

DANIEL F. GAINES, ESQ. SBN 251488
daniel@gaineslawfirm.com
ALEX P. KATOFISKY, ESQ. SBN 202754
alex@gaineslawfirm.com
GAINES & GAINES, APLC
4550 East Thousand Oaks Boulevard, Suite 100
Westlake Village, CA 91362
Telephone: (818) 703-8985
Facsimile: (818) 703-8984

Attorneys for Plaintiff Ricardo Loera
and Proposed Class Counsel

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF SAN JOAQUIN

RICARDO LOERA, on behalf of himself
and all "aggrieved employees" pursuant to
Labor Code § 2698 *et seq.*,

Plaintiff,

v.

VC1 CONCRETE CONSTRUCTION,
LLC, a California limited liability
company, and DOES 1 through 10,
inclusive,

Defendants.

CASE NO: STK-CV-UOE-2022-10482

Assigned to the Hon. Blanca Banuelos, Dept. 10B

CLASS ACTION

**DECLARATION OF DANIEL F. GAINES IN
SUPPORT OF UNOPPOSED MOTION FOR
PRELIMINARY APPROVAL OF CLASS
AND REPRESENTATIVE ACTION
SETTLEMENT**

**Date: October 8, 2024
October 9, 2024
October 10, 2024**

**Time: 9:00 a.m.
Dept.: 10B**

Complaint Filed: November 15, 2022

1 I, DANIEL F. GAINES, hereby declare and state as follows:

2 1. I am an attorney duly admitted to the practice of law in the State of California. I am
3 a shareholder of Gaines & Gaines, APLC, counsel for Plaintiff Ricardo Loera (“Loera” or
4 “Plaintiff”) and proposed Class Counsel in this action. I have personal knowledge of the facts set
5 forth herein and if called as a witness to testify to them, I could and would do so competently.

6 **Education and Experience:**

7 2. I obtained my BS degree from the University California at Berkeley in 2003. I
8 majored in Business Administration at the Haas School of Business.

9 3. Thereafter, I attended the University of Virginia School of Law. At Virginia, I was
10 a member of the editorial board of the Virginia Tax Review. I was also the recipient of the Lacy
11 Armour Scholarship, awarded to recognize academic excellence. At Virginia, I focused my
12 studies on tax and real estate. I earned my JD and became a member of the California Bar in 2007.

13 4. Until his retirement, I practiced law with my partner/father, Kenneth, at Gaines &
14 Gaines, APLC. My father practiced law in California for over 40 years, emphasizing litigation for
15 the vast majority of his career. Our current practice specializes in litigation, with an emphasis in
16 employment disputes like this one. Over 95% of our practice is devoted to complex employment
17 litigation.

18 5. My firm has represented employees in complex employment matters such as this
19 one, with an emphasis in wage and hour issues. I have participated in and have been certified as
20 class counsel in dozens of class action matters since my admission to the Bar. A partial list of the
21 cases in which I have been appointed as class counsel is attached hereto as **Exhibit A**.

22 **Factual and Procedural Background:**

23 6. On September 7, 2022, Plaintiff Loera exhausted the pre-filing requirements of the
24 Labor Code Private Attorneys General Act of 2004 (“PAGA”).

25 7. On November 15, 2022, Plaintiff commenced this Action by filing a Complaint
26 alleging claims under PAGA. Plaintiff subsequently filed the Operative Complaint (the First
27 Amended Complaint) on June 6, 2023.

1 8. As set forth in the operative First Amended Complaint, the Action assert claims
2 against Defendant for: (1) Failure to Pay All Minimum and Overtime Wages Due (Labor Code §§
3 510, 1194, and 1194.2); (2) Failure to Pay Reporting Time Wages (Labor Code §§ 510, 1194, and
4 1194.2; IWC Wage Order 16-2001); (3) Failure to Provide Rest Periods Or Compensation In Lieu
5 Thereof (Labor Code § 226.7; IWC Wage Order 16-2001); (4) Failure to Provide Meal Periods Or
6 Compensation In Lieu Thereof (Labor Code §§ 226.7, 510, 512, 1174, 1174.5, 1194, and 1198;
7 IWC Wage Order 16-2001); (5) Failure to Reimburse Necessary Business Expenses (Labor Code
8 § 2802); (6) Knowing and Intentional Failure to Comply With Itemized Employee Wage
9 Statement Provisions (Labor Code § 226(a), (e)); (7) Failure to Timely Pay Wages Due At
10 Separation Of Employment (Labor Code §§ 201-203); (8) Violation of Business and Professions
11 Code § 17200; and (9) Penalties Pursuant To Labor Code § 2699(f) For Violations Of Labor Code
12 §§ 201, 202, 226(a), 226.7, 510, 512, 1174, 1174.5, 1194, 1198, And 2802 And Pursuant To Labor
13 Code § 2699(a) for Violations of Labor Code §§ 226.3 and 558.

14 9. Defendant denies any liability or wrongdoing of any kind associated with the claims
15 alleged in the Action, and further denies that the Action are appropriate for class treatment for any
16 purpose other than this settlement. Defendant contends that it has complied at all times with the
17 California Labor Code. It is Defendant's position that, if this case were to be litigated, class
18 certification would be inappropriate because Plaintiff is not an adequate Class Representative,
19 Plaintiff's claims are not typical of putative class members, and individual issues predominate
20 over class issues, among other defenses. The Action, the negotiation and execution of this
21 Settlement Agreement, and all acts performed or documents executed pursuant to or in furtherance
22 of this Settlement Agreement (i) shall not be used as an admission, or as evidence of wrongdoing
23 by the Defendant, or for any other purpose whatsoever; (ii) shall not be an admission or evidence
24 of fault on behalf of Defendant in any action before a civil court, criminal court, administrative
25 agency of any type, or other tribunal; and (iii) shall not be deemed to be, and may not be used as,
26 an admission or evidence of the appropriateness of these or similar claims for class certification
27 in the Action or with respect to any other proceeding whatsoever.

1 10. The Class Representative contends that Defendant violated the California Labor
2 Code and Industrial Welfare Commission Wage Order(s), and that this case is appropriate for class
3 certification.

4 **Investigation and Settlement Discussions**

5 11. My office conducted a thorough investigation into the facts and law during the
6 prosecution of this class action case, including the exchange of extensive informal discovery and
7 the review and verification of statistical data and other facts and information provided by
8 Defendant. My colleagues and I have investigated the applicable law as applied to the facts
9 discovered regarding the alleged claims of Plaintiff and potential defenses thereto, and the
10 damages and other losses claimed by Plaintiff.

11 12. On May 2, 2024, following our exchange of information and documents regarding
12 the Settlement Class and the claims and defenses asserted by the Parties, the Parties engaged in
13 arm's-length negotiations with the assistance of an experienced wage and hour mediator, Judge
14 Howard R. Broadman (Ret.), where the Parties were able to reach the resolution of the Action
15 detailed herein.

16 **Class Counsel's Assessment of the Fairness of the Settlement and the Risks of Continued**
17 **Litigation:**

18 13. Based on our independent investigation and evaluation, my colleagues and I are of
19 the opinion that settlement for the consideration and on the terms set forth in this Settlement
20 Agreement is fair, reasonable, and adequate and is in the best interest of the Settlement Class in
21 light of all known facts and circumstances, including the risk of significant delay, the risk the
22 Settlement Class will not be certified by the Court, and the defenses asserted by Defendant.
23 Defendant and its counsel also agree that this settlement is fair and in the best interest of the
24 Settlement Class.

25 14. The Parties agree that the Settlement Class described herein may be certified for
26 settlement purposes only and that any motion for approval seeking, *inter alia*, certification of the
27 Settlement Class is for purposes of the settlement only. If for any reason the settlement is not
28 approved, the certification will have no force or effect and will immediately be revoked. The

1 Parties further agree that certification for purposes of the settlement is in no way an admission that
2 class certification is proper under the more stringent standard applied for litigation and that
3 evidence of this limited Settlement Agreement for settlement purposes only will not be admissible
4 for any purpose in this or any other proceeding.

5 15. The parties jointly prepared the Class Action and Private Attorneys General Act
6 (“PAGA”) Settlement Agreement (“Settlement Agreement”, “Settlement”, or “Stip.”). A true and
7 correct copy of the Settlement is attached hereto as **Exhibit B**.

8 16. In the lawsuit, Plaintiff alleges that Defendant failed to pay Class Members all wages
9 due in two separate ways. First, Defendant purportedly failed to pay Class Members all minimum
10 and overtime wages due, in violation of Labor Code §§ 510, 558, 1194, and 1194.2, by requiring
11 them to work off-the-clock, without compensation. Defendant allegedly required Class Members
12 to always list a specified number of hours on their timesheets, even if they worked longer than the
13 hours written. Additionally, after Class Members left the last job site, they were allegedly not
14 compensated for the drive time from the last jobsite back to the yard site.

15 17. Plaintiff also alleges that Class Members were contacted by Defendant off-the-
16 clock. Defendant called and texted to discuss the work schedule, the driving time for the next day,
17 and other work matters. Class Members contend that they were not compensated for this time.

18 18. Defendant also allegedly maintained an illegal policy and practice regarding
19 overtime from May 1, 2018 until January 15, 2024.

20 19. Plaintiff also argues that Defendant failed to pay Class Members all reporting time
21 wages due, in violation of Labor Code §§ 510, 1194, and 1194.2 and IWC Wage Order 16-2001.
22 He argues that Class Members routinely reported to work only to be told they were no longer
23 needed and were sent home within two hours of reporting to work. Defendant, however, did not
24 pay Class Members the required reporting time pay. Defendant is required to pay Class Members
25 for half the usual or scheduled day’s work, but in no event for less than two hours at the employee’s
26 regular rate of pay.

27 20. Plaintiff calculates damages on these unpaid wage claims at \$494,768, with PAGA
28 civil penalty liability of up to \$363,300.

1 21. Plaintiff contends that Defendant failed to permit or authorize Class Members to
2 take timely 30-minute meal periods for shifts greater than 5 hours in length, in violation of Labor
3 Code §§ 226.7, 510, 512, 558, 1174, 1174.5, 1194, and 1198 and IWC Wage Order 16-2001.
4 Labor Code § 512 provides that employers may not employ an employee for a work period of
5 more than 5 hours without providing a 30-minute meal period starting no later than the end of the
6 5th hour. Class Members were routinely unable to take a proper meal period when they worked
7 shifts in excess of 5 hours in duration.

8 22. From May 1, 2018 until January 15, 2024, Defendant allegedly maintained an
9 unlawful written meal period policy that failed to set forth any language with respect to a second
10 meal period for employees who worked ten or more hours in one workday. Timecards typically
11 demonstrated uniform clock in and clock out times for meal periods across the entire class.

12 23. Plaintiff and Class Members contend that they rarely took a legally compliant meal
13 period; they were typically late, cut short, or on-duty. Plaintiff contends that he and Class Members
14 were given a short amount of time to eat, but then were told to get back to work by their Foreman.
15 Plaintiff alleges that he never received an uninterrupted 30-minute meal period and was never paid
16 a meal period premium.

17 24. Although Plaintiff was unable to ascertain a specific meal period violation rate based
18 on the wage and time data provided by Defendant through informal discovery, based on Plaintiff's
19 experience, he assumes a 50% meal period violation rate. Plaintiff calculates damages on this
20 claim at \$971,132, with PAGA civil penalty liability of up to \$363,300.

21 25. Plaintiff further argues that Defendant failed to pay Class Members premium wages
22 for missed, denied and unauthorized rest periods in violation of Labor Code §§ 226.7 and 558 and
23 IWC Wage Order 16-2001. Class Members were allegedly denied, and therefore unable to take,
24 10-minute rest periods for every four hours of work or major fraction thereof, but were not paid
25 premium wages of one hour's pay for each missed, denied and unauthorized rest period.

26 26. As with meal periods, from May 1, 2018 until January 15, 2024, Defendant allegedly
27 maintained an improper rest period policy which did not contain the "major fraction thereof"
28 language.

1 27. Plaintiff contends that he and other Class Members were encouraged to keep
2 working through their rest breaks by the foreman to be done with the day quicker. Plaintiff
3 calculates damages on this claim at up to \$973,000, with PAGA civil penalty liability of up to
4 \$363,300, based on a 50% violation rate.

5 28. Class Members were also allegedly required to incur expenses in the performance
6 of their job duties for which they were not fully reimbursed, in violation of Labor Code § 2802.
7 Class Members were required to use their personal vehicles, cell phones, and personal tools, but
8 were allegedly not fully reimbursed by Defendant for these expenses. This practice violates Labor
9 Code § 2802.

10 29. Plaintiff calculates damages on this claim at \$252,607, with PAGA civil penalty
11 liability of \$363,300 (calculated based on \$50/month in unreimbursed cell phone and personal
12 vehicle expenses and \$200/employee in unreimbursed tool expenses).

13 30. Defendant allegedly failed to issue Class Members accurately itemized wage
14 statements. Specifically, Class Members were not paid all wages due, as detailed above. As a
15 result, the wage statements issued by Defendant to Plaintiff and Class Members fail to accurately
16 state all gross wages earned, in violation of Labor Code § 226(a)(1), total hours worked, in
17 violation of Labor Code § 226(a)(2), net wages earned, in violation of Labor Code § 226(a)(5),
18 and all applicable hourly rates in effect during the pay period and the corresponding number of
19 hours worked at each hourly rate, in violation of Labor Code § 226(a)(9). Separately, the wage
20 statements issued to Plaintiff and Class Members also purportedly violate Labor Code § 226(a)(7)
21 as they fail to set forth the last four digits of the employee's social security number or an employee
22 identification number. Plaintiff calculates statutory penalties on this claim at \$332,000, with
23 PAGA civil penalty liability of \$363,300.

