defendants and each of their former and present insurers, brands, concepts, affiliates, subsidiaries, parent companies, predecessors, successors, assigns, employees, officers, directors, agents, attorneys, administrators, representatives, heirs, estates, powers-of-attorney, and any individual or entity that

could be jointly liable with Defendants.

- 1.45. “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.46. “Response Deadline” means sixty (60) calendar days after the Administrator mails Class Notice Packet to Class Members and Aggrieved Employees and shall be the last date on which Class Members may: (a) submit Requests for Exclusion from the Settlement, or (b) submit his or her Objection to the Settlement. Class Members to whom Class Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.
- 1.47. “Settlement” means the disposition of the Action and all related claims effectuated by this Agreement and the Judgment.
- 1.48. “Workweek” means any week during the Class Period in which a Class Member worked for Defendants as a Class Member for at least one day.

2. RECITALS

Myles Class Action

- 2.1. On October 9, 2020, Plaintiff commenced this Action by filing a Class Action Complaint against Defendants Builders Concrete Inc., Concrete Holding Company of California, Inc, Viking Ready Mix Co., Inc., and National Ready Mixed Concrete Co. in the Superior Court of the State of California, County of Kern (the “Myles Class Action”). Plaintiff’s Complaint asserted claims that all four Defendants:
- (a) Violated California Business and Professions Code § 17200 et seq. (“UCL”);
 - (b) Failed to pay minimum wages in violation of California Labor Code §§ 1194, 1197 & 19987.1;
 - (c) Failed to pay overtime wages in violation of California Labor Code § 510, et seq.;
 - (d) Failed to provide required meal periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order;
 - (e) Failed to provide required rest periods in violation of California Labor Code §§ 226.7 & 512 and the applicable IWC Wage Order;
 - (f) Failed to reimburse employees for required expenses in violation of California Labor Code § 2802.
 - (g) Failed to provide accurate itemized wage statements in violation of California Labor Code § 226; and,
 - (h) Failed to provide wages when due in violation of California Labor Code §§ 201, 202 and 203.

- 2.2. On December 7, 2020, each defendant filed an Answer to Plaintiff's Class Action Complaint.
- 2.3. On July 27, 2021, Plaintiff and defendants filed a Stipulation for Leave for Plaintiff to file a First Amended Class Action Complaint, which the Court granted.
- 2.4. On July 28, 2021, Plaintiff filed a First Amended Class Action Complaint, adding two causes of action for violations of FCRA.
- 2.5. On August 27, 2021, the four defendants removed the First Amended Class Action Complaint to the United States District Court for the Eastern District of California.
- 2.6. On August 27, 2021, each defendant filed an Answer to Plaintiff's Class Action Complaint.
- 2.7. On November 11, the four defendants filed a Motion for Judgment on the Pleadings ("MJOP") as to Plaintiff's allegations against Defendants Concrete Holding Company of California, Inc, Viking Ready Mix Co., Inc., and National Ready Mixed Concrete Co., which the Court granted on June 28, 2022 with leave for Plaintiff to file a Second Amended Class Action Complaint.
- 2.8. On July 21, 2022, Plaintiff filed a Second Amended Class Action Complaint.
- 2.9. On August 4, 2022, the four Defendants filed a Motion to Dismiss under F.R.C.P. 12(B)(6) as to Plaintiff's allegations against Defendants Concrete Holding Company of California, Inc, Viking Ready Mix Co., Inc., and National Ready Mixed Concrete Co., as well as to Plaintiff's UCL Claim against all four Defendants.
- 2.10. The Parties never received a ruling on the Defendants' Motion to Dismiss, as the matter subsequently settled (discussed below) and on January 10, 2023, the Court stayed its consideration of the Motion to Dismiss.
- 2.11. On January 30, 2023, Plaintiff and Defendants filed a Stipulation to remand matter to state court, which the Court granted on February 15, 2023.

Plaintiff's PAGA Action

- 2.12. On December 10, 2020, Plaintiff filed a separate Representative Action Complaint against Defendants Builders Concrete Inc., Concrete Holding Company of California, Inc, Viking Ready Mix Co., Inc., and National Ready Mixed Concrete Co. in the Superior Court of the State of California, County of Kern, alleging one cause of action for Civil Penalties Pursuant to Labor Code § 2699, et seq. for violations of Labor Code §§ 201, 202, 203, 204 et seq., 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B) (the "Myles PAGA Action").

2.13. On March 8, 2021, each defendant filed an Answer to Plaintiff's Representative Action Complaint.

2.14. On April 27, 2022, the Court granted the four defendants' Motion to Stay the Representative PAGA Action pending Plaintiff's Class Action that was pending in the United States District Court for the Eastern District of California.

Mediations and Settlement

2.15. As part of this Settlement Agreement, the parties agreed to remand the Class Action to State Court and have stipulated to the filing of an amended Consolidated Class Action and Representative Action Complaint that consolidates the PAGA Action into the first-filed Class Action in state court. The Consolidated Class Action and Representative Action Complaint shall dismiss Concrete Holding Company of California, Inc. and National Ready Mixed Concrete Co., leaving only Defendants Builders Concrete Inc. and Viking Ready Mix Co., Inc. as the only remaining Defendants. The amended Consolidated Class Action and Representative Action Complaint also clarifies the basis for all claims, causes of action, and theories of liability addressed during the mediation. The Consolidated Class Action and Representative Action Complaint shall be the operative complaint in the Action (the "Operative Complaint").

2.16. Defendants deny the allegations in the Operative Complaint, deny any failure to comply with the laws identified in the Operative Complaint and deny any and all liability for the causes of action alleged.

2.17. On June 24, 2021, the Parties participated in an all-day mediation with mediator David Rottman, Esq., a respected mediator of wage and hour representative and class actions. The matter did not resolve at this first mediation.

2.18. On December 7, 2022, the Parties participated in a second all-day mediation presided over by Louis Marlin, Esq., a respected mediator of wage and hour representative and class actions. Following the mediation, each side, represented by its respective counsel, were able to agree to settle the Action based upon a mediator's proposal which was memorialized in the form of a Memorandum of Understanding. Once executed, this Agreement replaces and supersedes the Memorandum of Understanding and any other agreements, understandings, or representations between the Parties.

2.19. Prior to mediation, Plaintiff obtained sufficient documents and information to sufficiently investigate the claims such that Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

2.20. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by Defendants that the claims in the Action of Plaintiff or the Class have merit or that Defendants bear any liability to Plaintiff or the Class on those claims or any other claims, or as an admission by Plaintiff that Defendants' defenses in the Action have merit. The Parties agree to certification of the Class for purposes of this Settlement only. If for any reason the settlement does not become effective, Defendants reserve the right to contest certification of any class for any reason and reserves all available defenses to the claims in the Action.

2.21. The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS

3.1. Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Defendants promises to pay \$975,000 and no more as the Gross Settlement Amount. This amount is all-inclusive of all payments contemplated in this resolution, excluding any employer-side payroll taxes on the portion of the Individual Class Payments allocated to wages which shall be separately paid by Defendants to the Administrator. Defendants have no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendants.

3.2. Payments from the Gross Settlement Amount. Subject to the terms and conditions of this Agreement, the Administrator will make the following payments out of the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval.

(a) To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$10,000 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Defendants will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payments no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

- (b) To Class Counsel: A Class Counsel Fees Payment of not more than one-third (1/3) of the Gross Settlement Amount, which is currently estimated to be \$325,000, and a Class Counsel Litigation Expenses Payment of not more than \$33,000. Defendants will not oppose requests for these payments provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Defendants harmless, and indemnifies Defendants, from any dispute or controversy regarding any division or sharing of any of these payments.
- (c) To the Administrator: An Administration Expenses Payment not to exceed \$13,000 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses Payment is less or the Court approves payment less than \$13,000, the Administrator will retain the remainder in the Net Settlement Amount for distribution to Participating Class Members.
- (d) To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$25,000 to be paid from the Gross Settlement Amount, with 75% (currently \$18,750) allocated to the LWDA PAGA Payment and 25% (currently \$6,250) allocated to the Individual PAGA Payments.
- i. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$6,250) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.
 - ii. If the Court approves PAGA Penalties different from the amount requested, the Administrator will use the difference to adjust the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.
- (e) To Each Participating Class Member: \$25,000 will be allocated from the Net Settlement Amount to the FCRA Class so at least \$100 will be paid to each of the 188 FCRA Class Members, whose share of the \$25,000 payment shall be split equally

between the Participating Class Members for the FCRA Class. The balance of the Net Settlement Amount will be allocated to the Participating Class Members for the California Class who will be paid based on the number of workweeks worked during the California Class Period. An Individual Class Payment for the California Class is calculated by (a) dividing the Net Settlement Amount (less the \$25,000 allocated to the FCRA Class) by the total number of Workweeks worked by all Participating California Class Members during the California Class Period and (b) multiplying the result by each Participating California Class Member's Workweeks.

