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

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

18 Plaintiff,

19 vs.

20 BUILDERS CONCRETE, INC., a
21 California Corporation; CONCRETE
22 HOLDING COMPANY OF
23 CALIFORNIA, INC., a Corporation;
24 VIKING READY MIX CO., INC., a
25 Corporation; NATIONAL READY
26 MIXED CONCRETE CO., a California
27 Corporation; and DOES 1 through 50,
28 inclusive,

Defendants.

Case No. BCV-20-102375

NOTICE OF ENTRY OF JUDGMENT

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 **TO ALL PARTIES AND THEIR RESPECTIVE ATTORNEYS OF RECORD:**

2 YOU ARE HEREBY NOTIFIED THAT on October 23, 2023, the Court entered the
3 Final Approval Order and Judgment in the above entitled action. A true and correct copy of
4 the Final Approval Order and Judgment is attached hereto as Exhibit #1. The Judgment was
5 also served on the LWDA pursuant to the Proof of Service below.

6 Respectfully submitted,

7 Dated: November 8, 2023

**BLUMENTHAL NORDREHAUG BHOWMIK
DE BLOUW LLP**

9 By: /s/ Kyle Nordrehaug
10 Kyle R. Nordrehaug
11 Attorneys for Plaintiff
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1 PROOF OF SERVICE

2 STATE OF CALIFORNIA, COUNTY OF SAN DIEGO

3 I, Kyle Nordrehaug, am employed in the County of San Diego, State of California. I am
4 over the age of 18 and not a party to the within action. My business address is 2255 Calle Clara, La
Jolla, California 92037.

5 On November 8, 2023, I served the document(s) described as:

6 **1. NOTICE OF ENTRY OF JUDGMENT**

7 X **(BY ELECTRONIC SERVICE):** Pursuant to the provisions of CCP §1010.6, I provided
8 the documents referenced above electronically via electronic mail (e-mail) to counsel for
9 Defendant at the following confirmed e-mail addresses:

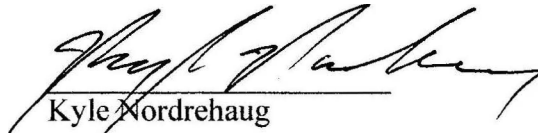
10 Spencer C. Skeen
Spencer.skeen@ogletree.com
11 Jesse C. Ferrentella
Jesse.ferrantella@ogletree.com

12 OGLETREE, DEAKINS, NASH , SMOAK & STEWART, P.C.
13 4370 La Jolla Village Drive, Suite 990
San Diego, CA 92122
14 Telephone : (858)652-3100
Facsimile : (858)652-3101
15

16 X **(ONLINE TO THE LWDA):** I caused the above-described document to be delivered to the
17 Labor Workforce Development Agency via online process at the PAGA Filing website in
accordance with the procedure imposed by the LWDA.

18 X **(State):** I declare under penalty of perjury under the laws of the State of California that the
19 above is true and correct.

20 Executed on November 8, 2023, at La Jolla, California.

21 
22 Kyle Nordrehaug
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FILED
KERN COUNTY SUPERIOR COURT
10/23/2023

BY Dickey, Leslie
DEPUTY

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: October 23, 2023
Hearing Time: 8:30 a.m.

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

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 October 23,
5 2023 before the Honorable Bernard Barmann, Jr..

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 July 10, 2023, the Court granted preliminary approval of the Settlement. At this
25 same time, the Court approved conditional certification of the Class for settlement purposes 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 August 14, 2023. 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 October 13, 2023, 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. No
6 objections were received. No requests for exclusion were received.

7 e. The participation rate was high. 365 Class Members will be mailed a
8 settlement payment, representing 100% 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 \$325,000 for attorneys' fees, representing one-third of the Gross
18 Settlement Amount, and \$32,437.39 for litigation costs and expenses, is reasonable, in light of the
19 contingent nature of Class Counsel's fee, the hours worked by Class Counsel, and the results
20 achieved by Class Counsel. The requested award has been supported by Class Counsel's lodestar
21 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 \$10,000 to the Plaintiff is reasonable in light of
26 the risks and burdens undertaken by the Plaintiff in this litigation, for his time and effort in
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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 \$13,000 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 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. There were
10 no individuals who requested exclusion.

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 \$325,000 and costs in
14 the amount of \$32,437.39. Class Counsel shall not seek or obtain any other compensation or
15 reimbursement from Defendants, Plaintiff or members of the Class.

16 5. The payment of Class Representative Service Payment in the amount of \$10,000 to
17 the Plaintiff is approved.

18 6. The payment of \$13,000 to the Administrator for its fees and expenses is approved.

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

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

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

1 Agreement is, may be construed as, or may be used as an admission by or against Defendants of
2 any fault, wrongdoing or liability whatsoever. The entering into or carrying out of the Agreement,
3 and any negotiations or proceedings related thereto, shall not in any event be construed as, or
4 deemed to be evidence of, an admission or concession with regard to the denials or defenses by
5 Defendants. Notwithstanding these restrictions, Defendants may file in the Action or in any other
6 proceeding this Final Approval Order and Judgment, the Agreement, or any other papers and
7 records on file in the Action as evidence of the Settlement to support a defense of *res judicata*,
8 collateral estoppel, release, or other theory of claim or issue preclusion or similar defense as to the
9 Released Class Claims and/or Released PAGA Claims.

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

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

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

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

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

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

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

Dated: October 23, 2023



HON. BERNARD BARMANN, JR.
JUDGE OF THE SUPERIOR COURT OF CALIFORNIA

BCV-20-102375

Signed: 10/23/2023 08:59 AM