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JORGE L. LEON, and all others similarly situated

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
11 **FOR THE COUNTY OF FRESNO**
12 **(UNLIMITED JURISDICTION)**

13 JORGE L. LEON, on behalf of himself, all others
14 similarly situated, the general public, and as an
15 “aggrieved employee” on behalf of other
“aggrieved employees” under the Labor Code
Private Attorneys General Act of 2004,

16 *Plaintiff(s),*

17 vs.
18

19 DAVIS & ROBERTS CONSTRUCTION, INC.,
20 a California corporation; and DOES 1–50,
inclusive,

21 *Defendant(s).*
22

Case No. 22CECG00407

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

Hearing Date: June 5, 2024
Hearing Time: 3:30 p.m.
Hearing Dept.: 501, The Honorable D.
Tyler Tharpe

Action filed: February 08, 2022



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1 The Motion of Plaintiff Jorge L. Leon (hereafter referred to as “Plaintiff”) for Preliminary
2 Approval of a Class Action Settlement (the “Motion”) was considered by the Court, the
3 Honorable D. Tyler Tharpe presiding. The Court having considered the Motion, the Class Action
4 and PAGA Settlement Agreement and Class Notice (“Settlement” or “Settlement Agreement”),
5 and supporting papers, HEREBY ORDERS THE FOLLOWING:

6 1. The Court grants preliminary approval of the Settlement and the Settlement Class
7 based upon the terms set forth in the Settlement filed as an Exhibit to the Motion for Preliminary
8 Approval. All terms herein shall have the same meaning as defined in the Settlement. The Court
9 has determined only that there is sufficient evidence to suggest that the proposed settlement might
10 be fair, adequate, and reasonable, and that any final determination of those issues will be made at
11 the final hearing. The Court will make a determination at the hearing on the motion for final
12 approval of class action settlement (the “Final Approval Hearing”) as to whether the Settlement
13 is fair, adequate and reasonable to the Settlement Class.

14 2. For purposes of this Preliminary Approval Order, the “Settlement Class” means
15 all current and former hourly, nonexempt employees of Defendant in California (collectively
16 “Class Members”), who worked anytime during the Class Period. The “Class Period” shall mean
17 the period of time from February 08, 2018, through the date of preliminary approval of this
18 Settlement.

19 3. Defendant estimated for purposes of mediation that there are 9,686 weeks worked
20 by 119 Class Members for the period of February 8, 2018 through May 16, 2023. If the number
21 of weeks worked by Class Members increases by more than ten percent (10%) above the estimated
22 number of 9,686 as of the date of the Court’s preliminary approval of the Settlement, then
23 Defendant shall have the option of either (1) increasing the amount of the Gross Settlement
24 Amount by the corresponding percentage increase above ten percent (10%) (i.e., if the number of
25 weeks worked by the Class Members increases above the 10% threshold of 10,655, the Gross
26 Settlement Amount shall increase by the percentage of weeks worked by the Class Members
27 above the threshold of 10,655; calculated as follows: updated total weeks worked - 10,655 =
28 workweeks above 10% threshold, workweeks above 10% threshold / 10,655 = percentage



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1 increase, percentage increase x \$166,713.47 original Gross Settlement Amount = additional
2 monies owed) or (2) modifying the end date of the Class Period to an earlier date to not trigger
3 the escalation provision. Before the Parties seek or a Party seeks final Court approval of the
4 Settlement, the Settlement Administrator will advise Plaintiff's counsel and Defendant's counsel
5 of Defendant's report of the total number of weeks worked by the Class Members for the period
6 of February 8, 2018 through the date of the Court's preliminary approval of the Settlement.

7 4. "Effective Date" means the date by when both of the following have occurred: (a)
8 the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the
9 Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no
10 Participating Class Member objects to the Settlement, the day the Court enters Judgment; (b) if
11 one or more Participating Class Members objects to the Settlement, the day after the deadline for
12 filing a notice of appeal from the Judgment; or if a timely appeal from the Judgment is filed, the
13 day after the appellate court affirms the Judgment and issues a remittitur.

14 5. This action is provisionally certified pursuant to section 382 of the California Code
15 of Civil Procedure and Rule 3.760, et seq. of the California Rules of Court as a class action for
16 purposes of settlement only with respect to the proposed Settlement Class.

17 6. Not later than 15 days after the Court grants Preliminary Approval of the
18 Settlement, Defendant will simultaneously deliver the Class Data to the Administrator, in the form
19 of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator
20 must maintain the Class Data in confidence, use the Class Data only for purposes of the Settlement
21 and for no other purpose, and restrict access to the Class Data to Administrator employees who
22 need access to the Class Data to effect and perform under the Settlement Agreement. Defendant
23 has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data
24 omitted class member identifying information and to provide corrected or updated Class Data as
25 soon as reasonably feasible. Without any extension of the deadline by which Defendant must send
26 the Class Data to the Administrator, the Parties and their counsel will expeditiously use best
27 efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted
28 Class Data.