- i. Tax Allocation of Individual Class Payments. 20% of each Participating California Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. 80% of each Participating California Class Member's Individual Class Payment will be allocated to settlement of claims for non-wages, expense reimbursement, interest and penalties (the "Non-Wage Portion"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment. For the FCRA Class, 100% of the Individual Class Payment will be reported on IRS 1099 Forms and not subject to wage withholdings.
- ii. Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

4. SETTLEMENT FUNDING

- 4.1. Class Workweeks and Aggrieved Employee Pay Periods. Based on its records, Defendants have represented that at the time of the MOU, the Class consists of approximately 320 California Class Members who collectively worked a total of 42,675 Workweeks during the period of April 1, 2018 through November 8, 2022, 188 FCRA Class Members who had background checks procured since October 9, 2015, and approximately 271 Aggrieved Employees who worked a total of 14,518 PAGA Pay Periods.
- 4.2. Class Data. Not later than 21 days after the Court grants Preliminary Approval of the Settlement, Defendants will deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. The Class Data shall not be shared with either Plaintiff or Class Counsel unless expressly approved by Defendant and Defense Counsel, or if a Class Member requests that their personal data be shared with Class Counsel. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence,

use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Defendants have a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted Class Member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Defendants must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

- 4.3. Funding of the Gross Settlement Amount. Defendants shall fully fund the Gross Settlement Amount, and also fund the amounts necessary to fully pay Defendants' share of payroll taxes by transmitting the funds to the Administrator no later than 21 days after the Effective Date.

5. PAYMENTS FROM THE GROSS SETTLEMENT AMOUNT

- 5.1. Within 14 days after Defendants fund the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment.
- 5.2. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the "void date", which is 180 days after the date of mailing, when the check will be voided. Before checks are mailed, the Administrator shall update address information through the National Change of Address database. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Class Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment(s) and the Individual PAGA Payment. Before mailing any checks, the Administrator must update the recipients' mailing addresses using the National Change of Address Database. If a Participating Class Member's or Aggrieved Employee's check is not cashed within 120 days after its last mailing to the affected individual, the Administrator will also send the individual a notice informing him or her that unless the check is cashed by the void date, it will expire and become non-negotiable, and offer to replace the check if it was lost or misplaced but not cashed.

- 5.3. The Administrator must conduct a Class Member Address Search for all other Class Members whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, requested by the Class Member prior to the void date.
- 5.4. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).
- 5.5. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendants to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.
- 6. RELEASE OF CLAIMS.** Effective on the date when Defendants fully fund the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Participating Class Members, Aggrieved Employees and the LWDA will release claims against all Released Parties as follows:
- 6.1. Plaintiff's Release. In addition to the claims released under Sections 6.2 and 6.3 below, Plaintiff and Plaintiff's former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns, agree to a general release of any and all claims, transactions, or occurrences against Released Parties—which will include without limitation any and all claims which in any way relate to Plaintiff's employment with Defendant, under State or Federal law, in tort, common law, statute, contract, or equity, whether pled in the Complaint or not, including but not limited to any claims under the Fair Labor Standards Act ("FLSA"), Title VII, Americans with Disabilities Act ("ADA"), Fair Employment and Housing Act ("FEHA"), Age Discrimination in Employment Act ("ADEA"), Private Attorneys General Act ("PAGA"), California Labor Code, or any Industrial Welfare Commission Wage Order—now existing or arising in the future, based on any act, omission, event, occurrence, or nonoccurrence from the beginning of time to the date of execution hereof ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, or workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees,

nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

- (a) Plaintiff's Waiver of Rights Under Civil Code Section 1542. For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that 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 Released Party.

- 6.2. Release by Participating Class Members. All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from the Released Class Claims.

- 6.3. Release of PAGA Claims. All Aggrieved Employees, the State of California, and the LWDA are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all of the Released PAGA Claims.

7. **MOTION FOR PRELIMINARY APPROVAL**. The Parties agree to jointly prepare and file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with the Court's procedures and instructions.

- 7.1. Defendants' Responsibilities. Within 14 days of the full execution of this Agreement, Defendants will prepare and deliver to Class Counsel a signed Declaration disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator, but only if there is any actual or potential conflict of interest.

- 7.2. Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency; operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency

to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator; (vi) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial and subsequent notices of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code section 2699, subd. (l)(2)); and (vii) all facts relevant to any actual or potential conflict of interest with Class Members or the Administrator. In their Declarations, Plaintiff and Class Counsel Declaration shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

7.3. Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

7.4. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

8. SETTLEMENT ADMINISTRATION

8.1. Selection of Administrator. The Parties have jointly selected the Administrator to serve in that role and verified that, as a condition of appointment, the Administrator agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Administrator's duties will include preparing, printing, and mailing the Class Notice Packet to all Class Members; conducting a National Change of Address search to update Class Member addresses before mailing the Class Notice Packets; re-mailing Class Notice Packets that are returned to the Class Member's new address; setting up a toll-free telephone number and email and a fax number to receive communications from Class Members; receiving and reviewing for validity completed Requests for Exclusion; providing the Parties with weekly status reports about the delivery of Class Notice Packets and receipt of Requests for Exclusion, objections and disputes; calculating Individual Class Payments and Individual PAGA Payments; issuing the checks to effectuate the payments due under the Settlement; issuing the tax reports required under this Settlement; and otherwise administering the Settlement pursuant to this Agreement. The Parties and their Counsel

represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

8.2. Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports state and federal tax authorities.

8.3. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.

8.4. Notice to Class Members.

- (a) No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, Aggrieved Employees, Workweeks, and Pay Periods in the Class Data.
- (b) Using best efforts to perform as soon as possible, and in no event later than 14 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice with Spanish translation substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member/Aggrieved Employee, and the number of Workweeks and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.
- (c) Not later than 7 days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
- (d) The deadlines for Class Members’ written objections, Challenges to Workweeks and/or Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the Response Deadline provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.
- (e) If the Administrator, the Parties, Defense Counsel or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the

Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, whichever are later.

8.5. Requests for Exclusion (Opt-Outs).

- (a) Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than the Response Deadline (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.
- (b) The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.
- (c) Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraph 6.2 of the Agreement, regardless of whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.
- (d) Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 6.3 of this Agreement and are eligible for an Individual PAGA Payment. In other words, there shall be no right for Aggrieved Employees to

request exclusion from the PAGA settlement. If a Class Member submits both a Request for Exclusion and an objection, only the Request for Exclusion will be accepted, and the objection will be void.

8.6. Challenges to Calculation of Workweeks. Each Class Member shall have until the Response Deadline (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Workweeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Workweeks contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Workweeks and/or Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Workweeks and/or Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination as to the challenges.

8.7. Objections to Settlement.

- (a) Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Class Representative Service Payment.
- (b) Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, or in addition to a written objection, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than the Response Deadline (plus an additional 14 days for Class Members whose Class Notice was re-mailed).
- (c) Non-Participating Class Members have no right to object to any of the class action components of the Settlement. If a Class Member submits both a Request for Exclusion and an objection, only the Request for Exclusion will be accepted and the objection will be void.

8.8. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise

- (a) Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members

including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

- (b) Request for Exclusion (Opt-Outs) and Exclusion List. The Administrator will promptly review on a rolling basis Requests for Exclusion to ascertain their validity. Not later than 7 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Class Counsel and Defense Counsel containing (a) the names of Class Members who have timely submitted valid Requests for Exclusion (“Exclusion List”); (b) the names of Class Members who have submitted invalid Requests for Exclusion; (c) copies of all Requests for Exclusion from Settlement submitted (whether valid or invalid), with personal identifying information other than names redacted.
- (c) Workweek and/or Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Workweeks and/or Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.
- (d) Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Workweeks and/or Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received, with personal identifying information other than names redacted.
- (e) Administrator’s Declaration. Not later than 7 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or

requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

- (f) Final Report by Administrator. Within 10 days after the Administrator disburses all funds of the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 7 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court. If a second declaration attesting to the distribution of uncashed checks is required, the Administrator shall provide this second declaration at least 7 days before any deadline for a second declaration and Class Counsel shall be responsible for filing the second declaration with the Court.

9. CLASS SIZE MODIFICATION AND ESCALATOR CLAUSE. Based on its records, Defendants provided figures as to the Class size as set forth in paragraph 4.1 above. If during the California Class Period, the number of work weeks is more than 5% higher, then the Gross Settlement Amount will be increased proportionately. For example, if the number is 6% higher, the Gross Settlement Amount will be increased by 1%. Alternatively, Defendants will have the option to scale back the California Class Period so as not to trigger the escalator. If during the FCRA Class Period, the number of background checks run is more than 5% higher, then Defendants will increase the amount allocated to the FCRA proportionally. For example, if the number is 6% higher, Defendants will pay an additional amount to increase the amount allocated to the FCRA Class by 1%. Alternatively, Defendants will have the option to scale back the FCRA Class Period so as not to trigger the escalator.

10. DEFENDANTS' RIGHT TO WITHDRAW. If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 5% of the total of the California Class Members or FCRA Class Members, Defendants may, but are not obligated, elect to withdraw from the Settlement. The Parties agree that, if Defendants withdraw, the Settlement shall be void ab initio, have no force or effect whatsoever, and that neither Party will have any further obligation to perform under this Agreement; provided, however, Defendants will remain responsible for paying all Settlement Administration Expenses incurred as of the date Defendants make this election to withdraw. Defendants must notify Class Counsel and the Court of their election to withdraw not later than 10 days after the Administrator sends the final Exclusion List to Defense Counsel. Invalid Requests for Exclusion will have no effect on this threshold for an election.

11. MOTION FOR FINAL APPROVAL. Unless otherwise ordered by the Court, not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699(l), a Proposed Final Approval Order and a

proposed Judgment (collectively “Motion for Final Approval”). Plaintiff shall provide drafts of these documents to Defense Counsel not later than 7 days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

11.1. Response to Objections. Each Party retains the right to respond to any objection raised by a Participating Class Member, including the right to file responsive documents in Court no later than 5 court days prior to the Final Approval Hearing, or as otherwise ordered or accepted by the Court.

