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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 J. MANKIN,
ESQ., IN SUPPORT OF MOTION FOR
FINAL APPROVAL OF CLASS ACTION
SETTLEMENT**

Hearing
Date: February 27, 2024
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. I manage the employment law department and am a partner with the law firm of Lauby Mankin Lauby LLP, which has offices in Orange County and Riverside County. 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 Final 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 well over 500 employee vs. employer litigation matters during my
7 23 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 well over 250 class action and
10 representative action wage/hour cases, and have been appointed by the court as class counsel and
11 have received final court approval and judgment in over half of those actions to date, and
12 anticipate 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). My team and I once held the record for the largest known PAGA-only
17 case in California's history, which followed extensive litigation, summary adjudication and writs
18 to the CA Supreme Court against a Fortune 50 company (Garcia v. Macy's, San Bernardino
19 Superior Court).

20 5. I have tried two major class and PAGA cases against Fortune 100 companies. In
21 2018, I was lead counsel in a PAGA case that my firm tried in the Orange County Superior Court
22 and received a \$450,000 judgment. In 2019, I was co-counsel in a class action case against
23 Walmart in District Court, wherein the jury awarded Plaintiffs and the class over \$6 million.
24 Both cases were appealed.

25 6. I was named by the LA Times as one "Southern California Leading Lawyers" in
26 the May 2023 issue of Consumer Attorney's of Southern California (a recognition given to 17
27 employment/labor law attorneys in 2023). Additionally, over the last five consecutive years, I
28 have been selected by my peers as a "Super Lawyer" in Employment Litigation, a distinction that

only 5% of lawyers receive.

ADEQUACY OF THE SETTLEMENT

7. The Class, as conditionally certified by this Court, consists of 75 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 (the “Class Members”).

8. As set forth in the Declaration of the Settlement Administrator, the Net Settlement Amount is approximately \$175,693.62, after the deductions set forth in the chart below:

<i>Gross Settlement Amount</i>	\$ 350,977.22
Attorneys’ Fees (1/3)	\$ 116,992.41
Litigation Costs	\$ 13,191.19
Administrator Costs	\$ 5,600.00
PAGA Penalties	\$ 50,000.00
Class Representative Service Award	\$ 7,500.00
<i>Net Settlement Amount</i>	\$ 175,693.62

9. The process of mailing the Class Notice was successful, as 100% of the Notices were deemed deliverable by the Settlement Administrator.

10. The response from the Class Members was overwhelmingly positive, as no Class Members objected or opted-out of the Settlement.

11. As discussed at length in Plaintiff’s motion for preliminary approval, as well as in the Motion for Final Approval, this Settlement is reasonable in light of Defendant’s financial condition and the necessary payment plan.

12. Sufficient information existed to allow Class Counsel to intelligently value this case. Given the parties’ arms’ length bargaining facilitated by a reputable and experienced wage and hour mediator, the exchange of informal discovery, the experience of Class Counsel, the fact that 100% of the Class elected to participate and no objections were submitted, the presumption of fairness is justified.

13. I believe that the Settlement is fair, reasonable and adequate, and in the best interests of the Class, given the litigation risks and delay inherent in further litigation and possible appeals. As set forth in Plaintiff’s motion for preliminary approval and the declarations

submitted in support thereof, Defendants contested Plaintiff's claims, and Plaintiff faced real challenges moving forward and obtaining a recovery in this matter. Nonetheless, the Parties concluded that further litigation would be protracted and expensive, and that it is desirable that the action be fully and finally settled in the manner and upon the terms and conditions set forth in the Settlement Agreement in order to limit further expense, inconvenience and distraction, to dispose of burdensome and protracted litigation, and to permit the operation of Defendants' business without further expensive litigation and the distraction and diversion of its personnel with respect to matters at issue. All parties took into account the uncertainty of risks inherent in any litigation, especially in complex cases such as this case. The Parties determined that it is desirable and beneficial to both the Class and Defendants that this case be settled. Risks on both sides were considered in reaching the Settlement Agreement. The recoveries contemplated by the Settlement represent a good result for the Class, fairly proportioned to the likely risk-adjusted recovery in litigation.

ADEQUACY OF COUNSEL AND
REASONABLENESS OF REQUESTED FEE AND COST AWARDS

14. As set forth above, I have handled well over 250 class and representative actions, have been appointed as class counsel and have successfully resolved approximately half of those actions, and many others remain pending and will successfully resolve in the future while recovering in excess of \$250 million dollars for my clients and Class Members. This is substantially better than average accordingly to Mayer Brown LLP's study entitled, An Empirical Analysis of Class Actions, cited in *Laguna v. Coverall North America, Inc.* (9th Cir. 2014) 753 F.3d 918, which found that only one-third of class actions are successful, compared to two-thirds that are defeated and result in no payment to the class members.¹

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

¹ www.mayerbrown.com/files/uploads/Documents/PDFs/2013/December/DoClassActionsBenefitClassMembers.pdf

1 16. It has been my experience that the benchmark for attorney fee awards in
2 California state cases is one-third of a common settlement fund, which the CA Supreme Court
3 upheld in the *Robert Half* case. Here, in accordance with the Settlement Agreement, Class
4 Counsel is seeking a fee of \$116,992.41, which is one-third of the Settlement Amount.