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1 7. No later than three (3) business days after receipt of the Class Data, the
2 Administrator shall notify Class Counsel that the list has been received and state the number of
3 Class Members, PAGA Members, Work Weeks, and Pay Periods in the Class Data.

4 8. Using best efforts to perform as soon as possible, and in no event later than 14
5 days after receiving the Class Data, the Administrator will send to all Class Members identified
6 in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Notice Packet
7 with Spanish translation, if applicable substantially in the forms attached to this order as **Exhibits**
8 **A, B, C, and D.** The first page of the Class Notice shall prominently estimate the dollar amounts
9 of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member,
10 and the number of Work Weeks and PAGA Pay Periods (if applicable) used to calculate these
11 amounts. Before mailing Notice Packets, the Administrator shall update Class Member addresses
12 using the National Change of Address database.

13 9. Not later than 3 business days after the Administrator’s receipt of any Notice
14 Packet returned by the USPS as undelivered, the Administrator shall re-mail the Notice Packet
15 using any forwarding address provided by the USPS. If the USPS does not provide a forwarding
16 address, the Administrator shall conduct a Class Member Address Search, and re-mail the Notice
17 Packet to the most current address obtained. The Administrator has no obligation to make further
18 attempts to locate or send Notice Packet to Class Members whose Notice Packet is returned by
19 the USPS a second time.

20 10. Class Counsel’s contact information is David G. Spivak, Esq., The Spivak Law
21 Firm, 8605 Santa Monica Bl, PMB 42554, West Hollywood, CA 90069. Defense Counsel’s
22 contact information is Ian B. Wieland, Esq., Sagaser, Watkins & Wieland PC, 5260 N. Palm Ave.,
23 Ste. 400, Fresno, CA, 93704.

24 11. The deadlines for Class Members’ written objections, Challenges to Work Weeks
25 and/or weekly Pay Periods (disputes), and Requests for Exclusion will be extended an additional
26 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose
27 notice is re-mailed. The Administrator will inform the Class Member of the extended deadline
28 with the re-mailed Notice Packet.



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1 12. If the Administrator, Defendant or Class Counsel is contacted by or otherwise
2 discovers any persons who believe they should have been included in the Class Data and should
3 have received Notice Packet, the Parties will expeditiously meet and confer in person or by
4 telephone, and in good faith, in an effort to agree on whether to include them as Class Members.
5 If the Parties agree, such persons will be Class Members entitled to the same rights as other Class
6 Members, and the Administrator will send, via email or overnight delivery, a Notice Packet
7 requiring them to exercise options under the Settlement Agreement not later than 14 days after
8 receipt of Notice Packet, or the deadline dates in the Notice Packet, which ever are later.

9 13. Requests for Exclusion. Class Members who wish to exclude themselves (opt-out
10 of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written
11 Request for Exclusion not later than 60 days after the Administrator mails the Notice Packet (plus
12 an additional 14 days for Class Members whose Notice Packet is re-mailed). A Request for
13 Exclusion is a letter from a Class Member or his/her representative that reasonably communicates
14 the Class Member's election to be excluded from the Settlement and includes the Class Member's
15 name, address and email address or telephone number. To be valid, a Request for Exclusion must
16 be timely faxed, emailed, or postmarked by the Response Deadline. An Election Not to Participate
17 in Settlement form, attached as Exhibit B, may be used for this purpose but is not required.

18 14. The Administrator may not reject a Request for Exclusion as invalid because it
19 fails to contain all the information specified in the Class Notice. The Administrator shall accept
20 any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of
21 the person as a Class Member and the Class Member's desire to be excluded. The Administrator's
22 determination shall be final and not appealable or otherwise susceptible to challenge. If the
23 Administrator has reason to question the authenticity of a Request for Exclusion, the
24 Administrator may demand additional proof of the Class Member's identity. The Administrator's
25 determination of authenticity shall be final and not appealable or otherwise susceptible to
26 challenge.

27 15. Every Class Member who does not submit a timely and valid Request for Exclusion
28 is deemed to be a Participating Class Member under the Settlement Agreement, entitled to all



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benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 6.2 and 6.3 of the Settlement, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.

16. 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. Plaintiff releases all claims for civil penalties that could have been sought by the Labor Commissioner for the violations identified in Plaintiffs pre-filing letter to the LWDA; Plaintiff does not release the claim for wages or damages of any Aggrieved Employee unless such Aggrieved Employee is a Participating Class Member.

17. Challenges to Calculation of Work Weeks. Each Class Member shall have 60 days after the Administrator mails the Notice Packet (plus an additional 14 days for Class Members whose Notice Packet is re-mailed) to challenge the number of Class Work Weeks and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. This is also known as a dispute. A Work Week Dispute form, attached as Exhibit C, may be used for this purpose but is not required. 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 Work Weeks 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 Work Weeks and/or weekly 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 Work Weeks and/or weekly Pay Periods to Defense Counsel and Class Counsel and the Administrator's determination the challenges.

