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LEONEL LUNA

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

LEONEL LUNA, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

DEMCON CONCRETE CONTRACTORS,
INC., a California corporation; D AND D
CONCRETE CONSTRUCTION, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: 37-2023-00004126-CU-OE-CTL

*[Assigned for All Purposes to Hon. Carolyn M.
Caietti, Dept. C-70]*

**DECLARATION OF SCOTT M.
LIDMAN IN SUPPORT OF MOTION
FOR FINAL APPROVAL OF CLASS
ACTION SETTLEMENT, CLASS
REPRESENTATIVE'S SERVICE
AWARD, AND ATTORNEYS' FEES
AND COSTS**

Date: September 26, 2024
Time: 10:30 a.m.
Dept.: C-70

1 I, SCOTT M. LIDMAN, declare as follows:

2 1. I am a shareholder and principal of the law firm Lidman Law, APC, and counsel for the
3 named Plaintiff Leonel Luna ("Plaintiff") and the proposed Settlement Class in the above-captioned
4 matter. I am a member in good standing of the bar of the State of California and am admitted to practice
5 in this Court. I have personal knowledge of the facts stated in this declaration and could testify
6 competently to them if called upon to do so.

7 2. I am a 1998 graduate of Santa Clara University School of Law, where I graduated *summa*
8 *cum laude*. During law school, I worked as a summer associate for the international employment law
9 firm of Littler Mendelson, P.C., located in Los Angeles, California.

10 3. Since graduating from law school, my practice has focused exclusively on employment
11 litigation. In September 1998, I began working as an associate attorney at the international law firm of
12 Littler Mendelson P.C., at its Los Angeles office, which according to its website is the largest law firm
13 in the world exclusively devoted to representing management in employment, employee benefits and
14 labor law matters.

15 4. In 2000, I left Littler Mendelson to work at the Los Angeles office of Jones Day, which
16 was at the time one of the largest international firms in the world. During my employment at Jones
17 Day, I worked exclusively in the labor and employment department. In or around 2003, I went to work
18 at the law firm of Loeb & Loeb, again working exclusively in the Labor & Employment department. In
19 2008, I returned to Littler Mendelson, was promoted to Shareholder in 2009, and from 2008 until the
20 end of 2017, I practiced exclusively labor and employment law, with a strong emphasis and most of my
21 time working on wage and hour class actions venued in both state and federal courts. During that time
22 and my legal career in general, I also worked on a number of single and multi-plaintiff wage and hour
23 matters as well.

24 5. During my employment at Littler Mendelson, I played a significant role in the class
25 actions that I was staffed on, and ran many on my own both as an Of Counsel and as a Shareholder. In
26 particular, I received a wide-array of wage and hour class action experience performing the following
27 types of tasks: drafting demurrers, motions to strike and/or dismiss; removing actions from state court
28

1 to federal court; drafting and responding to written discovery; drafting and opposing discovery related
2 motions; arguing discovery related motions; drafting motions to consolidate related matters;
3 interviewing putative class members and obtaining declarations in connection with class certification;
4 drafting oppositions to motions for class certification; drafting motions for decertification following
5 class certification; conducting exposure analyses to assess the strengths and weaknesses of asserted
6 claims, the likelihood of prevailing at class certification and potential damages resulting from such
7 claims; drafting mediation briefs; serving as the primary contact to in-house counsel; deposing named
8 plaintiffs and putative class members; deposing retained expert witnesses; and defending the depositions
9 of corporate witnesses. I also was involved in the negotiations and settlements of many large wage and
10 hour class actions. In short, I played an integral role in all aspects of litigation from the inception of a
11 matter through and beyond class certification. I also supervised the work of several junior attorneys
12 who were staffed on the same wage and hour class actions.

13 6. Although not exhaustive, below is a list of many of the wage and hour class and PAGA
14 actions that I performed substantial work on while I was a shareholder at Littler Mendelson:

- 15 ► *Ortega v. J.B. Hunt Transport, Inc.*, Case No. 07-cv-8336-RGK-AFMx, United
16 States District Court, Central District of California, Honorable Gary Klausner,
17 presiding¹.
- 18 ► *Aceves v. J.B. Hunt Transport, Inc.*, Case No. CIVDS1306133, California
19 Superior Court, County of San Bernardino, Honorable Michael Sachs, presiding.
- 20 ► *Moreno v. J.B. Hunt Transport, Inc.*, Case No. BC388612, California Superior
21 Court, County of Los Angeles, Honorable Mel Red Recana, presiding.
- 22 ► *Newcomb v. J.B. Hunt Transport, Inc.*, Case No. RG16815734, California
23 Superior Court, County of Alameda, Honorable Winifred Smith, presiding.
- 24 ► *Vaquero v. Stoneledge Furniture, LLC, et al.*, Case No. 12-cv-08590-PA-MAN,
25 United States District Court, Central District of California, Honorable Percy
26 Anderson, presiding.