11.2. Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final Approval. The Court’s decision to award less than the amounts requested for a Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administration Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

11.3. Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the Parties, Action, and the Settlement under C.C.P. section 664.6 solely for purposes of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

11.4. Waiver of the Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment reflected set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties’ obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do not affect the amount of the Net Settlement Amount.

11.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court’s concerns and to obtain Final Approval and entry of Judgment, sharing, on an equal basis,

any additional Administration Expenses reasonably incurred at the time of remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

12. AMENDED JUDGMENT. If any amended judgment is required under Code of Civil Procedure section 384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

13. ADDITIONAL PROVISIONS

13.1. No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendants that any of the allegations in the Operative Complaint have merit or that Defendants have any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Defendants' defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does not grant Preliminary Approval, Final Approval or Judgment pursuant to this Agreement, the Parties will stipulate that class certification will be revoked without prejudice, Defendants reserve the right to contest certification of any class for any reasons, and Defendants reserve all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Defendants' defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

13.2. Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Defendants and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Defendants and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, with any with third party regarding this Agreement or the matters giving rise to this Agreement

except to respond only that “the matter was resolved,” or words to that effect. This paragraph does not restrict Class Counsel’s communications with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members.

13.3. No Solicitation. The Parties separately agree that they and their respective counsel and employees have not and will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel’s ability to communicate with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members.

13.4. No Publicity. Plaintiff and Class Counsel will not contact the media about the settlement or respond to any inquiries by the media regarding the Settlement, other than to state that the matter was amicably settled, and the Court did not find Defendants liable. Plaintiff and their respective counsel also will not post any information about the settlement on social media or their firms’ websites.

13.5. Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.

13.6. Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Defendants, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.

13.7. Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution. If the Court believes the amount of Administration Expenses; Attorneys’ Fees, Attorneys’ Expenses; Service Award; or PAGA Payment should be modified, the other terms of the settlement will remain in effect and any such reduction will not affect the remaining terms, other than adjusting the Net Settlement Amount. A reduction to the Attorneys’ Fees, Attorneys’ Expenses; Service Award; or PAGA Payment is not a ground for rescinding the settlement.

13.8. No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer,

or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.

- 13.9. No Tax Advice. Neither Plaintiff, Class Counsel, Defendants nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.
- 13.10. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 13.11. Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 13.12. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 13.13. Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 13.14. Confidentiality. To the extent permitted by law, all agreements made, and orders entered during Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 13.15. Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Defendants in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from Defendants.
- 13.16. Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 13.17. Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.

13.18. Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff and the Class:

Norman B. Blumenthal
Kyle R. Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP
2255 Calle Clara
La Jolla, CA 92037
Tel.: (858) 551-1223
Fax: (858) 551-1232
E-Mail: norm@bamlawca.com
kyle@bamlawca.com

To Defendant:

Spencer C. Skeen
Jesse C. Ferrantella
Cameron O. Flynn
Ogletree, Deakins, Nash, Smoak & Stewart, P.C
4660 La Jolla Village Drive, Suite 900
San Diego, CA 92122
Tel: 858-652-3100
Fax: 858-652-3101
E-Mail: Spencer.Skeen@ogletree.com
jesse.ferrantella@ogletree.com
cameron.flynn@ogletree.com

13.19. Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.

13.20. Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process, beginning on the date of execution of this Agreement.

13.21. Fair Settlement. The Parties, Class Counsel and Defense Counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, both current and potential.

14. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: Apr 10, 2023

 (Apr 10, 2023 21:55 PDT)

Plaintiff Dammion Myles

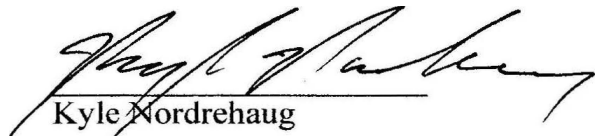
Dated: _____

[name]
For Defendant Builders Concrete, Inc

Dated: _____

[name]
For Defendant Viking Ready Mix Co., Inc.;

Dated: 4/13/23


Kyle Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP
Attorney for Plaintiff

Dated: _____

Spencer C. Skeen
Jesse C. Ferrantella
Cameron O. Flynn
Ogletree, Deakins, Nash, Smoak & Stewart, P.C
Attorney for Defendants

13.21. Fair Settlement. The Parties, Class Counsel and Defense Counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, taking into account all relevant factors, both current and potential.

14. EXECUTION BY PARTIES AND COUNSEL

The Parties and their counsel hereby execute this Agreement.

Dated: _____

Plaintiff Dammion Myles

Dated: 4/14/23

Mark D. Mitzel
MARK D. MITZEL [name]
For Defendant Builders Concrete, Inc

Dated: 4/14/23

Mark D. Mitzel
MARK D. MITZEL [name]
For Defendant Viking Ready Mix Co., Inc.;

Dated: _____

Kyle Nordrehaug
Blumenthal Nordrehaug Bhowmik De Blouw LLP
Attorney for Plaintiff

Dated: April 26, 2023

Spencer C. Skeen
Spencer C. Skeen
Jesse C. Ferrantella
Cameron O. Flynn
Ogletree, Deakins, Nash, Smoak & Stewart, P.C
Attorney for Defendants

EXHIBIT A

[NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION AND HEARING DATE FOR
FINAL COURT APPROVAL]

EXHIBIT “A”

**NOTICE OF PROPOSED SETTLEMENT OF CLASS ACTION
AND HEARING DATE FOR FINAL COURT APPROVAL**

***Myles v. Builders Concrete, Inc., Superior Court of the State of California,
County of Kern, Case No. BCV-20-102375
(consolidated with Case No. CGC- BCV-20-102905)***

***The Superior Court for the State of California authorized this Notice. Read it carefully!
It’s not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.***

**YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR DO NOT
ACT. PLEASE READ THIS NOTICE CAREFULLY.**

You may be eligible to receive money from an employee class action lawsuit (“Action”) against Defendants Builders Concrete, Inc. and Viking Ready Mix Co., Inc. (“Defendants”) for alleged wage and hour violations. The Action was filed by Plaintiff Dammion Myles (“Plaintiff”) and seeks payment of (1) wages and other relief on behalf of all individuals who were employed by Defendants in California and classified as a non-exempt employee at any time during the California Class Period (April 1, 2018 through March 14, 2023) (“California Class Members”), (2) penalties and other relief on behalf of all individuals who applied for employment or were employed by Defendants in the United States for whom background checks were run during the FCRA Class Period (October 9, 2015 through March 14, 2023) (“FCRA Class Members”) (FCRA Class Members and California Class Members are “Class Members”), and (3) penalties under the California Private Attorney General Act (“PAGA”) for all individuals who were employed by Defendants in California and classified as a non-exempt employee at any time during the PAGA Period (October 1, 2019 through March 14, 2023) (“Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendants to fund Individual Class Payment payments to Class Members, and (2) a PAGA Settlement requiring Defendants to fund the PAGA Penalties to pay penalties to the California Labor and Workforce Development Agency (“LWDA”) and to Aggrieved Employees.

Based on Defendants’ records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be <<\$_____>> (less withholding), and your share of the PAGA Penalties is estimated to be <<\$_____>>.** The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your share of the PAGA Penalties, then according to Defendants’ records you are not eligible for a share of the PAGA Penalties under the Settlement because you did not work during the PAGA Period.)

The above estimates are based on Defendants’ records showing that **you worked <<_____>> workweeks** during the Class Period and **you worked <<_____>> pay periods** during the PAGA Period. If you believe that you worked more workweeks and/or pay periods during either period, you can submit a challenge by the deadline date. See Section 5 of this Class Notice below.

The Court has already preliminarily approved the proposed Settlement and approved this Class Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or do not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff's attorneys ("Class Counsel"). The Court will also decide whether to enter a judgment that requires Defendants to make payments under the Settlement and in exchange requires Class Members to give up their rights to assert certain claims against Defendants.

If you worked for Defendants during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

- (1) **Do Nothing.** You don't have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or a share of the PAGA Penalties. As a Participating Class Member, though, you will give up your right to assert Released Class Claims against Defendants as described below in Section 4 below.
- (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not receive an Individual Class Payment, however you will preserve your right to personally pursue Class Claims against Defendants. If you are an Aggrieved Employee, you remain eligible for a share of the PAGA Penalties. You cannot opt-out of the PAGA portion of the proposed Settlement.

Defendants will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:	
You Don't Have to Do Anything to Participate in the Settlement	If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and a share of the PAGA Penalties (if any). In exchange, you will give up your right to assert the wage claims and/or background check claims against Defendants that are covered by this Settlement (Released Class Claims and Released PAGA claims). Additional information is set forth below.
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Response Deadline is _____.	If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. If you request exclusion, you will receive no money from the Class Settlement and you will not be bound by the Class Settlement. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 7 of

	this Class Notice. However, you cannot opt-out of the PAGA portion of the proposed Settlement. If you are an Aggrieved Employee and exclude yourself, you will still be paid your share of the PAGA Penalties and will remain subject to the release of the Released PAGA Claims regardless of whether you submit a request for exclusion.
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement Written Objections Must be Submitted by the Response Deadline (_____)	All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement. The Court’s decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 8 of this Class Notice.
You Can Participate in the Final Approval Hearing	The Court’s Final Approval Hearing is scheduled to take place on _____ at _____ [a.m./p.m.], at the Kern County Superior Court, located at 1215 Truxtun Ave, Bakersfield, CA 93301, in Department ____ before Judge _____. This hearing may change as explained below in Section 9. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 9 of this Class Notice.
You Can Challenge the Calculation of Your Workweeks / Pay Periods Written Challenges Must be Submitted by the Response Deadline (_____)	The amount of your Individual Class Payment and your share of the PAGA Penalties (if any) depend on how many workweeks you worked at least one day during the Class Period and how many pay periods you worked at least one day during the PAGA Period, respectively. The number of Class Period workweeks and number of PAGA Period pay periods you worked according to Defendants’ records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____. See Section 5 of this Class Notice.