18. Objections to Settlement. Only Participating Class Members may object to the class action components of the Settlement and/or the Settlement 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.



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1 19. Participating Class Members may send written objections to the Administrator, by
2 fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire
3 an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A
4 Participating Class Member who elects to send a written objection to the Administrator must do
5 so not later than 60 days after the Administrator's mailing of the Notice Packet (plus an additional
6 14 days for Class Members whose Notice Packet was re-mailed). An The Objection form attached
7 as Exhibit D may be used for this purpose but is not required.

8 20. Non-Participating Class Members have no right to object to any of the class action
9 components of the Settlement.

10 21. Not later than 14 days before the date by which Plaintiff is required to file the
11 Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and
12 Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and
13 compliance with all of its obligations under the Settlement Agreement, including, but not limited
14 to, its mailing of the Notice Packets, the Notice Packets returned as undelivered, the re-mailing
15 of Notice Packets, attempts to locate Class Members, the total number of Requests for Exclusion
16 from Settlement it received (both valid or invalid), the number of written objections and attach
17 the Exclusion List. The Administrator will supplement its declaration as needed or requested by
18 the Parties and/or the Court. Class Counsel is responsible for filing the Administrator's
19 declaration(s) in Court.

20 22. The Court approves, as to form and content, the Class Notice in substantially the
21 form attached as Exhibit A to this Order, the Election Not to Participate in Settlement form in
22 substantially the form attached as Exhibit B to this Order, the Work Weeks Dispute form in
23 substantially the form attached as Exhibit C to this Order, and the Objection form in substantially
24 the form attached as Exhibit D to this Order.

25 23. The Court approves, for settlement purposes only, David G. Spivak of The Spivak
26 Law Firm and Walter L. Haines of United Employees Law Group, PC as Class Counsel.

27 24. The Court approves, for settlement purposes only, Jorge L. Leon as the Class
28 Representative.



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1 25. The Court approves Simpluris, Inc. as the Administrator.

2 26. The Court preliminarily approves Class Counsel’s request for attorneys’ fees and
3 costs subject to final review by the Court.

4 27. The Court preliminarily approves the estimated Administrator costs payable to the
5 Administrator subject to final review by the Court.

6 28. The Court preliminarily approves Plaintiff’s Class Representative Service
7 Payment subject to final review by the Court.

8 29. A Final Approval Hearing shall be held on _____ at
9 _____.m. in Department 501 of the Superior Court for the State of California,
10 County of Fresno, located at the B.F. Sisk Court, 1130 O Street, Fresno, CA 93721 to consider
11 the fairness, adequacy and reasonableness of the proposed Settlement preliminarily approved by
12 this Preliminary Approval Order, and to consider the application of Class Counsel for attorneys’
13 fees and costs and the Class Representative Service Payment to the Class Representative. The
14 notice of motion and all briefs and materials in support of the motion for final approval of class
15 action settlement and motion for attorneys’ fees and litigation costs shall be served and filed with
16 this Court sixteen (16) Court days before the Final Approval Hearing. Plaintiff’s counsel must
17 give notice to any objecting party of any continuance of the hearing of the motion for final
18 approval.

19 30. If for any reason the Court does not execute and file a Final Approval Order and
20 judgment, or if the Effective Date, as defined in the Settlement, does not occur for any reason, the
21 proposed Settlement that is the subject of this order, and all evidence and proceedings had in
22 connection therewith, shall be without prejudice to the status quo ante rights of the Parties to the
23 litigation, as more specifically set forth in the Settlement.

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1 31. The Court expressly reserves the right to adjourn or continue the Final Approval
2 Hearing from time to time without further notice to members of the Class. The Plaintiff shall give
3 prompt notice of any continuance to Settlement Class Members who object to the Settlement.

4 **IT IS SO ORDERED.**

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7 **DATE**

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THE HONORABLE D. TYLER THARPE
SUPERIOR COURT JUDGE



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EXHIBIT A

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

(case name: *Jorge L. Leon v. Davis & Roberts Construction, Inc.* and number 22CECG00407)