24 31. Finally, Defendant allegedly failed to pay certain Class Members all wages due upon
25 separation of employment, in violation of Labor Code §§ 201-203. As Defendant failed to pay
26 them all wages due during the course of their employment, as described above, these wages were
27 due and owing upon separation of employment yet went unpaid. Plaintiff calculates statutory
28 penalties on this claim at \$841,662, with PAGA civil penalty liability of approximately \$10,000.

1 32. Defendant maintained numerous defenses to Plaintiff's claims. It contends that it
2 timely paid all wages due, always provided meal and rest breaks as require by law, reimbursed all
3 expenses as required by law. It contends that Plaintiff would not succeed in certifying a class. It
4 contends that even if Plaintiff prevailed on all of his claims, any damages are far less than proffered
5 by Plaintiff. When the costs and risks of non-certification and loss on the merits are considered,
6 Plaintiff's counsel are of the opinion that the settlement reached is clearly a favorable one.

7 33. The settlement for each Class Member is fair, reasonable and adequate, given the
8 inherent risk of litigation, the risk relative to class certification and the costs of pursuing such
9 litigation. The settlement shall finally resolve all claims of the Class Members as alleged in the
10 Action.

11 **Class Certification Requirements:**

12 34. To date, no class has been certified. The Stipulation of Settlement contains a
13 provision pursuant to which we stipulate to the Court's provisional certification of the
14 approximately 215-member Settlement Class, but do so for purposes of this settlement only.

15 35. In this case, the Class Members are identifiable from Defendant's employment and
16 payroll records. Further, the Settlement Class is sufficiently numerous to warrant certification.
17 According to Defendant's records, the Class comprises approximately 215 members.

18 36. The Class Members' claims all stem from a common source: members of the
19 Settlement Class allege that Defendant violated the same Labor Code provisions in connection
20 with their employment in non-exempt positions. All members of the Class seek the same relief
21 under the same California laws (related to unpaid wages, unpaid meal and rest period premiums,
22 inaccurate or incomplete wage statements, failure to reimburse expenses, failure to timely pay
23 wages due upon separation, and derivative claims). Under these circumstances, the commonality
24 requirement is satisfied for purposes of certifying the Settlement Class for settlement purposes.

25 37. In this case, named Plaintiff and proposed Class Representative Ricardo Loera is a
26 former non-exempt employee who worked for Defendant in the State of California during the
27 Class Period. He contends that Defendant failed to pay all wages, failed to provide meal and rest
28 periods, failed to comply with itemized employee wage statement provisions, failure to reimburse

1 expenses, and failed to timely pay wages at the separation of employment, in violation of Labor
2 Code §§ 201, 202, 226(a), 226.3, 226.7, 510, 512, 558, 1174, 1174.5, 1194, 1198, 2698, 2699, and
3 2802, among other Labor Code provisions. He has the same claims as those that the members of
4 the Settlement Class would reasonably be expected to bring based on the course of conduct alleged
5 herein.

6 38. Plaintiff has also demonstrated that he will aggressively and competently assert the
7 interests of the proposed Settlement Class; he has taken an active role in the litigation and has no
8 apparent conflicts with other class members.

9 **Settlement of Claims Pursuant to Labor Code § 2699 et seq. (PAGA)**

10 39. Concurrently with the filing of this Motion, my office is transmitting the Settlement
11 Agreement (and these approval documents) to the LWDA, in compliance with Labor Code §
12 2699(1)(2). Evidence of submission is attached hereto as **Exhibit C**.

13 I declare, under penalty of perjury, under the laws of the State of California, that the
14 foregoing is true and correct. Executed this 5th day of September, 2024 at Westlake Village,
15 California.

16 *Daniel F. Gaines*
17 DANIEL F. GAINES

EXHIBIT A

Adams v. Newell Rubbermaid, USDC – Central District of California (Los Angeles), Case No. EDCV 08-1499 JTM (CTx)

Adams v. Sam's West, Inc., San Bernardino County Superior Court, Case No. CIVDS1403987

Agredano v. GS Brothers, Inc., Los Angeles County Superior Court, Case No. BC445561

Allen v. Toms Sierra Company, Nevada County Superior Court, Case No. CU18-082823

Allen v. Valley Inventory Service, Inc., Solano County Superior Court, Case No. FCS034682

Alvarez v. Pilot Travel Centers, LLC, San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-4605

Alonzo v. Camblin Steel Service, Inc., Placer County Superior Court, Case No. SCV0034165

Amenhotep v. Google, Inc., Santa Clara County Superior Court, Case No. 17CV311528

Anaya v. Progressive Logistics Services, LLC, Riverside County Superior Court, Case No. RIC1308270

Andre v. Newell Rubbermaid, Inc., San Bernardino County Superior Court, Case No. CIVVS1200282

Anduha v. ABC Phones of North Carolina, Inc., Stanislaus County Superior Court, Case No. 2022729

Anslow v. Wellington Energy, Inc., USDC – Northern District of California (San Francisco), Case No. CV11-1596-JCS

Aranda, et al. v. Universal Lumpers of California, Inc., San Joaquin County Superior Court, Case No. STK-UOE-2017-7826

Armendariz v. Integrated Pain Management Medical Group, Inc., Kern County Superior Court, Case No. BCV-19-100267-SDS

Barrow, et al. v. Desmond Foods, L.P., Sacramento County Superior Court, Case No. 34-2015-00187227

Batmanghelich v. Sirius XM Radio Inc., USDC – Central District of California (Los Angeles), Case No. CV 09-9190 VBF (JCx)

Bosser v. Hooked on Solar, Yolo County Superior Court, Case No. CVCV-2016-876

Bourland v. Horizon Personnel Services, Inc., Sacramento County Superior Court, Case No. 34-2014-00161365-CU-OE-GDS

Bowen v. IMI Material Handling Logistics, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-0000192

Branson v. Mladen Buntich Construction, San Bernardino County Superior Court, Case No. CIVDS1609129

Brandt v. Sacramento Auto Insurance Center, Inc., San Joaquin County Superior Court, Case No. 39-2009-00202938-CU-OE-STK

Brown v. 22nd District Agricultural Association, United States District Court, Southern District of California, Case No. 15-cv-2578-DHB

Brown v. Sierra Central Credit Union, Sutter County Superior Court, Case No. CVCS18-0002161

Burgess v. Blue Cross and Blue Shield of South Carolina, San Joaquin County Superior Court, Case No. 39-2012-00277449-CU-BT-STK

Burgess v. Strategic Retail Solutions, LLC, Los Angeles County Superior Court, Case No. BC413791

Calhoun v. Celadon Trucking Services, Inc., USDC – Central District of California (Los Angeles), Case No. 5:16-cv-01351-PSG-FFM

Caporicci v. Owens & Minor Distribution, Inc., San Joaquin County Superior Court, Case No. 39-2013-00295662-CU-OE-STK

Carl v. Advanced Call Center Technologies, LLC, Sacramento County Superior Court, Case No. 34-2013-00148310

Carlisle, et al. v. Professional Technical Security Services, Inc., Case No. CGC18569791

Carrete v. Gamestop, Inc., Imperial County Superior Court, Case No. ECU08501

Carrillo v. Bimbo Bakeries, Inc., San Bernardino County Superior Court, Case No. CIVDS1606813

Caudillo v. Aegis Treatment Centers, LLC, Merced County Superior Court, Case No. 18CV-0744

Cerami v. Metlife, Inc., USDC – Central District of California (Orange County), Case No. 11-CV-00681-CJC (MLGx)

Charles v. Aaron's Inc., Los Angeles County Superior Court, Case No. BC431468

Charles v. Nursefinders, LLC, Imperial County Superior Court, Case No. ECU07422

Cheifer v. JetBlue Airways Corporation, Los Angeles County Superior Court, Case No. BC451887

Cheifer, et al. v. WHGM, Inc., Los Angeles County Superior Court, Case No. LC104900

Chong, et al. v. Crescent Northwoods Inn, Inc., Del Norte County Superior Court, Case No. CVUJ-2018-1133

Church v. GameStop, Inc., et. al., USDC – Central District of California (Los Angeles), Case No. 11-CV-00132-VAP-RZ

Clothier v. Spar Marketing Services, Inc., Alameda County Superior Court, Case No: RG12-639317

Coleman v. Wireless Lifestyle, Inc., USDC – Western District of Missouri, Case No. 4:12-cv-00855-ODS

Colombo-Beyeler, et al. v. Viking River Cruises, Inc., San Bernardino County Superior Court, Case No. CIVDS1611608

Conlee v. Clark Pacific Corporation, Yolo County Superior Court, Case No. CV14-1409

Contreras v. Osmose Utilities Services, Inc., San Bernardino County Superior Court, Case No. CIVDS1513998

Contreras v. West American Service Corporation, Kings County Superior Court, Case No. 14C0280

Corona v. Yosemite Meat & Locker Service, Inc., Stanislaus County Superior Court, Case No. 2006828

Cortellessa v. Dotnext, Inc., Alameda County Superior Court, Case No. RG09429971

County v. Ingram Mirco, Inc., San Bernardino Superior Court, Case No. CIVRS 1304445

Covarrubias, et al. v. Petersendean Builder Group, Inc., Kern County Superior Court, Case No. BCV-16-101122

Cowen, et al. v. Evergreen Alliance Golf Limited, L.P., d/b/a Arcis Golf, San Bernardino County Superior Court, Case No. CIVDS1719283

Cruz-Garcia v. Lemonade Restaurant Group, LLC, Los Angeles County Superior Court, Case No. BC478205

Cunningham v. Performance Contracting, Inc., Contra Costa County Superior Court, Case No. C16-02157

Dabney v. Coneybeare, LLC, et al., Orange County Superior Court, Case No. 30-2018-00999989-CU-OE-CXC

Dabney, et al. v. Panera, LLC., San Bernardino County Superior Court, Case No. CIVDS1516030

Diaz, et al. v. Seaworld Entertainment, Inc., Imperial County Superior Court, Case No. ECU10046

Diggs v. Western Waterproofing Company, Inc., San Francisco County Superior Court, Case No. CGC-14-539281

Dismuke v. Rhodes Retail Services, Inc., Sacramento County Superior Court, Case No. 34-2011-00105001

Dorsette v. TA Operating, LLC, USDC – Central District of California (Los Angeles), Case No. EDCV 09-1350 PA (RZx)

Duran v. The Image of California, Inc., Kern County Superior Court, Case No. S-1500-CV-284056 DRL

Edwards v. Trans World Entertainment Corp., San Diego County Superior Court, Case No. 37-2010-00095123-CU-OE CTL

Esakhani v. Central Valley Gaming, Stanislaus County Superior Court, Case No. 2020667

Escobar v. SMSSI of California, Inc., San Francisco Superior Court, JCCP No. 4776

Espinosa v. Taltech Construction, et al., Los Angeles County Superior Court, Case No. BC590176

Espinosa v. Bodycote Thermal Processing, Inc., Los Angeles County Superior Court, Case No. BC501617

Espinoza v. Pabco Building Products, LLC, Los Angeles County Superior Court, Case No. VC065660

Estrada v. Net Source Communications, Inc., Los Angeles County Superior Court, Case No. BC431169

Estrada v. OS Restaurant Services, LLC, Santa Clara County Superior Court, Case No. 16CV293249

Estupinan v. Global Development Strategies, Inc., Santa Clara County Superior Court, Case No. 110CV178898

Fadhl. v. Siemens Healthcare Diagnostics Inc., Sacramento County Superior Court, Case No. 34-2017-00209518

Fernandez v. The Regents of the University of California, Los Angeles County Superior Court, Case No. BC656256

Ferrer v. Dish Network Corporation, Los Angeles County Superior Court, Case No. BC441354

Findora v. Barry Callebaut USA LLC, Napa County Superior Court, Case No. 19CV000219

Flores v. Cintas Corporation, Los Angeles County Superior Court, Case No. BC400422

Friel v. Midwest Construction Services, Inc., San Joaquin County Superior Court, Case No. 39-2015-00329204-CU-OE-STK

Gagnon v. Banc of California, Contra Costa County Superior Court, Case No. C 15-00196

Galarza v. Bayou Well Services, LLC, Kern County Superior Court, Case No. S-1500-CV-279372 DRL

Galarza v. C & H Testing Service LLC, Kern County Superior Court, Case No. BCV-15-100008 SPC

Garcia v. Old Dominion Freight Line, Inc., San Bernardino County Superior Court, Case No. CIVDS1404636

Geer v. Applied Aerospace Structures Corp., San Joaquin County Superior Court, Case No. 39-2014-00313702-CU-OE-STK

Getz v. California Cinema Investments, Inc., Ventura County Superior Court, Case No. 56-2013-00437706-CU-MC-VTA

Gibbs v. M. Lehmann Enterprises, Orange County Superior Court, Case No. 30-2013-00678538-CU-OE-CXC

Gilles v. Schaefer Ambulance Service Inc., Imperial County Superior Court, Case No. ECU07970

Goldman, et al. v. Defender's, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-0009973

Gomez v. Low Desert Empire Pizza, Inc., San Bernardino County Superior Court, Case No. CIVVS900392

Gomez v. Pizza Hut of Southeast Kansas, Inc., San Bernardino County Superior Court, Case No. CIVVS900679

Gonzalez v. Harris Farms, Inc., USDC – Eastern District of California (Fresno), Case No. 1:14-cv-00038-LJO-SAB

Guerrero v. Main Electric Supply Company LLC, Ventura County Superior Court, Case No. 56-2019-00525427-CU-OE-VTA

Gutierrez v. Asset Management Specialists, Inc., Fresno County Superior Court, Case No. 12CECG03577

Gutierrez v. Linkus Enterprises, Inc., Madera County Superior Court, Case No. MCV065774

Gutierrez v. Shiekh, LLC, San Bernardino County Superior Court, Case Nos. CIVRS1206525, CIVRS1303408

Hairston v. Stanislaus Surgical Hospital, Stanislaus County Superior Court, Case No. CV-19-000651

