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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **COUNTY OF KINGS**

13 **ADRIAN LEON and RICHARD**
14 **RODRIGUEZ, JR., on behalf of themselves**
15 **and on behalf of all persons similarly situated,**

16 **Plaintiffs,**

17 **v.**

18 **CALAVERAS MATERIALS, INC., a**
19 **California Corporation; LEHIGH HANSON**
20 **SERVICES LLC, a Limited Liability**
21 **Company; SOUTH VALLEY MATERIALS,**
22 **INC., a Corporation; and DOES 1 through 50,**
23 **inclusive,**

24 **Defendants.**

CASE NO.: 21C-0105

[Consolidated with Case No. 21C-0167]

[PROPOSED] PRELIMINARY
APPROVAL ORDER

Hearing Date: October 20, 2022

Hearing Time: 10:30 a.m.

Judge: Hon. Melissa D'Morias

Dept.: 7

Action Filed: April 5, 2021

Trial Date: Not set

1 This matter, having come before the Honorable Hon. Melissa D'Morias of the Superior
2 Court of the State of California, in and for the County Kings, on October 20, 2022, for the motion
3 by Plaintiffs Adrian Leon and Richard Rodriguez, Jr. ("Plaintiffs") for preliminary approval of
4 the class settlement with Defendants Calaveras Materials, Inc.; Lehigh Hanson Services LLC;
5 South Valley Materials, Inc. ("Defendants"). The Court, having considered the briefs, argument
6 of counsel and all matters presented to the Court and good cause appearing, hereby GRANTS
7 Plaintiffs' Motion for Preliminary Approval of Class Action Settlement.

8 **IT IS HEREBY ORDERED:**

9 1. The Court preliminarily approves the Class Action Settlement Agreement
10 ("Agreement") submitted as Exhibit #1 to the Declaration of Kyle Nordrehaug in Support of
11 Plaintiffs' Motion for Preliminary Approval of Class Action Settlement. This is based on the
12 Court's determination that the Settlement set forth in the Agreement is within the range of possible
13 final approval, pursuant to the provisions of section 382 of the California Code of Civil Procedure
14 and California Rules of Court, rule 3.769.

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

17 3. The Gross Settlement Amount is Two Million Five Hundred Thousand Dollars
18 (\$2,500,000). It appears to the Court on a preliminary basis that the settlement amount and terms
19 are fair, adequate and reasonable as to all potential Class Members when balanced against the
20 probable outcome of further litigation and the significant risks relating to certification, liability and
21 damages issues. It further appears that investigation and research have been conducted such that
22 counsel for the Parties are able to reasonably evaluate their respective positions. It further appears
23 to the Court that settlement at this time will avoid substantial additional costs by all Parties, as
24 well as avoid the delay and risks that would be presented by the further prosecution of the Action.
25 It further appears that the Agreement has been reached as the result of serious and non-collusive,
26 arms-length negotiations. The Court therefore preliminarily finds that the Settlement is fair,
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adequate, and reasonable when balanced against the probable outcome of further litigation and the significant risks relating to certification, liability, and damages issues.

4. The Agreement specifies for an attorneys' fees award not to exceed one-third of the Gross Settlement Amount, an award of litigation expenses incurred, not to exceed Twenty Thousand Dollars (\$20,000), and proposed Class Representative Service Payments to the Plaintiffs in an amount not to exceed Ten Thousand Dollars (\$10,000) each. The Court will not approve the amount of attorneys' fees and costs, nor the amount of any service award, until the Final Approval Hearing. Plaintiffs will be required to present evidence supporting these requests prior to final approval.

5. The Court recognizes that Plaintiffs and Defendants stipulate and agree to certification of a class for settlement purposes only. This stipulation will not be deemed admissible in this or any other proceeding should this Settlement not become final. For settlement purposes only, the Court conditionally certifies the following Class: "all individuals who are or previously were employed by Defendant Lehigh Hanson Services, LLC in California who were classified as hourly-paid or non-exempt employees during the Class Period, and excluding any members of the settlement classes in the cases of *Avelar v. Hanson Aggregates, LLC*, Superior Court of California, County of Los Angeles, Case No. 19STCV32068 ("Avelar Action"); and *Rost v. Lehigh Hanson, Inc.*, Superior Court of the State of California, County of San Luis Obispo, Case No. 20CV-0225 ("Rost Action")." The Class Period is from April 5, 2017 through June 18, 2022.

6. The Court concludes that, for settlement purposes only, the Class meets the requirements for certification under section 382 of the California Code of Civil Procedure in that: (a) the Class is ascertainable and so numerous that joinder of all members of the Class is impracticable; (b) common questions of law and fact predominate, and there is a well-defined community of interest amongst the members of the Class with respect to the subject matter of the litigation; (c) the claims of the Plaintiffs are typical of the claims of the members of the Class; (d) the Plaintiffs can fairly and adequately protect the interests of the members of the Class; (e) a

1 class action is superior to other available methods for the efficient resolution of this controversy;
2 and (f) counsel for the Class is qualified to act as counsel for the Class and the Plaintiffs are
3 adequate representatives of the Class.

4 7. The Court provisionally appoints Plaintiffs Adrian Leon and Richard Rodriguez, Jr.
5 as the representatives of the Class. The Court provisionally appoints Norman B. Blumenthal, Kyle
6 R. Nordrehaug, Aparajit Bhowmik, and Jeffrey S. Herman of Blumenthal Nordrehaug Bhowmik
7 De Blouw LLP as Class Counsel for the Class.