***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.***

You may be eligible to receive money from an employee class action lawsuit (“Action”) against Davis & Roberts Construction, Inc. (“Defendant”) for alleged violations of California’s labor laws. The Action was filed by one of Defendant’s employees Jorge L. Leon (“Plaintiff”) and seeks payment of (1) wages and other relief for a class of all current and former hourly, nonexempt employees of Defendant in California (“Class Members”) Defendant during the Class Period (February 08, 2018 to <<the date of preliminary approval of this Settlement>>); and (2) penalties under the California Private Attorney General Act (“PAGA”) for hourly, non-exempt employees who worked for Defendant during the PAGA Period (December 23, 2020 to <<the date of preliminary approval of this Settlement>>) (“Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring Defendant to fund Individual Class Payments, and (2) a PAGA Settlement requiring Defendant to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on Defendant’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$<<IndividualClassPaymentAmount>> (less withholding) and your Individual PAGA Payment is estimated to be \$<<IndividualPAGAPaymentAmount>>.** The estimated dollar value of a Work Week is <<\$increment type value>> and a weekly Pay Period is <<@PayPeriodValue>>. 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 Individual PAGA Payment, then according to Defendant’s records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.) The individual payments amounts will vary. However, the average Individual Class Payment to a Class Member is estimated to be <<\$Average Individual Class Payment Amount>>. The average Individual PAGA Payment to a Class Member is estimated to be <<\$Average Individual PAGA Payment Amount>>. The highest Individual Class Payment to a Class Member is estimated to be <<\$Highest Individual Class Payment Amount>> and the lowest is estimated to be <<\$Lowest Individual Class Payment Amount>>. The highest Individual PAGA Payment to a Class Member is estimated to be <<\$Highest Individual PAGA Payment Amount>> and the lowest is estimated to be <<\$Lowest Individual PAGA Payment Amount>>.

The above estimates are based on Defendant’s records showing that **you worked <<__>> Work Weeks** during the Class Period and **you worked <<__>> Pay Periods** during the PAGA Period. If you believe that you worked more Work Weeks during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. The Court has determined only that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable, and that any final determination of those issues will be made at the Final Approval Hearing. Your legal rights are affected whether you act or 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 Defendant to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendant.

If you worked for Defendant 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 an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against Defendant.

(2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting a 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. You will, however, preserve your right to personally pursue Class Period claims for California labor law violations against Defendant, and, if you are an Aggrieved Employee, remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

Defendant 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 an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the claims against Defendant that are covered by this Settlement (Released Claims).
You Can Opt-out of the Class Settlement but not the PAGA Settlement The Opt-out Deadline is <<RESPONSE DEADLINE>>	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. You can use the enclosed Election Not To Participate In Settlement form for this purpose. 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 6 of this Notice.

		You cannot opt-out of the PAGA portion of the proposed Settlement. Defendant must pay Individual PAGA Payments to all Aggrieved Employees and Plaintiff releases Defendant from civil penalties it may owe to the Aggrieved Employees.
Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement	Written Objections Must be Submitted by <<RESPONSE DEADLINE>>	All Class Members who do not opt-out (“Participating Class Members”) can object to any aspect of the proposed Settlement. You can use the enclosed Objection form for this purpose. 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 are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.
You Can Participate in the <<FinalApprovalHearingDate>> Final Approval Hearing		The Court’s Final Approval Hearing is scheduled to take place on <<FinalApprovalHearingDate>>. 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 whether or not they submitted a written objection. See Section 8 of this Notice.
You Can Challenge the Calculation of Your Work Week / Pay Periods	Written Challenges Must be Submitted by <<RESPONSE DEADLINE>>	The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many Work Weeks 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 Class Period Work Weeks and number of PAGA Period Pay Periods you worked according to Defendant’s records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by <<RESPONSE DEADLINE>>. See Section 4 of this Notice. You can use the enclosed Work Weeks Dispute form for this purpose.

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former employee of Defendant. The Action accuses Defendant of violating California labor laws by failure to provide meal periods, failure to authorize and permit rest periods, failure to indemnify for business expenses, failure to issue proper wage statements, failure to timely pay wages, failure to maintain required payroll records, failure to pay wages, unauthorized and unlawful wage deductions, and related violations of the Labor Code. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the PAGA (Labor Code section 2698 and sections that follow) (“PAGA”). Plaintiff is represented by attorneys in the Action: David G. Spivak of The Spivak Law Firm and Walter L. Haines of United Employees Law Group, PC (“Class Counsel.”)

1 Defendant strongly denies violating any laws or failing to pay any wages and contends it complied
2 with all applicable laws.

3 **2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?**

4 So far, the Court has made no determination whether Defendant or Plaintiff is correct on the
5 merits. In the meantime, Plaintiff and Defendant hired an experienced, neutral mediator in an
6 effort to resolve the Action by negotiating an to end the case by agreement (settle the case) rather
7 than continuing the expensive and time-consuming process of litigation. The negotiations were
8 successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to
9 jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff
10 and Defendant have negotiated a proposed Settlement that is subject to the Court’s Final
11 Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By
12 agreeing to settle, Defendant does not admit any violations or concede the merit of any claims.

13 Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they
14 believe that: (1) Defendant has agreed to pay a fair, reasonable and adequate amount considering
15 the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement
16 is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily
17 approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and
18 scheduled a hearing to determine Final Approval.