Hindman v. Service Quick, Inc., San Bernardino County Superior Court, Case No. CIVDS1724229

Hogan v. iMobile of CA LLC, San Bernardino County Superior Court, Case No. CIVDS1409263

Hogan v. Wireless Evolution Inc., Riverside County Superior Court, Case No. MCC1300669

Hogan v. Wireless That's It! LLC, Riverside County Superior Court, Case No. RIC1201997

Holmes v. Bottling Group, LLC, Stanislaus County Superior Court, Case No. 2022584

Hooper, et al. v. URS Midwest, Inc., et al., San Bernardino Superior Court, Case No. CIVDS1607489

Humphrey v. Freedomroads, LLC, Shasta County Superior Court, Case No. 178228

Hurtado v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC427672

Hyde v. Dent Wizard International Corporation, Sacramento County Superior Court, Case No. 34-2015-00173882

Ibrihim v. Imperfect Foods, Inc., San Joaquin County Superior Court, Case No. STK-VI-UOE-2019-0000846

Id-deen v. Educational Services of America, Solano County Superior Court, Case No. FCS040803

Isherwood v. Mason Dixon Intermodal, Inc., San Joaquin County Superior Court, Case No. 39-2012-00279891-CU-OC-STK

Jahanbin v. Pacific Mercantile Bank, Orange County Superior Court, Case No. 30-2011-00480705CU-OE-CXC

Jenkins v. Sedgwick Claims Management Services, Inc., Los Angeles Superior Court, Case No. LC101648

Job v. California Security Services, Yuba County Superior Court, Case No. 14-0000820

Johnson v. The Goodyear Tire & Rubber Company, USDC – Northern District of California (San Francisco), Case No. 3:13-cv-01069-MMC

Jolin v. Bay Cities Recovery, Inc., El Dorado County Superior Court, Case No. PC20100458

Jordan v. Sutter Memorial Hospital, Stanislaus County Superior Court, Case No. 2023344

Keebaugh v. Mike Thompson Recreational Vehicles, San Bernardino County Superior Court, Case No. CIV-DS-1500718

Kelly v. Robin's Enviro Vac, Inc., Kern County Superior Court, Case No. S-1500-CV-282277
DRL

King v. Levy Premium Foodservice Limited Partnership, Alameda County Superior Court, Case No. HG15786353

Kunsman v. Punch Bowl Sacramento, LLC, et al., Sacramento County Superior Court, Case No. 34-2018-00243175

LaFear v. Encore Education Corporation, San Bernardino County Superior Court, Case No. CIVDS1802251

Lanzarin v. AWI Management Corporation, Solano County Superior Court, Case No. FCS041809

Lee, et al. v. Foster Dairy Farms, Stanislaus County Superior Court, Case Nos. 2006542, 2015679

Lemus, et al. v. Eastridge Workforce Technology, Inc., San Bernardino County Superior Court, Case No. CIV-DS-1611470

Lewis v. American Casino & Entertainment Properties LLC, San Bernardino County Superior Court, Case No. CIVDS1719094

Lemus v. On Assignment Staffing Services, San Bernardino County Superior Court, Case No. CIV-DS-1600497

Leon v. Piercey West Inc., Los Angeles County Superior Court, Case No. BC656874

Lopez v. Creative Communication Technologies, Inc., Imperial County Superior Court, Case No. ECU07851

Lopez v. Go Green Auto Spa Franchise, Inc., et al., Los Angeles County Superior Court, Case No. BC 562212

Lopez v. Truck Accessories Group, LLC, Yolo County Superior Court, Case No. CV13798

Ludlow v. Prince Telecom, LLC, Stanislaus County Superior Court, Case No. 684239

Luna v. Express Locations, LLC, Imperial County Superior Court, Case No. ECU09779

Macias v. American Tire Distributors, Inc., Kern County Superior Court, Case No. BCV-18-101586

Maldonado v. Hardwood Flooring Liquidators, Inc., Los Angeles County Superior Court, Case No. BC642170

Mansfield v. Cambridge Real Estate Services, Inc., Butte County Superior Court, Case No. 160175

Martinez v. DPI Specialty Foods West, San Joaquin County Superior Court, Case No. 39-2015-00327311-CU-OE-STK

Martinez v. Styles For Less, Inc., San Bernardino County Superior Court, Case No. CIVVS1203057

Mayne v. John Muir Behavioral Health, Contra Costa County Superior Court, Case No. C17-00998

Maze v. Bulldog Freightway, Inc., Imperial County Superior Court, Case No. ECU08716

McCormick v. G & O Body Shop, Inc., El Dorado Superior Court, Case No. PC20130291

McCrary v. Campbell Soup Supply Company, San Joaquin County Superior Court, Case No. 39-2013-00297698-CU-OE-STK

McDaniel v. Vancary, Inc., Tulare County Superior Court, Case No. 268036

Melgar-Farela v. Guardian Compliance, Inc., Los Angeles County Superior Court, Case No. BC481865

Mendiola v. Tyco Electronics Corporation, Riverside County Superior Court, Case No. RIC1400721

Mettler v. Les Schwab Tire Centers of California, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-476

Miller v. California Subshine, Inc., Los Angeles County Superior Court, Case No. BC637754

Miller v. Southwest Airlines Co., USDC – Northern District of California (San Francisco), Case No. 3:12-cv-05978-CRB

Mitchell v. Crossmark, Inc., USDC – Central District of California (Los Angeles), Case No. CV 11-2818-JAK (FMOx)

Moghrabi v. Vitaligent, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2018-1650

Molina v. Berkshire Hathaway Energy Company, et al., Imperial County Superior Court, Case No. ECU000522

Moore v. Horizon Solar Power, Inc., San Bernardino County Superior Court, Case No. CIVDS1410001

Murray v. Select Media Services, LLC, Los Angeles County Superior Court, Case No. BC424506

Myles v. Central Transport LLC, San Bernardino County Superior Court, Case No. CIVDS1401434

Navarro v. Mariana Packing Co., Inc., Solano County Superior Court, Case No. FCS045935

Nehrlich, et al. v. RPM Mortgage, Inc., Orange County Superior Court, Case No. 30-2013-00666783-CU-OE-CXC

Overton v. Hat World, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:11-CV-01645-LKK-KJN

Perez v. Alcatel-Lucent USA Inc., Imperial County Superior Court, Case No. ECU07977

Perez v. Major Gloves and Safety, Inc., San Bernardino County Superior Court, Case No. CIVDS1710445

Perry v. Cardinal Health 200, LLC, Solano County Superior Court, Case No. FCS035303

Phraxayavong-Briones v. RSM, Inc., Sacramento County Superior Court, Case No. 34-2012-00117524

Pugh v. Wi Spa, LLC, Imperial County Superior Court, Case No. ECU07932

Quist v. Knight Transportation, Inc., San Bernardino Superior Court, Case No. CIVDS 1615414

Quitco v. Aviation Fuel Systems Repair, Inc., San Bernardino Superior Court, Case No. CIVRS1302311

Rambeau v. C.C.M. Corporation, et al., Sacramento County Court, Case No. 34-2018-00244842

Rankins v. Roman Empire Living Skills, Inc., Los Angeles County Superior Court, Case No. BC713399

Rees v. Advantel, Incorporated, Santa Clara County Superior Court, Case No. 16-CV-292219

Renfrow v. Janra Enterprises, Inc., Sacramento County Superior Court, Case No. 3402010-00080471

Reynolds v. Diamond Pet Food Processors of Ripon, San Joaquin County Superior Court, Case No. 39-2014-00310818

Richard v. A-Para Transit Corp., Alameda County Superior Court, Case No. HG17870373

Richardson v. TEC Equipment, Inc., et al., Los Angeles County Superior Court, Case No. VC065536

Robles v. North County Health Project Incorporated, San Diego Superior Court, Case No. 37-2014-00001751-CU-OE-NC

Rodas v. Monetary Management of California, Inc., USDC – Eastern District of California (Sacramento), Case No. 2:14 cv 01389 TLN AC

Rodriguez v. 20/20 Plumbing & Heating, Inc., San Bernardino County Superior Court, Case No. CIVDS1705362

Rodriguez v. Commerce Distribution Company, Los Angeles County Superior Court, Case No. BC656259

Rodriguez v. Valley Oak, San Joaquin County Superior Court, Case No. STK-CV-UOE-2016-7980

Roden v. Service Champions, San Bernardino County Superior Court, Case No. CIVDS1613183

Russell v. Bradshaw International, Imperial County Superior Court, Case No. ECU00853

Rutledge, et al. v. Healthport Technologies, LLC, Alameda County Superior Court, Case No. RG16835813

Sabala v. Econtactlive, Inc., Stanislaus County Superior Court, Case No. 684981

Sabatier v. Picture Perfect Installation, Inc., Riverside County Superior Court, Case No. RIC10004953

Salameh v. Sonomaidence OPCO, LLC, Sonoma County Superior Court, Case No. SVC264228

Salazar v. Tag-3 Medical Investment Group, LLC, Los Angeles County Superior Court, Case No. BC527698

Salbeck v. Ingredion Incorporated, San Joaquin County Superior Court, Case No. STK-UOE-2017-0012622

Sampson v. Healthnet of California Inc., Sacramento County Superior Court, Case No. 34-2015-00183785-CU-OE-GDS

Sanchez v. Don Roberto Jewelers, Inc., Imperial County Superior Court, Case No. ECU06819

Sanders v. Lionakis, Sacramento County Superior Court, Case No. 34-2017-00223601

Santana v. United Staffing Associates, LLC, Tulare County Superior Court, Case No. 249338

Schrader v. Adidas Promotional Retail Operations, Inc., Los Angeles County Superior Court, Case No. BC414168

Sebrell v. Pomeroy IT Solutions, San Bernardino County Superior Court, Case No. CIVDS1721560

Seymour v. Quest Service Group, LLC, Sacramento County Superior Court, Case No. 34-2017-00206917

Silva v. Trical, San Benito County Superior Court, Case No. CU-16-00218

Simler v. Polly's Inc., Riverside County Superior Court, Case No. RIC 1117862

Sipin, Scott v. Salesforce.com, Inc., San Joaquin County Superior Court, Case No. STK-CV-UOE-2019-0004629

Skuro v. BMW of North America, LLC, USDC – Central District of California (Los Angeles), Case No.: CV 10-8672-GW (FFMx)

Smith v. Steelcase, Inc., San Bernardino County Superior Court, Case No. CIVDS1725850

Sohal v. Foster Poultry Farms, Stanislaus County Superior Court, Case No. 2026605

Solomon v. City of Los Angeles, Los Angeles County Superior Court, Case No. BC570345

Solano v. Vozzcom, Inc., Imperial County Superior Court, Case No. ECU09519

Smith, et al. v. Sente Development, Inc., Sacramento County Superior Court, Case No. 34-2016-00196614

Solorzano v. FDS Manufacturing Corporation, Los Angeles County Superior Court, Case No. BC542532

Solowitz v. BakeMark USA LLC, Los Angeles County Superior Court, Case No. BC467838

Spampinato v. Wind & Sea Restaurants, Inc., San Bernardino County Superior Court, Case No. CIVVS1205154

Spitzer, et al. v. FRHI Hotels & Resorts (Canada) Inc., San Bernardino County Superior Court, Case No. C IVDS1712220

Stephens v. C.S., Inc., Riverside County Superior Court, Case No. PSC1301224

Stevenson v. Harvest Management Sub LLC, Ventura County Superior Court, Case No. 56-2011-00397420-CU-OE-SIM

Thompson v. Continental Labor Resources, Inc. d/b/a Continental Labor & Staffing Resources, Kern County Superior Court, Case No. S-1500-CV-278751-DRL

Thompson v. Sidhu Truck Line, Inc., Kern County Superior Court, Case No. BCV-15-101308-DRL

Tigas v. Ajilon Communications, Los Angeles County Superior Court, Case No. BC409737

Torres v. Coastal Employment Inc., Los Angeles County Superior Court, Case No. BC529207

Tran v. CSP Fiber Services, San Bernardino County Superior Court, Case No. CIVDS172758

Tripp v. California Guest Services, Inc., Plumas County Superior Court, Case No. CV16-00036

Valdez v. Diamond Landscaping, Inc., Los Angeles County Superior Court, Case No. BC497097

Valencia v. American Team Managers, Inc., Orange County Superior Court, Case No. 30-2016-00857365-CU-CR-CXC

Van Son v. Rush Truck Centers of California, Inc., Los Angeles County Superior Court, Case No. BC494747

Vasquez v. Schurman Fine Papers, San Joaquin County Superior Court, Case No. STK-CV-LMC-2015-10035

Velasquez v. Modesto Ventures, LLC, Sacramento County Superior Court, Case No. 32-2012-00126159

Victoria v. Bali Limousines Inc., San Mateo County Superior Court, Case No. CIV507774

Victorian v. Vision X, Inc., Los Angeles County Superior Court, Case No. BC400333

Wade v. Frito Lay, Kern County Superior Court, Case No. BCV-17-102014

Walls v. E. & J. Gallo, Stanislaus County Superior Court, Case No. 2015874

Warner v. Waterdrops Express Car Wash, LLC, Tulare County Superior Court, Case No. 265708

Waybright v. EAH, Inc., Stanislaus County Superior Court, Case No. 2011677

Weiss v. C.A.R. Enterprises, Inc., Riverside County Superior Court, Case No. RIC1113165

White v. Sally Beauty Supply, LLC, Imperial County Superior Court, Case No. ECU08177

Williams v. Dennis Dillon RV, LLC, San Bernardino County Superior Court, Case No. CIVDS 16006879

Williams v. Closet World, Inc., Los Angeles County Superior Court, Case No. BC400178

Williams v. Progress Rail Services Corporation, Kern County Superior Court, Case No. S-1500-CV-280236 DRL

