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Attorneys for Plaintiff Daniel Lopez and on behalf of the Proposed Class

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

DANIEL LOPEZ, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

MARTINEZ CONCRETE, INC., a
California Corporation, ROBERTO
MARTINEZ, an Individual, and DOES 1
through 20, inclusive;

Defendants.

Case No.: CIVSB2208282
*[Assigned to Hon. Joseph Ortiz, Dept. S17, for
all purposes]*

**DECLARATION OF BRIAN MANKIN IN
SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY APPROVAL**

Hearing

Date: November 6, 2023
Time: 1:30 p.m.
Dept.: S17

Complaint filed: April 21, 2022

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. Within our firm, I am a partner and manage the employment practice. I represent Plaintiff Daniel Lopez in this action and I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion for Preliminary Approval of this Class Action Settlement. If called as a witness, I could and would competently testify thereto.

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1 **COUNSEL’S EXPERIENCE**

2 2. I have been a member, in good standing, of the State Bar of California since 2001.
3 I am admitted to practice in the United States District Courts for the Central and Southern
4 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
5 courts in California.

6 3. I have handled over 500 employee vs. employer litigation matters during my 21
7 years in practice. Over the last 15 years, my practice has almost entirely consisted of
8 representing employees, the majority of which has included class action and representative
9 action wage and hour matters. In total, I have handled over 250 class action and representative
10 action wage/hour cases, and have been appointed by the court as class counsel and have received
11 final court approval and judgment in approximately half of those actions to date, and anticipate
12 receiving final approval in many more of those in the future.

13 4. As part of these settlements and judgments, I have recovered in excess of \$250
14 million in damages for my clients and the class members (who often work as nurses, ambulance
15 drivers, technicians, warehouse workers, truck drivers, sales, professional occupations and
16 countless other trades). As of the end of 2018, my team and I held the record for the largest
17 known PAGA-only case in California’s history as of that time - a \$12.5 million-dollar court
18 approved settlement, which followed extensive litigation, summary adjudication and writs to the
19 CA Supreme Court against a Fortune 50 company (*Garcia v. Macy’s*, San Bernardino Superior
20 Court).

21 5. I have tried two major class and PAGA cases against Fortune 100 companies. In
22 2018, I was lead counsel in a PAGA case that my firm tried to the bench in the Orange County
23 Superior Court and received a \$425,000 judgment. In 2019, I was co-counsel in a class action
24 case against Walmart that we tried to the jury in District Court, wherein the jury awarded
25 Plaintiff over \$6 million. Both cases were appealed.

26 6. Over the last 4 to 5 years, I have been consecutively selected by my peers as a
27 “Super Lawyer” in Employment Litigation.

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BRIEF SUMMARY OF THE SETTLEMENT

7. Following a productive mediation session, Plaintiff Daniel Lopez and Defendant Martinez Concrete, Inc, (collectively, the “Parties”) reached a settlement and approved a Class Action Settlement Agreement and Release of Claims resolving the wage and hour claims of the putative class (the “Settlement Agreement”), which is attached hereto as **Exhibit A**. The Settlement Agreement seeks to fully release and discharge Defendant from the claims brought against it in this matter in exchange for Defendant’s agreement to pay a Gross Settlement Amount of \$320,000 on a non-reversionary, non-claims made basis (each Class Member will receive his/her share of the Net Settlement Amount without having to submit a claim form or taking action, except for those who opt-out). Plaintiff seeks to represent a class of similarly situated individuals defined as: “All current and former nonexempt employees employed by Defendant Martinez Concrete, Inc., in California at any time during the Class Period of April 21, 2018, through September 17, 2023.

8. Under the terms of the Settlement Agreement, Defendant will not oppose Class Counsel’s application for a reasonable award of attorneys’ fees not to exceed one-third of the Settlement Amount, Class Counsel’s litigation expenses not to exceed \$20,000, settlement administrator costs not to exceed \$5,600, PAGA penalties of \$32,000 (of which \$24,000 or 75% will be paid to the LWDA and the remaining \$8,000 or 25% will be paid pro-rata to the Aggrieved Employees), and a Service Payment not to exceed \$7,500 for Plaintiff. After subtracting the agreed-upon deductions from the Gross Settlement Amount, it is estimated that \$148,233.34 will be available to the Class Members who do not opt-out of the settlement, as follows:

<i>Settlement Amount</i>	\$ 320,000.00
Attorneys’ Fees (1/3)	\$ 106,666.66
Litigation Costs (not to exceed)	\$ 20,000.00
Administrator Costs	\$ 5,600.00
PAGA Penalties	\$ 32,000.00
Class Representative Service Award	\$ 7,500.00
<i>Net Settlement Amount</i>	\$ 148,233.34

1 Assuming 80 Class Members, the average payment to each class member will be
2 approximately \$1,852.92 (\$148,233.34 / 80). Of course, the actual payment will be calculated on
3 a pro-rata basis according to the number of Weeks Worked by each Class Member. Assuming
4 an estimated 8,000 Weeks Worked, each Workweek will have a value of approximately \$18.53
5 on average. In addition, the Aggrieved Employees (*i.e.*, individuals who worked during the
6 PAGA Period of April 21, 2021, through September 17, 2023), will receive a pro rata share of
7 the \$8,000 PAGA Penalties (accounting for 25% of the total \$32,000 allocation). Moreover,
8 approximately 50 Aggrieved Employees worked during the PAGA Period.

9 9. Each Class Member will receive the Class Notice, explaining the nature of the
10 case, and the process for participating, objecting and opting-out, and advising of his/her estimated
11 settlement payment and the number of Pay Periods he/she is credited with working during the
12 Class and PAGA Periods (attached hereto as **Exhibit B**).

13 **PROCEDURAL BACKGROUND**

14 10. My office has performed considerable work and diligently investigated and
15 prosecuted this case to a successful conclusion. Our work has resulted in the creation of a
16 significant settlement fund for the benefit of the Class. We efficiently communicated and
17 exchanged information informally with Defense counsel which enabled the parties to
18 successfully settle the case at mediation. Because of the risks involved in litigating the case and
19 the contested legal and factual issues, I believe this settlement to be fair, reasonable, and
20 adequate.

21 11. After being retained by Plaintiff, we sent an April 19, 2022, letter to Defendants
22 requesting the production of his personnel file and timekeeping records in order to further
23 evaluate his wage and hour claims. That same day, we submitted a letter to the California Labor
24 Workforce Development Agency (the "LWDA") for civil penalties under the Private Attorney
25 General Act of 2004 (the "PAGA"), which is attached hereto as **Exhibit C**.

26 12. Plaintiff then filed a class and PAGA complaint in the Court that alleges claims
27 for: (1) failure to pay minimum wages, (2) failure to pay overtime wages, (3) failure to provide
28 meal periods, (4) failure to provide rest breaks; (5) failure to timely pay final wages, (6) failure

1 to provide accurate itemized wage statements, (7) unfair and unlawful competition pursuant to
2 Business and Professions Code §17200 *et seq*, and (8) related PAGA claims.

3 13. Defendants retained counsel began to defend the case. Plaintiff served written
4 discovery, but after discussions amongst counsel, the Parties agreed to attend private mediation.
5 In preparation for the mediation, the Parties informally exchanged documents and information
6 that allowed both sides to calculate the potential damages and evaluate potential risk, including
7 policies and procedures pertaining to each claim alleged, and statistics relating to the number of
8 current and former employees, number of shifts, pay periods worked and other things. In this
9 regard, Defendant provided a random sampling of timekeeping and payroll records of the Class
10 Members. This robust sampling enabled both parties to take a deep dive into the claims.
11 Additionally, during this process, Plaintiff and his counsel analyzed, researched, and investigated
12 the potential issues, including matters related to the calculation of damages, trial, and appellate
13 issues and risks.

14 14. On July 17, 2023, Plaintiff and Defendants participated in mediation before Jeff
15 Krivis Phillips, who is one of the most respected class action wage and hour mediator in
16 California. At the conclusion of mediation, the mediator issued a mediator's proposal calling for
17 a class-wide settlement for \$320,000. The Parties accepted the mediator's proposal and
18 memorialized the terms of the settlement in a long-form Settlement Agreement. The Parties now
19 seek the Court's preliminary approval of the Settlement.

20 **THE SETTLEMENT IS FAIR, JUST, AND REASONABLE**

21 15. The settlement was the product of extensive arm's length negotiations, facilitated
22 by an experienced mediator. Though cordial and professional, the settlement negotiations were
23 adversarial and non-collusive in nature. The settlement reached is the product of substantial
24 effort by the parties and their counsel. Although we believed that there was a possibility of
25 certifying the claims, we recognized the potential risk, expense, and complexity posed by
26 litigation, such as unfavorable decisions on class certification, summary judgment, at trial and/or
27 on the damages awarded, and/or on an appeal that can take several more years to litigate.
28

1 16. The settlement will result in a fair payment to each class member based on the
2 number of Weeks Worked by each Class Member. As set forth hereinabove, Plaintiff and his
3 counsel have diligently investigated the claims and defenses on behalf of the Class Members and
4 worked to achieve a resolution of the claims to maximize the recovery by avoiding further
5 expenditure of attorneys' fees and costs. After evaluating the significant risks attendant with
6 further litigation described above and weighing them against the benefits of a known
7 compromise and settlement as set forth in the Settlement Agreement, settlement on the terms
8 agreed to is believed to be in the best interest of Plaintiff and the Class, and is a fair and
9 reasonable resolution of the claims alleged.

10 17. Plaintiff's counsel brought to bear a great deal of experience in negotiating the
11 settlement of this case. As detailed herein, Plaintiff's counsel engaged in the necessary discovery
12 and investigation, making it possible to exercise informed judgment throughout the settlement
13 process, including significant document review (e.g. documents pertaining to Defendant's
14 policies and procedures, personnel documents, among others), and conducted an extensive
15 analysis of the detailed class-wide data provided by Defendant.

16 18. Based on my experience in other cases, including wage and hour matters, I
17 believe I am qualified to evaluate the class claims and viability of defenses in this class action.
18 In this case, the recovery for each class member is reasonable, fair, and adequate, and a
19 settlement at this time is in the best interests of the class. The settlement provides each class
20 member with compensation for the alleged violations when viewed in relation to the costs and
21 risks inherent in obtaining class certification and proceeding to trial.

22 19. Plaintiff's counsel, as well as Defendants' counsel, fully endorse the terms and
23 conditions of the settlement as set forth in the abovementioned Settlement Agreement.

24 20. Of course, the settlement amount represents a compromise figure, taking into
25 account the various risks surrounding class certification and the merits of Defendants' asserted
26 defense. Nevertheless, the settlement provides for fair and adequate payments to the class
27 members, with no reversion to Defendants.