8 8. The Court hereby approves, as to form and content, the Notice of Proposed
9 Settlement of Class Action and Hearing Date for Final Court Approval (“Class Notice”), as
10 revised and submitted as Exhibit A to the Agreement. The Court finds that the Class Notice
11 appears to fully and accurately inform the Class of all material elements of the proposed
12 Settlement, of the Class Members’ right to be excluded from the Class by submitting a written opt-
13 out request, and of each Class Member’s right and opportunity to object to the Settlement. The
14 Court further finds that the distribution of the Class Notice substantially in the manner and form
15 set forth in the Agreement and this Order meets the requirements of due process, is the best notice
16 practicable under the circumstances, and shall constitute due and sufficient notice to all persons
17 entitled thereto. The Court orders the mailing of the Class Notice by first class mail, pursuant to
18 the terms set forth in the Agreement. If a Class Notice Packet is returned because of an incorrect
19 address, the Settlement Administrator will promptly search for a more current address for the
20 Class Member and re-mail the Class Notice Packet to the Class Member no later than seven (7)
21 business days after the receipt of the undelivered Class Notice.

22 9. The Court hereby appoints ILYM Group as Settlement Administrator. No later
23 than fourteen (14) calendar days after issuance of this Order, Defendants shall provide to the
24 Settlement Administrator an electronic spreadsheet with the Class Data. This information will
25 otherwise remain confidential and will not be disclosed to anyone, except as required to applicable
26 taxing authorities, to carry out the procedures in the Agreement, or pursuant to Defendants’
27 express written authorization or by order of the Court. The Settlement Administrator will perform
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1 address updates and verifications as necessary prior to the mailing of the Class Notice. Using best
2 efforts to mail it as soon as possible, and in no event later than fourteen (14) calendar days after
3 receiving the Class Data, the Settlement Administrator will mail the Class Notice to all Class
4 Members via first-class U.S. Mail.

5 10. The Court hereby preliminarily approves the proposed procedure for exclusion
6 from the Settlement. Any Class Member may individually choose to opt-out of and be excluded
7 from the Class as provided in the Class Notice by following the instructions set forth in the Class
8 Notice. All requests for exclusion must be postmarked by no later than forty-five (45) calendar
9 days after the date of the mailing of the Class Notice. If the Class Notice Packet is re-mailed, this
10 deadline will be extended an additional fifteen (15) calendar days. Any such person who chooses
11 to opt-out of and be excluded from the Class will not be entitled to any recovery under the
12 Settlement and will not be bound by the Settlement or have any right to object, appeal or comment
13 thereon. Aggrieved Employees shall be sent their share of the PAGA Payment and will be subject
14 to the release of the PAGA Released Claims regardless of whether they opt-out of the Class.
15 Class Members who have not requested exclusion shall be bound by all determinations of the
16 Court, the Agreement, and the Judgment. A request for exclusion applies only to the individual
17 submitting the request for exclusion, and any attempt to effect an opt-out on behalf of any other
18 individual or individuals (including a group, class, or subclass of individuals) is not permitted and
19 will be deemed invalid.

20 11. Any Class Member who has not opted-out may appear at the Final Approval
21 Hearing and may object or express the Member's views regarding the Settlement, and may present
22 evidence and file briefs or other papers that may be proper and relevant to the issues to be heard
23 and determined by the Court as provided in the Class Notice. Class Members will have until the
24 deadline set forth in the Class Notice to submit their written objections to the Settlement
25 Administrator in accordance with the instructions in the Class Notice. If the Class Notice is re-
26 mailed, the deadline will be extended an additional fifteen (15) calendar days. Class Members
27 may also appear at the Final Approval Hearing to make an oral objection.

1 12. A Final Approval Hearing shall be held before this Court on **March 2, 2022** at
2 10:30 a.m. in Department 7 of the Kings County Superior Court to determine all necessary matters
3 concerning the Settlement, including: whether the proposed settlement of the Action on the terms
4 and conditions provided for in the Agreement is fair, adequate and reasonable and should be
5 finally approved by the Court; whether the Final Approval Order and Judgment should be entered
6 herein; whether the plan of allocation contained in the Agreement should be approved as fair,
7 adequate and reasonable to the Class Members; and to finally approve attorneys' fees and costs,
8 the service awards, and the expenses of the Settlement Administrator. The motion for final
9 approval and the motion for attorneys' fees, costs and service awards shall be filed with the Court
10 and served on all counsel no later than sixteen (16) court days before the hearing and both motions
11 shall be heard at the Final Approval Hearing.

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

24 14. In the event the Settlement does not become effective in accordance with the terms
25 of the Agreement, or the Settlement is not finally approved, or is terminated, canceled or fails to
26 become effective for any reason, this Order shall be rendered null and void and shall be vacated,
27 and the Parties shall revert to their respective positions as of before entering into the Agreement,
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1 and expressly reserve their respective rights regarding the prosecution and defense of this Action,
2 including all available defenses and affirmative defenses, and arguments that any claim in the
3 Action could not be certified as a class action and/or managed as a representative action. In such
4 an event, the Court's orders regarding the Settlement, including this Order, shall not be used or
5 referred to in litigation for any purpose. Nothing in this Paragraph 14 is intended to alter the terms
6 of the Agreement with respect to the effect of the Agreement if the Settlement it is not approved.

7 15. The Court reserves the right to adjourn or continue the date of the Final Approval
8 Hearing and all dates provided for in the Agreement without further notice to Class Members, and
9 retains jurisdiction to consider all further applications arising out of or connected with the
10 proposed Settlement.

11 16. The Action is stayed and all trial and related pre-trial dates are vacated, subject to
12 further orders of the Court at the Final Approval Hearing.

13 **IT IS SO ORDERED.**

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15 Dated: _____

HON. MELISSA D'MORIAS
JUDGE, SUPERIOR COURT OF CALIFORNIA