Wing v. Three Group, Inc., Los Angeles County Superior Court, Case No. BC643883

Wilson v. ALSCO, Inc., Imperial County Superior Court, Case No. ECU07406

Wilson v. Michael C. Stead, Inc., Contra Costa Superior Court, Case No. C1400135

Winningham v. Storer Transportation Service, San Joaquin County Superior Court, Case No. 39-2015-00324708-CU-STK

Woody v. WBN Home Design, San Bernardino County Superior Court, Case No. CIVDS1613367

Woods, et al. v. F&B Innovations, LLC, San Bernardino County Superior Court, Case No. CIVDS1717765

Woodyard v. Bellus ALC Acquisition, LLC, USDC – Central District of California (Los Angeles), Case No. 2:13-cv-05285 SJO AGRx

Wright v. Social Vocational Services, Inc., Kern County Superior Court, Case No. BCV-15-101264

Ybarra v. New Legend, Inc., Sutter County Superior Court, Case No. CVCS-16-2097

Zaragoza v. Center Automotive, Inc., Los Angeles Superior Court, Case No. BC505194

EXHIBIT B

Daniel F. Gaines, State Bar No. 251488
Alex P. Katofsky, State Bar No. 202754
GAINES & GAINES, APLC
4550 East Thousand Oaks Boulevard, Suite 100
Westlake Village, CA 91362
Telephone: (818) 703-8985
Facsimile: (818) 703-8984
Email: daniel@gaineslawfirm.com; alex@gaineslawfirm.com

Attorneys for Plaintiff, RICARDO LOERA

Ian B. Wieland, State Bar No. 285721
Michael J. Conway II, State Bar No. 322030
SAGASER, WATKINS & WIELAND PC
5260 North Palm Avenue, Suite 400
Fresno, California 93704
Telephone: (559) 421-7000
Facsimile: (559) 473-1483
E-mails: ian@sw2law.com; mikec@sw2law.com

Attorneys For Defendant, VC1 Concrete Construction, LLC

STATE OF CALIFORNIA

SUPERIOR COURT FOR THE COUNTY OF SAN JOAQUIN

RICARDO LOERA, on behalf of himself
and all "aggrieved employees" pursuant to
Labor Code § 2698 et seq.,

Plaintiff,

v.

VC1 CONCRETE CONSTRUCTION, LLC;
a California limited liability company, and
DOES 1 through 10, inclusive

Defendants.

Case No.: STK-CV-UOE-2022-0010482

**CLASS ACTION AND PRIVATE
ATTORNEYS GENERAL ACT ("PAGA")
SETTLEMENT AGREEMENT**

Complaint Filed: November 15, 2022
Trial Date: None Set

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between Plaintiff Ricardo Loera on behalf of himself, the putative class, and aggrieved employees, and Defendant VC1 Concrete Construction, LLC. The Agreement refers to Plaintiff Ricardo Loera and Defendant VC1 Concrete Construction, LLC, collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS

1.1. “Action” means the matter of *Loera v. VCI Concrete Construction, LLC*, San Joaquin County Superior Court, Case No. STK-CV-UOE-2022-10482.

1.2. “Administrator” means Phoenix Class Action Administration Solutions, the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid obtained by the Parties.

1.4. “Aggrieved Employee” means a person directly employed by Defendant in California and classified as a non-exempt employee who worked during the PAGA Period.

1.5. “Class” means all persons directly employed by Defendant in California and classified as a non-exempt employee who worked during the Class Period.

1.6. “Class Counsel” means Daniel F. Gaines and Alex P. Katofsky of Gaines & Gaines, APLC.

1.7. “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts Class Counsel will be paid from the Gross Settlement Amount as payment for reasonable attorneys’ fees and statutorily recoverable costs, respectively, incurred to prosecute the Action.

1.8. “Class Data” means each Class Member’s name, last-known mailing address, Social Security number, and number of Class Pay Periods and PAGA Pay Periods.

1.9. “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).

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1 **1.10.** “Class Member Address Search” means the Administrator’s investigation and search
2 for current Class Member mailing addresses using reasonably available sources, methods and means
3 including, but not limited to, the National Change of Address database, skip traces, and direct
4 contact by the Administrator with Class Members.

5 **1.11.** “Class Notice” means the Court-approved Notice of Class Action Settlement and
6 Hearing Date for Final Court Approval, in substantially the same form as that attached as Exhibit A
7 hereto.

8 **1.12.** “Class Pay Period” means any Pay Period during the Class Period in which a Class
9 Member was employed directly by Defendant and was issued payment by Defendant for wages for
10 work performed within the Pay Period.

11 **1.13.** “Class Period” means the period from June 6, 2019, through the date in which the
12 Court grants Preliminary Approval of the Settlement, unless modified pursuant to Section 8 of this
13 Agreement.

14 **1.14.** “Class Representative” means the named Plaintiff in the Operative Complaint in the
15 Action seeking Court approval to serve as a Class Representative.

16 **1.15.** “Class Representative Service Payment” means the amount the Class Representative
17 will be paid out of the Gross Settlement Amount for initiating the Action, providing services in
18 support of the Action, and providing a general release of claims and Civil Code §1542 waiver in
19 favor of Defendant.

20 **1.16.** “Court” means the Superior Court of California, County of San Joaquin.

21 **1.17.** “Defendant” means Defendant VC1 Concrete Construction, LLC.

22 **1.18.** “Defense Counsel” means Ian B. Wieland and Michael J. Conway II of Sagaser
23 Watkins & Wieland PC.

24 **1.19.** “Effective Date” means the date by when both of the following have occurred: (a)
25 the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the
26 Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no
27 Participating Class Members object to the Settlement, the day the Court enters Judgment; (b) if one
28 or more Participating Class Members object to the Settlement, the day after the deadline for filing a

notice of appeal from the Judgment; or, (c) if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.

1.20. “Final Approval” means the Court’s order granting final approval of the Settlement.

1.21. “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.

1.22. “Final Judgment” and “Judgment” means the Judgment entered by the Court upon Granting Final Approval of the Settlement.

1.23. “Gross Settlement Amount” means \$325,000.00 which is the total amount Defendant agrees to pay under the Settlement, subject to (voluntary) increase as provided in Section 8 of this Agreement. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees, Class Counsel Expenses, Class Representative Service Payment, and the Administrator’s Expenses.

1.24. “Individual Class Payment” means a Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Class Pay Periods worked by the Participating Class Member.

1.25. “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of PAGA Pay Periods worked by the Aggrieved Employee.

1.26. “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code §2699, subd. (i), to receive the LWDA PAGA Payment.

1.27. “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code §2699, subd. (i).

1.28. “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment.

1.29. “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.

1 **1.30.** “Notice Packet” means the Class Notice (Exhibit A), the Request for Exclusion form
2 (Exhibit B), the Pay Period Dispute form (Exhibit C), and the Objection form (Exhibit D).

3 **1.31.** “Operative Complaint” means the First Amended Complaint filed by Plaintiff on
4 June 6, 2023.

5 **1.32.** “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

6 **1.33.** “PAGA Pay Period” means any Pay Period during the PAGA Period in which an
7 Aggrieved Employee was employed directly by Defendant and was issued payment by Defendant
8 for wages for work performed within the Pay Period.

9 **1.34.** “PAGA Period” means the period from November 15, 2021, through the date in
10 which the Court grants Preliminary Approval of the Settlement, unless modified pursuant to Section
11 8 of this Agreement..

12 **1.35.** “PAGA Notice” means Plaintiff’s September 7, 2022, letter to Defendant and the
13 LWDA providing notice pursuant to Labor Code §2699.3, subd. (a).

14 **1.36.** “PAGA Penalties” means \$20,000.00, the total amount of PAGA civil penalties to
15 be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$5,000.00)
16 and the 75% to LWDA (\$15,000.00) in settlement of PAGA claims.

17 **1.37.** “Participating Class Member” means a Class Member who does not submit a valid
18 and timely Request for Exclusion from the Settlement.

19 **1.38.** “Plaintiff” means Ricardo Loera, the named plaintiff in the Action.

20 **1.39.** “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of
21 the Settlement.

22 **1.40.** “Preliminary Approval Order” means the proposed Order Granting Preliminary
23 Approval of the Settlement.

24 **1.41.** “Released Class Claims” means the Released Claims being released as described in
25 Section 5.4.1 below.

26 **1.42.** “Released PAGA Claims” means the Released Claims being released as described in
27 Section 5.4.2 below, which arise and/or are assertable under PAGA.

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1 **1.43.** “Released Parties” means: Defendant together with its present and former parents,
2 subsidiaries, affiliated entities, commonly owned or controlled entities, present and former owners,
3 board members, officers, directors, trustees, shareholders, members, partners, employees, agents,
4 insurers, attorneys, representatives, heirs, executors, administrators, successors and assigns, and any
5 individual or entity to whom liability for claims released by Plaintiff, or the Released Class Claims
6 and Released PAGA Claims, could be assigned pursuant to Labor Code § 558.1, or on a joint-
7 employer, alter-ego, or other joint or vicarious liability theory.

8 **1.44.** “Request for Exclusion” means a Class Member’s submission of a written request to
9 be excluded from the Class Settlement signed by the Class Member. A Request for Exclusion form
10 is attached as Exhibit B.

11 **1.45.** “Response Deadline” means 45 days after the Administrator mails Notice to Class
12 Members and Aggrieved Employees (plus an additional 14 days, in the case of Class Members
13 whose Notice Packets are resent by the Administrator after being returned as undeliverable), and
14 shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion
15 from the Settlement, or (b) fax, email, or mail his or her Objection to the Settlement.

16 **1.46.** “Settlement” means the disposition of the Action effected by this Agreement and the
17 Judgment.

18 **2. RECITALS**

19 **2.1.** On November 15, 2022, Plaintiff commenced this Action by filing a Complaint
20 alleging claims under PAGA. Plaintiff subsequently filed the Operative Complaint (the First
21 Amended Complaint) on June 6, 2023. Defendant denies the allegations in the Operative Complaint,
22 denies any failure to comply with the law, and denies any liability for the claims alleged in the
23 Operative Complaint.

24 **2.2.** Pursuant to Labor Code §2699.3, subd. (a), Plaintiff gave timely written notice to
25 Defendant and the LWDA by sending the PAGA Notice.

26 **2.3.** On May 2, 2024, the Parties participated in an all-day mediation presided over by
27 neutral Judge Howard R. Broadman (Ret.) which led to this Agreement to settle the Action.

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2.4. Prior to mediation, Plaintiff obtained, through informal discovery, the number of putative Class Members, the number of Aggrieved Employees, the number of workweeks, the number of pay periods, sample time records, sample payroll records, written policies, and related information. Plaintiff's investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 ("*Dunk/Kullar*").

2.5. The Court has not granted class certification.

3. MONETARY TERMS

3.1. Gross Settlement Amount. Except as otherwise provided by Section 8 below, Defendant promises to pay \$325,000.00 and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Defendant has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadlines stated in Section 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Defendant.

3.2. Payments from the Gross Settlement Amount. The Administrator will make and deduct the following payments from the Gross Settlement Amount, in the amounts specified by the Court in the Final Approval:

3.2.1. To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$20,000.00 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member and Aggrieved Employee). Defendant will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payment no later than 10 calendar days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net

Settlement Amount, and Plaintiff's general release of claims and waiver of rights under Civil Code §1542 will remain intact. The Administrator will pay the Class Representative Service Payment using IRS Form 1099-MISC. Plaintiff assumes full responsibility and liability for taxes owed on the Class Representative Service Payment and agrees to hold Defendant harmless, and indemnify Defendant, from any dispute or controversy regarding any division, sharing, or taxation of this payment.

3.2.2. To Class Counsel: A Class Counsel Fees Payment of not more than one-third, which is currently estimated to be \$108,333.33 and a Class Counsel Litigation Expenses Payment of not more than \$15,000.00. Defendant will not oppose requests for these payments provided that do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Litigation Expenses Payment no later than 10 calendar days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Defendant and Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Expenses Payment using one or more IRS 1099-MISC Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and agrees to hold Defendant harmless, and indemnify Defendant, from any dispute or controversy regarding any division, sharing, or taxation of any of these payments.

3.2.3. To the Administrator: An Administrator Expenses Payment not to exceed \$7,000.00 except for a showing of good cause and as approved by the Court. To the extent the Administration Expenses are less than \$7,000.00, or the Court approves payment less than \$7,000.00, the Administrator will allocate the remainder in the Net Settlement Amount.

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3.2.4. To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Class Pay Periods worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Class Pay Periods. 10-percent of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portion of Individual Class Payments are subject to tax withholding and will be reported on an IRS W-2 Form. 90-percent of each Participating Class Member's Individual Class Payment will be allocated to settlement of non-wage claims, including claims for non-wage statutory remedies (the "Non-Wage Portion"). The Non-Wage Portion of Individual Class Payments are not subject to wage withholdings and will be reported on IRS 1099-MISC Forms, with amounts payable being reported in Box 3 (Other income). Participating Class Members assume full responsibility and liability for any taxes owed on their Individual Class Payment. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

3.2.5. To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$20,000.00 to be paid from the Gross Settlement Amount, with 75% (\$15,000.00) allocated to the LWDA PAGA Payment and 25% (\$5,000.00) allocated to the Individual PAGA Payments. The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$5,000.00) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment. If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

1 **4. SETTLEMENT FUNDING AND PAYMENTS.**

2 **4.1.** Class Size. Based on a review of its records through March 2024, Defendant estimate
3 there are 215 Class Members who collectively worked a total of 9,076 Pay Periods.