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1 **PLAINTIFF’S REQUESTED ENHANCEMENT PAYMENTS**

2 21. Plaintiff seeks an enhancement payment of \$7,500, which I believe is fair and
3 warranted given the time and effort he devoted to this case. As noted in the motion, he entered
4 into a separation agreement at the conclusion of mediation and had to locate new employment
5 (which was resolved through a separate confidential agreement that can be disclosed to the Court
6 upon request). Additionally, his efforts included providing factual background for the Class and
7 PAGA complaint; providing documents and information about Defendant’s compensation plan;
8 participating in phone calls to discuss litigation and settlement strategy; making himself available
9 throughout the litigation to assist with analyzing the claims and defenses; helping Class Counsel
10 prepare for the mediation; and reviewing the settlement documents. The Class Representative
11 also assumed significant risk in bringing this litigation—namely, had he lost, he could have been
12 ordered to pay Defendant’s costs.

13 **ADEQUACY OF COUNSEL AND THE PROVISIONAL REASONABLENESS OF THE**
14 **REQUESTED FEES AND COSTS**

15 22. As set forth above, I have handled over 250 class and representative actions, have
16 been appointed as class counsel and have successfully resolved over half of those class actions,
17 and many others remain pending and will successfully resolve in the future.

18 23. When this case was taken on a contingency fee basis, with my firm agreeing to
19 assume responsibility for all litigation costs, the ultimate result was far from certain. In the
20 course of this litigation, my firm paid all costs including filing fees, court costs, research fees,
21 and mediation costs. There was never a guarantee that my firm would recoup those expenditures.

22 24. It is my experience that attorney fee awards of one-third of a common fund
23 settlement is the standard in California. In this case, Plaintiff’s counsel agreed to seek one-third
24 of the Settlement Amount for attorneys’ fees. Defendant does not oppose this fee request. The
25 fee is further warranted because it is within the range of reasonableness typically awarded in
26 class actions. My firm’s costs are reasonably capped at \$20,000 and will be based on the actual
27 amount of costs incurred at the time of final approval.

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26. Plaintiff has concurrently submitted the settlement and the complete motion to the LWDA in accordance with Labor Code § 2699(1)(2). The proof of submission is attached hereto as **Exhibit D**.

27. For the foregoing reasons, it is respectfully requested that the Court grant preliminary approval of the settlement as being fair, reasonable, and in the best interests of the class, as well as preliminarily approve the requested attorneys' fees, costs, and enhancement payment to the Class Representative.

By: Brian J. Mankin
Brian J. Mankin, Esq.

EXHIBIT “A”

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Attorneys for Defendants Martinez Concrete, Inc. and Roberto Martinez

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO

DANIEL LOPEZ, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

MARTINEZ CONCRETE, INC., a California
Corporation, ROBERTO MARTINEZ, an
Individual, and DOES 1 through 20,
inclusive;

Defendants.

Case No.: CIVSB2208282
*[Assigned to Hon. Jessica Morgan, Dept S26,
for all purposes]*

**CLASS ACTION SETTLEMENT
AGREEMENT AND RELEASE OF
CLAIMS**

This Class Action Settlement Agreement and Release of Claims is entered into by and
between Plaintiff Daniel Lopez, individually and on behalf of all others similarly situated, and on
behalf of the State of California, and Defendants Martinez Concrete, Inc., and Roberto Martinez,
and is approved by their respective counsel of record, subject to the terms and conditions hereof

1 and the Court's approval.

2 **A. Definitions**

3 1. "Action" or "Lawsuit" means and refers to the case entitled *Daniel Lopez v.*
4 *Martinez Concrete, Inc., et al.*, San Bernardino County Superior Court, Case No.
5 CIVSB2208282, which was commenced on April 21, 2022.

6 2. "Administrator" means and refers to ILYM Group, the third-party class action
7 settlement administrator agreed to by the Parties, and approved by the Court, that will provide
8 the Notice to the Class Members and distribute the settlement amounts as described in this
9 Agreement.

10 3. "Administration Costs" means the costs payable from the Settlement Amount to
11 the Administrator for administering this Settlement, including, but not limited to, printing,
12 distributing, and tracking documents for this Settlement, tax reporting, and deposit of the
13 employee and employer share of payroll taxes, unclaimed property due diligence, reporting and
14 remittance obligations, distributing the Settlement Amount, and providing necessary reports and
15 declarations, as requested by the Parties. The Administration Costs shall be paid from the
16 Settlement Amount, including, if necessary, any such costs in excess of the amount represented
17 by the Administrator as being the maximum costs necessary to administer the Settlement.

18 4. "Aggrieved Employee(s)" means all current and former nonexempt employees
19 employed by Defendant Martinez Concrete, Inc., in California at any time during the PAGA
20 Period.

21 5. "Agreement" or "Settlement Agreement" or "Settlement" shall mean this Class
22 Action and PAGA Settlement Agreement and Release of Claims.

23 6. "Class" is defined all current and former nonexempt employees employed by
24 Defendant Martinez Concrete, Inc., in California at any time during the Class Period.

25 7. "Class Member(s)" refers to individual members of the Class.

26 8. "Class Counsel" refers to Brian Mankin and Misty Lauby of Lauby, Mankin &
27 Lauby LLP.

1 9. “Class Data” means a complete list that Defendants will diligently and in good
2 faith compile from their records and provide to the Administrator on one spreadsheet which shall
3 include, for each Class Member, the individual’s full name; last known address; Social Security
4 Number; and total Weeks Worked during the PAGA Period and the Class Period.

5 10. “Class Period” is deemed to be any time during the period of April 21, 2018,
6 through September 17, 2023.

7 11. “Class Representative” or “Plaintiff” means and refers to Plaintiff Daniel Lopez.

8 12. “Complaint” refers to the operative first amended class and PAGA representative
9 action complaint on file in the Action.

10 13. “Court” (or “Judge”) means the California Superior Court, County of San
11 Bernardino.

12 14. “Defendants” refers collectively to Defendants Martinez Concrete, Inc., and its
13 owner/principal, Roberto Martinez.

14 15. “Defendants’ Counsel” or “Defense Counsel” means and refers to Brown &
15 Brown.

16 16. “Effective Date” means the latest of the following dates: (i) if no Class Member
17 timely and properly intervenes or files a motion to vacate the Judgment under Code of Civil
18 Procedure § 663, then the date the Court enters an order granting Final Approval of the
19 Settlement; (ii) if a Class Member intervenes or files a motion to vacate the Judgment, then
20 sixty-one (61) calendar days following the date the Court enters an order granting Final
21 Approval, assuming no appeal is filed; or (iii) if a Class Member timely and properly intervenes
22 or files a motion to vacate the Judgment under Code of Civil Procedure § 663 or initiates another
23 collateral attack, and if a timely appeal is filed, then the date of final resolution of that appeal or
24 other collateral attack (including any requests for rehearing and/or petitions for *certiorari*),
25 resulting in final judicial approval of the Settlement.

26 17. “Escalator Clause:” Defendants represent that there are approximately 76 Class
27 Members, who collectively worked a total of approximately 8,000 Workweeks during the Class
28 Period. If the total count of 8,000 Workweeks (as contained in the Class Data) increases by

1 more than 10% of this number (*i.e.*, above 8,800 Workweeks), then the Settlement Amount shall
2 increase by \$33.06 for each Workweek above 48,400.

3 18. “Final Approval” refers to the order of the Court granting final approval of this
4 Settlement Agreement and entering a judgment approving this Agreement on substantially the
5 terms provided herein or as may be modified by subsequent agreement of the Parties.

6 19. “Individual Class Payment” refers to each Participating Class Members share of
7 the Net Settlement Amount, as further discussed in Paragraph 47(c) below.

8 20. “Individual PAGA Payment” refers to each Aggrieved Employees share of the
9 PAGA Penalties, as further discussed in Paragraph 47(c) below.

10 21. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 47(b)
11 below.

12 22. “Notice” means the notice of proposed class settlement that will be sent to the
13 Class Members and which will advise each Class Member of the settlement and his or her
14 estimated Individual Class Payment and Individual PAGA Payment and will further advise of the
15 setting of a Final Approval Hearing. The Notices shall be mailed in English and Spanish.

16 23. “Response Deadline” is 30 calendar days from the date the Notice is mailed to the
17 Class Members.

18 24. “Objecting Class Member” means a Class Member, other than Plaintiff, who
19 submits a valid and timely objection to the terms of this Agreement, pursuant to Paragraph 68(c)
20 below.

21 25. “PAGA Penalties” means the amount that the Parties have agreed to pay to the
22 Labor and Workforce Development Agency (“LWDA”) in connection with the California Labor
23 Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”), as well
24 as the Individual PAGA payment allocated to each Aggrieved Employee.

25 26. “PAGA Period” is deemed to be any time during the period of April 21, 2021,
26 through September 17, 2023.

27 27. “Participating Class Member” means any and all Class Members who do not opt-
28 out by submitting timely valid Requests for Exclusion.

1 28. “Parties” or “Settling Parties” mean Plaintiff and Defendants, collectively.

2 29. “Preliminary Approval Date” means the date the Court approves the Settlement
3 Agreement and enters the Preliminary Approval Order.

4 30. “Preliminary Approval Order” means the judicial Order to be entered by the
5 Court, upon the application or motion of the Plaintiff, preliminarily approving this Settlement
6 and providing for the issuance of the Notice to the Class, an opportunity to opt out of the
7 Settlement, an opportunity to submit timely objections to the Settlement, and setting a final
8 approval hearing on the fairness of the terms of Settlement, including approval of attorneys’ fees
9 and costs. Provided that the motion is consistent with the terms herein, Defendants will not
10 object to Plaintiff’s motion for preliminary approval but will be provided with an opportunity to
11 review and comment upon the motion before it is filed.

12 31. “QSF” means the Qualified Settlement Fund set up by the Administrator for the
13 benefit of the Participating Class Members and Aggrieved Employees, and from which the
14 settlement payments shall be made.

15 32. “Released Class Claims” or “Class Claims” by the Participating Class Members
16 upon Final Approval of the Settlement will include the claims stated in the Complaint, or that
17 reasonably could have been alleged based upon the factual allegations in the Complaint,
18 including: (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to
19 provide meal periods, (d) failure to provide rest breaks, (e) failure to failure to timely pay wages
20 upon separation of employment, (f) failure to provide accurate itemized wage statements, (g)
21 unfair and unlawful competition, and (h) all other claims for statutory penalties based on the
22 facts or claims alleged in the Complaint.

23 33. “Released PAGA Claims” or “PAGA Claims” means any and all PAGA claims
24 that Plaintiff alleged against the Released Parties, on behalf of the Aggrieved Employees and the
25 State of California, based on the facts alleged or that reasonably could have been alleged based
26 on the factual allegations in the Complaint and in the relevant LWDA notice letter, including all
27 PAGA claims seeking civil penalties premised (a) failure to pay minimum wages, (b) failure to
28 pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e)

1 failure to failure to timely pay wages each period and upon separation of employment, (f) failure
2 to provide accurate itemized wage statements, (g) failure to maintain employment records, and
3 (h) all other claims for civil penalties recoverable under the Private Attorneys General Act,
4 Labor Code §§ 2698 *et seq.* based on the facts or claims alleged in the Complaint. Under
5 *Robinson v. Southern Counties Oil Co.*, 53 Cal.App.5th 476 (2020), the Released PAGA Claims
6 apply to all Aggrieved Employees, regardless of whether they request exclusion from the class.
7 The Released PAGA Claims do not release any Aggrieved Employees' claims for wages or
8 statutory penalties.