1. Why did I get this Notice?

A proposed class action settlement (the “Settlement”) of the above-captioned action pending in the Superior Court of the State of California, in and for the County of Kern (the “Court”), has

been reached between Plaintiff and Defendants and has been granted preliminary approval by the Court. You may be entitled to receive money from this Settlement.

You have received this Class Notice because you have been identified as a member of the Class, which consists of both the California Class and the FCRA Class. The California Class is defined as:

All individuals who were employed by Defendants in California and classified as a non-exempt employee at any time during the California Class Period.

The California Class Period is from April 1, 2018 through March 14, 2023.

The FCRA Class is defined as:

All individuals who applied for employment or were employed by Defendants in the United States for whom background checks were run during the FCRA Class Period.

The FCRA Class Period is from October 9, 2015 through March 14, 2023.

2. What is this class action lawsuit about?

On October 9, 2020, Plaintiff filed a class action complaint against Defendants in the Superior Court of the State of California, County of Kern. Plaintiff asserted the following class claims against Defendants: unfair competition, failure to pay minimum wages, failure to pay overtime wages, failure to provide required meal periods, failure to provide required rest periods, failure to reimburse employees for required expenses, failure to provide accurate itemized wage statements, and failure to provide wages when due. On July 28, 2021, Plaintiff filed a First Amended Class Action Complaint, adding two causes of action for violations of FCRA. On July 21, 2022, Plaintiff filed a Second Amended Class Action Complaint.

On December 10, 2020, Plaintiff filed a separate representative action complaint against Defendants in the Superior Court of the State of California, County of Kern, asserting a single cause of action for civil penalties under the Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”) alleging violations of Labor Code § 2699, et seq. for violations of Labor Code §§ 201, 202, 203, 204 et seq., 210, 226(a), 226.7, 351, 510, 512, 558(a)(1)(2), 1194, 1197, 1197.1, 1198, 2802, California Code of Regulations, Title 8, Section 11040, Subdivision 5(A)-(B).

These two lawsuits are referred to in this Class Notice as the “Action.” On _____, 2023, the Court issued an Order granting leave to file the Consolidated Class Action and Representative Action Complaint. This Consolidated Class Action and Representative Action Complaint filed _____, 2023 is the operative complaint in Case No. BCV-20-102375 and is referred to as the “Operative Complaint”.

Defendants deny that they have done anything wrong and dispute all the claims in the Action. Specifically, Defendants contend that Plaintiff and the Class Members were, at all times, properly compensated for wages under California law; that Plaintiff and the Class Members were provided with meal and rest periods in compliance with California law; that Defendants did not

fail to pay to Plaintiff or any Class Members any wages allegedly due at the time of their termination; the Defendants did not fail to reimburse Class Members for required expenses; that Defendants complied with California wage statement requirements; that Defendants did not violate California Business and Professions Code section 17200 *et seq.*; that all background checks and background check forms were compliant; that Defendants are not liable for any of the penalties sought or that could be sought in the Action; and that this Action cannot be maintained as a class or representative action.

The Court granted preliminary approval of the Settlement on <<INSERT PRELIMINARY APPROVAL DATE>>. At that time, the Court also preliminarily approved the Plaintiff to serve as the Class Representatives, and the law firm Blumenthal Nordrehaug Bhowmik De Blouw LLP to serve as Class Counsel.

The Court has not ruled on the merits of Plaintiff's claims. However, to avoid additional expense, inconvenience, and interference with the business operations of Defendants, the Parties concluded that it is in their best interests and the interests of the Class to settle the Action now on the terms summarized in this Class Notice. The Settlement was reached after mediation and arm's-length negotiations between the Parties. The Plaintiff and Class Counsel think the settlement is in the best interest of all Class Members.

Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Defendants, who expressly deny all liability.

3. What are the terms of the Settlement?

Gross Settlement Amount. Defendants have agreed to pay an "all in" amount of Nine Hundred Seventy-Five Thousand Dollars (\$975,000) (the "Gross Settlement Amount") to fund the settlement of the Action. The Gross Settlement Amount includes all payments of Individual Class Payments to Class Members, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment, the Administration Expenses Payment, and the PAGA Penalties for civil penalties under PAGA. Any employer-side payroll taxes on the portion of the Individual Class Payments allocated to wages shall be separately paid by Defendants. Defendants shall fully fund the Gross Settlement Amount no later than 21 days after the Effective Date. The "Effective Date" is the date the Judgment is entered, or if there are objections or any appeal, the date the Judgment is no longer subject to appeal. Within 14 days after Defendants fully fund the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment.

Court Approved Deductions from Gross Settlement Amount. The proposed payments, subject to Court approval, will be deducted from the Gross Settlement Amount before payments of Individual Class Payments are made to Class Members who do not request exclusion ("Participating Class Members"). At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement Amount, the amounts of which will be decided by the Court at the Final Approval Hearing:

- Administration Expenses Payment. Payment to the Settlement Administrator, estimated not to exceed \$13,000, for expenses, including expenses of notifying the Class Members of the Settlement, processing opt outs, and distributing settlement checks and tax forms.
- Attorneys' Fees and Costs. Payment to Class Counsel of reasonable attorneys' fees not to exceed one-third (1/3) of the Gross Settlement Amount, which presently equals \$325,000, and an additional amount to reimburse actual litigation costs incurred by the Plaintiff not to exceed \$33,000. Class Counsel has been prosecuting the Action on behalf of Plaintiff and the Class on a contingency fee basis (that is, without being paid any money to date) and has been paying all litigation costs and expenses. The amounts stated are what Class Counsel will be requesting and the final amounts to be paid will be decided at the Final Approval Hearing.
- Class Representative Service Payment. A Class Representative Service Payment in an amount not more than \$10,000 to Plaintiff, or such lesser amount as may be approved by the Court, to compensate for services on behalf of the Class in initiating and prosecuting the Action, and for the risks Plaintiff undertook. The amount stated is what Plaintiff will be requesting and the final amount to be paid will be decided at the Final Approval Hearing.
- PAGA Penalties. A payment of \$25,000 relating to Plaintiff's claim under PAGA, \$18,750 of which will be paid to the State of California's Labor and Workforce Development Agency ("LWDA"). The remaining \$6,250 will be distributed to the Aggrieved Employees as Individual PAGA Payments. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$6,250) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. "PAGA Pay Period" means any Pay Period during which an Aggrieved Employee worked for Defendants for at least one day during the PAGA Period (October 1, 2019 through March 14, 2023).

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

Calculation of Payments to Class Members. After all of the payments of the court-approved Attorneys' Fees and Costs, the Class Representative Service Payment, the PAGA Penalties, and the Administration Expenses Payment are deducted from the Gross Settlement Amount, the remaining portion, the "Net Settlement Amount", shall be distributed as Individual Class Payments to the Participating Class Members, whose share of The Net Settlement Amount is estimated to be at least \$_____. The Administrator will pay an Individual Class Payment from the Net Settlement Amount to each Participating Class Member. The Individual Class Payment for each Participating Class Member will be calculated as follows: First, for the FCRA Class, at least \$100 will be paid to each of the FCRA Class Members, by splitting the \$25,000 allocation equally between the Participating Class Members for the FCRA Class. The balance of the Net Settlement Amount will be allocated to the Participating Class Members for

the California Class who will be paid based on the number of workweeks worked during the California Class Period. An Individual Class Payment for the California Class is calculated by (a) dividing the Net Settlement Amount (less the \$25,000 allocated to the FCRA Class) by the total number of Workweeks worked by all Participating California Class Members during the California Class Period and (b) multiplying the result by each Participating California Class Member's Workweeks. "Workweek" means any week during the Class Period in which a Class Member worked for Defendants as a Class Member for at least one day. The number of Workweeks will be based on Defendants' records; however, Class Members may challenge the number of Workweeks as explained below.

If the Settlement is approved by the Court and you do not exclude yourself, you will automatically be mailed a check for your Individual Class Payment to the same address as this Class Notice. You do not have to do anything to receive a payment. If your address has changed, you must contact the Administrator to inform them of your correct address to ensure you receive your payment.

Tax Matters. Twenty Percent (20%) of each Participating California Class Member's Individual Class Payment is in settlement of wage claims (the "Wage Portion"). Accordingly, the Wage Portion is subject to wage withholdings, and shall be reported on IRS Form W-2. Eighty Percent (80%) of each Participating California Class Member's Individual Class Payment is in settlement of claims for alleged statutory damages, expense reimbursement, penalties, and interest due to employees (collectively the "Non-Wage Portion"). The Non-Wage Portion shall not be subject to wage withholdings, and shall be reported on IRS Form 1099. For the FCRA Class, 100% of the Individual Class Payment will be reported on IRS 1099 Forms and not subject to wage withholdings. The employee portion of all applicable income and payroll taxes will be the responsibility of the Participating Class Members. Neither Class Counsel nor Defendants' Counsel intend anything contained in this Class Notice to constitute advice regarding taxes or taxability. The tax issues for each Participating Class Member are unique to him/her, and each Participating Class Member may wish to consult a tax advisor concerning the tax consequences of the payments received under the Settlement.

Conditions of Settlement. This Settlement and your receipt of the Individual Class Payment is conditioned upon the Court entering an order granting final approval of the Settlement and entering Judgment.