4 **4.2.** Class Data. Not later than 15 days after service of the Court's Preliminary Approval
5 of the Settlement, Defendant will deliver the Class Data to the Administrator, in the form of a
6 Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must
7 maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and
8 for no other purpose, and restrict access to the Class Data to Administrator employees who need
9 access to the Class Data to effect and perform under this Agreement. Defendant has a continuing
10 duty to immediately notify Class Counsel if it discovers that the Class Data omitted Class Members'
11 identifying information and to provide corrected or updated Class Data as soon as reasonably
12 feasible. Without any extension of the deadline by which Defendant must send the Class Data to the
13 Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to
14 reconstruct or otherwise resolve any issues related to missing or omitted Class Data.

15 **4.3.** Funding of Gross Settlement Amount. Defendant shall fund one-half (\$162,500.00)
16 of the Gross Settlement Amount and the corresponding amounts necessary to pay the payroll taxes
17 on the Wage Portion of the Individual Class Payments allocable to this amount as calculated by the
18 Administrator within 30 calendar days of the Effective Date. Defendant shall fund the remainder of
19 the Gross Settlement Amount (\$162,500.00) and the corresponding amounts necessary to pay the
20 payroll taxes on the Wage Portion of the Individual Class Payments allocable to this amount as
21 calculated by the Administrator within one-year after the Effective Date.

22 **4.4.** Payments from the Gross Settlement Amount. Within 30 days after Defendant funds
23 the first installment of the Gross Settlement Amount (\$162,500.00), the Administrator shall mail
24 checks for the pro-rata share of Individual Class Payments, Individual PAGA Payments, the LWDA
25 PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, and the
26 Class Counsel Litigation Expenses Payment, and full share of the Class Representative Service
27 Payment. Within 30 days after Defendant funds the second installment of the Gross Settlement
28 Amount (\$162,500.00), the Administrator shall mail checks for the remaining pro-rata share of

Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, and the Class Counsel Litigation Expenses Payment.

4.4.1. The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Class Payments to all Participating Class Members (including those for whom Notice Packet was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Notice Packet was returned undelivered). The Administrator may send Participating Class Members and Aggrieved Employees a single check combining the Individual Class Payment and the Individual PAGA Payment.

4.4.2. The Administrator must conduct a Class Member Address Search for all Class Members whose checks are returned undelivered without USPS forwarding address. Within 7 days of receiving a returned check the Administrator must re-mail checks to the USPS forwarding address provided or to an address ascertained through the Class Member Address Search. The Administrator need not take further steps to deliver checks to Class Members whose re-mailed checks are returned as undelivered. The Administrator shall promptly send a replacement check to any Class Member whose original check was lost or misplaced, as requested by the Class Member prior to the void date.

4.4.3. For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the Wounded Warrior Project.

4.4.4. The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions, bonuses, vacation plans, sick leave plans, PTO

plans, regular rate of pay calculations, or other benefit plan) beyond those specified in this Agreement.

5. RELEASES OF CLAIMS

5.1. Effective Date of Release. The releases described in this Agreement shall take effect upon the Effective Date. Therefore, Defendant and Released Parties shall have the right to enforce the releases contained in this Agreement against Plaintiff, Participating Class Members, Aggrieved Employees, and the LWDA as of the Effective Date, prior to funding the Gross Settlement Amount and prior to distribution of Individual Class Payments, Individual PAGA Payments, and the LWDA PAGA Payment. The releases described in this Agreement may be invalidated after the Effective Date if Defendant fails to fund the Gross Settlement Amount by the deadlines set forth in Section 4.3 of this Agreement. The statute of limitations on any Released Claims shall be tolled between the Effective Date and Defendant's deadline to fund the Gross Settlement Amount per Section 4.3.

5.2. Plaintiff's General Release. Plaintiff, on behalf of himself and on behalf of his respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns, agrees to release and discharge Defendant and Released Parties from all known and unknown claims of whatever type that Plaintiff has or may have against Defendant and Released Parties through the date of Plaintiff's execution of this Agreement, except for claims to enforce this Agreement or claims that Plaintiff cannot release via a general release as a matter of law, including claims for unemployment and workers' compensation benefits ("Plaintiff's General Release").

5.3. Plaintiff's Waiver of Rights Under California Civil Code Section 1542. Plaintiff acknowledges that he may discover facts or law different from, or in addition to, the facts or law that he now knows or believes to be true, which could materially affect his decision to agree to the releases set forth in this Agreement. Nonetheless, Plaintiff voluntarily assumes this risk, and agrees that Plaintiff's General Release shall remain in effect notwithstanding such different or additional discoveries. To this end, Plaintiff expressly waives and relinquishes his rights under California Civil Code §1542, which provides:

1 **A general release does not extend to claims that the creditor or releasing party**
2 **does not know or suspect to exist in his or her favor at the time of executing the**
3 **release, and that if known by him or her, would have materially affected his or**
4 **her settlement with the debtor or Released Party.**

5 **5.4. Release by Participating Class Members and Aggrieved Employees:**

6 5.4.1. Release of Class Claims: As of the Effective Date, all Participating Class
7 Members shall release Defendant and Released Parties of all claims that are not assertable under
8 PAGA and that Plaintiff alleged, or could have alleged, based on the facts pled in the Operative
9 Complaint, and which arose or existed during the Class Period during employment in California
10 in a non-exempt position ("Released Class Claims"). Without limiting the foregoing, Released
11 Class Claims shall include:

12 5.4.1.1. All claims relating to unpaid wages (including claims for failure to
13 pay minimum wages, straight time wages, overtime and double-time compensation); all
14 claims related to the timeliness of wage payments (whether regular or final wages); all claims
15 relating to the failure to provide compliant meal, rest, and recovery periods; all claims
16 relating to the failure to pay premiums for violations of meal, rest, and recovery period laws
17 (including the failure to make premium payments at all, or failure to make premium
18 payments at the correct rate of pay); all claims relating to the provision of wage statements;
19 all claims relating to the failure to maintain accurate employment records; all claims relating
20 to the reimbursement of necessary business expenses; all claims relating to the failure to pay
21 reporting time pay (including the failure to pay reporting time pay at all when required by
22 law, or failure to pay reporting time pay at the correct rate of pay); and all claims relating to
23 unfair business practices resulting from any of the foregoing.

24 5.4.1.2. All claims arising under California Labor Code §§ 201, 202, 203, 204,
25 204b, 208, 210, 218.5, 218.6, 226, 226.7, 510, 512, 558, 1174, 1194, 1194.2, 1198, and 2802;
26 8 C.C.R. § 11160, Sections 3, 4, 5, 6, 7, 8, 10, 11, and 18; 8 C.C.R. § 3395; California
27 Business and Professions Code §§17200-17208; California Civil Code §§ 3287 and 3289;
28 California Code of Civil Procedure §1021.5; and related claims under the applicable
 provisions of the Fair Labor Standards Act (29 U.S.C. §§201, et seq.).

5.4.1.3. All remedies associated with any of the claims described herein, including but not limited to compensatory, consequential, incidental, liquidated, and punitive damages; statutory penalties; restitution; interest; costs; attorneys' fees; injunctive or other equitable relief.

5.4.2. Release of PAGA Claims: As of the Effective Date, all Aggrieved Employees and the LWDA shall release Defendant and Released Parties of all claims that are assertable under PAGA and that Plaintiff alleged, or could have alleged, based on the facts pled in the Operative Complaint or Plaintiff's PAGA Notice, and which arose or existed during the PAGA Period during employment in California in a non-exempt position ("Released PAGA Claims"). Without limiting the foregoing, Released PAGA Claims shall include:

5.4.2.1. All claims for civil penalties recoverable under PAGA relating to unpaid wages (including claims for failure to pay minimum wages, straight time wages, overtime and double-time compensation); all claims for civil penalties recoverable under PAGA related to the timeliness of wage payments (whether regular or final wages); all claims for civil penalties recoverable under PAGA relating to the failure to provide compliant meal, rest, and recovery periods; all claims for civil penalties recoverable under PAGA relating to the failure to pay premiums for violations of meal, rest, and recovery period laws (including the failure to make premium payments at all, or failure to make premium payments at the correct rate of pay); all claims for civil penalties recoverable under PAGA relating to the provision of wage statements; all claims for civil penalties recoverable under PAGA relating to the failure to maintain accurate employment records; all claims for civil penalties recoverable under PAGA relating to the failure to pay reporting time pay (including the failure to pay reporting time pay at all when required by law, or failure to pay reporting time pay at the correct rate of pay); and all claims for civil penalties recoverable under PAGA relating to the reimbursement of necessary business expenses.

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5.4.2.2. All claims for civil penalties recoverable under PAGA and set forth in California Labor Code §§203, 210, 225.5, 226, 226.3, 248.5, 558, 558.1, 1174.5, 1197.1, 8 C.C.R. § 11160, Sec. 18, 8 C.C.R., and other default civil penalties for the Released PAGA Claims available under California Labor Code § 2699.

5.5. Releases Effective Regardless of Receipt of Class Notice and/or Payment. The releases described in this section shall bind all Participating Class Members and Aggrieved Employees regardless of whether they receive the Class Notice, receive their Individual Class Payment and/or Individual PAGA Payment, and/or whether they deposit their Individual Class Payment and/or Individual PAGA Payment.

5.6. Construction. The Parties intend that this release be construed as broadly as possible.

5.7. Resolution of Good Faith Dispute. The Parties warrant and represent that the releases for Participating Class Members and Aggrieved Employees resolve, pursuant to Labor Code §§206 and 206.5, and applicable case law (including but not limited to *Chindarah v. Pick Up Stix, Inc.* (2009) 171 Cal.App.4th 796) a good faith dispute regarding any and all wages, if any, owed by Defendant to Participating Class Members / Aggrieved Employees as specified above. The Parties further warrant and represent that the Gross Settlement Amount described in this Agreement is in addition to any undisputed wages and other benefits owed to Class Members by Defendant.

6. MOTION FOR PRELIMINARY APPROVAL. Plaintiff shall prepare and file a motion for preliminary approval (“Motion for Preliminary Approval”). Defendant shall not oppose the motion to the extent it is consistent with this Agreement.

6.1. Plaintiff’s Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice and memorandum in support of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code §2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a signed declaration from the Administrator attaching its “not to exceed” bid for administering the Settlement and attesting to its willingness and ability to serve as an administrator in this matter, including information related to its financial relationship with Class

Counsel; (iv) a signed declaration from Plaintiff confirming his willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members, and/or the Administrator; (v) a signed declaration from Class Counsel attesting to their competency to represent the Class Members; and (vi) proof of Plaintiff's timely transmission to the LWDA of all necessary PAGA documents (including the initial notice of violations sent to Defendant and the LWDA pursuant to Labor Code §2699.3, subd. (a), the Operative Complaint (Labor Code §2699, subd. (1)(1)), and this Agreement (Labor Code §2699, subd. (1)(2))).

6.2. Responsibilities of Counsel. Class Counsel is responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 20 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval Order to the Administrator.

6.3. Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in good faith to modify the Agreement and otherwise satisfy the Court's concerns. However, no Party shall be obligated to consent to any material change (including but not limited to changes to the Gross Settlement Amount or the releases set forth herein) in the Agreement, whether or not such material change is caused or requested by the Court.

7. SETTLEMENT ADMINISTRATION

7.1. Selection of Administrator. The Parties have jointly selected Phoenix Class Action Administration Solutions to serve as the Administrator and verified that, as a condition of appointment, Phoenix Class Action Administration Solutions agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for the Administration Expenses Payment. The Parties, Class Counsel, and Defense Counsel represent that

they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.

7.2. Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund (“QSF”) under US Treasury Regulation section 468B-1.

7.3. Notice to Class Members.

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

7.3.2. Using best efforts to perform as soon as possible, and in no event later than 15 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Notice Packet substantially in the forms attached to this Agreement as Exhibits A, B, C, and D. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and/or Individual PAGA Payment payable to the Class Member and/or Aggrieved Employee, and the number of Class Pay Periods and PAGA Pay Periods (if applicable) used to calculate these amounts.

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

7.3.4. The deadlines for Class Members’ written objections, Challenges to Class Pay Periods and/or PAGA Pay Periods (disputes), and Requests for Exclusion will be extended an additional 14 days beyond the 45 days otherwise provided in the Class Notice for all Class

Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Notice Packet.

7.3.5. If the Administrator, Defendant, or Class Counsel is contacted by or otherwise discovers any persons who believe they should have been included in the Class Data and should have received Notice Packet, the Parties will expeditiously meet and confer in person or by telephone, and in good faith in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send a Notice Packet requiring them to exercise options under this Agreement within the timeframes applicable to Class Members whose Notice Packet is re-mailed by the Administrator.

7.4. Requests for Exclusion (Opt-Outs).

7.4.1. Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 45 days after the Administrator mails the Notice Packet (plus an additional 14 days for Class Members whose Notice Packet is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, signature, date, and telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline. A Request for Exclusion form, attached as Exhibit B, may be used for this purpose but is not required.

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

susceptible to challenge.

7.4.3. Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Section 5.4.1 of this Agreement, regardless of whether the Participating Class Member actually receives the Notice Packet, an Individual Class Payment, objects to the settlement, or disputes the pay periods set forth in the Class Notice.

7.4.4. Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement.

7.4.5. All Aggrieved Employees are entitled to all benefits and bound by all terms and conditions of the Settlement as they pertain to PAGA claims, including the Aggrieved Employees' Releases under Section 5.4.2 of this Agreement, regardless of whether the Aggrieved Employee actually receives the Notice Packet, an Individual PAGA Payment, objects to the settlement, or disputes the pay periods set forth in the Class Notice.

7.5.Challenges to Calculation of Pay Periods. Each Class Member shall have 45 days after the Administrator mails the Notice Packet (plus an additional 14 days for Class Members whose Notice Packet is re-mailed) to challenge the number of Class Pay Periods and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. A Pay Period Dispute form, attached as Exhibit C, may be used for this purpose but is not required. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Class Pay Periods and PAGA Pay Periods contained in the Class Data are correct. The Administrator's determination of each Class Member's allocation of Class Pay Periods and/or PAGA Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Class Pay Periods and/or PAGA Pay Periods and the Administrator's determination as to such challenges to Defense Counsel and Class Counsel, except

that any information provided to Class Counsel in relation to pay period disputes shall not contain any personal identifying information (e.g., names and contact information) of the Class Members.