9 34. "Released Parties" means Defendants and their parents, subsidiaries, directors,
10 owners, shareholders, officers, agents, attorneys, servants, joint employers and employees, past
11 and present, and each of them and anyone acting in concert with foregoing.

12 35. "Release" shall mean the release and discharge of the Released Class Claims by
13 Plaintiff and all Participating Class Members and their assignees.

14 36. "Request for Exclusion" shall have the meaning ascribed to it in Paragraph 70(a)
15 below.

16 37. "Service Payment" or "Service Award" means the amount approved by the Court
17 to be paid to Class Representative Daniel Lopez in addition to his Individual Class Payment as a
18 Participating Class Member and Individual PAGA Payment as an Aggrieved Employee.

19 38. "Settlement Amount" is \$320,000.00, subject to the Escalator Clause and
20 exclusive of Defendants' obligation to fund their respective shares of payroll taxes, as further
21 discussed in Paragraph 47(a) below.

22 39. "Work Weeks" or "Weeks Worked" means all calendar weeks in which the Class
23 Member or Aggrieved Employee was employed by Defendants in California as a truck driver
24 and worked at least one shift during the week. For purposes of calculating Weeks Worked, there
25 will no fractional calculations (*i.e.*, a situation where an individual worked only one shift during
26 a week does not equal 1/7th of a Work Week, it counts as one Work Week).

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1 **B. General Terms**

2 40. On April 21, 2022, Plaintiff filed a putative class and representative PAGA action
3 in the San Bernardino County Superior Court, alleging Class Claims and PAGA Claims,
4 including: (a) failure to pay minimum and regular wages, (b) failure to pay for nonproductive
5 time under Labor Code § 226.2, (c) failure to reimburse for business expenses, (d) failure to
6 timely pay final wages, and (e) failure to provide accurate itemized wage statements; (f) unfair
7 and unlawful competition, and (g) related PAGA claims.

8 41. Defendants deny Plaintiff's claims and allegations and contends that the Action is
9 not suitable for class certification.

10 42. The Class Representative believes he can proceed with the representative and
11 class claims, that the Action is meritorious, and that class certification is appropriate.

12 43. The Parties have conducted a thorough investigation into the facts of the Action.
13 This includes conducting an extensive exchange of informal discovery, including Defendants'
14 written policies and practices and confirmation regarding the uniform payroll and timekeeping
15 practices for Class Members. Class Counsel is both knowledgeable about and has done
16 extensive research with respect to the applicable law and potential defenses to the claims of the
17 Class. Class Counsel has diligently pursued an investigation of the Class Members' claims
18 against Defendants. Based on the foregoing data and on their own independent investigation and
19 evaluation, Class Counsel is of the opinion that the settlement with Defendants for the
20 consideration and on the terms set forth in this Settlement Agreement is fair, reasonable, and
21 adequate and is in the best interest of the Class Members in light of all known facts and
22 circumstances, including the risk of significant delay and uncertainty associated with litigation,
23 various defenses asserted by Defendants, and numerous potential appellate issues.

24 44. On July 17, 2023, Plaintiff and Defendants participated in a full-day mediation
25 with Jeff Krivis, a well-respected wage-and-hour mediator. At the conclusion of mediation, Mr.
26 Krivis issued a mediator's proposal, which the Parties accepted and reached the Settlement
27 detailed herein.
28

1 45. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts
2 to be performed or judgment to be entered pursuant to the terms of the Settlement and
3 Agreement, shall be construed as an admission by Defendants of any wrongdoing or violation of
4 any statute or law or liability on the claims or allegations in the Action.

5 46. Stipulation for Class Certification. For settlement purposes only, Defendants will
6 stipulate that the Class Members described herein who do not Request Exclusion from the Class
7 may be conditionally certified as a Class. This stipulation to certification is in no way an
8 admission that class action certification is proper and shall not be admissible in this or in any
9 other action except for the sole purposes of enforcing this Agreement. Should, for whatever
10 reason, the Court fail to issue Final Approval, the Parties' stipulation to class certification as part
11 of the Settlement shall become null and void ab initio and shall have no bearing on, and shall not
12 be admissible in connection with, the issue of whether certification would be appropriate in a
13 non-settlement context. Defendants expressly reserve their rights and declare that they would
14 continue to oppose class certification and the substantive merits of the case should the Court fail
15 to issue Final Approval. Plaintiff expressly reserves his rights and declares that he will continue
16 to pursue class certification and a trial should the Court fail to issue Final Approval.

17 **C. Terms of Settlement**

18 47. The financial terms of the Settlement are as follows:

19 (a) Settlement Amount: The Parties agree to settle this Action for the
20 Settlement Amount, subject to the Escalator Clause and Defendant's obligation to separately pay
21 its share of payroll taxes on the wage portion of the Individual Class Payments, which is the
22 maximum amount that will be paid by Defendant and includes Individual Class Payments, Class
23 Counsel's Attorneys' Fees and Costs Award, the Service Payment to the Class Representative,
24 Settlement Administration Costs, and PAGA Penalties.

25 (b) Net Settlement Amount: The "Net Settlement Amount" is defined as the
26 Settlement Amount less the Attorneys' Fees and Costs Award, the Service Payment to the Class
27 Representative as awarded by the Court, the Administration Costs, and PAGA Penalties. If the
28 Court reduces the Attorneys' Fees and Costs Award, Service Award or Administrator Costs, or

1 either increases or decreases the amount allocated to the PAGA Penalties, the difference shall be
2 placed in the Net Settlement Amount and allocated to the Class.

3 (c) The Individual Class Payment for each Class Member will be calculated
4 by the Administrator using the Class Data provided by Defendants as follows. Compensable
5 workweeks will be all Weeks Worked by the Class Members during the Class Period. The
6 dollars per compensable work week will be calculated by dividing the total Weeks Worked by
7 Class Members into the Net Settlement Amount to determine a per work week value
8 (“Workweek Value”). The Workweek Value will be multiplied by the number of Weeks
9 Worked by a Participating Class Member during the Class Period to determine the distribution
10 for a Participating Class Member. If there are any timely submitted Requests for Exclusion, the
11 Administrator shall proportionately increase the Individual Class Payments for each Participating
12 Class Member so that the amount actually distributed to Participating Class Members equals
13 100% of the Net Settlement Amount.

14 (d) Allocation of Individual Class Payments: The Individual Class Payments
15 to Participating Class Members will be allocated as follows: one-third (33.33%) will be allocated
16 as wages subject to withholding of all applicable local, state and federal taxes; and two-thirds
17 (66.67)% will be allocated for interest and statutory penalties (pursuant to, *e.g.*, California Labor
18 Code sections 203, 210, 226) from which no taxes will be withheld. The Administrator will
19 issue to each Participating Class Member an Internal Revenue Service Form W-2 and
20 comparable state forms with respect to the wage allocation and a Form 1099 with respect to the
21 penalties and interest allocations.

22 (e) Service Payment to Class Representative: The amount, if any, awarded to
23 the Class Representative as a Service Payment will be set by the Court in its discretion, not to
24 exceed \$7,500, in exchange for the service that Plaintiff performed on behalf of the Class.
25 Defendants agree not to oppose this request. The Service Payment to Plaintiff will be paid out of
26 the Settlement Amount. The Class Representative will be issued an IRS Form 1099 in
27 connection with this payment. Plaintiff shall be solely and legally responsible to pay all
28 applicable taxes on this payment. The Parties agree that any amount awarded as the Service

1 Payment to Plaintiff less than the requested amount shall not be a basis for Class Counsel to void
2 this Settlement Agreement. Should the Court approve a lesser amount for the Service Payment,
3 the difference shall be added to the Net Settlement Amount to be distributed to the Participating
4 Class Members.

5 (f) Attorneys' Fees and Costs Award: Defendants agree to not oppose a
6 request by Class Counsel to the Court for an award of attorneys' fees of one-third of the
7 Settlement Amount, plus reasonable litigation costs not to exceed \$20,000 ("Attorney's Fees and
8 Cost Award"). Defendants agree not to oppose any contention by Class Counsel that attorneys'
9 fees should be based on the common fund theory. The Attorney's Fee and Cost Award shall be
10 paid from the Settlement Amount, and, except for this award, Defendants shall have no further
11 obligation to pay any attorneys' fees, costs, or expenses to Class Counsel. Should the Court
12 approve a lesser amount than what is sought by Class Counsel, the difference shall be added to
13 the Net Settlement Amount to be distributed to the Participating Class Members. Any Court
14 order awarding less than the amount sought by Class Counsel shall not be grounds to rescind the
15 Settlement Agreement or otherwise void the Settlement. The Administrator shall issue to Class
16 Counsel an IRS Form 1099 reflecting the amount of attorneys' fees and costs awarded by the
17 Court.

18 (g) Administration Costs: The fees and other charges of the Administrator
19 will be paid from the Settlement Amount, not to exceed \$5,600, unless (1) the Escalator Clause
20 is triggered (whereby any reasonable increase in Settlement Administration Costs shall be paid
21 from the increased Settlement Amount, subject to Court approval), or (2) as otherwise approved
22 by all Parties and the Court.

23 (h) PAGA Penalties: The Parties agree that \$32,000 is allocated to PAGA
24 Penalties, and is to be paid from the Settlement Amount, subject to Court approval. Of this
25 amount, \$24,000 (75%) shall be paid to the LWDA in satisfaction of civil penalties under the
26 Private Attorney General Act of 2004 ("PAGA") and \$8,000 (25%) will form the Individual
27 PAGA Payments to the Aggrieved Employees, which shall be calculated and allocated pro-rata
28 on a Work Week basis, which will be treated entirely as civil penalties and shall be reported as

1 required on an IRS Form 1099. Class Counsel shall give proper notice to the LWDA of the
2 Settlement.

3 (i) Tax Liability: Class Counsel and Defendants make no representations as
4 to the tax treatment or legal effect of settlement amounts called for hereunder, and Plaintiff and
5 the Class Members are not relying on any statement or representation by Class Counsel or
6 Defendants in this regard. Plaintiff, Participating Class Members, and Aggrieved Employees
7 understand and agree that they will be solely responsible for the payment of any taxes and
8 penalties assessed on their respective Individual Class Payments and Individual PAGA
9 Payments, described herein. Forms 1099 will be distributed in the manner required by the
10 Internal Revenue Code of 1986 (the “Code”) and consistent with this Agreement. If the Code,
11 the regulations promulgated thereunder, or other applicable tax law, is changed after the date of
12 this Agreement, the processes set forth in this Section may be modified in a manner to bring
13 Defendants into compliance with any such changes. Plaintiff, Participating Class Members, and
14 Aggrieved Employees understand and agree that they will be solely responsible for the payment
15 of any taxes and penalties assessed on their respective payments described herein.

