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12 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

13 **COUNTY OF KERN**

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

17 Plaintiff,

18 vs.

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

27 Defendants.

CASE NO.: BCV-20-102375

**[PROPOSED] PRELIMINARY
APPROVAL ORDER**

Hearing Date: July 10, 2023 _____

Hearing Time: 8:30 a.m.

Judge: Bernard Barmann, Jr.

Courtroom: Div. H

Date Action Filed: October 9, 2020

Trial date: Not set

28 This matter came before the Honorable Bernard Barmann, Jr. of the Superior Court of the
State of California, in and for the County Kern, on July 10, 2023, 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 #1 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
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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
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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
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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. Consistent
23 with California law, there shall be no right for Aggrieved Employees to request exclusion from the
24 settlement of the PAGA claims.

25 13. Any Class Member who has not opted out may appear at the final approval hearing
26 and may object or express the Member’s views regarding the Settlement, and may present
27 evidence and file briefs or other papers that may be proper and relevant to the issues to be heard
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1 and determined by the Court as provided in the Class Notice. Class Members will have until the
2 Response Deadline to submit their written objections to the Administrator. Written objections
3 may also be faxed or emailed to the Administrator as indicated in the Class Notice. If a Class
4 Notice Packet is re-mailed, the Response Deadline for written objections will be extended an
5 additional fourteen (14) days. Alternatively, Class Members may appear at the Final Approval
6 Hearing to make an oral objection.

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

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

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

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

18 **IT IS SO ORDERED.**

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20 Dated: _____

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