5 17. There are several additional factors why I believe that the Court should award
6 one-third of the common fund as reasonable attorneys' fees. First, Class Counsel's efforts
7 resulted in a common fund settlement amount of \$350,977.22. This is a good result in light of
8 the disputed nature of the claims alleged. This result was achieved by the work and success of
9 my office, who negotiated the settlement after necessary preparation, investigation, mediation,
10 and work thereafter.

11 18. Second, Plaintiff faced significant risks going forward with the litigation. As
12 discussed in the motion for preliminary approval, Defendants raised various defenses and there
13 were potential appellate issues. Accordingly, Plaintiff faced risky issues going forward with this
14 litigation.

15 19. Third, Class Counsel are experienced class action litigators. This experience and
16 expertise, combined with the high quality of work performed in this case, resulted in the
17 settlement achieved in this case.

18 20. Fourth, Class Counsel have been representing Plaintiff in this matter strictly on a
19 contingency fee basis. To that end, we have incurred the risk of non-recovery after investing a
20 substantial amount of time, money, and resources, and have done so since the inception of this
21 case without any payment or compensation. If Plaintiff had lost this case, we would have
22 recovered nothing, and would have lost our out-of-pocket costs. This is not an easy burden for
23 my office, which is a small firm. While some cases result in a positive lodestar and some in a
24 negative lodestar like this case, if, despite these hardships and risks, the best my office could
25 hope for is merely to be paid our hourly rate, then Class Counsel would not be compensated for
26 the hardships and serious risks we face when litigating contingency fee cases, and would not be
27 incentivized to take on similar cases in the future. Indeed, not all class/PAGA cases are
28 successful. Many cases end with no fees or a greatly reduced fee that is far less than lodestar like

1 this one, often due to no fault of counsel (i.e., bankruptcy, change in the law, consolidation-
2 coordination-preemption, being top filed, etc.). As noted in the Mayer Brown LLP's study
3 discussed above, only one-third of class actions are successful, compared to two-thirds that are
4 defeated and result in no payment to the class members. As exemplified by the contingent nature
5 of high risk class action litigation, I can further attest to having had many cases result in (a) zero
6 recovery, (b) negative multiplier and (c) an individual settlement in lieu of a class recovery.

7 21. Fifth, the request for attorney's fees in the amount of one-third of the common
8 fund falls well within the norms accepted by state and federal courts in California in comparable
9 wage and hour actions actually handled by my office. Moreover, the award of a one-third fee
10 recovery under the common fund doctrine was approved by the California Supreme Court in
11 *Laffitte v. Robert Half*.

12 22. For all of the above reasons, a common fund fee award here in the amount of one-
13 third of the common fund created by Plaintiff and Class Counsel is fair and reasonable.

14 23. At my office, this case was primarily handled by Misty Lauby, while I performed
15 the role of the supervising attorney. As set forth in her declaration, Ms. Lauby works exclusively
16 with me on employment law matters and has been in practice for 16 years. She bills at the
17 hourly rate of \$650/hour. I have been in practice for 23 years, with most of those years handling
18 complex litigation and for over the last 15 years, my practice has almost entirely consisted of
19 handling class action wage and hour matters. My billing rate is \$775/hour. I believe these rates
20 are consistent with Plaintiff and Defense attorneys who handle complex class action litigation, if
21 not somewhat lower.

22 24. The hourly rates above are comparable to those of other attorneys with equal or
23 similar experience, if not somewhat lower (i.e., the Laffey Matrix at www.laffeymatrix.com
24 indicates that the benchmark rates are: \$676/hour for an 8–10-year attorney, \$764/hour for a 11-
25 19 year attorney, and \$919/hour for a 20+ year attorney). Moreover, the Wolters Kluwer 2023
26 Real Rate Report ("Real Rate Report") provides directly applicable information in this regard.
27 The Real Rate Report is based on an enormous and statistically significant compilation of data,
28 comprising millions billing entries from a hundred thousand individual timekeepers who worked

at thousands of law firms. The Real Rate Report then compiles and analyzes this data to provide the hourly rates for partners and associates in major metropolitan areas. For the southern California area: (a) the rates for partners in Los Angeles is between \$840 and \$1,159 per hour for the middle and upper quartiles, and (b) the rates for associates with seven or more years of experience, the median rate is \$674 per hour, and the upper quartile rate is \$888 per hour. And, perhaps most importantly, the information provided in the Real Rate Report is not based on self-reported numbers, surveys, sampling, or reviews or other publications – instead, the Real Rate Report is based on the actual hours and fees billed by law firms.