7.6. Objections to Settlement.

7.6.1. Only Participating Class Members may object to the class action components of the Settlement and/or this Agreement, including contesting the fairness of the Settlement, and/or amounts requested for the Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and/or the Class Representative Service Payment.

7.6.2. Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 45 days after the Administrator's mailing of the Notice Packet (plus an additional 14 days for Class Members whose Notice Packet was re-mailed). The Objection form attached as Exhibit D may be used for this purpose, but is not required.

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

7.7. Administrator Duties. The Administrator has a duty to perform or observe all tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

7.7.1. Email Address, Fax Number, and Toll-Free Number. The Administrator will establish and maintain and use an email address, fax number, and a toll-free telephone number to receive Class Member emails, faxes, and calls.

7.7.2. Requests for Exclusion (Opt-outs) and Exclusion List. The Administrator will promptly review Requests for Exclusion to ascertain their validity. Not later than 5 days after the expiration of the deadline for submitting Requests for Exclusion, the Administrator shall email a list to Defense Counsel containing (a) the names and other identifying information of Class Members who have timely submitted valid Requests for Exclusion ("Exclusion List"); (b) the names and other identifying information of Class Members who have submitted invalid Requests for Exclusion; and, (c) copies of all Requests for Exclusion documentation submitted

(whether valid or invalid). Upon request, the Administrator may provide summary information regarding the information described in this section to Class Counsel, but shall not provide any personal identifying information (e.g., names and contact information) to Class Counsel.

7.7.3. Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Notice Packets mailed or re-mailed, Notice Packets returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to Class Pay Periods and/or PAGA Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must include the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received, except that any information provided to Class Counsel shall not contain any personal identifying information (e.g., names and contact information) of the Class Members

7.7.4. Class Pay Period and/or PAGA Pay Period Challenges. The Administrator has the authority to address and make decisions consistent with the terms of this Agreement on all Class Member challenges regarding the calculation of Class Pay Periods and/or PAGA Pay Periods. Any party or Class Member dissatisfied with the decision of the Administrator may seek the Court’s intervention in challenging their Class Pay Periods or PAGA Pay Periods.

7.7.5. Administrator’s Declaration. Not later than 10 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel a signed declaration suitable for filing in Court attesting to its due diligence and compliance with its obligations under this Agreement, including, but not limited to, its mailing of the Notice Packets, the Notice Packets returned as undelivered, the re-mailing of Notice Packets, attempts to locate Class Members, the total number of Requests for Exclusion it received (both valid or invalid), and the number of written objections received. The Administrator shall provide along with such declaration the Exclusion List with all personal identifying information (e.g., names and contact information) redacted. The Administrator will supplement its declaration as needed or requested by the Parties and/or

the Court. Class Counsel is responsible for filing the Administrator's declaration(s) in Court.

7.7.6. Final Report by Administrator. Within 14 days after the Administrator disburses the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements. All personal identifying information (e.g., names and contact information) shall be redacted from the report. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator's declaration in Court if the Court requires it.

8. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE. If the number of Class Members exceeds 215 by 10-percent (i.e., more than 237 Class Members) or the number of Class Pay Periods exceeds 9,076 by 10-percent (i.e., more than 9,984 Class Pay Periods), whichever figure is more favorable to Defendant, the Gross Settlement Amount may, subject to Defendant's election, increase proportionally by either (a) \$1,315.79 for each additional Class Member above 237, or (b) \$31.14 for each additional Class Pay Period above 9,984, whichever figure Defendant elects to use. In lieu of paying an additional amount, Defendant shall have the exclusive option to choose an end-date for the Class Period and PAGA Period (the same date) earlier than the date of Preliminary Approval so to avoid any such pro rata increase of the Gross Settlement Amount.

9. DEFENDANT'S RIGHT TO WITHDRAW. Defendant shall have the right at its sole discretion to terminate the settlement if more than 5% of Class Members (i.e., more than 11 Class Members) timely elect to exclude themselves from the Settlement, as determined by the Administrator. If Defendant exercises its right under this Section, Defendant shall be solely liable for administrative costs incurred by the Administrator. Defendant must exercise their right to terminate the settlement in a writing to Class Counsel stating an intention to terminate the Settlement within 10 days of receiving the final Exclusion List from the Administrator.

10. MOTION FOR FINAL APPROVAL. Not later than 10 calendar days before the calendared Final Approval Hearing, unless otherwise instructed by the Court, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA

1 settlement under Labor Code §2699, subd. (l), a proposed Final Approval order, and a proposed
2 Judgment (collectively “Motion for Final Approval”). Plaintiff shall provide drafts of these
3 documents to Defense Counsel not later than 5 court days prior to filing the Motion for Final
4 Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by
5 telephone, and in good faith, to resolve any disagreements concerning the Motion for Final
6 Approval.

7 **10.1.** Response to Objections. Each Party retains the right to respond to any objection
8 raised by a Participating Class Member, including the right to file responsive documents in Court
9 no later than 10 calendar days prior to the Final Approval Hearing, or as otherwise ordered or
10 accepted by the Court.

11 **10.2.** Duty to Cooperate. If the Court does not grant Final Approval or conditions Final
12 Approval on any material change to the Agreement (including but not limited to the scope of the
13 releases or changes to the Gross Settlement Amount), the Parties shall expeditiously work together
14 in good faith to address the Court’s concerns in an endeavor to revise the Agreement as necessary
15 to obtain Final Approval. No Party shall be obligated to consent to any material change in the
16 Agreement, whether or not such material change is caused or requested by the Court. The Court’s
17 decision to award less than the amounts requested for the Class Representative Service Payment,
18 Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administrator
19 Expenses Payment shall not constitute a material modification to the Agreement within the meaning
20 of this section.

21 **10.3.** Continuing Jurisdiction of the Court. The Parties agree that, after entry of Judgment,
22 the Court will retain jurisdiction over the Parties, the Action, and the Settlement solely for purposes
23 of (i) enforcing this Agreement and/or Judgment, (ii) addressing settlement administration matters,
24 and (iii) addressing such post-Judgment matters that are permitted by law.

25 **10.4.** Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and
26 conditions of this Agreement, the Parties, their respective counsel, and all Participating Class
27 Members who did not object to the Settlement as provided in this Agreement waive all rights to
28 appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right

to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals.

10.5. Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the appellate court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of releases or changes to the Gross Settlement Amount), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional administration expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment, the Class Counsel Fees Payment, and/or the Class Counsel Litigation Expenses Payment shall not constitute a material modification of the Judgment within the meaning of this section, as long as the Gross Settlement Amount remains unchanged. However, no party shall be obligated to consent to any material change in the Agreement, whether or not such material change is caused or requested by the reviewing Court.

11. AMENDED JUDGMENT. If any amended judgment is required under Code of Civil Procedure §384, the Parties will work together in good faith to jointly submit and a proposed amended judgment.

12. ADDITIONAL PROVISIONS.

12.1. No Admission of Liability, Class Certification, or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Defendant that any of the allegations in the Operative Complaint have merit or that Defendant has any liability for any claims asserted. Nor shall this Agreement be intended or construed as an admission by Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does grant Preliminary Approval, Final Approval, or enter Judgment, Defendant reserves the right to contest certification of any class for any reasons, Defendant reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds

available and to contest Defendant's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).

12.2. Confidentiality. Plaintiff, Class Counsel, Defendant, and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; (5) in response to an inquiry or subpoena issued by a state or federal government agency; or, (6) to Class Members for purposes of informing them about this Settlement and its procedures. Thereafter, Class Counsel further agrees not to disclose this Settlement to the media, or on any websites, blogs, social media, and/or online platforms. Class Counsel shall have the ability to disclose this Settlement in the following circumstances: (i) disclosures necessary to comply with the law, judicial processes, or for financial planning or tax preparation purposes; (ii) to the extent needed to enforce this Agreement; (iii) disclosures to a court for purposes of describing its qualifications as counsel; (iv) to Class Members for purposes of informing them about this Settlement and its procedures; or, (v) as part of a declaration made by an attorney in Class Counsel's firm to establish his/her experience in handling wage and hour class action and/or PAGA matters. Each Party agrees to immediately notify the other Party of any judicial or agency order, inquiry, or subpoena seeking such information.

12.3. No Solicitation. The Parties agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this section shall be construed to restrict the Parties' or their respective counsel's ability to communicate with Class Members for purposes of informing them about this Settlement and its procedures.

1 **12.4. Integrated Agreement.** Upon execution by the Parties, Class Counsel, and Defense
2 Counsel, this Agreement together with its attached exhibits shall constitute the entire agreement
3 between the Parties relating to the Settlement, superseding any and all oral representations,
4 warranties, covenants, or inducements made to or by any Party.

5 **12.5. Cooperation.** The Parties and their counsel will cooperate with each other and use
6 their best efforts, in good faith, to implement the Settlement. In the event the Parties are unable to
7 agree upon the form or content of any document necessary to implement the Settlement, or on any
8 modification of the Agreement that may become necessary to implement the Settlement, the Parties
9 will seek the assistance of Judge Howard R. Broadman (Ret.) and/or the Court for resolution.
10 Nothing in this section shall be construed as obligating the Parties to consent to any material change
11 in the Agreement, whether or not such material change is caused or requested by the Court or the
12 reviewing Court.

13 **12.6. No Prior Assignments.** The Parties separately represent and warrant that they have
14 not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or
15 encumber to any person or entity any portion of any liability, claim, demand, action, cause of action,
16 or right released and discharged by the Party in this Settlement.

17 **12.7. No Tax Advice.** Plaintiff, Class Counsel, Defendant, and Defense Counsel are not
18 providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied
19 upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part
20 10, as amended) or otherwise.

21 **12.8. Modification of Agreement.** This Agreement, and all parts of it, may be amended,
22 modified, changed, or waived only by an express written instrument signed by all Parties, and
23 approved by the Court.

24 **12.9. Agreement Binding on Successors.** This Agreement will be binding upon, and inure
25 to the benefit of, the successors of each of the Parties.

26 **12.10. Applicable Law.** All terms and conditions of this Agreement and its exhibits will be
27 governed by and interpreted according to the internal laws of the state of California, without regard
28 to conflict of law principles.

1 **12.11.** Cooperation in Drafting. The Parties have cooperated in the drafting and preparation
2 of this Agreement. This Agreement will not be construed against any Party on the basis that the
3 Party was the drafter or participated in the drafting.

4 **12.12.** Confidentiality. To the extent permitted by law, all agreements made, and orders
5 entered during Action and in this Agreement relating to the confidentiality of information shall
6 survive the execution of this Agreement.

7 **12.13.** Use and Return of Class Data. Information provided to Class Counsel pursuant to
8 California Evid. Code §1152, and all copies and summaries of the Class Data provided to Class
9 Counsel by Defendant in connection with the mediation, other settlement negotiations, or in
10 connection with the Settlement, may be used only with respect to this Settlement, and no other
11 purpose, and may not be used in any way that violates any existing contractual agreement, statute,
12 or rule of court. Not later than 90 days after the Effective Date, upon demand by Defendant, Plaintiff
13 shall destroy all paper and electronic versions of Class Data received from Defendant unless, prior
14 to the Effective Date, Defendant makes a written request to Class Counsel for the return, rather than
15 the destruction, of Class Data.

16 **12.14.** Headings. The descriptive heading of any section or section of this Agreement is
17 inserted for convenience of reference only.

18 **12.15.** Calendar Days. Unless otherwise noted, all reference to “days” in this Agreement
19 shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
20 weekend or legal holiday, such date or deadline shall be on the first business day thereafter.

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1 **12.16.** Notice. All written notices, demands or other communications between the Parties in
2 connection with this Agreement shall be addressed as follows:

3 To Plaintiff:

4 Daniel F. Gaines, Esq.

5 Alex P. Katofsky, Esq.

6 **GAINES & GAINES, APLC**

7 4550 East Thousand Oaks Boulevard, Suite 100

8 Westlake Village, CA 91362

9 Email: daniel@gaineslawfirm.com; alex@gaineslawfirm.com

10 To Defendant:

11 Ian B. Wieland, Esq.

12 Michael J. Conway II, Esq.

13 Sagaser Watkins & Wieland PC

14 5260 N Palm Ave, Ste. 400

15 Fresno, CA 93704

16 Email: ian@sw2law.com; mikec@sw2law.com

17 **12.17.** Execution in Counterparts. This Agreement may be executed in one or more
18 counterparts by facsimile, electronically (i.e. DocuSign), or email, which for purposes of this
19 Agreement shall be accepted as an original. All executed counterparts and each of them will be
20 deemed to be one and the same instrument if counsel for the Parties will exchange between
21 themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove
22 the existence and contents of this Agreement.

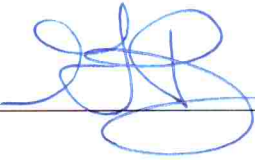
23 Dated: 07 / 31 / 2024

RICARDO LOERA

24 By: 

25 Dated: 7/26/2024

VC1 CONCRETE CONSTRUCTION, LLC

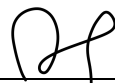
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Approved as to Form

Dated: July 31, 2024

GAINES & GAINES, APLC

By: 
Attorneys for Plaintiff

Dated: July 30, 2024

SAGASER, WATKINS & WIELAND PC

By: 
Attorneys for Defendants

EXHIBIT A

THIS IS AN IMPORTANT COURT APPROVED NOTICE. READ CAREFULLY.

Ricardo Loera v. VC1 Concrete Construction, LLC
San Joaquin County Superior Court Case No. STK-CV-UOE-2022-0010482

If you worked as a non-exempt hourly employee for VC1 Concrete Construction, LLC in California at any time from November 15, 2018, through [DATE], you may be eligible to receive compensation from a class action and Private Attorneys General Act settlement.