19 **3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?**

20 A. Gross Settlement Amount. Defendant Will Pay \$166,713.47 as the Gross
21 Settlement Amount (Gross Settlement). The Gross Settlement Amount is inclusive of all amounts
22 to be paid to Class Members as part of a “Pick Up Stix” campaign. Defendant has agreed to
23 deposit the Gross Settlement Amount into an account controlled by the Administrator of the
24 Settlement. The Administrator will use the Gross Settlement Amount to pay the Individual Class
25 Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s
26 attorney’s fees and expenses, the Administrator’s expenses, and penalties to be paid to the
27 California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants
28 Final Approval, Defendant will fund the Gross Settlement Amount not more than 14 days after
the Judgment entered by the Court become final. The Judgment will be final on the date the Court
enters Judgment, or a later date if Participating Class Members object to the proposed Settlement
or the Judgment is appealed. The Gross Settlement Amount includes the \$56,713.47 Defendant
paid to Class Members as part of its direct negotiations with individual Class Members to release
their claims (“Pick-Up-Stix campaign”).

B. Court Approved Deductions from Gross Settlement. At the Final Approval
Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions
from the Gross Settlement, the amounts of which will be decided by the Court at the Final
Approval Hearing:

1. Attorney Fees and Costs. Up to \$55,571.00 (33.33% of the Gross

Settlement to Class Counsel for attorneys' fees and up to \$20,000.00 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.

2. Class Representative Service Award. Up to \$15,000.00 as a Class Representative Service Award for filing the Action, working with Class Counsel and representing the Class. A Class Representative Service Award will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.

3. Administration Expenses. Up to \$10,000.00 to the Administrator for services administering the Settlement.

4. PAGA Penalties. Up to \$4,000.00 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Period Pay Periods.

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

Defendant estimated for purposes of mediation that there are 9,686 weeks worked by 119 Class Members for the period of February 8, 2018 through May 16, 2023. If the number of weeks worked by Class Members increases by more than ten percent (10%) above the estimated number of 9,686 as of the date of the Court's preliminary approval of the Settlement, then Defendant shall have the option of either (1) increasing the amount of the Gross Settlement Amount by the corresponding percentage increase above ten percent (10%) (i.e., if the number of weeks worked by the Class Members increases above the 10% threshold of 10,655, the Gross Settlement Amount shall increase by the percentage of weeks worked by the Class Members above the threshold of 10,655; calculated as follows: $\text{updated total weeks worked} - 10,655 = \text{workweeks above 10\% threshold}$, $\text{workweeks above 10\% threshold} / 10,655 = \text{percentage increase}$, $\text{percentage increase} \times \$166,713.47 \text{ original Gross Settlement Amount} = \text{additional monies owed}$) or (2) modifying the end date of the Class Period to an earlier date to not trigger the escalation provision. Before the Parties seek or a Party seeks final Court approval of the Settlement, the Settlement Administrator will advise Plaintiff's counsel and Defendant's counsel of Defendant's report of the total number of weeks worked by the Class Members for the period of February 8, 2018 through the date of the Court's preliminary approval of the Settlement.

C. Net Settlement Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement (the "Net Settlement") by making Individual Class Payments to Participating Class Members based on their Class Period Work Weeks.

D. Taxes Owed on Payments to Class Members. Plaintiff and Defendant are asking the Court to approve an allocation of 20.00% of each Individual Class Payment to taxable wages ("Wage Portion") and 80.00% to interest and penalties ("Non-Wage Portion."). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendant will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted

1 as penalties rather than wages for tax purposes. The Administrator will report the Individual
2 PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099
Forms.

3 Although Plaintiff and Defendant have agreed to these allocations, neither side is giving
4 you any advice on whether your Payments are taxable or how much you might owe in taxes. You
5 are responsible for paying all taxes (including penalties and interest on back taxes) on any
6 Payments received from the proposed Settlement. You should consult a tax advisor if you have
any questions about the tax consequences of the proposed Settlement.

7 E. Need to Promptly Cash Payment Checks. The front of every check issued for
8 Individual Class Payments and Individual PAGA Payments will show the date when the check
9 expires (the void date). If you don't cash it by the void date, your check will be automatically
10 cancelled, and the monies will be deposited with the California Controller's Unclaimed Property
11 Fund (https://www.sco.ca.gov/search_upd.html) in your name. If the monies represented by your
check are sent to the Controller's Unclaimed Property Fund, you should consult the rules of the
Fund for instructions on how to retrieve your money. You can contact the Unclaimed Property
Fund at (800) 992-4647.

12 F. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated
13 as a Participating Class Member, participating fully in the Class Settlement, unless you notify the
14 Administrator in writing, not later than <<RESPONSE DEADLINE>>, that you wish to opt-out.
15 The easiest way to notify the Administrator is to email, fax, or mail a written and signed Request
16 for Exclusion by the <<RESPONSE DEADLINE>> Response Deadline. The Request for
17 Exclusion should be a letter from a Class Member or his/her representative setting forth a Class
18 Member's name, present address, telephone number, and a simple statement electing to be
excluded from the Settlement. You may use the enclosed Election Not To Participate In
Settlement form for this purpose. Excluded Class Members (i.e., Non-Participating Class
Members) will not receive Individual Class Payments, but will preserve their rights to personally
pursue claims against Defendant for violations of California's labor laws.