16 (j) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS
17 AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY”
18 AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING
19 PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO
20 PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR
21 DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND
22 OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
23 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
24 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
25 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE
26 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
27 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
28 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO

THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR ADVISOR'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

(k) "Non-Reversionary" Settlement. This is a "non-reversionary" settlement. Under no circumstances will any portion of the Settlement Amount revert to Defendants. Participating Class Members and Aggrieved Employees will not have to make a claim in order to receive an Individual Class Payment or Individual PAGA Payment. Distributions, in the form of Individual Class Payment or Individual PAGA Payments will be made directly to each Participating Class Member and Aggrieved Employee. The Administrator shall be responsible for accurately and timely reporting and remittance obligations with respect to unclaimed funds as a result of a Participating Class Member and/or Aggrieved Employee not cashing any checks delivered pursuant to the Settlement by the check cashing deadline, as set forth herein.

(l) Class Counsel and Plaintiff believe that the Settlement is fair and reasonable and will so represent same to the Court.

D. Release by the Participating Class Members

48. Upon entry of the Final Approval Order and Defendants funding of the Settlement Amount and the required employer-side payroll taxes, and except as to such rights or claims as may be created by this Agreement, Plaintiff and the Participating Class Members will forever completely release and discharge the Released Parties from the Released Class Claims for the Class Period.

1 49. Each Participating Class Member will be deemed to have made the foregoing
2 Release as if by manually signing it.

3 50. Class Representative, on behalf of himself and the Class, acknowledges and
4 agrees that the claims for unpaid wages and untimely payment of wages in the Action are
5 disputed, and that the payments set forth herein constitute payment of all sums allegedly due to
6 them. Class Representative, on behalf of himself and the Class, acknowledges and agrees that
7 Labor Code § 206.5 is not applicable to the Parties or Settlement. Labor Code § 206.5 provides
8 in pertinent part as follows: “An employer shall not require the execution of any release of any
9 claim or right on account of wages due, or to become due, or made as an advance on wages to be
10 earned, unless payment of those wages has been made.”

11 **E. Release of PAGA Claims**

12 51. Upon entry of the Final Approval Order and Defendants’ funding of the
13 Settlement Amount and the required employer-side payroll taxes, Plaintiff, the LWDA and
14 Aggrieved Employees shall completely release and discharge the Released Parties from the
15 Released PAGA Claims for the PAGA Period.

16 52. Regardless of submitting a valid Request for Exclusion, neither Plaintiff nor any
17 Aggrieved Employee shall have the right to opt-out or otherwise exclude themselves from
18 releasing the Released PAGA Claims.

19 53. It is the intent of the Parties that the Final Approval Order shall have full
20 equitable and collateral estoppel and res judicata effect to the fullest extent permitted by law.

21 **F. Release by Plaintiff and Class Representative**

22 54. Class Representative does hereby, for himself and his spouses, heirs, successors,
23 beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians,
24 personal representatives, and assigns forever and completely release and discharge the Released
25 Parties from any and all charges, complaints, claims, liabilities, obligations, promises,
26 agreements, controversies, damages, actions, causes of action, suits, rights, demands, costs,
27 losses, debts, and expenses (including back wages, statutory penalties, civil penalties, liquidated
28 damages, exemplary damages, interest, attorneys’ fees, and costs) of any nature whatsoever,

1 from the beginning of time through the execution of this Agreement, whether known or
2 unknown, suspected or unsuspected, including but not limited to all claims arising out of, based
3 upon, or relating to Class Representative's employment with Defendants or the remuneration for
4 or termination of such employment (the "Class Representative's Claims").

5 55. Without limiting the generality of the foregoing, this general release by Plaintiff
6 includes all federal, state and local statutory claims, federal and state common law claims
7 (including but not limited to those for contract, tort and equity), including without limitation the
8 Americans with Disabilities Act, Age Discrimination in Employment Act, Title VII of the Civil
9 Rights Act of 1964 (as amended), 42 USC sec. 1981, 42 USC sec. 1983, the Fair Labor
10 Standards Act, the Employment Retirement Security Income Act of 1974, the California
11 Constitution, the California Fair Employment and Housing Act, the California Unfair
12 Competition Act (California Business and Professions Code section 17200 et seq.), and the
13 California Labor Code.

14 56. Plaintiff agrees that there is a risk that any injury that he may have suffered by
15 reason of the Released Parties' relationship with him might not now be known, and there is a
16 further risk that said injuries, whether known or unknown at the date of this Settlement
17 Agreement, might possibly become progressively worse, and that as a result thereof further
18 damages may be sustained. Nevertheless, Plaintiff agrees to forever and fully release and
19 discharge the Released Parties, and understands that by the execution of this Settlement
20 Agreement no further claims for any such injuries that existed at the time of the execution of this
21 Settlement Agreement may ever be asserted by Plaintiff with respect to claims arising in the time
22 period from the beginning of time to the execution of this Settlement Agreement.

23 57. Plaintiff expressly waives and relinquishes all rights and benefits afforded by
24 Section 1542 of the Civil Code of the State of California and does so understanding and
25 acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code
26 of the State of California states:

27 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
28 THAT THE CREDITOR OR RELEASING PARTY DOES NOT
KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
THE TIME OF EXECUTING THE RELEASE AND THAT, IF

1 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
2 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
3 OR RELEASED PARTY.

4 Notwithstanding the provisions of Section 1542, and for the purpose of implementing a
5 full and complete release and discharge of all parties, Class Representative expressly
6 acknowledges that this Settlement Agreement is intended to include in its effect, without
7 limitation, all claims that Class Representative knew of, as well as all claims that he does not
8 know or suspect to exist in his favor against the Released Parties, or any of them, for the time
9 period from the beginning of time to the execution of this Settlement Agreement, and that this
10 Settlement Agreement contemplates the extinguishment of any such Class Representative's
11 Claims. Notwithstanding the above, the general release by Class Representative shall not extend
12 to claims for workers' compensation benefits, claims for unemployment benefits, or other claims
13 that may not be released by law.

14 **G. Interim Stay of Proceedings**

15 58. Pending completion of all of the prerequisites necessary to effectuate this
16 Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action
17 except such as is necessary to effectuate the Settlement.

18 **H. Notice Process**

19 59. Appointment of Administrator. The Parties have agreed to the appointment of the
20 Administrator to perform the duties of a settlement administrator, including mailing the Notice,
21 using standard devices to obtain forwarding addresses, independently reviewing and verifying
22 documentation associated with any claims or opt-out requests, resolving any disputes regarding
23 the calculation or application of the formula for determining the Individual Class Payment and
24 Individual PAGA Payments, drafting and mailing the settlement checks to Participating Class
25 Members and Aggrieved Employees, issuing all necessary tax forms, preparing declarations and
26 reports for the Parties and the Court, and performing such other tasks as set forth herein or as the
27 Parties mutually agree or that the Court orders.
28

1 60. Disputes Regarding Administration. Any and all disputes relating to
2 administration of the Settlement by the Administrator (except for disputes regarding Class Data)
3 shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms
4 and conditions of this Agreement, until Plaintiff and Defendants notify the Court that all
5 payments and obligations contemplated by this Agreement have been fully carried out. Prior to
6 presenting any issue to the Court, counsel for the Parties will confer in good faith to resolve the
7 dispute without the necessity of Court intervention. The Administrator shall also be responsible
8 for issuing to Plaintiff, Participating Class Members, and Aggrieved Employees, and Class
9 Counsel any Tax Forms as may be required by law for all amounts paid pursuant to this
10 Agreement.

11 61. Class Data. Within fourteen (14) days after entry of the Preliminary Approval
12 Order, Defendants shall provide the Class Data to the Administrator. The Administrator will run
13 a check of the Class Members' addresses against those on file with the U.S. Postal Service's
14 National Change of Address List. The Class Data provided to the Administrator will remain
15 confidential and will not be used or disclosed to anyone, except as required by applicable tax
16 authorities, pursuant to Defendants' express written consent, or by order of the Court. Although
17 Class Counsel will not be provided with the list of Class Data, nothing herein shall prevent Class
18 Counsel from communicating with Class Members regarding the Action and Settlement.

19 62. Total Workweeks. At least 5 days prior to mailing the Notice, the Administrator
20 shall provide a spreadsheet to Class Counsel and Defense Counsel containing a preliminary
21 calculation of all payments to be paid from the Settlement Amount, including the estimated
22 Individual Class Payments to each Class Member and Individual PAGA Payments to each
23 Aggrieved Employee (a person's name shall be redacted and a control number used in place of
24 the name). In the event that the total Workweeks worked by all Class Members triggers the
25 Escalator Clause, the Settlement Administrator shall notify the Parties of the increased
26 Settlement Amount, and related increased payments from the Settlement Amount, including
27 increased Attorneys Fees and Costs and any increased Settlement Administration Costs, all of
28 which shall be subject to Court approval.

1 63. Notice. The Notice, as approved by the Court, shall be sent by the Administrator
2 to the Class Members, by first class mail, in English and Spanish, within ten (10) calendar days
3 following the Administrator's receipt of the Class Data. The Administrator shall use standard
4 devices, including a skip trace, to obtain forwarding addresses of Class Members if any
5 envelopes are returned.

6 64. Returned Notice Packets. The Administrator will take steps to ensure that the
7 Notice is received by all Class Members, including utilization of the National Change of Address
8 Database maintained by the United States Postal Service to review the accuracy of and, if
9 possible, update a mailing address. Notices will be re-mailed to any Class Member for whom an
10 updated address is located within ten (10) calendar days following both the Administrator
11 learning of the failed mailing and its receipt of the updated address. The Notice shall be identical
12 to the original Notice, except that it shall notify the Class Member that the exclusion (opt-out)
13 request or objection must be returned by the later of the Response Deadline or fifteen (15) days
14 after the remailing of the Notice.

15 65. Presumption Regarding Receipt of Notice. It will be conclusively presumed that
16 if an envelope has not been returned to Administrator by the Response Deadline that the Class
17 Member received the Notice.

18 66. Disputes Regarding Class Data. Class Members are deemed to participate in the
19 Settlement unless they opt-out, and Aggrieved Employees may not opt out of the Released
20 PAGA Claims. The Notice will inform Class Members of his/her estimated Individual Class
21 Payment and Individual PAGA Payment, as well as the number of weeks he/she worked during
22 the Class Period and the PAGA Period. Class Members may dispute their Weeks Worked if they
23 feel they should be credited with more Weeks Worked in the Class Period and/or PAGA Period
24 in California than Defendants' records show by timely submitting evidence to the Administrator.
25 Defendants' records will be presumed determinative absent reliable evidence to rebut
26 Defendants' records, but the Administrator will evaluate the evidence submitted by the Class
27 Member and provide the evidence submitted to Class Counsel and Defense Counsel who agree to
28 meet and confer in good faith about the evidence to determine the Class Member's actual

1 number of Work Weeks and estimated Individual Class Payment and Individual PAGA Payment.
2 If Class Counsel and Defense Counsel are unable to agree, they agree to submit the dispute to the
3 Court to render a final decision. Class Members and Aggrieved Employees will have until the
4 Response Deadline to dispute Weeks Worked, object or opt out, unless extended by the Court.