- You have been identified as a Class Member (defined below) in a Lawsuit (defined below) brought by a former employee, Ricardo Loera (“Plaintiff”), of VC1 Concrete Construction, LLC (“Defendant”). Defendant denies all allegations and contends it has complied with California law at all relevant times. However, to avoid the continuing expense of litigation, the Parties have reached a settlement of highly disputed claims (the “Settlement”). The Court has preliminarily approved the Settlement, finding it to be fair, reasonable, adequate, and in the best interests of the Class Members.
- The Class Settlement will affect all of Defendant’s non-exempt hourly California employees from June 6, 2019, through [DATE] (the “Class Period”). The PAGA Settlement will affect all of Defendant’s non-exempt hourly California employees from November 15, 2021, through [DATE] (the “PAGA Period”).
- If the Court grants final approval of the Settlement, you will receive a settlement payment.

*A court authorized this notice. This is not an advertisement.
You are not being sued. Your rights will be affected by this notice and settlement.*

YOUR LEGAL RIGHTS AND OPTIONS	
<u>PARTICIPATE IN THE SETTLEMENT – NO ACTION REQUIRED</u>	Stay in this Lawsuit. Receive a payment. Give up certain rights. By doing nothing, you become part of the Settlement Class (defined below), will receive a settlement payment, and will give up certain rights to sue or continue to sue Defendant separately about the legal claims raised in this Lawsuit.
<u>OBJECT TO THE SETTLEMENT – ACTION REQUIRED</u>	Stay in this Lawsuit. May give up certain rights. If you object to the Settlement, you will remain a member of the Class (defined below), and if the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as Class Members who do not object.
<u>ASK TO BE EXCLUDED – ACTION REQUIRED</u>	Opt out of the Settlement. Receive no payment from the settlement for the Class claims, but receive an individual settlement share for civil penalties under the California Private Attorneys General Act of 2004 (“PAGA”). Keep rights to individually pursue only the Class claims. If you opt out of the Settlement, you won’t receive any share of the Class payment, but you retain the right to sue Defendant separately about the Class claims in this Lawsuit. However, even if you opt out, you will still receive an individual

	settlement share for claims for civil penalties pursuant to PAGA and will be deemed to have released the PAGA claims.
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- To object to the Settlement or to ask to be excluded, you must act before [DATE].
- **Any questions?** Read on or contact Class Counsel (defined below) or the Settlement Administrator (defined below).

WHAT THIS NOTICE CONTAINS

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BASIC INFORMATION

1. Why did I get this notice?

Records show that you are a potential member of the Class because you worked for Defendant in California as a non-exempt employee during the Class Period. The Court has given preliminary approval to the Settlement of a class action lawsuit that may affect your legal rights and ordered that this Notice be sent to you to explain your rights in connection with the Settlement. The Court has determined only that there is sufficient evidence to suggest that the proposed Settlement might be fair, adequate, and reasonable; the Court has not made any ruling on the merits of Plaintiff's claims or Defendant's defenses.

The lawsuit consists of the action entitled *Loera v. VCI Concrete Construction, LLC*, San Joaquin County Superior Court Case No. STK-CV-UOE-2022-0010482 (the "Lawsuit"). You can view the Lawsuit's records online by visiting the Court's website (<https://cms.sjcourts.org/fullcourtweb/start.do>), clicking "Login", clicking "Cases" and selecting "Civil Case" from the dropdown menu, the typing in "CV" in the first search box, "2022" in the second search box, and "0010482" in the third search box then selecting "RETRIEVE".

2. What is this Lawsuit about?

The Lawsuit is about whether Defendant failed to pay minimum, regular, overtime, double time, and other wages for all hours worked, failed to provide proper meal, rest, and recovery breaks, failed to provide accurate itemized wage statements, failed to pay all wages timely during employment or upon separation of employment, failed to reimburse business expenses, failed to pay reporting time pay, and committed related employment-law violations under applicable California laws against its non-exempt employees. Based on these alleged violations, the Lawsuit also alleges violations of California's Unfair Competition Law ("UCL") and seeks penalties under California's Private Attorneys General Act.

Defendant denies any liability or wrongdoing associated with the claims alleged in the Lawsuit.

3. What is a class action and who is involved?

In an employment class action lawsuit such as this, a person called the "Class Representative" sues his or her employer or former employer on behalf of other current or former employees who may have similar claims. The people who may have similar claims are called "Class Members," and Class Members are collectively referred to as "the Class." The Class Representative is also called the Plaintiff. There is one Class Representative in this Action, Ricardo Loera. The company sued (VCI Concrete Construction, LLC) is called the Defendant. In class action litigation, one Court resolves the issues for everyone in the Class in one lawsuit, except for those people who choose to exclude themselves from the Class.

4. Why is this Lawsuit a class action?

As part of the Settlement, Plaintiff and Defendant agreed to conditionally certify the Lawsuit as a class action for all of Plaintiff's alleged claims for settlement purposes only and to ask the Court to approve the Settlement.

By agreeing to the terms of the settlement, Defendant does not admit any of the allegations in this Action,

that it has done anything wrong, or that any Class Member has suffered any damage. Defendant settled this case to avoid additional expense, inconvenience, and interference with its business operations that would ensue if the Lawsuit continued. The Court has not ruled on the merits of Plaintiff's claims or the defenses of Defendant. Defendant retains the right to defend itself against any of the allegations involved in the Lawsuit if for any reason the Settlement is not approved by the Court.

5. What are the terms of the proposed Settlement?

The major terms of the Settlement are as follows:

1. Defendant has agreed to pay \$325,000.00. This \$325,000.00 total settlement figure is known as the "Gross Settlement Amount," unless increased on a pro rata basis according to the terms of the Settlement Agreement.
2. Plaintiff Ricardo Loera has agreed to a general release of all of his claims against Defendant in addition to a waiver of his rights under California Civil Code §1542.
3. Plaintiff seeks the following allocation of the Gross Settlement Amount:
 - a. Up to one-third (1/3) of the Gross Settlement Amount (or currently approximately \$108,333.33) for Class Counsel's attorneys' fees;
 - b. Up to \$15,000.00 for reimbursement of Class Counsel's litigation costs;
 - c. An enhancement payment of up to \$20,000 for Plaintiff Ricardo Loera for dedicating personal time and performing work in connection with the Lawsuit, assisting Class Counsel in investigating the alleged claims, being available to answer Class Counsel's questions, providing a general release of claims, and undertaking the risks of filing the Lawsuit;
 - d. All costs of the Settlement Administrator, which are currently estimated to be no more than \$7,000; and
 - e. \$20,000.00 as PAGA civil penalties. Per Labor Code Section 2699(i), seventy-five percent (75%) of this amount (\$15,000.00) will be payable to the California Labor and Workforce Development Agency ("LWDA"). The remaining twenty-five percent (25%) of this amount (\$5,000.00) will be payable to certain members of the Class who worked during the PAGA Period as Individual PAGA Payments.
4. After the above deductions from the Gross Settlement Amount, the remaining funds will be distributed to Class Members on a pro rata basis. To ensure timely payment, please contact and inform the Settlement Administrator listed in Section 18, below, of any changes to your mailing address.

If the Court approves this proposed allocation, the Parties estimate that \$325,000.00 (the "Net Settlement Amount") will be distributed to Class Members who do not request exclusion (the "Participating Class Members") according to the following formula:

Dividing the Net Settlement Amount by the total number of Class Pay Periods (defined as any Pay Period during the Class Period in which a Class Member was employed directly by Defendant and was issued payment by Defendant for wages for work performed within the Pay Period) worked by all Class Members during the Class Period and multiplying the result by each Class Member's Class Pay Periods.

The PAGA Amount will be distributed to Aggrieved Employees according to the following formula:

Dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties \$5,000.00 by the total number of PAGA Pay Periods (defined as any Pay Period during the PAGA Period in which a Aggrieved Employee was employed directly by Defendant and was issued payment by Defendant for wages for work performed within the Pay Period) worked by all Aggrieved Employees during the PAGA Period and multiplying the result by each Aggrieved Employee's PAGA Pay Periods.

Your estimated Individual Settlement Payment and Individual PAGA Payment is listed in Section 8 of this Notice. Employee-side payroll deductions will be made to your Individual Settlement Payment for state and federal withholding taxes and any other applicable payroll deductions owed by you as a result of the payment, with 10% allocated to wages, and 90% allocated to settlement of non-wage claims, including claims for non-wage statutory remedies. Your Individual PAGA Payment will not be subject to employee-side payroll deductions. Defendant will pay employer-side taxes separate and apart from the Gross Settlement Amount.

Nothing in this Notice or the Settlement is intended to be tax advice. You should consult your tax advisor for any tax issues pertaining to this Settlement.

WHO IS IN THE CLASS?

6. Am I part of this Class?

The "Settlement Class" consists of all persons who worked as non-exempt hourly employees in California for Defendant at any time from June 6, 2019, through **[DATE]**.

7. I'm still not sure if I am included.

If you still are not sure whether you are included in the Class, you can get free help by contacting Phoenix Class Action Administration Solutions, the "Settlement Administrator," at the designated phone number for this matter at **[insert telephone number]**, or by calling or writing the lawyers representing the Class in this case ("Class Counsel"), at (818) 703-8985.

YOUR RIGHTS AND OPTIONS

You have to decide whether to stay in the Class, object to the Settlement, or ask to be excluded from the Settlement. These options are further explained below, including the dates by which you need to take any action.

8. What is my approximate Individual Settlement Payment?

According to payroll records maintained by Defendant, your total number of Class Pay Periods during the Class Period is [REDACTED] and PAGA Pay Periods during the PAGA Period is [REDACTED]. As a result, your estimated Individual Class Payment will be \$ [REDACTED], less applicable withholdings. Further, your estimated Individual PAGA Payment will be \$ [REDACTED].

You do not need to do anything further to receive your Individual Class Payment and Individual PAGA Payment, other than to ensure that the Settlement Administrator has an accurate mailing address for you. It is important that you contact and inform the Settlement Administrator listed in Section 18, below, of any changes to your mailing address for timely payment.

If you believe your total number of Class Pay Periods or PAGA Pay Periods (shown above) is not accurate, you may submit a signed written dispute to the Settlement Administrator, indicating what you believe is the correct number of Class Pay Periods or PAGA Pay Periods. Please be advised that your number of Class Pay Periods and PAGA Pay Periods are presumed to be correct, unless you submit documents to support your contention to the Settlement Administrator no later than [DATE]. A sample pay dispute form you can use for these purposes is enclosed with this notice as **Exhibit A**.

9. What rights am I releasing if I participate in the Settlement?

If the Court grants final approval of the Settlement, each Class Member who does not validly opt-out will be mailed an Individual Class Payment. If the Court grants final approval of the Settlement, each Aggrieved Employee will be mailed an Individual PAGA Payment, regardless of any election to opt-out.

In addition, each Class Member who does not validly opt-out and each Aggrieved Employee will be deemed to release the Released Parties from the Released Class Claims and Released PAGA Claims, as of the Effective Date of the Settlement. If a Class Member opts out, then he/she will be deemed to release the Released Parties from only the Released PAGA Claims.

- The **Effective Date** of the Settlement is the date by when both of the following have occurred: (a) the Court enters a Judgment on its Order Granting Final Approval of the Settlement; and (b) the Judgment is final. The Judgment is final as of the latest of the following occurrences: (a) if no Participating Class Members object to the Settlement, the day the Court enters Judgment; (b) if one or more Participating Class Members object to the Settlement, the day after the deadline for filing a notice of appeal from the Judgment; or, (c) if a timely appeal from the Judgment is filed, the day after the appellate court affirms the Judgment and issues a remittitur.
- The **Released Parties** includes Defendant together with their present and former parents, subsidiaries, affiliated entities, commonly owned or controlled entities, present and former owners, board members, officers, directors, trustees, shareholders, members, partners,

employees, agents, insurers, attorneys, representatives, heirs, executors, administrators, successors and assigns, and any individual or entity to whom liability for claims released by Plaintiff, or the Released Class Claims and Released PAGA Claims, could be assigned pursuant to Labor Code §558.1, or on a joint-employer, alter-ego, or other joint or vicarious liability theory.