19 You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude
20 themselves from the Class Settlement (Non-Participating Class Members) remain eligible for
21 Individual PAGA Payments and Plaintiff releases Defendant from civil penalties it may owe to
the Aggrieved Employees.

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

26 H. Administrator. The Court has appointed a neutral company, Simpluris, Inc. (the
27 "Administrator") to send this Notice, calculate and make payments, and process Class Members'
28 Requests for Exclusion. The Administrator will also decide Class Member Challenges over Work
Weeks, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to

1 administer the Settlement. The Administrator's contact information is contained in Section 9 of
2 this Notice.

3 I. Participating Class Members' Release. After the Judgment is final and Defendant
4 has fully funded the Gross Settlement (and separately paid all employer payroll taxes),
5 Participating Class Members will be legally barred from asserting any of the claims released under
6 the Settlement. This means that unless you opted out by validly excluding yourself from the Class
7 Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendant or
8 its officers, directors, employees, and agents for wages based on the Class Period facts and PAGA
9 penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

10 The Participating Class Members will be bound by the following release:

11 All Participating Class Members, on behalf of themselves and their respective
12 former and present representatives, agents, attorneys, heirs, administrators,
13 successors, and assigns, release Released Parties from all claims stated in the
14 Operative Complaint and those based solely upon the facts alleged in the Operative
15 Complaint. Except as set forth in Section 6.3 of the Settlement Agreement,
16 Participating Class Members do not release any other claims, including claims for
17 vested benefits, wrongful termination, violation of the Fair Employment and
18 Housing Act, unemployment insurance, disability, social security, workers'
19 compensation, or claims based on facts occurring outside the Class Period.

20 J. The PAGA Release. After the Court's judgment is final, and Defendant has paid
21 the Gross Settlement (and separately paid the employer-side payroll taxes), Plaintiff releases all
22 claims for civil penalties that could have been sought by the Labor Commissioner for the
23 violations identified in Plaintiff's pre-filing letter to the LWDA; Plaintiff does not release the
24 claim for wages or damages of any Aggrieved Employee unless such Aggrieved Employee is a
25 Participating Class Member.

26 **4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?**

27 A. Individual Class Payments. The Administrator will calculate Individual Class
28 Payments by (a) dividing the Net Settlement Amount by the total number of Work Weeks worked
by all Participating Class Members, and (b) multiplying the result by the number of Work Weeks
worked by each individual Participating Class Member. An Individual Class Payment will be
offset by any amount already paid to the Class Member as part of the Defendant's "Pick Up Stix"
campaign.

B. Individual PAGA Payments. The Administrator will calculate Individual PAGA
Payments by (a) dividing \$1,000.00 by the total number of PAGA Period Pay Periods worked by
all Aggrieved Employees and (b) multiplying the result by the number of PAGA Period Pay
Periods worked by each individual Aggrieved Employee. An Individual PAGA Payment will be
offset by any amount already paid to the Aggrieved Employee as part of the Defendant's "Pick Up
Stix" campaign.

1 C. Workweek/Pay Period Challenges. The number of Class Work Weeks you worked
2 during the Class Period and the number of PAGA Pay Periods you worked during the PAGA
3 Period, as recorded in Defendant's records, are stated in the first page of this Notice. You have
4 until <<RESPONSE DEADLINE>> to challenge the number of Work Weeks and/or weekly Pay
5 Periods credited to you. You can submit your challenge by signing and sending a letter to the
6 Administrator by email, fax or regular U.S. mail. You can use the enclosed Dispute form for this
7 purpose. Section 9 of this Notice has the Administrator's contact information.

8 You need to support your challenge by submitting copies of pay stubs or other records.
9 The Administrator will accept Defendant's calculation of Work Weeks and/or weekly Pay Periods
10 based on Defendant's records as accurate unless you send copies of records containing contrary
11 information. You should send copies rather than originals because the documents will not be
12 returned to you. The Administrator will resolve Work Week and/or Pay Period challenges based
13 on your submission and on input from Class Counsel (who will advocate on behalf of
14 Participating Class Members) and Defendant's Counsel. The Administrator's decision is final.
15 You can't appeal or otherwise challenge its final decision.

11 5. HOW WILL I GET PAID?

12 A. Participating Class Members. The Administrator will send, by U.S. mail, a single
13 check to every Participating Class Member (i.e., every Class Member who doesn't opt-out)
14 including those who also qualify as Aggrieved Employees. The single check will combine the
15 Individual Class Payment and the Individual PAGA Payment.

16 B. Non-Participating Class Members. The Administrator will send, by U.S. mail, a
17 single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class
18 Settlement (i.e., every Non-Participating Class Member).