5 67. Declaration of Due Diligence. The Administrator shall provide counsel for the
6 Parties, at least twenty-five (25) days prior to the final approval hearing, a declaration of due
7 diligence and proof of mailing with regard to the mailing of the Notice.

8 68. Class Members' Rights. Each Class Member will be fully advised of the
9 Settlement, the ability to object to the settlement, and the ability to opt-out or request exclusion
10 from the Class Claims portion of the Settlement. The Notice will inform the Class Members of
11 the Court-established deadlines for filing objections or requesting exclusion from the Settlement
12 in accordance with the following guidelines:

13 (a) Requests for Exclusion from Class. Any Class Member, other than
14 Plaintiff, may request to be excluded from the Class by submitting a "Request for Exclusion" to
15 the Administrator, postmarked on or before the Response Deadline. The Request for Exclusion
16 should state:

17 "I WISH TO BE EXCLUDED FROM THE CLASS IN THE
18 MARTINEZ CONCRETE LAWSUIT. I UNDERSTAND THAT
19 IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT
20 CLASS, I WILL NOT RECEIVE MY INDIVIDUAL CLASS
21 PAYMENT FROM THIS LAWSUIT."

22 To be valid, any Request for Exclusion must include the full name, address, telephone
23 number, last four digits of the social security number or date of birth, and signature of the Class
24 Member requesting exclusion. The Request for Exclusion must be returned by mail to the
25 Administrator at the specified address set forth in the Notice. Any such Request must be made in
26 accordance with the terms set forth in the Notice. A Request for Exclusion will be timely only if
27 postmarked by the Response Deadline, unless the Parties otherwise agree in writing. Any Class
28 Member who timely requests exclusion in compliance with these requirements: (i) will not have

1 any rights under this Agreement, including the right to object, appeal or comment on the
2 Settlement; (ii) will not be entitled to receive the Individual Class Payment under this
3 Agreement; and (iii) will not be bound by this Agreement, or the Judgment. Any Class Member
4 who is an Aggrieved Employee who requests timely exclusion will still be subject to the
5 Released PAGA Claims to the fullest extent permitted by law and receive an Individual PAGA
6 Payment. All Parties and their counsel, including Defendants' respective members, member
7 managers, owners, officers, and directors, shall not encourage or solicit opt-outs or objections,
8 directly or indirectly, through any means.

9 (b) Binding Effect on Participating Class Members. All Participating Class
10 Members will: (i) be bound by the terms and conditions of this Agreement, the Judgment, and
11 the releases set forth herein; and (ii) except as otherwise provided herein, will be deemed to have
12 waived all objections and oppositions to the fairness, reasonableness, and adequacy of the
13 Settlement.

14 (c) Objections to Settlement. Any Class Member, other than Plaintiff, who
15 does not submit a valid and timely Request for Exclusion may object to the terms of this
16 Agreement. To object, a Class Member shall inform the Administrator, in writing, of his or her
17 objection which must be postmarked by the Response Deadline at the address set forth in the
18 Notice. Such objection shall include the Objecting Class Member's full name, address,
19 telephone number, last four digits of the social security number or date of birth, signature, and
20 dates of employment with Defendant, in addition to the case name and number, the basis for the
21 objection, including any legal support and each specific reason in support of the objection, as
22 well as any documentation or evidence in support thereof, and, if the Objecting Class Member is
23 represented by counsel, the name and address of his or her counsel. The Administrator shall
24 provide objections, if any, to Class Counsel and Defense Counsel within three (3) calendar days
25 of receipt, and the Administrator shall attach the same to its declaration of due diligence and file
26 with the Court prior to the Final Approval Hearing. An Objecting Class Member remains
27 eligible to receive monetary compensation from the Settlement. Plaintiff and Defendants shall
28 not be responsible for any fees, costs, or expenses incurred by an Objecting Class Member

1 and/or his or her counsel related to any objections to the Settlement. Submitting an objection
2 does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by
3 becoming a party of record by timely and properly intervening or filing a motion to vacate the
4 judgment under Code of Civil Procedure § 663.

5 (d) Failure to Object. Any Class Member who does not timely and properly
6 become a party of record by intervening or filing a motion to vacate the judgment waives any
7 and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding
8 and appellate proceeding, such as a motion to vacate judgment, motion for new trial, a motion
9 under California Code of Civil Procedure section 473, and extraordinary writs.

10 (e) Responses to Objections. Counsel for the Parties may file a response to
11 any objections submitted by an Objecting Class Member at least five (5) court days before the
12 date of the Final Approval Hearing.

13 (f) Class Members will have until the Response Deadline to object or submit
14 a Request for Exclusion to the Administrator by U.S. Mail. The Administrator shall disclose
15 jointly to Class Counsel and Defense Counsel what objections or Requests for Exclusion were
16 timely submitted on a weekly basis, and upon the request of Class Counsel or Defense Counsel.

17 69. Funding of the Settlement Amount. Defendants shall, jointly and severally,
18 deposit the Settlement Amount, plus Defendants' payroll taxes owed on Individual Class
19 Payments, with the Administrator within fifteen (15) days after the Effective Date.

20 70. Distribution of Funds. No later than ten (10) calendar days after the deposit of the
21 Settlement Amount by Defendants, the Administrator shall mail the Individual Class Payments
22 to the Participating Class Members, the Individual PAGA Payments to the Aggrieved
23 Employees, the payment to Class Counsel for the Attorneys' Fees and Costs Award, any Service
24 Payment to the Class Representative, the payment to the LWDA for PAGA Penalties, and will
25 pay itself the Administration Costs.

26 71. Deadline for Cashing Settlement Checks. Participating Class Members and
27 Aggrieved Employees shall have 180 calendar days after mailing by the Administrator to cash
28 their settlement checks. The release will be binding upon all Participating Class Members who

do not cash their checks within the 180-day period. In the event that any settlement check is returned to the Administrator within 180 days of mailing, the Administrator will, within five (5) business days of receipt of the returned settlement check, perform a skip trace to locate the individual, and notify Defense Counsel and Class Counsel of the results. If a new address is located by these means, the Administrator will have ten (10) business days to re-issue the check. Neither Defendants, Defense Counsel, Class Counsel, Plaintiff, nor the Administrator will have any liability for lost or stolen settlement checks, forged signatures on settlement checks, or unauthorized negotiation of settlement checks. Without limiting the foregoing, in the event a Participating Class Member and/or Aggrieved Employee notifies the Administrator that he or she believes that a settlement check has been lost or stolen, the Administrator shall immediately stop payment on such check. If the check in question has not been negotiated prior to the stop payment order, the Administrator will issue a replacement check.

(a) If any Participating Class Member's check is not cashed within the time periods noted above, the check will be void and a stop-payment will be issued, and the Administrator shall issue the unclaimed funds to the California State Controller's Office in the name of the Class Member.

(b) If any Aggrieved Employee's check is not cashed within the time periods noted above, the check will be void and a stop-payment will be issued, and the Administrator shall issue the unclaimed funds to the California State Controller's Office in the name of the Aggrieved Employee.

I. Duties of the Parties Prior to the Court's Approval

72. Promptly after execution of this Agreement, Plaintiff will move the Court for Preliminary Approval of this Settlement and entry of the Preliminary Approval Order accomplishing the following:

- (a) Approving as to form and content the proposed Notice;
- (b) Directing the mailing of the Notice by first class mail to the Class Members;
- (c) Preliminarily approving this Settlement;

- 1 (d) Preliminarily certifying the class for purposes of this Settlement;
2 (e) Advising the LWDA of the proposed Settlement; and
3 (f) Scheduling the Final Approval Hearing on the issue of whether this
4 Settlement should be finally approved as fair, reasonable and adequate.

5 **J. Duties of the Parties Following Court's Final Approval**

6 73. In connection with the Final Approval Hearing provided for in this Agreement,
7 Class Counsel shall submit a proposed Final Approval Order:

- 8 (a) Approving the Settlement, adjudging the terms thereof to be fair,
9 reasonable and adequate, and directing consummation of its terms and provisions;
10 (b) Approving Class Counsel's application for an award of attorneys' fees and
11 reimbursement of litigation costs and expenses, the Service Payment to the Class Representative,
12 and the payment to the Administrator for costs of administering the settlement; and
13 (c) Entering judgment approving settlement.

14 **K. Voiding the Agreement**

15 74. If the Court fails or refuses to issue the Final Approval Order or fails to approve
16 any material condition of this Agreement which effects a fundamental change of the Settlement,
17 the entire Agreement shall be rendered voidable and unenforceable as to all Parties herein at the
18 option of either Party.

19 75. If the Settlement is voided or fails for any reason, Plaintiff and Defendants will
20 have no further obligations under the Settlement, including any obligation by Defendants to pay
21 the Settlement Amount, or any amounts that otherwise would have been owed under this
22 Settlement.

23 76. If the Settlement is voided or fails for any reason, any costs incurred by the
24 Administrator shall be borne equally by Defendants and Plaintiff, unless otherwise specified in
25 this Agreement.

26 **L. Other Terms**

27 77. Waiver. The waiver by one Party of any breach of this Agreement by another
28 Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

1 78. Parties' Authority. The signatories hereto represent that they are fully authorized
2 to enter into this Agreement and bind the Parties hereto to the terms and conditions hereof.

3 79. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to
4 accomplish the terms of this Agreement, including but not limited to, execution of such
5 documents and to take such other action as may reasonably be necessary to implement the terms
6 of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts
7 contemplated by this Agreement and any other efforts that may become necessary by order of the
8 Court, or otherwise, to effectuate this Agreement and the terms set forth herein. As soon as
9 practicable after execution of this Agreement, Class Counsel shall, with the assistance and
10 cooperation of Defendants and Defense Counsel, take all necessary steps to secure the Court's
11 preliminary and final approval of the settlement, and the final entry of judgment.

12 80. No Prior Assignments. The Parties hereto represent, covenant, and warrant that
13 they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign,
14 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action,
15 cause of action or rights released and discharged by this Agreement.

16 81. No Admission. Defendants deny any and all liability to Plaintiff and/or any Class
17 Member and/or Aggrieved Employee in this Action, as to any and all causes of action that were
18 asserted or that might have been asserted in this Action. Nonetheless, Defendants wish to settle
19 and compromise the matters at issue in the Complaint to avoid further substantial expense and
20 the inconvenience and distraction of protracted and burdensome litigation. Defendants have
21 taken into account the uncertainty and risks inherent in litigation, and without conceding any
22 infirmity in the defenses that they have asserted or could assert against Plaintiff, have determined
23 that it is desirable and beneficial that Plaintiff's claims be settled in the manner and upon the
24 terms and conditions set forth in this Agreement.