The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline to enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Defendants have agreed that, in either case, the Settlement will be void: Defendants will not pay any money and Class Members will not release any claims against Defendants.

Need to Promptly Cash Payment Checks. The front of every check issued will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the individual who failed to cash their check.

4. What Do I Release Under the Settlement?

Released Class Claims. Effective on the date when Defendants fully fund the entire Gross Settlement Amount, all Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from the Released Class Claims. The “Released Class Claims” means as follows: for California Class Members, all non-FCRA claims that were alleged, or reasonably could have been alleged, based on the factual allegations stated in the Operative Complaint which occurred during the California Class Period; and for FCRA Class Members, all FCRA claims that were alleged, or reasonably could have been alleged, based on the background check factual allegations stated in the Operative Complaint which occurred during the FCRA Class Period. Except as expressly set forth in this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers’ compensation, Class Claim claims outside of the Class Period, or FCRA Claims outside of the FCRA Class Period. California Class Members may also be FCRA Class Members, in which case those California Class Members (who are also FCRA Class Members) would also release all FCRA claims that were alleged, or reasonably could have been alleged, based on the background check factual allegations stated in the Operative Complaint which occurred during the FCRA Class Period.

This means that, if you do not timely and formally exclude yourself from the Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or any other Released Party about the Released Class Claims resolved by this Settlement. It also means that all of the Court’s orders in the Actions will apply to you and legally bind you.

Released PAGA Claims. Effective on the date when Defendants fully fund the entire Gross Settlement Amount, all Aggrieved Employees, the State of California, and the LWDA are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all of the Released PAGA Claims. The “Released PAGA Claims” are all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the factual allegations stated in the Operative Complaint and the PAGA Notice, which occurred during the PAGA Period. The Released PAGA Claims do not include other PAGA claims, claims for wrongful termination, discrimination, unemployment insurance, disability and worker’s compensation, or PAGA Claims outside of the PAGA Period.

Released Parties. The Released Parties are: Defendants and each of their former and present insurers, brands, concepts, affiliates, subsidiaries, parent companies, predecessors, successors, assigns, employees, officers, directors, agents, attorneys, administrators, representatives, heirs, estates, powers-of-attorney, and any individual or entity that could be jointly liable with Defendants.

5. How much will my payment be?

Defendants’ records reflect that you worked <<____>> Workweeks during the California Class Period (April 1, 2018 through March 14, 2023).

Defendants' records reflect that Defendants << did / did not >> run a background check on you during the FCRA Class Period (October 9, 2015 through March 14, 2023). If Defendants did run a background check on you, you will receive a payment of <<\$ >> per individual.

Based on this information, your estimated Individual Class Payment from the Net Settlement Amount is << >>.

[Defendants' records reflect that you worked << >> PAGA Pay Periods during the during the PAGA Period (October 1, 2019 through March 14, 2023). Based on this information your estimated Individual PAGA Payment is << >>.]

If you wish to challenge the information set forth above, then you must submit a written, signed dispute challenging the information along with supporting documents, to the Administrator at the address provided in this Class Notice no later than the Response Deadline, which is [sixty (60) days after the mailing of the Class Notice or an additional 14 days in the case of re-mailing]. You may also fax the dispute to or email the dispute to by no later than the Response Deadline. Any dispute should include credible written evidence and will be resolved by the Administrator.

6. How can I get a payment?

To get money from the Settlement, you do not have to do anything. A check for your Individual Class Payment will be mailed automatically to the same address as this Class Notice. If your address is incorrect or has changed, you must notify the Settlement Administrator. The Settlement Administrator is: ILYM Group (800) .

The Court will hold a Final Approval Hearing on at to decide whether to approve the Settlement and fix the amounts to be paid as attorneys' fees and costs to Class Counsel and as service payment to Plaintiff. If the Court approves the Settlement and there are no objections or appeals, payments will be mailed approximately two months after this hearing. If there are objections or appeals, resolving them can take time, perhaps more than a year. Please be patient.

7. What if I don't want to be a part of the Settlement?

If you do not wish to participate in the Settlement, you may exclude yourself from the Class portion of the Settlement or "opt out." **If you opt out, you will not receive an Individual Class Payment from the Settlement, and you will not be bound by its terms, which means you will retain the right to sue Defendants for the Released Class Claims.** However, Aggrieved Employees who opt out will still be paid their allocation of the PAGA Penalties and will remain subject to the release of the Released PAGA Claims regardless of whether they submit a request for exclusion.

To opt out, you must submit to the Administrator a written, signed and dated request to opt-out postmarked no later than the Response Deadline which is . You may also fax your request to opt out to or email the request to

by no later than the Response Deadline. The request to opt-out should state in substance that you wish to be excluded from the class settlement in the *Myles v. Builders Concrete* lawsuit. The request to opt-out should state the Class Member's full name, address and email address or telephone number. Please include the name and number of the case, which is *Myles v. Builders Concrete*, Case No. BCV-20-102375. The request to opt-out must be completed and signed by you. No other person may opt-out for a living member of the Class.

The address for the Administrator is _____. Written requests for exclusion that are postmarked after _____, or are incomplete or unsigned will be rejected, and those Class Members will remain bound by the Settlement and the release described above.

8. How do I Object to the Settlement?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Defendants are asking the Court to approve. At least sixteen (16) court days before the Final Approval Hearing, scheduled for _____, Class Counsel and Plaintiffs will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Attorneys' Fees, Litigation Expenses and Service Award stating (a) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (b) the amount Plaintiff is requesting as a Class Representative Service Payment. Upon reasonable request, Class Counsel (whose contact information is below) will send you copies of these documents at no cost to you. You can also view them on [ADMINISTRATOR WEBSITE] or the Case Information page for the California Superior Court for the County of Kern (<https://www.kern.courts.ca.gov/online-services/case-information-search>) and entering the Case No. BCV-20-102375.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Attorneys' Fees, Litigation Expenses and Service Award may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The Response Deadline for sending written objections to the Administrator is _____** [sixty (60) days after the date of the Notice or an additional 14 days after the Notice in the case of re-mailing]. You may also fax the dispute to _____ or email the dispute to _____ by no later than this Response Deadline. Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action, *Myles v. Builders Concrete*, Case No. BCV-20-102375, and include your name, current address, email or telephone number, and approximate dates of employment with Defendants and sign the objection. The Administrator's contact information is as follows:

Administrator:

Name of Company: ILYM Group

Email Address: _____

Mailing Address: _____

Telephone Number: _____

Fax Number: _____

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. You also have the option to appear at the hearing remotely through the Court's procedure at <https://www.kern.courts.ca.gov/online-services/remote-court-hearings>. Check the Court's website for the most current information. See Section 9 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

The addresses for Parties' counsel are as follows:

CLASS COUNSEL:

Kyle Nordrehaug
Blumenthal Nordrehaug Bhowmik DeBlouw LLP
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San Diego, CA 92122
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Fax: (858) 652-3101
Email: jesse.ferrantella@ogletree.com

9. Can I Attend the Final Approval Hearing?

The Court will hold a Final Approval Hearing at _____ (Pacific Standard Time) on _____, in Department ____ of the Superior Court of California, County of Kern County Superior Court, located at 1215 Truxtun Ave, Bakersfield, CA 93301, before Judge _____. At this hearing the Court will consider whether the Settlement is fair, reasonable, and adequate. The purpose of this hearing is for the Court to determine whether to grant final approval to the Settlement and to fix the amounts to be paid as attorneys' fees and costs to Class Counsel and as service payment to Plaintiff. If there are objections, the Court will consider them. **You are not required to attend** the Final Approval Hearing, although any Class Member is welcome to attend the hearing using the procedure at <https://www.kern.courts.ca.gov/online-services/remote-court-hearings/remote-hearing-information>, or by telephone using Courtcall (<https://www.courtcall.com/>) at 888-882-6878.

It is possible the Court will reschedule the Final Approval Hearing. If the hearing is continued, notice will be posted on [ADMINISTRATOR WEBSITE]. In addition, hearing dates are posted on the Internet via the Case Information page for the California Superior Court for the

County of Kern (<https://www.kern.courts.ca.gov/online-services/case-information-search>) and entering the Case No. BCV-20-102375.

10. How Can I Get More Information?

You may call the Administrator at _____ or write to *Myles v. Builders Concrete* Administrator, c/o _____.

This Class Notice summarizes the proposed settlement. More details are in the Settlement Agreement. You may receive a copy of the Settlement Agreement, the Judgment, the motion for attorneys' fees, costs and service awards, the motion for final approval or other Settlement documents by going to [ADMINISTRATOR WEBSITE]. You may get more details by examining the Court's file on the Internet via the Case Information page for the California Superior Court for the County of Kern (<https://www.kern.courts.ca.gov/online-services/case-information-search>) and entering the Case No. BCV-20-102375. If you wish to view the Court files in person, you should go to the Clerk's Office at the Metropolitan Division Justice Courthouse, 1215 Truxtun Ave, Bakersfield, CA 93301.

PLEASE DO NOT CALL THE COURT ABOUT THIS NOTICE.

IMPORTANT:

- **What if Your Address Changes** - To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.
- **What if You Fail to Cash a Check** - Settlement checks will be null and void 180 days after issuance if not deposited or cashed, and this expiration date is printed on the check. In such event, the Administrator shall direct all unclaimed funds to be paid to the California Controller's Unclaimed Property Fund in the name of and for the benefit of the individual who did not cash their check. The funds may be claimed at https://www.sco.ca.gov/upd_msg.html.
- **What if You Lose Your Check** - If your check is lost or misplaced, you should contact the Administrator immediately to request a replacement.