- The **Released Class Claims** include all claims that are not assertable under PAGA and that Plaintiff alleged, or could have alleged, based on the facts pled in the Operative Complaint, and which arose or existed during the Class Period during employment in California in a non-exempt position (“Released Class Claims”). Without limiting the foregoing, Released Class Claims shall include:
 - All claims relating to unpaid wages (including claims for failure to pay minimum wages, straight time wages, overtime and double-time compensation); all claims related to the timeliness of wage payments (whether regular or final wages); all claims relating to the failure to provide compliant meal, rest, and recovery periods; all claims relating to the failure to pay premiums for violations of meal, rest, and recovery period laws (including the failure to make premium payments at all, or failure to make premium payments at the correct rate of pay); all claims relating to the provision of wage statements; all claims relating to the failure to maintain accurate employment records; all claims relating to the reimbursement of necessary business expenses; all claims relating to the failure to pay reporting time pay (including the failure to pay reporting time pay at all when required by law, or failure to pay reporting time pay at the correct rate of pay); and all claims relating to unfair business practices resulting from any of the foregoing.
 - All claims arising under California Labor Code §§201, 202, 203, 204, 204b, 208, 210, 218.5, 218.6, 226, 226.7, 512, 5581174, 1194, 1194.2, 1198, 2802; 8 C.C.R. §11160, Sections 3, 4, 5, 6, 7, 8, 10, 11, and 18; 8 C.C.R. §3395; California Business and Professions Code §§17200-17208; California Civil Code §§3287 and 3289; California Code of Civil Procedure §1021.5; and related claims under the applicable provisions of the Fair Labor Standards Act (29 U.S.C. §§201, et seq.).
 - All remedies associated with any of the claims described herein, including but not limited to compensatory, consequential, incidental, liquidated, and punitive damages; statutory penalties; restitution; interest; costs; attorneys’ fees; injunctive or other equitable relief.
- The **Released PAGA Claims** include all claims that are assertable under PAGA and that Plaintiff alleged, or could have alleged, based on the facts pled in the Operative Complaint or Plaintiff’s PAGA Notice, and which arose or existed during the PAGA Period (“Released PAGA Claims”). Without limiting the foregoing, Released PAGA Claims shall include:
 - All claims for civil penalties recoverable under PAGA relating to unpaid wages (including claims for failure to pay minimum wages, straight time wages, overtime and double-time compensation); all claims for civil penalties recoverable under PAGA related to the timeliness of wage payments (whether regular or final wages); all claims for civil penalties recoverable under PAGA relating to the failure to provide compliant meal, rest, and recovery periods; all claims for civil penalties recoverable under PAGA relating to the failure to pay premiums for violations of meal, rest, and recovery period laws (including the failure to make premium payments at all, or failure to make premium payments at the correct rate of pay); all claims for civil penalties recoverable under PAGA relating to the provision of wage statements; all claims for civil penalties recoverable under PAGA relating to the failure to maintain accurate employment records; all claims for civil penalties recoverable under PAGA relating to the failure to pay reporting time pay (including the failure to pay reporting time pay at all when required

- by law, or failure to pay reporting time pay at the correct rate of pay); and all claims for civil penalties recoverable under PAGA relating to the reimbursement of necessary business expenses.
- All claims for civil penalties recoverable under PAGA and set forth in California Labor Code §§203, 210, 225.5, 226, 226.3, 248.5, 558, 558.1, 1174.5, 1197.1, 8 C.C.R. §11160, Sec. 18, and other default civil penalties for the Released PAGA Claims available under California Labor Code §2699.

The releases described in this section shall bind all Participating Class Members and Aggrieved Employees regardless of whether they receive the Class Notice, receive their Individual Class Payment and/or Individual PAGA Payment, and/or whether they deposit their Individual Class Payment and/or Individual PAGA Payment.

For members of the Class who do not validly opt out, the release period shall run from June 6, 2019, through **[DATE]** (“Class Period”). For Aggrieved Employees, the release period shall run from November 15, 2021, through **[DATE]** (“PAGA Period”).

“Aggrieved Employees” means all persons currently or formerly employed as non-exempt employees in California by Defendant at any time during the PAGA Period.

The proposed Settlement includes the settlement of claims for civil penalties under PAGA. An employee may not request exclusion from the settlement of a PAGA claim. Thus, if the Court approves this Settlement, then even if you request exclusion from the Settlement, you will still receive an individual settlement share for the PAGA claims and will be deemed to have released the PAGA claims. A request for exclusion will preserve your right to individually pursue only the remaining Class claims.

10. How do I object to the Settlement?

If you are a Class Member and would like to object to the Settlement, you must not submit a request for exclusion (*i.e.*, must not opt out).

If you submit both a request for exclusion and an objection, you will be excluded from the Settlement (see sections 11 and 12 below), and your objection will not be considered.

To object, mail, fax, or email a written objection to the Settlement Administrator (at the address in Section 18, below) setting forth the grounds of objection, along with any supporting documents postmarked no later than **[DATE]**, which is 45 days from the date that this Notice was mailed. An objection form you can use to object to the settlement, if desired, is enclosed with this notice as **Exhibit B**.

All written objections must be signed and must contain your address, telephone number, and a reference to the Lawsuit. You may also appear personally or through an attorney, at your own expense, at the Final Approval Hearing to present your objection directly to the Court. If you object, but the Court approves the Settlement, you will be bound by the terms of the Settlement in the same way as a Class Member who does not object.

11. Why would I ask to be excluded?

You have the right to exclude yourself from the Settlement. If you exclude yourself from the Class –

sometimes called “opting-out” of the Class – you will only receive an individual settlement share for the PAGA claims and will not receive any compensation from the Settlement for the Class claims. If you exclude yourself, you will not be legally bound by the Court’s disposition of the Class claims, but you will still be deemed to have released the PAGA claims.

12. How do I ask to be excluded from the Class?

If you are a member of the Class described above and would like to exclude yourself from the Class, you need to submit the Exclusion Form that is enclosed with this notice as **Exhibit C**. To exclude yourself from the Settlement, you must mail, fax, or email your completed Exclusion Form to the Settlement Administrator at the address below in Section 18, and it must be postmarked on or before [DATE]. The date of the postmark on the mailing envelope, or timestamp on the fax/email shall be the exclusive means used to determine whether a request for exclusion has been timely submitted. Any Class Member who requests to be excluded from the Class will only receive an individual settlement share for the PAGA claims, will release only his or her PAGA Released Claims, will not receive any compensation from the Settlement for the Class claims, and will not have any right to object, appeal, or comment thereon. Class Members who fail to submit a valid and timely request for exclusion on or before [DATE], will be bound by all terms of the Settlement and any final disposition entered in this Class Action if the Court approves the Settlement.

THE LAWYERS REPRESENTING YOU

13. Do I have a lawyer in this case?

The Court preliminarily decided that Gaines & Gaines, APLC, is qualified to represent you and all Class Members in this Lawsuit. This law firm is also called “Class Counsel” in the context of this case.

14. How will the lawyers be paid?

As part of the Settlement with Defendants, Class Counsel has requested one-third of the Gross Settlement Amount (currently, that is equal to approximately \$108,333.33) in attorneys’ fees, plus costs not to exceed \$15,000 to be paid from the Gross Settlement Amount to compensate Class Counsel for their work on this matter. You will not have to pay Class Counsel’s fees and costs from your Individual Settlement Payment.

THE SETTLEMENT, APPROVAL, AND PAYMENT PROCESS

15. Who is handling the Settlement Administration process?

The Settlement Administrator will handle the process. The Settlement Administrator’s contact information is provided in Section 18, below.

16. When is the Final Approval Hearing and do I have to attend?

The Final Approval Hearing has been set for [DATE], at [TIME] .m. in Department [] of the Superior Court of the State of California, County of San Joaquin, located at 180 E. Weber Ave., Stockton, California 95202. You do not need to attend the hearing to be a part of the Settlement. However, if you wish to object to the Settlement, you may appear at the hearing. If physical access to the Court is

restricted due to COVID-19 or other reasons, please contact the Settlement Administrator regarding alternative options to appear at the hearing.

17. When will I get money after the hearing?

Your Individual Class Payment from the Net Settlement Amount and Individual PAGA Payment will be made in two increments, the first of which is to be made within approximately 60 days of the Effective Date, and the second within approximately one-year and 60 days of the Effective Date.

GETTING MORE INFORMATION

18. Are more details available?

A copy of the entire Settlement Agreement was filed in this case as Exhibit [] to the Declaration of **NAME OF ATTORNEY** in Support of Motion for Preliminary Approval, filed on [DATE].

You may contact the Settlement Administrator, whose contact information is below:

[INSERT ADMINISTRATOR]
[ADDRESS]
[PHONE]
[FAX]
[EMAIL]

You may also contact Class Counsel, whose contact information is below:

Daniel F. Gaines, Esq.
Alex P. Katofsky, Esq.
GAINES & GAINES, APLC
4550 East Thousand Oaks Boulevard, Suite 100
Westlake Village, CA 91362
Telephone: (818) 703-8985
Facsimile: (818) 703-8984

Defendants are represented by:

Ian B. Wieland
Michael J. Conway II
SAGASER, WATKINS & WIELAND, PC
5260 North Palm Avenue, Suite 400
Fresno, California 93704
Telephone: (559) 421-7000
Facsimile: (559) 473-1483

PLEASE DO NOT CALL OR WRITE TO THE JUDGE OR TO THE COURT REGARDING THIS NOTICE OR THE LAWSUIT.

EXHIBIT B

Ricardo Loera v. VCI Concrete Construction, LLC
San Joaquin County Superior Court
State of California
EXCLUSION FORM

MAIL OR FAX TO:

c/o [Administrator]

P.O. Box *****

*****, CA *****

Fax: (***) ***-****

Email:*****

YOU DO NOT NEED TO COMPLETE THIS FORM TO RECEIVE MONEY FROM THE SETTLEMENT.

COMPLETE THIS FORM **ONLY IF** YOU WISH TO EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS. IF YOU EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS, YOU **WILL NOT** RECEIVE COMPENSATION FROM THE SETTLEMENT FOR THE CLASS ACTION CLAIMS.

I, _____, request to be excluded from the Settlement Class in the matter of *Ricardo Loera v. VCI Concrete Construction, LLC*, San Joaquin County Superior Court Case No. STK-CV-UOE-2022-0010482.

I understand that by submitting this Exclusion Form, I will no longer be eligible for compensation from the settlement for the class action claims.

Printed Name

Date

Signature

Telephone Number

By signing this form, I hereby certify that I request exclusion from the Settlement Class as specified above and that the last four digits of my social security number are true and accurate to the best of my knowledge.

TO BE TIMELY, A REQUEST SUBMITTED BY FAX MUST BE SENT ON OR BEFORE **DATE**. A REQUEST SUBMITTED BY MAIL MUST BE POSTMARKED ON OR BEFORE **DATE**. IT MUST BE SENT TO THE FOLLOWING ADDRESS, FAX NUMBER, OR EMAIL ADDRESS:

c/o [Administrator]

P.O. Box *****

*****, CA *****

Fax: (***) ***-****

Email:*****

[BAR CODE OR CLASS MEMBER ID WILL BE INCLUDED HERE]

EXHIBIT C

Ricardo Loera v. VCI Concrete Construction, LLC
San Joaquin County Superior Court
State of California
PAY PERIOD DISPUTE FORM

MAIL OR FAX TO:

c/o [Administrator]
P.O. Box *****
*****, CA *****
Fax: (***) ***-****
Email:*****

YOU DO NOT NEED TO COMPLETE THIS FORM TO RECEIVE MONEY FROM THE SETTLEMENT.

COMPLETE THIS FORM **ONLY IF** YOU WISH TO DISPUTE THE CLASS PAY PERIODS AND/OR PAGA PAY PERIODS ATTRIBUTED TO YOU IN SECTION 8 OF THE CLASS NOTICE. IF YOU BELIEVE THESE FIGURES ARE CORRECT, YOU DO NOT HAVE TO DO ANYTHING.

I, _____, dispute the number of Class Pay Periods and/or PAGA Pay Periods attributed to me in Section 8 of the Class Notice I received.

☐ I wish to dispute the number of Class Pay Periods listed in Section 8 of the Class Notice I received. I believe the correct amount of my Class Pay Periods is _____.

☐ I wish to dispute the number of PAGA Pay Periods listed in Section 8 of the Class Notice I received. I believe the correct amount of my PAGA Pay Periods is _____.

Please provide all supporting documentation along with this form, such as payroll records, paystubs, or related information.

By signing this form, I authorize the Settlement Administrator identified below to review my records and make a determination as to the validity of my dispute based upon a review VCI Concrete Construction, LLC's records, my dispute form, and the supporting documentation submitted. I understand that the Settlement Administrator's decision with respect to my Class Pay Periods and/or PAGA Pay Periods is final and not subject to review.

Printed Name

Date

Signature

Last Four Digits of Social Security Number

TO BE TIMELY, A REQUEST SUBMITTED BY FAX MUST BE SENT ON OR BEFORE **DATE**. A REQUEST SUBMITTED BY MAIL MUST BE POSTMARKED ON OR BEFORE **DATE**. IT MUST BE SENT TO THE FOLLOWING ADDRESS, FAX NUMBER, OR EMAIL ADDRESS:

c/o [Administrator]
P.O. Box *****
*****, CA *****
Fax: (***) ***-****
Email:*****

Ricardo Loera v. VCI Concrete Construction, LLC
San Joaquin County Superior Court
State of California
PAY PERIOD DISPUTE FORM

[BAR CODE OR CLASS MEMBER ID WILL BE INCLUDED HERE]

EXHIBIT D

Ricardo Loera v. VCI Concrete Construction, LLC
San Joaquin County Superior Court
State of California
OBJECTION FORM

MAIL OR FAX TO:

c/o [Administrator]
P.O. Box *****
*****, CA *****
Fax: (***) ***-****
Email:*****

YOU DO NOT NEED TO COMPLETE THIS FORM TO RECEIVE MONEY FROM THE SETTLEMENT.

COMPLETE THIS FORM **ONLY IF** YOU WISH TO PARTICIPATE IN THE SETTLEMENT, BUT YOU OBJECT TO THE TERMS OF THE SETTLEMENT. IF YOU WISH TO OBJECT, YOU MUST COMPLETELY FILL OUT THIS FORM.

I, _____, object to the Settlement in the matter of *Ricardo Loera v. VCI Concrete Construction, LLC*, San Joaquin County Superior Court Case No. STK-CV-UOE-2022-0010482.

The basis for my objection is as follows: _____

By signing this form, I understand that the Court will consider my objection at the Final Approval Hearing. I further understand that the failure to complete this form fully or the failure to send it to the administrator in a timely manner will result in the Court declaring my objection null, void, and without effect.

Printed Name

Date

Signature

Last Four Digits of Social Security Number

TO BE TIMELY, A REQUEST SUBMITTED BY FAX MUST BE SENT ON OR BEFORE **DATE**. A REQUEST SUBMITTED BY MAIL MUST BE POSTMARKED ON OR BEFORE **DATE**. IT MUST BE SENT TO THE FOLLOWING ADDRESS, FAX NUMBER, OR EMAIL ADDRESS:

c/o [Administrator]
P.O. Box *****
*****, CA *****
Fax: (***) ***-****
Email: ****

[BAR CODE OR CLASS MEMBER ID WILL BE INCLUDED HERE]

EXHIBIT C