25 82. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
26 Order, nothing contained herein, nor the consummation of this Agreement, is to be construed or
27 deemed an admission of liability, culpability, negligence, or wrongdoing on the part of
28 Defendants or any of the other Released Parties. Each of the Parties hereto has entered into this

1 Agreement with the intention of avoiding further disputes and litigation with the attendant
2 inconvenience and expenses. This Agreement is a settlement document, and it, along with all
3 related documents such as the notices, and motions for preliminary and final approval, shall,
4 pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be
5 inadmissible in evidence in any proceeding, except an action or proceeding to approve the
6 settlement, and/or interpret or enforce this Agreement. The stipulation for class certification as
7 part of this Agreement is for settlement purposes only and if, for any reason the settlement is not
8 approved, the stipulation will be of no force or effect.

9 83. No Publicity. The Parties will not publicize the Settlement or disclose it to third
10 parties prior to the Court granting Preliminary Approval, except as required or necessary to
11 effectuate its terms and comply with law.

12 84. Notices. Unless otherwise specifically provided herein, all notices, demands or
13 other communications given hereunder shall be in writing and shall be deemed to have been duly
14 given as of the third business day after mailing by United States registered or certified mail,
15 return receipt requested, addressed:

16 *To the Class:*

17 Brian J. Mankin
18 *brian@lmlfirm.com*
19 Lauby, Mankin & Lauby LLP
20 5198 Arlington Ave, PMB 513
Riverside, CA 92504
Tel: (951) 320-1444 | Fax: (951) 320-1445

21 *To Defendants:*

22 Tyler H. Brown, Esq. [CSB No. 259620]
23 *Tylerbrown@brownandbrownllp.com*
24 1152 N. Mountain Avenue, Suite 210
Upland, California 91786
25 Tel: (909) 982-5086

26 85. Construction. The Parties hereto agree that the terms and conditions of this
27 Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and
28 that this Agreement shall not be construed in favor of or against any Party by reason of the extent

1 to which any Party or his or its counsel participated in the drafting of this Agreement. Plaintiff
2 and Defendants expressly waive the common-law and statutory rule of construction that
3 ambiguities should be construed against the drafter of an agreement and further agree, covenant,
4 and represent that the language in all parts of this Agreement shall be in all cases construed as a
5 whole, according to its fair meaning.

6 86. Captions and Interpretations. Paragraph titles or captions contained herein are
7 inserted as a matter of convenience and for reference, and in no way define, limit, extend, or
8 describe the scope of this Agreement or any provision hereof. Each term of this Agreement is
9 contractual and not merely a recital.

10 87. Modification. This Agreement may not be changed, altered, or modified, except
11 in writing and signed by the Parties hereto, and approved by the Court. This Settlement
12 Agreement may not be discharged except by performance in accordance with its terms or by a
13 writing signed by all of the Parties hereto.

14 88. Dispute Resolution. Prior to instituting legal action to enforce the provisions of
15 this Agreement or to declare rights and/or obligations under this Agreement, a Party shall
16 provide written notice to the other Party and allow an opportunity to cure the alleged
17 deficiencies, and Plaintiff and Defendants may agree to seek the help of the Mediator to resolve
18 any dispute they are unable to resolve informally. During this period, the Parties shall bear their
19 own attorneys' fees and costs. This provision shall not apply to any legal action or other
20 proceeding instituted by any person or entity other than Plaintiff or Defendant.

21 89. Choice of Law. This Settlement Agreement shall be governed by and construed,
22 enforced and administered in accordance with the laws of the State of California, without regard
23 to its conflicts-of-law rules.

24 90. Integration Clause. This Settlement Agreement contains the entire agreement
25 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
26 or contemporaneous agreements, understandings, representations, and statements, whether oral
27 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
28 hereunder may be waived except in writing.

91. Binding On Assigns. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective heirs, trustees, executors, administrators, successors and assigns.

92. Signatures of All Class Members Unnecessary to be Binding. It is agreed that, because the members of the Class are numerous, it is impossible or impractical to have each Class Member execute this Agreement. The Notice will advise all Class Members of the binding nature of the release provided herein and such shall have the same force and effect as if this Agreement were executed by each Class Member.

93. Counterparts. This Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully signed Agreement, which shall be binding upon and effective as to all Parties. Electronic signatures shall have the same force and effect as an original.

Dated: September 27, 2023

PLAINTIFF AND CLASS REPRESENTATIVE:


Daniel Lopez (Sep 27, 2023 14:46 PDT)
Daniel Lopez

Dated: September 27, 2023

CLASS COUNSEL
LAUBY, MANKIN & LAUBY LLP


Brian J. Mankin
Attorneys for Plaintiff

Dated: September __, 2023

DEFENDANT MARTINEZ CONCRETE, INC.

By: _____ (name)
_____ (title)

1 91. Binding On Assigns. This Agreement shall be binding upon and inure to the
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13 signatures shall have the same force and effect as an original.

14
15 Dated: September __, 2023

PLAINTIFF AND CLASS REPRESENTATIVE:

16 _____
17 Daniel Lopez

18 Dated: September __, 2023

CLASS COUNSEL
LAUBY, MANKIN & LAUBY LLP

19 _____
20 Brian J. Mankin
21 Attorneys for Plaintiff

22
23 Dated: September __, 2023

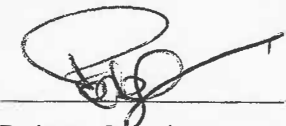
DEFENDANT MARTINEZ CONCRETE, INC.

24 
25 _____
26 By: _____ (name)
27 _____ (title)
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Dated: September __, 2023

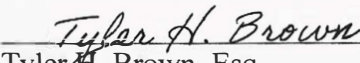
DEFENDANT ROBERTO MARTINEZ



Roberto Martinez

Dated: October 10 __, 2023

**COUNSEL FOR DEFENDANTS
BROWN & BROWN**



Tyler H. Brown, Esq.
Attorneys for Defendants

END OF DOCUMENT

EXHIBIT “B”

COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT

Lopez v. Martinez Concrete, Inc., et al.

(San Bernardino County Superior Court, Case No. CIVSB2208282)

***The San Bernardino County Superior Court 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 a class action lawsuit (“Action”) against Martinez Concrete, Inc., and Roberto Martinez (collectively, “Defendants”) for alleged unpaid wage claims.

The Action was filed by a former employee of Defendants, and seeks payment of unpaid wages, statutory damages and penalties, interest and attorneys’ fees on behalf of the “Class Members” defined as all current and former nonexempt employees employed by Martinez Concrete, Inc., in California at any time during the Class Period (which is April 21, 2018, through September 17, 2023). The Action also seeks penalties under the California Private Attorney General Act (“PAGA”) for all “Aggrieved Employees” defined as all current and former nonexempt employees employed by Martinez Concrete, Inc., in California at any time during the PAGA Period (which is April 21, 2021, through September 17, 2023).

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

[CLASS MEMBER NAME] **[ID/CONTROL NUMBER]**

Two Parts	Weeks Worked During: Class Period (Class Member) and PAGA Period (Aggrieved Employee)	Your Estimated Share
Class Member	INSERT (During Class Period)	\$INSERT (Individual Class Payment)
Aggrieved Employee	INSERT (During PAGA Period)	\$INSERT (Individual PAGA Payment)

Based on Defendants’ records, and the Parties’ current assumptions, your estimated Individual Class Payment (less withholding) and your Individual PAGA Payment are shown in the chart above, along with the Workweeks you are credited with working during the Class Period and PAGA Period, respectively, according to Defendants’ records. The actual amount you may receive could be adjusted depending on several factors. (If no amount is stated for your Individual PAGA Payment, then you are not eligible for an Individual PAGA Payment because you did not work during the PAGA Period.

If you believe that you worked more weeks during either period than Defendants’ records show in the chart above, you can submit a challenge by **DATE**, 2023 (“**Response Deadline**”). 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. 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 Defendants to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Defendants.

If you worked for Martinez Concrete during the Class Period and/or the PAGA Period, you have a few options as shown in the Chart below:

YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT	
DO NOTHING AND RECEIVE A SETTLEMENT PAYMENT	If you want to receive your full settlement payment, then no further action is required on your part. You will automatically receive a settlement payment if the Settlement receives final approval by the Court. You will be bound by the terms of the Settlement Agreement and will give up your right to sue on the Released Class Claims described in Section 3 .
EXCLUDE YOURSELF	If you do <u>not</u> wish to participate in the settlement of the Class Claims, you may “opt-out” of the settlement of the Class Claims. If you choose to opt-out, you must submit a Request for Exclusion by [REDACTED], 2023 (see Section 6 for more details on how to opt-out). If you opt-out, you will no longer be a Class Member, and you will (1) <u>not</u> receive an Individual Class Payment, but you will preserve your right to pursue the Released Class Claims described below subject to applicable statutes of limitations, and (2) be barred from filing an objection to the settlement. You cannot opt-out of the PAGA portion of the proposed Settlement. Defendants must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue PAGA Released Claims. See Section 6 of this Notice.
OBJECT	If you decide to object to the settlement with respect to the Class Claims because you find it unfair or unreasonable, you must submit an Objection stating why you object to the settlement by [REDACTED], 2023 (see Section 7 for details on how to object).
DISPUTE THE NUMBER OF WEEKS WORKED	If you believe the number of workweeks that you were credited with working in the chart above is incorrect, you may submit a written dispute to the Administrator (see Section 4 for more details on how to dispute your credited Weeks Worked). Defendants’ records will be presumed correct, but you may provide evidence to the Administrator showing how many Work Weeks you believe you should be credited.

YOU MAY ATTEND THE FINAL APPROVAL HEARING, BUT IT’S NOT REQUIRED	
DATE: INSERT DATE, 2024 TIME: 10:00 A.M.	At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.

1. WHAT IS THE ACTION ABOUT?

Plaintiff and Class Representative, Daniel Lopez, was a former employee of Martinez Concrete. The Action accuses Defendants of violating California labor laws due to the alleged: (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to failure to timely pay wages upon separation of employment, (f) failure to provide accurate itemized wage statements, (g) unfair and unlawful competition. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”). Plaintiff is represented by attorneys in the Action (“Class Counsel”). See Section 9 below for their contact information.

Defendants strongly deny violating any laws or failing to pay any wages and contend they complied with all applicable laws.

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

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

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

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

1. Defendants Will Pay \$320,000 as the Settlement Amount. Defendants have agreed to deposit \$320,000 (the “Settlement Amount”) into an account controlled by the Administrator of the Settlement. The Settlement Amount could increase if all Class Members collectively worked more than 8,800 Workweeks during the Class Period. The Administrator will use the Settlement Amount to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel’s attorneys’ fees and expenses, the Administrator’s Costs, and PAGA Penalties to be paid to the California Labor and Workforce Development Agency (“LWDA”). Assuming the Court grants Final Approval, Defendants will fund the Settlement not more than 15 days after the Court’s grants Final Approval, assuming that no Class Member objects or intervenes in the Settlement, which will delay payments until after the deadline to file an appeal or an appeal is resolved.