19 **Your check will be sent to the same address as this Notice. If you change your
20 address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has
21 the Administrator's contact information.**

20 6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

21 Email, fax, or mail a written and signed letter with your name, present address, telephone
22 number, and a simple statement that you do not want to participate in the Settlement. You may
23 use the enclosed Election Not To Participate In Settlement form for this purpose. The
24 Administrator will exclude you based on any writing communicating your request be excluded.
25 Be sure to personally sign your request, identify the Action as *Jorge L. Leon vs. Davis & Roberts
26 Construction, Inc.*, Case No. 22CECG00407, and include your identifying information (full name,
27 address, telephone number, approximate dates of employment, and social security number for
28 verification purposes). You must make the request yourself. If someone else makes the request
for you, it will not be valid. You should send your Request for Exclusion to the Administrator by
email, fax, or send by regular U.S. mail. **The Administrator must be sent your request to be
excluded by <<RESPONSE DEADLINE>>, or it will be invalid.** Section 9 of the Notice has

the Administrator's contact information. If you are an Aggrieved Employee, you will still receive an Individual PAGA Payment.

7. 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 Defendant are asking the Court to approve. At least 16 days before the Final Approval Hearing, Class Counsel and/or Plaintiff 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 Fees, Litigation Expenses and Service Award stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Award. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them and the Settlement Agreement on the Administrator's Website <<ADMINISTRATOR WEBSITE>> or the Court's website <<COURT WEBSITE>>.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for 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 deadline for sending written objections to the Administrator is <<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, *Jorge L. Leon vs. Davis & Roberts Construction, Inc.*, case no. 22CECG00407, and include your name, current address, telephone number, and approximate dates of employment for Defendant and sign the objection. Section 9 of this Notice has the Administrator's contact information. You may use the enclosed Objection form for this purpose. You should send your objection to the Administrator by email, fax, or send by regular U.S. mail.

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. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on <<FINAL APPROVAL HEARING DATE>> at <<FINAL APPROVAL HEARING TIME>> in Department 501 of the Fresno Superior Court, located at B.F. Sisk Court, 1130 O Street, Fresno, CA 93721. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually by <<CourtConnect/CourtCall/MicrosoftTeams>>

(<https://www.<<CourtVirtualAppearanceLink>>>). Check the Court's website for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website <<ADMINISTRATOR WEBSITE>> beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Defendant and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to the Administrator's website at <<CLERK OF COURT'S PHONE NUMBER>>. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to (<http://www.<<COURT'S WEBSITE>>.aspx>) and entering the Case Number for the Action, Case No. 22CECG00407. You can also make an appointment to personally review court documents in the Clerk's Office at the B.F. Sisk Court by calling <<CLERK OF COURT'S PHONE NUMBER>>.

DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

Class Counsel:

Name of Attorney:	David G. Spivak
Email Address:	david@spivaklaw.com
Name of Firm:	The Spivak Law Firm
Mailing Address:	8605 Santa Monica Bl PMB 42554 West Hollywood, CA 90069
Telephone:	(213) 725-9094

Administrator:

Name of Company:	Simpluris, Inc.
Email Address:	_____
Mailing Address:	_____
Telephone:	_____
Fax Number:	_____

10. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void

☐ you should consult the Unclaimed Property Fund (https://www.sco.ca.gov/search_upd.html) for instructions on how to retrieve the funds. You can contact the Unclaimedx Property Fund at (800)

1 992-4647.

2 ☐ you will have no way to recover the money.

3 **11. WHAT IF I CHANGE MY ADDRESS?**

4 To receive your check, you should immediately notify the Administrator if you move or otherwise
5 change your mailing address.

EXHIBIT B

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Leon v. Davis & Roberts Construction, Inc.
Superior Court of the State of California, County of Fresno
Case No. 22CECG00407

ELECTION NOT TO PARTICIPATE IN SETTLEMENT FORM

**IF YOU WANT TO BE INCLUDED IN THIS CLASS ACTION SETTLEMENT AND BE ELIGIBLE FOR
A SHARE OF THE SETTLEMENT PROCEEDS,
DO NOT FILL OUT THIS FORM.**

**IF YOU DO NOT WANT TO BE INCLUDED IN THE SETTLEMENT, YOU MUST COMPLETE AND
SIGN THIS DOCUMENT AND MAIL IT TO THE ADDRESS BELOW, EMAILED, FAXED, OR
POSTMARKED NOT LATER THAN <<RESPONSE DEADLINE>>:**

Leon v. Davis & Roberts Construction, Inc. Class Action Administrator
c/o _____

I declare as follows: I have received notice of the proposed settlement in this action and I wish to be excluded from the class and **not** to participate in the proposed settlement. I understand this means that I will not be bound by the Settlement and also will not share in the settlement proceeds. I understand that exclusion from the Class Settlement will not result in exclusion from the PAGA portion of the Settlement. If I am an Aggrieved Employee under the Settlement, I will still receive an Individual PAGA Payment.