EXHIBIT B

[ORDER GRANTING PRELIMINARY APPROVAL]

EXHIBIT "B"

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KERN

DAMMION MYLES, an individual, on behalf
of himself and on behalf of all persons
similarly situated,

Plaintiff,

vs.

BUILDERS CONCRETE, INC., a California
Corporation; CONCRETE HOLDING
COMPANY OF CALIFORNIA, INC., a
Corporation; VIKING READY MIX CO.,
INC., a Corporation; NATIONAL READY
MIXED CONCRETE CO., a California
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO.: BCV-20-102375

**[PROPOSED] PRELIMINARY
APPROVAL ORDER**

Hearing Date: _____
Hearing Time: _____

Judge:
Dept.:

Date Action Filed: October 9, 2020
Trial date: Not set

This matter came before the Honorable _____ of the Superior Court of the State
of California, in and for the County Kern, on _____ [DATE], for hearing on the unopposed
motion by Plaintiff Dammion Myles ("Plaintiff") for preliminary approval of the Settlement with

PRELIMINARY APPROVAL ORDER

1 Defendants Builders Concrete, Inc. and Viking Ready Mix Co., Inc. (“Defendants”). The Court,
2 having considered the briefs, argument of counsel and all matters presented to the Court and good
3 cause appearing, hereby GRANTS Plaintiff’s Motion for Preliminary Approval of Class Action
4 Settlement.

5
6 **IT IS HEREBY ORDERED:**

7 1. The Court preliminarily approves the Class Action and PAGA Settlement
8 Agreement (“Agreement”) attached as Exhibit ____ to the Declaration of Kyle Nordrehaug in
9 Support of Plaintiff’s Motion for Preliminary Approval of Class Action Settlement. This is based
10 on the Court’s determination that the Settlement set forth in the Agreement is within the range of
11 possible final approval, pursuant to the provisions of Section 382 of the California Code of Civil
12 Procedure and California Rules of Court, rule 3.769.

13 2. This Order incorporates by reference the definitions in the Agreement, and all
14 terms defined therein shall have the same meaning in this Order as set forth in the Agreement.

15 3. The Gross Settlement Amount that Defendants shall pay is Nine Hundred Seventy-
16 Five Thousand Dollars (\$975,000). It appears to the Court on a preliminary basis that the
17 settlement amount and terms are fair, adequate and reasonable as to all potential Class Members
18 when balanced against the probable outcome of further litigation and the significant risks relating
19 to certification, liability and damages issues. It further appears that investigation and research
20 have been conducted such that counsel for the Parties are able to reasonably evaluate their
21 respective positions. It further appears to the Court that the Settlement will avoid substantial
22 additional costs by all Parties, as well as avoid the delay and risks that would be presented by the
23 further prosecution of the Action. It further appears that the Settlement has been reached as the
24 result of serious and non-collusive, arms-length negotiations.

25 4. The Court preliminarily finds that the Settlement appears to be within the range of
26 reasonableness of a settlement that could ultimately be given final approval by this Court. The
27 Court has reviewed the monetary recovery that is being granted as part of the Settlement and
28

1 preliminarily finds that the monetary settlement awards made available to the Class is fair,
2 adequate, and reasonable when balanced against the probable outcome of further litigation and the
3 significant risks relating to certification, liability, and damages issues.

4 5. The Agreement specifies for an attorneys' fees award not to exceed one-third of the
5 Gross Settlement Amount, an award of litigation expenses incurred, not to exceed \$33,000, and
6 proposed a Class Representative Service Payment to the Plaintiff in an amount not to exceed
7 \$10,000. The Court will not approve the amount of attorneys' fees and costs, nor the amount of
8 any service award, until the Final Approval Hearing. Plaintiff will be required to present evidence
9 supporting these requests, including lodestar, prior to final approval.

10 6. The Court recognizes that Plaintiff and Defendants stipulate and agree to
11 certification of a class for settlement purposes only. This stipulation will not be deemed
12 admissible in this or any other proceeding should this Settlement not become final. For settlement
13 purposes only, the Court conditionally certifies the Class which consists of both the California
14 Class and the FCRA Class. The California Class is defined as: "All individuals who were
15 employed by Defendants in California and classified as a non-exempt employee at any time during
16 the California Class Period." The California Class Period is from April 1, 2018 through March 14,
17 2023. The FCRA Class is defined as: "All individuals who applied for employment or were
18 employed by Defendants in the United States for whom background checks were run during the
19 FCRA Class Period." The FCRA Class Period is from October 9, 2015 through March 14, 2023.

20 7. The Court concludes that, for settlement purposes only, the Class meets the
21 requirements for certification under section 382 of the California Code of Civil Procedure in that:
22 (a) the Class is ascertainable and so numerous that joinder of all members of the Class is
23 impracticable; (b) common questions of law and fact predominate, and there is a well-defined
24 community of interest amongst the members of the Class with respect to the subject matter of the
25 litigation; (c) the claims of the Plaintiff are typical of the claims of the members of the Class; (d)
26 the Plaintiff will fairly and adequately protect the interests of the members of the Class; (e) a class
27 action is superior to other available methods for the efficient adjudication of this controversy; and
28

1 (f) counsel for the Class is qualified to act as counsel for the Class and the Plaintiff is an adequate
2 representative of the Class.

3 8. The Court provisionally appoints Plaintiff as the representative of the Class. The
4 Court provisionally appoints Norman B. Blumenthal, Kyle R. Nordrehaug, Aparajit Bhowmik,
5 Nicholas J. DeBlouw, Jeffrey S. Herman, and Sergio J. Puche of Blumenthal Nordrehaug
6 Bhowmik De Blouw LLP as Class Counsel for the Class.

7 9. The Agreement provides for a PAGA Penalties out of the Gross Settlement
8 Amount of \$25,000, which shall be allocated \$18,750 to the Labor & Workforce Development
9 Agency (“LWDA”) as the LWDA’s 75% share of the settlement of civil penalties paid under this
10 Agreement pursuant to the PAGA and \$6,250 to the Aggrieved Employees. “Aggrieved
11 Employees” are all individuals who were employed by Defendants in California and classified as a
12 nonexempt employee at any time during the PAGA Period (October 1, 2019 through March 14,
13 2023). Pursuant to Labor Code section 2699, subdivision (l)(2), the LWDA will be provided
14 notice of the Agreement and these settlement terms. The Court finds the PAGA Penalties to be
15 reasonable.

16 10. The Court hereby approves, as to form and content, the Class Notice attached to the
17 Agreement as Exhibit A. The Court finds that the Class Notice appears to fully and accurately
18 inform the Class of all material elements of the proposed Settlement, of the Class Members’ right
19 to be excluded from the Class by submitting a written opt-out request, and of each member’s right
20 and opportunity to object to the Settlement. The Court further finds that the distribution of the
21 Class Notice substantially in the manner and form set forth in the Agreement and this Order meets
22 the requirements of due process, is the best notice practicable under the circumstances, and shall
23 constitute due and sufficient notice to all persons entitled thereto. The Court orders the mailing of
24 the Class Notice by first class mail pursuant to the terms set forth in the Agreement. If a Class
25 Notice Packet is returned because of an incorrect address, the Administrator will promptly search
26 for a more current address for the Class Member and re-mail the Class Notice Packet to any new
27
28

1 address for the Class Member no later than seven (7) days after the receipt of the undelivered
2 Class Notice.

3 11. The Court hereby appoints ILYM Group as the Administrator. No later than
4 twenty-one (21) days after this Order, Defendants will provide the Class Data to the
5 Administrator. The Administrator will perform address updates and verifications as necessary
6 prior to the first mailing. Using best efforts to mail it as soon as possible, and in no event later
7 than fourteen (14) days after receiving the Class Data, the Administrator will mail the Class Notice
8 Packet to all Class Members via first-class regular U.S. Mail to their last known address.

9 12. The Court hereby preliminarily approves the proposed procedure for exclusion
10 from the Settlement. Any Class Member may individually choose to opt out of and be excluded
11 from the Class as provided in the Class Notice by following the instructions for requesting
12 exclusion from the Class that are set forth in the Class Notice. All requests for exclusion must be
13 postmarked or received no later than sixty (60) calendar days after the date of the mailing of the
14 Class Notice (“Response Deadline”). If a Class Notice Packet is re-mailed, the Response Deadline
15 for requests for exclusion will be extended an additional fourteen (14) days. A Request for
16 Exclusion may also be faxed or emailed to the Administrator as indicated in the Class Notice.
17 Any such person who chooses to opt out of and be excluded from the Class will not be entitled to
18 any recovery under the Class Settlement and will not be bound by the Class Settlement or have
19 any right to object, appeal or comment thereon. Class Members who have not requested exclusion
20 shall be bound by all determinations of the Court, the Agreement and the Judgment. A request for
21 exclusion may only opt out that particular individual, and any attempt to effect an opt-out of a
22 group, class, or subclass of individuals is not permitted and will be deemed invalid.

23 13. Any Class Member who has not opted out may appear at the final approval hearing
24 and may object or express the Member’s views regarding the Settlement, and may present
25 evidence and file briefs or other papers that may be proper and relevant to the issues to be heard
26 and determined by the Court as provided in the Class Notice. Class Members will have until the
27 Response Deadline to submit their written objections to the Administrator. Written objections
28

1 may also be faxed or emailed to the Administrator as indicated in the Class Notice. If a Class
2 Notice Packet is re-mailed, the Response Deadline for written objections will be extended an
3 additional fourteen (14) days. Alternatively, Class Members may appear at the Final Approval
4 Hearing to make an oral objection.