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

- A. Up to one-third of the Settlement Amount to Class Counsel for attorneys’ fees (currently estimated to be \$106,666.66) and up to \$20,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
- B. Up to \$7,500 to the Class Representative as a Service Payment for filing the Action, working with Class Counsel and representing the Class. The Class Representative’s Service Payment will be the only monies Plaintiff will receive other than Plaintiff’s Individual Class Payment and any Individual PAGA Payment.
- C. Up to \$XX to the Administrator for services administering the Settlement (unless the Court approves a higher or lower amount).
- D. Up to \$32,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% to Individual PAGA Payments to all Aggrieved Employees, which will be divided based on their share of Weeks Worked during the PAGA Period.

3. 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 remainder (the “Net Settlement”) by making Individual Class Payments to Participating Class Members based on their Weeks Worked during the Class Period.

4. Taxes Owed on Payments to Class Members. Plaintiff and Defendants are asking the Court to approve an allocation of 33.33% of each Individual Class Payment to taxable wages (“Wage Portion”) and 66.67% to penalties and

interest (“Non-Wage Portion”). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Defendants will separately pay employer payroll taxes they owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and Defendants have agreed to these allocations, neither side is giving you any advice on whether your payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any 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.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name.

If the monies represented by your check are sent to the Controller's Unclaimed Property, you should consult the rules of the Fund for instructions on how to retrieve your money.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you opt-out of the Settlement no later than the Response Deadline. See Section 6 of this Notice for details on how to Opt-Out.

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

8. Administrator. The Court has appointed a neutral company, **XX** (the “Administrator”) to send this Notice, calculate and make payments, and process Class Members’ Requests for Exclusion and Objections (if any). The Administrator will also decide any Disputes over weeks worked, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator’s contact information is contained in Section 9 of this Notice.

9. Participating Class Members' Release. After the Judgment is final and Defendants have fully funded the Settlement Amount and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Defendants or related entities for wages based on the facts alleged in the Action for the duration of the Class Period and PAGA Period, which are resolved by this Settlement.

The Participating Class Members will be bound by the following release: All Participating Class Members release the Released Parties from the claims stated in the Complaint, or that reasonably could have been alleged based upon the factual allegations in the Complaint, including: (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to failure to timely pay wages upon separation of employment, (f) failure to provide accurate itemized wage statements, (g) unfair and unlawful competition, and (h) all other claims for statutory penalties based on the facts or claims alleged in the Complaint (the “Released Class Claims”).

“Released Parties” includes Defendants and their parents, subsidiaries, directors, owners, shareholders, officers, agents, attorneys, servants, joint employers and employees, past and present, and each of them and anyone acting in concert with foregoing.

10. Release of Released PAGA Claims. After the Court's judgment is final, and Defendants have paid the Settlement Amount (and separately paid the employer-side payroll taxes), Plaintiff, the State of California, the LWDA and Aggrieved Employees shall release the Released Parties from all PAGA claims that Plaintiff alleged against the Released Parties, on behalf of the Aggrieved Employees and the State of California, based on the facts alleged or that reasonably

could have been alleged based on the factual allegations in the Complaint and in the relevant LWDA notice letter, including all PAGA claims seeking civil penalties premised upon (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest breaks, (e) failure to failure to timely pay wages each period and upon separation of employment, (f) failure to provide accurate itemized wage statements, (g) failure to maintain employment records, and (h) all other claims for civil penalties recoverable under the Private Attorneys General Act, Labor Code §§ 2698 *et seq.* based on the facts or claims alleged in the Complaint. Under *Robinson v. Southern Counties Oil Co.*, 53 Cal.App.5th 476 (2020), the Released PAGA Claims apply to all Aggrieved Employees, regardless of whether they request exclusion from the class (“Released PAGA Claims.”) The time period governing the Released PAGA Claims shall be any time during the PAGA Period.

4. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Weeks Worked by all Participating Class Members during the Class Period, and (b) multiplying the result by the number of Weeks Worked by each individual Participating Class Member during the Class Period.

2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$8,000 by the total number of Weeks Worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by the number of Weeks Worked by each individual Aggrieved Employee during the PAGA Period.

3. Disputing Weeks Worked. The number of weeks you worked during the Class Period and PAGA Period, as recorded in Defendants’ records, are stated in the first page of this Notice. You have until **INSERT DATE HERE** (“Response Deadline”) to dispute the number of Workweeks credited to you by submitting evidence to the Administrator.

You need to support your dispute by sending copies of pay stubs or other records. The Administrator will accept Defendants’ calculation of weeks worked based on Defendants’ records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Workweek challenges based on your submission and on input from Class Counsel and Defendants’ Counsel. The Administrator’s decision is final. You can’t appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members and Aggrieved Employees. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (*i.e.*, every Class Member who does not opt-out) and Aggrieved Employee. The single check will combine the Individual Class Payment and the Individual PAGA Payment.

2. Aggrieved Employees Only. If you opted out of the Class settlement, but qualify as an Aggrieved Employee, then the Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee, including those who opt out of the Class Settlement.

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

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

If you **do not** wish to take part in the release of the Class Claims in the Settlement, you may exclude yourself by sending to the Settlement Administrator a “Request for Exclusion” letter/card postmarked no later than , 2023 with your full name, address, telephone number, last four digits of your social security number or your date of birth, and signature. The Request for Exclusion should state:

“I WISH TO BE EXCLUDED FROM THE CLASS IN THE MARTINEZ CONCRETE LAWSUIT. I UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE

SETTLEMENT CLASS, I WILL NOT RECEIVE MY INDIVIDUAL CLASS
PAYMENT FROM THIS LAWSUIT.”

Any person who submits a timely Request for Exclusion from the Class Claims (1) will not have any rights under this Settlement, including the right to object, appeal or comment on the Settlement; (2) will not be entitled to receive an Individual Class Payment; (3) will preserve the right to pursue the Released Class Claims, and (4) will not be bound by this Settlement, or the Judgment.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement remain eligible for Individual PAGA Payments.

If you do not want to participate in the Settlement, the Administrator will exclude you based on timely receipt of a writing communicating your request to be excluded. Be sure to personally sign your request, identify the Action as Lopez v. Martinez Concrete, Inc., and include your identifying information (full name, address, telephone number, approximate dates of employment, and last four digits of social security number or your date of birth for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **Send your request to be excluded to the Administrator by [REDACTED], 2023 (the “Response Deadline”), or it will be invalid.** Section 9 of the Notice has the Administrator’s contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. A Participating Class Member who disagrees with any aspect of the Settlement may wish to object. **The deadline for sending written objections to the Administrator is [REDACTED], 2023 (the “Response Deadline”).**

If you wish to object to the proposed Settlement, you or your own attorney must submit a written objection, and the objection must include your full name, address, telephone number, last four digits of the social security number or date of birth, signature, and dates of employment with Defendants, in addition to the case name and number (Lopez v. Martinez Concrete, Inc., Case No. CIVSB2208282), the basis for the objection, including any legal support and each specific reason in support of the objection, as well as any documentation or evidence in support thereof. Additionally, if you are represented by an attorney, the objection must include the name and address of your attorney. This objection and all supporting information must be sent to the Administrator at the address listed in Section 9, **postmarked** on or before [REDACTED], 2023.

If you do not comply with these procedures and the deadline for objections, the Court may not consider your objection at the Final Approval Hearing, and you may lose the right to contest the approval of the Settlement. You are still eligible to receive a settlement payment should the settlement become Final even if you object to the settlement. Submitting an objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is preserved by becoming a party of record by timely and properly intervening or filing a motion to vacate the judgment before entry of judgment.

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. WHEN IS THE FINAL APPROVAL HEARING?

On [REDACTED], 2024, the Court will hold a public hearing in in Department S17 of the Superior Court for the State of California, County of San Bernardino, 247 West 3rd Street, San Bernardino, CA 92415, for the purposes of determining whether the proposed Settlement is fair, adequate and reasonable and should be approved, whether to approve Class Counsel’s applications for attorneys’ fees and costs, whether to approve the payments to the LWDA, and whether to approve Plaintiff’s request for the service award. This hearing may be continued or rescheduled by the Court. Objectors to the proposed settlement will be provided notice in the event that the Final Approval Hearing is continued to a later date. Class Members who support the proposed Settlement do not need to appear at the hearing and do not need to take any other

action to indicate their approval. Class Members who object to the proposed Settlement are not required to attend the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

If you have questions about this Notice, the process to Opt-Out or Object, or the Settlement, or if you did not receive this Notice in the mail and you believe that you are or may be a member of the Class, you should contact the Administrator for more information or to request that a copy of this Notice be sent to you in the mail.

Settlement Administrator
Name
Mailing Address
Telephone Number

If you wish to communicate directly with Class Counsel, you may contact them at the contact information noted here:

Class Counsel
Brian Mankin, Esq. <i>brian@LMLfirm.com</i> Misty Lauby, Esq. <i>misty@LMLfirm.com</i> Lauby Mankin Lauby LLP 5198 Arlington Ave, PMB 513 Riverside, CA 92504 Tel: (951) 320-1444

You may also seek advice and guidance from your own private attorney at your own expense, if you so desire.

This Notice is only a summary. For more detailed information, you may review the Settlement Agreement, containing the complete terms of the proposed Settlement, which is on file with the Court and attached to the Declaration of Brian J. Mankin in Support of Motion for Preliminary Approval of Class Action Settlement filed on XX, 2023 and which is available to be inspected at any time during regular business hours the Office of the Clerk, San Bernardino County Superior Court, located at 247 West Third Street, San Bernardino, CA 92415.

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

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 for instructions on how to retrieve the funds.

11. WHAT IF I CHANGE MY ADDRESS?

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

EXHIBIT “C”



April 19, 2022

Sent Via Online Filing to the LWDA

California LWDA
Attn: PAGA Administrator
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

Sent Via U.S. Mail and Certified Mail

Martinez Concrete, Inc.
920 W. Foothill Blvd.
Azusa, CA 91702

T. Roberto Martinez
920 W. Foothill Blvd.
Azusa, CA 91702

Re: PAGA Civil Penalty Claim
Daniel Lopez v. Martinez Concrete, Inc., et al.

To the Labor and Workforce Development Agency, Martinez Concrete, Inc., and T. Roberto Martinez:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as notification of the PAGA civil penalty claim of aggrieved employee Daniel Lopez (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against his employer(s), Martinez Concrete, Inc., and/or any affiliated entities, Mr. T. Roberto Martinez (the “Company”), for violations of Labor Code §§ 200, 201, 202, 203, 204, 208, 210, 218.6, 226, 226.3, 226.7, 256, 510, 512, 558, 1194, 1194.2, 1197, 1197.1, 1198, 1199, and 2802 among possibly other sections inadvertently omitted, and/or sections of the applicable Industrial Welfare Commission Wage Order(s).

FACTUAL BACKGROUND

Claimant was employed by the Company between approximately July 24, 2019 through March 7, 2022. Claimant alleges that, at all relevant times, he and all other non-exempt employees employed by the Company in California (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations to Claimant was subjected during his employment.