25. The table below includes a summary of the hours worked, plus an estimated 30 hours that I will bill in finalizing and filing the motion, preparing for and attending the approval hearing, and working with the administrator and defense counsel over a one year period until funds are disbursed to the State Controller. The total lodestar for my firm is approximately \$137,185 through the conclusion of this matter. This results in a *negative* multiplier, as summarized in the following table, and in the submitted declarations of the handling attorneys:

Attorney/Timekeeper	Rate	Hours	Fee
Brian J. Mankin <i>Trial Counsel / Partner</i> (23 Years)	\$775	84²	\$65,100
Misty Lauby <i>Handling Attorney</i> (16 Years)	\$650	110.9	\$72,085
Grand Total for All Attorneys			\$137,185

26. The fee is warranted because of the results achieved for the Class Members, both in terms of the immediate cash settlement, as well as the fact that the Class Members resoundingly supported the Settlement. Defendants do not oppose this fee request.

27. In the course of prosecuting this action, Class counsel have incurred expenses that were incidental and necessary to the effective representation of the Class. These expenses

² Includes an estimated 15 hours of additional work preparing for and attending the hearing, as well as 15 hours in anticipated work to be performed after the final approval, particularly in light of the payment plan, as it will require considerable more work with counsel, administrator, and Class Members.

1 included but were not limited to: court filings, copying and management of documents, on-line
2 Lexis research, messenger services, postage, mediator fees, and other incidental expenses
3 directly related to this action. The Settlement Agreement provided up to \$20,000 in costs.
4 Through final approval, my office incurred \$13,191.19 in litigation costs (see Exhibit “B”
5 attached hereto). The saving will be placed in the Net Settlement Amount for payment to the
6 Class Members. Defendants do not oppose this request for costs.

7 REASONABLENESS OF REQUESTED SERVICE AWARDS

8 28. I also believe that the service award of \$7,500 for Plaintiff is fair and warranted
9 for the reasons outlined in his declarations and in the motion. He came forward and worked
10 directly with my office in analyzing the claims and documents, and providing valuable
11 information. (See his declaration for supporting information.) Indeed, his participation was an
12 essential element of Defendant’s desire to mediate and of the pre and post mediation analysis
13 that allowed Class Counsel to settle the case. Of course, he also took on various risks, including
14 the risk that he could have been ordered to pay Defendant’s costs if he lost and the risk of
15 retaliation and being black-balled in the industry. Finally, Defendants do not oppose the
16 requested service award.

17 SUBMISSION TO THE LWDA

18 29. The Motion and declarations, including the Settlement Agreement, have
19 concurrently been submitted to the LWDA. (See Exhibit “C”).

20 EXHIBITS AND CONCLUSION

21 30. A true and correct copy of the Settlement Agreement is attached hereto as Exhibit
22 “A.”

23 31. Attached hereto as Exhibit “B” is a true and correct copy of an itemized statement
24 of my firm’s litigation costs.

25 32. The LWDA’s confirmation of receipt of this Motion and Declaration is attached
26 hereto as Exhibit “C.”

27 33. For the foregoing reasons, it is respectfully requested that the Court grant final
28 approval of the settlement as being fair, reasonable, and in the best interest of the class, and

1 approve the requested attorneys' fees, costs, and service award.

2 I declare under penalty of perjury under the laws of the State of California that the
3 foregoing is true and correct. Executed on February 1, 2024, at Riverside, California.

4
5 By: 
6 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).

27 ///

28 ///

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

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

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

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

23 **D. Release by the Participating Class Members**

24 48. Upon entry of the Final Approval Order and Defendants funding of the Settlement
25 Amount and the required employer-side payroll taxes, and except as to such rights or claims as
26 may be created by this Agreement, Plaintiff and the Participating Class Members will forever
27 completely release and discharge the Released Parties from the Released Class Claims for the
28 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
2 benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
3 successors and assigns.

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12 signed Agreement, which shall be binding upon and effective as to all Parties. Electronic
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

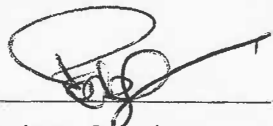
DEFENDANT MARTINEZ CONCRETE, INC.