5 14. A final approval hearing shall be held before this Court on _____
6 _____ at _____ in Department ____ at the Kern County Superior Court to hear the
7 motion for final approval and the motion for attorneys' fees and costs, and to determine all
8 necessary matters concerning the Settlement, including: whether the proposed settlement of the
9 Action on the terms and conditions provided for in the Agreement is fair, adequate and reasonable
10 and should be finally approved by the Court; whether the Final Approval Order and Judgment
11 should be entered herein; whether the plan of allocation contained in the Agreement should be
12 approved as fair, adequate and reasonable to the Class Members; and to finally approve attorneys'
13 fees and costs, service award, and the fees and expenses of the Administrator. All papers in
14 support of the motion for final approval and the motion for attorneys' fees, costs and service
15 awards shall be filed with the Court and served on all counsel no later than sixteen (16) court days
16 before the hearing and both motions shall be heard at this final approval hearing.

17 15. Neither the Settlement nor any exhibit, document, or instrument delivered
18 thereunder shall be construed as a concession or admission by Defendants in any way that the
19 claims asserted have any merit or that this Action was properly brought as a class or representative
20 action, and shall not be used as evidence of, or used against Defendants as, an admission or
21 indication in any way, including with respect to any claim of any liability, wrongdoing, fault or
22 omission by Defendants or with respect to the truth of any allegation asserted by any person.
23 Whether or not the Settlement is finally approved, neither the Settlement, nor any exhibit,
24 document, statement, proceeding or conduct related to the Settlement, nor any reports or accounts
25 thereof, shall in any event be construed as, offered or admitted in evidence as, received as or
26 deemed to be evidence for any purpose adverse to the Defendants, including, but not limited to,

1 evidence of a presumption, concession, indication or admission by Defendants of any liability,
2 fault, wrongdoing, omission, concession or damage.

3 16. In the event the Settlement does not become effective in accordance with the terms
4 of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to
5 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
6 and the Parties shall revert to their respective positions as of before entering into the Agreement,
7 and expressly reserve their respective rights regarding the prosecution and defense of this Action,
8 including all available defenses and affirmative defenses, and arguments that any claim in the
9 Action could not be certified as a class action and/or managed as a representative action. In such
10 an event, the Court's orders regarding the Settlement, including this Order, shall not be used or
11 referred to in litigation for any purpose. Nothing in this paragraph is intended to alter the terms of
12 the Agreement with respect to the effect of the Agreement if it is not approved.

13 17. The Court reserves the right to adjourn or continue the date of the final approval
14 hearing and all dates provided for in the Agreement without further notice to Class Members and
15 retains jurisdiction to consider all further applications arising out of or connected with the
16 proposed Settlement.

17 **IT IS SO ORDERED.**

18 Dated: _____

19 _____
20 HON.
21 JUDGE OF THE SUPERIOR COURT OF CALIFORNIA
22
23
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28

EXHIBIT C

[FINAL APPROVAL ORDER AND JUDGMENT]

EXHIBIT "C"

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF KERN

DAMMION MYLES, an individual, on behalf
of himself and on behalf of all persons
similarly situated,

Plaintiff,

vs.

BUILDERS CONCRETE, INC., a California
Corporation; CONCRETE HOLDING
COMPANY OF CALIFORNIA, INC., a
Corporation; VIKING READY MIX CO.,
INC., a Corporation; NATIONAL READY
MIXED CONCRETE CO., a California
Corporation; and DOES 1 through 50,
inclusive,

Defendants.

CASE NO.: BCV-20-102375

**[PROPOSED] FINAL APPROVAL
ORDER AND JUDGMENT**

Hearing Date: _____
Hearing Time: _____

Judge:
Dept.:

Date Action Filed: October 9, 2020
Trial date: Not set

FINAL APPROVAL ORDER AND JUDGMENT

1 The unopposed motion of Plaintiff Dammion Myles (“Plaintiff”) for an order finally
2 approving the Class Action and PAGA Settlement Agreement (“Agreement”) with Defendants
3 Builders Concrete, Inc. and Viking Ready Mix Co., Inc. (“Defendants”), attorneys’ fees and costs,
4 service payment, and the expenses of the Administrator duly came on for hearing on
5 _____ before the Honorable _____.

6 **I.**

7 **FINDINGS**

8 Based on the oral and written argument and evidence presented in connection with the
9 motion, the Court makes the following findings:

- 10 1. All terms used herein shall have the same meaning as defined in the Agreement.
- 11 2. This Court has jurisdiction over the subject matter of this litigation pending before
12 the Superior Court for the State of California, in and for the County of Kern, and over all Parties to
13 this litigation, including the Class.
- 14 3. Based on a review of the papers submitted by Plaintiff and a review of the
15 applicable law, the Court finds that the Gross Settlement Amount of Nine Hundred Seventy-Five
16 Thousand Dollars (\$975,000) and the terms set forth in the Agreement are fair, reasonable, and
17 adequate.
- 18 4. The Court further finds that the Settlement was the result of arm’s length
19 negotiations conducted after Class Counsel had adequately investigated the claims and became
20 familiar with the strengths and weaknesses of those claims. In particular, the amount of the
21 Settlement, and the assistance of an experienced mediator in the settlement process, among other
22 factors, support the Court’s conclusion that the Settlement is fair, reasonable, and adequate.

23 **Preliminary Approval of the Settlement**

- 24 5. On _____, the Court granted preliminary approval of the Settlement. At
25 this same time, the Court approved conditional certification of the Class for settlement purposes
26 only.

1 **Notice to the Class**

2 6. In compliance with the Preliminary Approval Order, the Court-approved Class
3 Notice was mailed by first class mail to members of the Class at their last-known addresses on or
4 about _____. Mailing of the Class Notice to their last-known addresses was the best
5 notice practicable under the circumstances and was reasonably calculated to communicate actual
6 notice of the litigation and the proposed settlement to the Class. The Class Notice given to the
7 Class Members fully and accurately informed the Class Members of all material elements of the
8 proposed Settlement and of their opportunity to object to or comment thereon or to seek exclusion
9 from the Settlement; was valid, due, and sufficient notice to all Class Members; and complied
10 fully with the laws of the State of California, the United States Constitution, due process and other
11 applicable law. The Class Notice fairly and adequately described the Settlement and provided
12 Class Members adequate instructions and a variety of means to obtain additional information.

13 7. The Response Deadline for opting out or submitting written objections to the
14 Settlement was _____, which date for re-mailings was extended by fourteen (14) days.
15 There was an adequate interval between notice and the deadline to permit Class Members to
16 choose what to do and to act on their decision. A full and fair opportunity has been afforded to the
17 Class Members to participate in this hearing, and all Class Members and other persons wishing to
18 be heard have had a full and fair opportunity to be heard. Class Members also have had a full and
19 fair opportunity to exclude themselves from the proposed Settlement and Class. Accordingly, the
20 Court determines that all Class Members who did not timely and properly submit a request for
21 exclusion are bound by the Settlement and this Final Approval Order and Judgment.

22 **Fairness of the Settlement**

23 8. The Agreement is entitled to a presumption of fairness. *Dunk v. Ford Motor Co.*
24 48 Cal.App.4th 1794, 1801 (1996).

25 a. The settlement was reached through arm's-length bargaining between the
26 Parties during an all-day mediation before Lou Marlin, an experienced mediator of wage and hour
27 class actions. There has been no collusion between the Parties in reaching the Settlement.

1 b. Plaintiff and his counsel's investigation and discovery have been sufficient
2 to allow the Court and counsel to act intelligently.

3 c. Counsel for all Parties are experienced in similar employment class action
4 litigation. Plaintiff's counsel recommended approval of the Agreement.

5 d. The percentage of objectors and requests for exclusion is small. ____
6 objections were received. _____ requests for exclusion were received.

7 e. The participation rate was high. _____ Class Members will be mailed a
8 settlement payment, representing ____% of the overall Class.

9 9. The consideration to be given to the Class Members under the terms of the
10 Agreement is fair, reasonable and adequate considering the strengths and weaknesses of the claims
11 asserted in this action and is fair, reasonable and adequate compensation for the release of Class
12 Members' claims, given the uncertainties and significant risks of the litigation and the delays
13 which would ensue from continued prosecution of the action.

14 10. The Agreement is approved as fair, adequate and reasonable and in the best
15 interests of the Class Members.

16 **Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment**

17 11. An award of \$_____ for attorneys' fees, representing one-third of the
18 Gross Settlement Amount, and \$_____ for litigation costs and expenses, is reasonable,
19 in light of the contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and
20 the results achieved by Class Counsel. The requested award has been supported by Class
21 Counsel's lodestar and billing statement.

22 **Class Representative Service Payment**

23 12. The Agreement provides for a Class Representative Service Payment of not more
24 than \$10,000 to the Plaintiff, subject to the Court's approval. The Court finds that a Class
25 Representative Service Payment in the amount of \$_____ to the Plaintiff is reasonable in
26 light of the risks and burdens undertaken by the Plaintiff in this litigation, for his time and effort in
27
28

1 bringing and prosecuting this matter on behalf of the Class, and for his execution of a general
2 release.

3 **Administration Expenses Payment**

4 13. The Administrator shall calculate and administer the payment to be made to the
5 Class Members, transmit payment for attorneys' fees and costs to Class Counsel, transmit the
6 Class Representative Service Payment to the Plaintiff, issue all required tax reporting forms,
7 calculate withholdings and perform the other remaining duties set forth in the Agreement. The
8 Administrator has documented \$ _____ in fees and expenses, and this amount is reasonable
9 considering the work performed by the Administrator.