For instance, at all relevant times, Claimant and the Aggrieved Employees were not provided proper minimum and overtime wages due to the Company’s failure to accurately record and compensate for all hours worked. Among other violations, the Company failed to pay Claimant that the Aggrieved Employees for time spent loading their work trucks and traveling from the Company’s yard in Azusa to worksites throughout Los Angeles County and other locations throughout Southern California. For example, Claimant was required to arrive at the yard at 5:00 a.m. in the morning to load the work truck with supplies and tools needed for the day’s job, but he was not allowed to clock in for work until he reached the jobsite at 7:00 a.m. In addition, regardless of when Claimant and Aggrieved Employees arrived at the jobsite and began to perform work, they were required to clock-in or record on their timesheets that they started at 7:00 a.m.

Moreover, the Company failed to pay reporting time pay on days where Claimant and Aggrieved Employees report to work but are sent home because, for example, the jobsite is not ready, or the weather conditions do not allow for work to be performed. Similarly, when the Company did not have enough work for Claimant and the Aggrieved Employees to do, Claimant and the Aggrieved Employees would show up for work at 5:00 a.m. and be told to return at 7:00 a.m. to perform work at the yard without being paid reporting time pay. Similarly, if Defendants did not have any work for Claimant and the Aggrieved Employees perform at the start of the shift, Claimant and the Aggrieved Employees were forced to wait up to 2 hours to begin work without being paid any wages while on forced standby.

Additionally, the Company fails to pay overtime hours at the correct overtime rate on the occasions when the Aggrieved Employees worked in excess of 8 and/or 12 hours per day and/or 40 hours per week. In addition to the issues of unpaid work detailed above, the Company failed to pay proper overtime compensation to Claimant because, when calculating the overtime owed each period, the Company unlawfully utilized the “rate in effect” method to calculate and pay overtime rather than the proper “weighted average” method during pay periods where Claimant and the Aggrieved Employees worked government contract prevailing wage jobs and performed work at a lower rate for things such as private contract jobs, work at the yard, or drive time in the same pay period.

Claimant was also not provided 30-minute off-duty meal periods, as mandated by California law, during employment with the Company. As a result of the Company’s policies and practices, Claimant was subjected to meal period violations when he was: (1) instructed not to take a lunch due to company policy despite never agreeing to waive his lunch period, (2) unable to take a meal period due to workload, (3) forced to take an on-duty meal period while under the control of the Company, (4) forced to take a meal period after the 5th hour of work, and (5) not provided mandated second or third meal periods on shifts in excess of 10 hours or 15 hours, respectively. Even on occasions when they were denied a meal period, the Company nevertheless automatically deducted 30 minutes of pay.

The Company also failed to provide Claimant with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. The Company did not schedule Claimant’s rest breaks, Claimant was unable to leave the premises for breaks, and Claimant was often not authorized and/or permitted to take mandated rest breaks due to company policies and being overwhelmed by the hectic workload. Furthermore, on occasions when Claimant worked in excess of 10 hours in a shift, the Company failed to authorize and/or permit a third mandated rest break.

The Company also failed to comply with the mandates of Labor Code § 204 regarding the timing of the payment of wages to its employees each period, including meal and rest period premiums. Also, the Company failed to comply with the mandates of Labor Code §§ 201 – 203 regarding payment of final wages upon separation of employment. Finally, during his employment with the Company, Claimant received inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a). Specifically, Claimant alleges that the Company failed to provide wage statements that listed all applicable rates of pay and total hours worked, among other violations - in direct violation of Labor Code § 226(a).

Furthermore, Claimant alleges that T. Roberto Martinez is now and at all relevant times was the owners of Martinez Concrete, Inc., and were Claimant’s and the Aggrieved Employees’ actual employer or, in the alternative, were individuals employed by the Company as managerial and/or supervisory employees and/or agents. In addition, Claimant alleges that at all relevant times Mr. Martinez had the authority, in the



interest of Martinez Concrete, Inc. to exercise independent judgment to hire, transfer, promote, discharge, assign, discipline, or take other similar actions against Claimant and the Aggrieved Employees, and were in Claimant's chain of command at the time of and direct participants in the wrongful conduct which constitutes the basis of Claimant's complaint herein. Claimant also alleges that Martinez Concrete, Inc. and Mr. Martinez are the agents, servants, employees, partners, affiliates, and/or representatives of each other, and were, at all times herein mentioned, acting within the course, scope, and purpose of such relationship(s) and with the knowledge, consent and/or ratification of each other. Furthermore, in conducting themselves in the manner described herein, Martinez Concrete, Inc. and Mr. Martinez were acting in active concert with on another such that the acts of each were fully attributable to the other in all material respects.

Claimant also alleges that Martinez Concrete, Inc. and Mr. Martinez were merely the alter-ego of the other in that there existed a unity of interest and ownership such that any separateness between them ceased to exist and each exercised undue dominance, control, influence, and management over the other. Claimant further alleges that, at all relevant times, Martinez Concrete, Inc. has been inadequately capitalized to conduct business, has failed to follow appropriate corporate formalities, and has simply been a shell and instrumentality through which Mr. Martinez has conducted his personal affairs. Adherence to the fiction of the separate existence of Martinez Concrete, Inc. would permit abuse of the corporate privilege, thereby sanctioning fraud and promoting injustice. Accordingly, the corporate veil should be pierced, and any liability attached to Martinez Concrete, Inc. should be imposed jointly and severally against Mr. Martinez.

Finally, in an additional separate, but not necessarily mutually exclusive, alternative theory of liability, Mr. Martinez is liable for PAGA civil penalties under Labor Code § 558 as "other person(s)" who caused the violations regarding minimum wage among other claims. See *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 ("if there is evidence and a finding that a party other than the employer 'violates, or causes to be violated' the overtime laws (§ 558(a)) or 'pays or causes to be paid to any employee' less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties regardless of the identity or business structure of the employer"); *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S.Dist.LEXIS 40851 (same)

As a result of these violations, and others described below, Claimant alleges that he and other Aggrieved Employees were denied specific rights to which they are/were entitled under California law and the rules promulgated by the IWC Wage Orders, including the following:

**PAGA ASSESSMENT FOR FAILURE TO
PAY ALL MINIMUM, REGULAR, AND OVERTIME WAGES**

(Labor Code §§ 204, 221-223, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order §§ 3, 4(B), 5)

As discussed above, the Company failed to pay all required minimum, regular, and overtime wages to Claimant and the Aggrieved Employees due to the Company's failure to accurately record and compensate for all hours worked. This resulted in earned, but unpaid, wages due and owing to Claimant and the Aggrieved Employees. This resulted in earned, but unpaid, wages due and owing to Claimant and the Aggrieved Employees. Therefore, Claimants and the Aggrieved Employees performed work for the Company without receiving proper payment of the requisite minimum, overtime, and/or doubletime wages.

Accordingly, Labor Code §§ 210, 558, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages including, but not limited to, minimum, regular, and overtime wages in violation of the Labor Code and/or the IWC Wage Orders.



**PAGA ASSESSMENT FOR DENIAL OF MEAL PERIODS,
REST BREAKS, AND WAGE PREMIUMS**

(Labor Code §§ 226.7(b) & (c), 512, 558; Cal. Admin. Code, Title 8, § 11090)

Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ...” Labor Code § 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than 5 hours per day without providing the employee with an uninterrupted meal period of not less than 30 minutes [...] [a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.”

Section 12 of applicable IWC Wage Order states in pertinent part: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

Here, Claimant and other Aggrieved Employees were regularly not provided compliant mandatory meal periods and paid rest breaks due to the Company’s policies described above. Although the Company was required to pay Claimant and all Aggrieved Employees premium wages equal to an additional hour of pay at the employee’s regular rate of pay for each violation under Labor Code § 226.7(c), the Company did not pay the mandatory one-hour wage premiums. Labor Code § 558 imposes a penalty for each violation, plus an amount sufficient to recover the underpaid wages. Additionally, the civil assessment set forth in Labor Code § 2699 applies to these violations.

**PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**

(Labor Code §§ 204, 204.1, 208, 256 and 2699)

Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

As a result of the Company’s failure to pay Claimant and the Aggrieved Employees all compensation to which they were entitled, the Company had a pattern and practice of failing to pay all wages due and owing to Claimant and the Aggrieved Employees within the time mandated by Labor Code § 204. As a result of these violations, penalties may be assessed pursuant to Labor Code §§ 203, 210, 256, and/or 2699.

PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES

(Labor Code §§ 201, 202, 203, 256 and 2699)

Labor Code § 201(a) provides in pertinent part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202(a) states in



pertinent part “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours’ previous notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.” Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

The Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment in accordance with Labor Code §§ 201-202. As a result, all such Aggrieved Employees are entitled to 30 days of wages as a “waiting time penalty.” (Labor Code §§ 203, 256.) Labor Code § 2699 also imposes a penalty.

**PAGA ASSESSMENT FOR FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS**

(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the pay period, the employee’s name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all times pertinent hereto, the Company failed to provide accurate itemized wage statements to Claimants and all Aggrieved Employees due to violations including the failure to state total hours worked during the period and the failure to state all applicable hourly rates of pay and number of hours worked at each rate. Additionally, the Company’s wage statements failed to accurately state gross wages earned, all deductions, net wages earned, and the name and address of the legal entity that is the employer. Accordingly, Claimants are entitled to damages under Labor Code § 226(e), including reasonable attorneys’ fees. Labor Code §§ 226.3 and 2699 also impose a civil penalty and/or assessment for these violations.

PAGA ASSESSMENT FOR FAILURE TO MAINTAIN EMPLOYMENT RECORDS

(Labor Code §§ 1174, 1174.5, 1198, and § 7 of the IWC Wage Orders)

Labor Code § 1174(d), and § 7 of the IWC Wage Orders require employers to maintain accurate employment records, including accurate payroll records showing the total number of regular and overtime hours worked each day by employees, including meal periods, and the gross wages earned by the employee, including all applicable pay rates and the corresponding number of hours worked at each pay rate, among other requirements.

Here, the Company failed to maintain accurate employment records as mandated by California law. Therefore, in addition to recovering the amount of attorneys’ fees and cost incurred herein, Claimant is entitled to the assessment of civil penalties in accordance with Labor Code §§ 1174(d), 1174.5, 1199, and 2699.



PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199

(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company's violations described herein, the Company is subject to the civil penalties in accordance with Labor Code § 2699.

ATTORNEYS' FEES, INTEREST, AND PENALTIES

(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys' fees, and costs of suit. Additionally, Claimants seek the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 1197.1, 2699, and/or § 20 of the IWC Wage Orders, among possibly other provisions inadvertently omitted herein. Furthermore, Claimants is entitled to bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees.

Additionally, Claimant seeks attorney's fees pursuant to C.C.P. § 1021.5. Please construe this correspondence as Claimants' notification of alleged wrongdoing and attempted resolution in accordance with C.C.P. § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

CONCLUSION

Based on the foregoing, the Company may be liable for penalties related to the foregoing claims and remedies. If Claimant becomes aware of any additional claims for Labor Code violations related to his employment and/or other employees of the Company, he reserves the right to add new claims by amending this claim letter.

Should you have any questions, please feel free to give me a call. In the meantime, I look forward to your response.

Very Truly Yours,



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EXHIBIT “D”