24 
25 _____
26 By: _____ (name)
27 _____ (title)
28

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Dated: September __, 2023

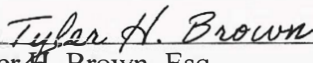
DEFENDANT ROBERTO MARTINEZ



Roberto Martinez

Dated: October 10 __, 2023

**COUNSEL FOR DEFENDANTS
BROWN & BROWN**



Tyler H. Brown, Esq.
Attorneys for Defendants

END OF DOCUMENT

EXHIBIT “B”

All Expenses

Lauby, Mankin & Lauby LLP

Staff Member = All (Active Only)
Group By Staff Member Group
Client - Project = 14000-00495 Lopez v Martinez
Concrete (Active Only)
Activity Code = All
Expense Code = All
View = Original
Approval Status = All
Selected Expenses = All
From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
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Daniel Lopez
14000-00495 Lopez v Martinez Concrete

04-19-2022	Approved		Non-Billable	E112 Court fees L.	Grossi, Tracie	75.00	0.00	1.00	75.00
04-19-2022	Approved	LWDA fee to submit PAGA ltr							
04-19-2022	Approved	76 copies @ .06 each - Letters to company	Non-Billable	E101 Copying	Chiarito, Tracie	0.06	0.00	76.00	4.56
04-25-2022	Approved	Bosco Inv#6978312 File and conform. -Certificate of Assignment -Civil Case Cover Sheet -Summons -Complaint *Advance fees, including complex case* Court: San Bernardino County Superior Court - Central District Completed on: 04/21/2022	Non-Billable	Attorney Service	Grossi, Tracie L.	1,628.50	0.00	1.00	1,628.50
05-03-2022	Approved	Postage for April 2022	Non-Billable	E108 Postage	Grossi, Tracie L.	16.92	0.00	1.00	16.92
05-17-2022	Approved	Bosco Inv#7062585 Serve: Martinez Concrete, Inc., a California Corporation Summons; Complaint; Civil Case Cover Sheet; Certificate of Assignment; ADR Court: San Bernardino County Superior Court - Central District Completed on: 05/12/2022	Non-Billable	Attorney Service	Grossi, Tracie L.	140.41	0.00	1.00	140.41
05-20-2022	Approved	Bosco Inv#7062591 Serve: T. Roberto Martinez, an individual Summons; Complaint; Civil Case Cover Sheet; Certificate of Assignment; ADR Court: San Bernardino County Superior Court - Central District Completed on: 05/16/2022	Non-Billable	Attorney Service	Grossi, Tracie L.	140.41	0.00	1.00	140.41
08-01-2022	Approved	8 copies @ .06 for Nic of Change of Address	Non-Billable	E101 Copying	Chiarito, Tracie	0.06	0.00	8.00	0.48
08-10-2022	Approved	Courtcall ID #11570682 for 8/9/22 CMC	Non-Billable	Attorney Service	Chiarito, Tracie	94.00	0.00	1.00	94.00

All Expenses
Lauby, Mankin & Lauby LLP

Staff Member = All (Active Only)
Group By Staff Member Group
Client - Project = 14000-00495 Lopez v Martinez
Concrete (Active Only)
Activity Code = All
Expense Code = All
View = Original
Approval Status = All
Selected Expenses = All
From Earliest To Latest

Entered	Status	Approval	BillableType	Expense	Staff Member	Price	Mark Up %	Qty	Amount
<u>Daniel Lopez</u> <u>14000-00495 Lopez v Martinez Concrete</u>									
10-28-2022	Approved		Non-Billable	E125 Mediation fees	Chiarito, Tracie	10,000.00	0.00	1.00	10,000.00
First Mediation Inv #24583 for 7/17/2023 mediation w Jeff Krivis									
02-03-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	72.00	0.00	1.00	72.00
Courtcall ID #11655268 for 2/6/23 CMC									
07-26-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	9.95	0.00	1.00	9.95
TurboCourt Order #8148838 - file Joint Statement									
08-04-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	72.00	0.00	1.00	72.00
Courtcall ID #11727287 for 8/7/23 CMC									
08-08-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	9.95	0.00	1.00	9.95
TurboCourt Order #8180590 - file Notice of Ruling									
10-14-2023	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	80.51	0.00	1.00	80.51
Onelgal Order #21422788 - file MPA									
11-06-2023	Approved		Non-Billable	E112 Court fees	Chiarito, Tracie	2.50	0.00	1.00	2.50
Receipt for San Bernardino Superior Court for copy of signed PA order									
01-02-2024	Approved		Non-Billable	E124 Other expenses	Chiarito, Tracie	600.00	0.00	1.00	600.00
Wolters Kluwer's 2023 Real Rate Report									
02-01-2024	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	100.00	0.00	1.00	100.00
File MFA and supporting documents via Onelgal									
02-27-2024	Approved		Non-Billable	Attorney Service	Chiarito, Tracie	144.00	0.00	1.00	144.00
Courtcall for 2/27/24 MFA									

Project Total 13,191.19
Client Total 13,191.19
Grand Total 13,191.19

EXHIBIT “C”