(Typed or Printed Name)

(Address)

(City, State, Zip Code)

EXHIBIT C

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Jorge L. Leon v. Davis & Roberts Construction, Inc., Case No. 22CECG00407

<<Name>>	
<<Address>>	
<<City>>, <<State>> <<Zip Code>>	
XX – XX -	

11 The amount of your estimated Settlement Award is based upon the number of Work Weeks you
12 worked between February 08, 2018 and <<the date of preliminary approval of this Settlement>>
13 and Work Weeks you worked between December 23, 2020 and the date of preliminary approval
14 of this Settlement. “Individual Class Work Weeks” are defined as any Work Week in which you
15 worked at least one (1) day as an hourly, non-exempt of Davis & Roberts Construction, Inc.
16 (“Defendant”) in California during the calendar week. “Individual PAGA Work Weeks” are
17 defined as any Work Week (Pay Period) in which you worked at least one (1) day as an hourly,
non-exempt of Davis & Roberts Construction, Inc. (“Defendant”) in California during the
calendar week during the period of December 23, 2020 through <<the date of preliminary
approval of this Settlement>>. The number of Class and PAGA Work Weeks applicable to your
claim are set forth below.

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Class Action and PAGA Settlement Agreement

1 If you wish to dispute the number of February 08, 2018 credited to you, or anything else about
2 your employment status, you must complete and return this form by indicating what you believe
3 is incorrect on the blank lines below and return it on or before <<RESPONSE DEADLINE>> to
4 the Administrator by email, fax, or regular U.S. Mail with proof of the submission date (such as
5 a postmark or delivery service date stamp). You may use this Work Weeks Dispute form for this
6 purpose. You must also send any documents or other information that you contend supports your
7 belief that the information set forth above is incorrect. The Administrator will resolve any dispute
8 based upon Defendant's records and any information you provide. Please be advised that the
9 information on this Work Weeks Dispute Form is presumed to be correct unless the documents
10 you submit are company records from Defendant.

11 _____
12 _____
13 _____
14 _____
15 _____

16 **UNLESS YOU ARE FILING A DISPUTE REGARDING THE NUMBER OF WORK**
17 **WEEKS, RECEIPT OF A SETTLEMENT PAYMENT, OR YOUR EMPLOYMENT**
18 **STATUS, YOU DO NOT NEED TO TAKE ANY ACTION**

EXHIBIT D

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OBJECTION FORM

Jorge L. Leon v. Davis & Roberts Construction, Inc.
Superior Court of the State California, County of Fresno
Case No. 22CECG00407

Please verify and/or complete any missing identifying information:

CPT ID: <<CPT ID>>

<<Name>>

<<Address1>>

<<Address2>>

<<City>>, <<State>> <<Zip>>

CORRECT NAME AND ADDRESS HERE:

Telephone Number: (____) ____ - ____

THIS FORM IS TO BE USED ONLY IF YOU WANT TO PARTICIPATE IN THE SETTLEMENT, BUT YOU OBJECT TO THE TERMS OF THE SETTLEMENT. IF YOU OBJECT TO THE SETTLEMENT, YOU SHOULD SIGN AND COMPLETE THIS FORM ACCURATELY AND IN ITS ENTIRETY (OR ONE LIKE IT), AND YOU SHOULD EMAIL IT TO <<____@____.COM>>, FAX IT TO <<XXX-XXX-XXXX>>, OR MAIL IT BY FIRST CLASS U.S. MAIL TO THE ADMINISTRATOR SO THAT IT IS POSTMARKED ON OR BEFORE <<RESPONSE DEADLINE>>. THE ADDRESS FOR THE ADMINISTRATOR IS NOTED ON PAGE TWO OF THIS FORM.

IF YOU DO NOT OBJECT TO THE SETTLEMENT, DO NOT SUBMIT THIS FORM. THE ADMINISTRATOR WILL SEND THIS OBJECTION AND ANY SUPPORTING DOCUMENTS TO THE ATTORNEYS FOR THE PARTIES. THE ATTORNEYS FOR THE PARTIES WILL FILE THE OBJECTION WITH THE COURT.

The Court will consider your objection at the Final Approval Hearing if you timely submit it. Include any and all evidence and supporting papers (including, without limitation, all briefs, written evidence, and declarations) that you would like the Court to consider. However, you may speak to the Court at the final approval hearing whether or not you submit a timely objection.

[] I OBJECT to the *Jorge L. Leon v. Davis & Roberts Construction, Inc.* Settlement on the following grounds (if additional space necessary, please include additional sheets of paper):

1 [] I am or will be represented by an attorney (provide name and address of attorney on lines
2 below if applicable):

3 _____
4 _____
5 _____
6 _____
7 _____
8 _____

9
10 Executed on _____, 2023

(Signature)

<<Name>>

(Printed Name)

13
14
15 EMAIL TO THE ADMINISTRATOR: <<____@____.COM>>

16 FAX TO THE ADMINITRATOR: <<(XXX) XXX-XXXX>>

17 MAIL TO THE SETTLEMENT ADMINISTRATOR, BY U.S. MAIL
18 POSTMARKED NOT LATER THAN <<RESPONSE DEADLINE>>:

19 Jorge L. Leon v. Davis & Roberts Construction, Inc. Administrator

[ADDRESS]

20 <<____>>
21 <<____>>
22 <<____>>