10 **PAGA Penalties**

11 14. The Agreement provides for a PAGA Penalties out of the Gross Settlement
12 Amount of \$25,000, which shall be allocated \$18,750 to the Labor & Workforce Development
13 Agency ("LWDA") as the LWDA's 75% share of the settlement of civil penalties paid under this
14 Agreement pursuant to the PAGA and \$6,250 to be distributed to the Aggrieved Employees and
15 allocated by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties
16 (\$6,250) by the total number of PAGA Period Pay Periods worked by all Aggrieved Employees
17 during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA
18 Period Pay Periods. "Aggrieved Employees" are all individuals who were employed by
19 Defendants in California and classified as a non-exempt employee at any time during the PAGA
20 Period (October 1, 2019 through March 14, 2023). Pursuant to Labor Code section 2699,
21 subdivision (l)(2), the LWDA was provided notice of the Agreement and these settlement terms
22 and has not indicated any objection thereto. The Court finds the PAGA Penalties to be reasonable.

23 **II.**

24 **ORDERS**

25 Based on the foregoing findings, and good cause appearing, IT IS HEREBY ORDERED:

26 1. The Class is certified for the purposes of settlement only. The Class is consists of
27 both the California Class and the FCRA Class. The California Class is defined as:
28

1 All individuals who were employed by Defendants in California and classified as a non-
2 exempt employee at any time during the California Class Period.

3 The California Class Period is from April 1, 2018 through March 14, 2023. The FCRA Class is
4 defined as:

5 All individuals who applied for employment or were employed by Defendants in the
6 United States for whom background checks were run during the FCRA Class Period.

7 The FCRA Class Period is from October 9, 2015 through March 14, 2023.

8 2. All persons who meet the foregoing definition are members of the Class, except for
9 those individuals who filed a valid request for exclusion (“opt out”) from the Class. [INSERT
10 REFERENCE TO IDENTIFY ANY OPT OUTS].

11 3. The Agreement is hereby finally approved as fair, reasonable, adequate, and in the
12 best interest of the Class.

13 4. Class Counsel are awarded attorneys’ fees in the amount of \$_____ and
14 costs in the amount of \$_____. Class Counsel shall not seek or obtain any other
15 compensation or reimbursement from Defendants, Plaintiff or members of the Class.

16 5. The payment of Class Representative Service Payment in the amount of \$_____

17 to the Plaintiff is approved.
18 6. The payment of \$_____ to the Administrator for its fees and expenses is

19 approved.
20 7. The PAGA Penalties of \$25,000 is approved and is to be distributed in accordance

21 with the Agreement.
22 8. Pursuant to Labor Code section 2699, subdivision (l)(2), Class Counsel shall
23 submit a copy of this Final Approval Order and Judgment to the LWDA within 10 days after its

24 entry.
25 9. Neither the Agreement nor this Settlement is an admission by Defendants, nor is
26 this Final Approval Order and Judgment a finding, of the validity of any claims in the Action or of
27 any wrongdoing by Defendants or that this Action is appropriate for class or representative
28 treatment (other than for settlement purposes). Neither this Final Approval Order and Judgment,

1 the Agreement, nor any document referred to herein, nor any action taken to carry out the
2 Agreement is, may be construed as, or may be used as an admission by or against Defendants of
3 any fault, wrongdoing or liability whatsoever. The entering into or carrying out of the Agreement,
4 and any negotiations or proceedings related thereto, shall not in any event be construed as, or
5 deemed to be evidence of, an admission or concession with regard to the denials or defenses by
6 Defendants. Notwithstanding these restrictions, Defendants may file in the Action or in any other
7 proceeding this Final Approval Order and Judgment, the Agreement, or any other papers and
8 records on file in the Action as evidence of the Settlement to support a defense of *res judicata*,
9 collateral estoppel, release, or other theory of claim or issue preclusion or similar defense as to the
10 Released Class Claims and/or Released PAGA Claims.

11 10. Notice of entry of this Final Approval Order and Judgment shall be given to all
12 Parties by Class Counsel on behalf of Plaintiff and all Class Members. It shall not be necessary to
13 send notice of entry of this Final Approval Order and Judgment to individual Class Members.

14 11. If the Agreement does not become final and effective in accordance with the terms
15 of the Agreement, then this Final Approval Order and Judgment, and all orders entered in
16 connection herewith, shall be rendered null and void and shall be vacated, and the Parties shall
17 revert to their respective positions as of before entering into the Agreement, and expressly reserve
18 their respective rights regarding the prosecution and defense of this Action, including all available
19 defenses and affirmative defenses, and arguments that any claim in the Action could not be
20 certified as a class action and/or managed as a representative action.

21 **IT IS HEREBY ORDERED, ADJUDICATED AND DECREED THAT:**

22 1. Except as set forth in the Agreement and this Final Approval Order and Judgment,
23 Plaintiff, and all members of the Class, shall take nothing in the Action.

24 2. The Court shall retain jurisdiction to construe, interpret, implement and enforce the
25 Agreement, to hear and resolve any contested challenge to a claim for settlement benefits, and to
26 supervise and adjudicate any dispute arising from or in connection with the distribution of
27 settlement benefits.

1 3. All Parties shall bear their own attorneys' fees and costs, except as otherwise
2 provided in the Agreement and in this Final Approval Order and Judgment.

3 4. Effective on the date when Defendants fully fund the Gross Settlement Amount and
4 all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff,
5 Participating Class Members, Aggrieved Employees and the LWDA will release claims against all
6 Released Parties as follows:

7 (a) All Participating Class Members, on behalf of themselves and their
8 respective former and present representatives, agents, attorneys, heirs, administrators, successors,
9 and assigns, release Released Parties from the Released Class Claims. The "Released Class
10 Claims" means as follows: for California Class Members, all non-FCRA claims that were alleged,
11 or reasonably could have been alleged, based on the factual allegations stated in the Operative
12 Complaint which occurred during the California Class Period; and for FCRA Class Members, all
13 FCRA claims that were alleged, or reasonably could have been alleged, based on the background
14 check factual allegations stated in the Operative Complaint which occurred during the FCRA
15 Class Period. Except as expressly set forth in this Agreement, Participating Class Members do not
16 release any other claims, including claims for vested benefits, wrongful termination, violation of
17 the Fair Employment and Housing Act, unemployment insurance, disability, social security,
18 workers' compensation, Class Claim claims outside of the Class Period, or FCRA Claims outside
19 of the FCRA Class Period. California Class Members may also be FCRA Class Members, in
20 which case those California Class Members (who are also FCRA Class Members) would also
21 release all FCRA claims that were alleged, or reasonably could have been alleged, based on the
22 background check factual allegations stated in the Operative Complaint which occurred during the
23 FCRA Class Period.

24 (b) All Aggrieved Employees, the State of California, and the LWDA are
25 deemed to release, on behalf of themselves and their respective former and present representatives,
26 agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all of
27 the Released PAGA Claims. The "Released PAGA Claims" are all claims for PAGA penalties
28

1 that were alleged, or reasonably could have been alleged, based on the factual allegations stated in
2 the Operative Complaint and the PAGA Notice, which occurred during the PAGA Period. The
3 Released PAGA Claims do not include other PAGA claims, claims for wrongful termination,
4 discrimination, unemployment insurance, disability and worker's compensation, or PAGA Claims
5 outside of the PAGA Period.

6 (c) Plaintiff and Plaintiff's former and present spouses, representatives, agents,
7 attorneys, heirs, administrators, successors, and assigns, agree to a general release of any and all
8 claims, transactions, or occurrences against Released Parties—which will include without
9 limitation any and all claims which in any way relate to Plaintiff's employment with Defendants,
10 under State or Federal law, in tort, common law, statute, contract, or equity, whether pled in the
11 Complaint or not, including but not limited to any claims under the Fair Labor Standards Act
12 ("FLSA"), Title VII, Americans with Disabilities Act ("ADA"), Fair Employment and Housing
13 Act ("FEHA"), Age Discrimination in Employment Act ("ADEA"), Private Attorneys General
14 Act ("PAGA"), California Labor Code, or any Industrial Welfare Commission Wage Order—now
15 existing or arising in the future, based on any act, omission, event, occurrence, or nonoccurrence
16 from the beginning of time to the date of execution hereof ("Plaintiff's Release") as fully set forth
17 in the Agreement.

18 (d) The Released Parties are: Defendants and each of their former and present
19 insurers, brands, concepts, affiliates, subsidiaries, parent companies, predecessors, successors,
20 assigns, employees, officers, directors, agents, attorneys, administrators, representatives, heirs,
21 estates, powers-of-attorney, and any individual or entity that could be jointly liable with
22 Defendants.

23 5. For any Class Member or Aggrieved Employee whose Individual Class Payment
24 check or Individual PAGA Payment check is uncashed and cancelled after the void date, the
25 Administrator shall transmit the funds represented by such checks to the California Controller's
26 Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue"
27 subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

1 6. The Court hereby enters judgment in the entire Action as of the filing date of this
2 Order and Judgment, pursuant to the terms set forth in the Settlement. Without affecting the
3 finality of this Order and Judgment in any way, the Court hereby retains continuing jurisdiction
4 over the interpretation, implementation, and enforcement of the Settlement and all orders entered
5 in connection therewith pursuant to California Code of Civil Procedure section 664.6.

6 **LET JUDGMENT BE FORTHWITH ENTERED ACCORDINGLY. IT IS SO ORDERED.**

7
8 Dated: _____

9
10 _____
HON.
JUDGE OF THE SUPERIOR COURT OF CALIFORNIA