27 ¹ My work on this matter including proceedings not only in District Court, but also work before the United States Court of
28 Appeals for the Ninth Circuit as well as the United States Supreme Court.

- 1 ► *Vaquero v. Stoneledge Furniture, LLC, et al.*, Case No. BC388612, California
2 Superior Court, County of Los Angeles, Honorable Elihu Berle, presiding.²
- 3 ► *Dugan v. Stoneledge Furniture, LLC*, Case No. 16-cv-01125-PA-FFMx, United
4 States District Court, Central District of California, Honorable Percy Anderson,
5 presiding.
- 6 ► *Klune v. Stoneledge Furniture, LLC*, Case No. 14-cv-03986-PA-FFMx, United
7 States District Court, Central District of California, Honorable Percy Anderson,
8 presiding.
- 9 ► *Diaz v. ABM Industries, Inc.; Ampco Parking*, Case No. BC362932, California
10 Superior Court, County of Los Angeles, Honorable Jane Johnson, presiding.³
- 11 ► *Adams v. Luxottica Retail North America, Inc.*, Case No. 07CC01346, California
12 Superior Court, County of Orange, Honorable Thierry Patrick Colaw, presiding.
- 13 ► *Sakkab v. Luxottica Retail North America, Inc.*, Case No. 12-cv-00436-GPC-
14 KSC, United States District Court, Southern District of California.⁴
- 15 ► *Page v. Oakley, Inc.*, Case No. FCS041512, California Superior Court, County
16 of Solano, Honorable Paul Berman, presiding.
- 17 ► *Ramirez v. Oakley, Inc.*, Case No. 30-2014-00731617-CU-OE-CJC California
18 Superior Court, County of Orange, Honorable William Claster, presiding.
- 19 ► *Ramirez v. Oakley, Inc.*, Case No. 30-2014-00723846-CU-DE-CXC, California
20 Superior Court, County of Orange, Honorable William Claster, presiding.
- 21 ► *Sierra v. Oakley, Inc.*, Case No. 13-cv-00319-AG-JPR, United States District
22 Court, Central District of California, Honorable Andrew Guilford, presiding.⁵
- 23
24
25

26 ² My work on this matter included proceedings not only in the trial court, but also before the California Courts of Appeal
27 and the California Supreme Court.

28 ³ This matter was consolidated and litigated collectively with Case Nos. BC380923, BC 381523 and BC 406663.

⁴ The work I performed on this case included work in the United States Court of Appeals for the Ninth Circuit.

⁵ The work I performed on this case included work in the United States Court of Appeals for the Ninth Circuit.

- 1 ▶ *Cordova v. Comerica Bank, et al.*, Case No. 09-cv-08905-MMM-PLAx, United
2 States District Court, Central District of California, Honorable Margaret Morrow,
3 presiding.
- 4 ▶ *Cordova v. Comerica Bank, et al.*, Case No. 09-cv-08905-MMM-PLAx, United
5 States District Court, Central District of California, Honorable Margaret Morrow,
6 presiding.
- 7 ▶ *Khelghatian v. Comerica Bank, et al.*, Case No. 11-cv-7689-DSF-FFMx, United
8 States District Court, Southern District of California, Honorable John A.
9 Houston, presiding.
- 10 ▶ *Babasa v. Comerica Bank, et al.*, Case No. 11-cv-0595-JAH-BGS, United States
11 District Court, Central District of California, Honorable Margaret Morrow,
12 presiding.
- 13 ▶ *Bernal v. Comerica Bank, et al.*, Case No. 11-cv-01298-JAH-BGS, United States
14 District Court, Central District of California, Honorable Margaret Morrow,
15 presiding.
- 16 ▶ *Khalili v. Comerica Bank, et al.*, Case No. 09-cv-08905-MMM-PLAx, United
17 States District Court, Northern District of California.
- 18 ▶ *Granata v. Comerica Bank, et al.*, Case No. 37-2011-00086316-CU-OE-CTL,
19 California Superior Court, County of San Diego, Honorable Jeffrey B. Barton,
20 presiding.
- 21 ▶ *Mathews v. Comerica Bank, et al.*, Case No. 111CV194781, California Superior
22 Court, County of Santa Clara.
- 23 ▶ *Gallegos v. Comerica Bank, et al.*, Case No. BC455515, California Superior
24 Court, County of Los Angeles, Honorable Terry Green, presiding.
- 25 ▶ *Rumohr v. Comerica Bank, et al.*, Case No. CGC-11-508433, California Superior
26 Court, County of San Francisco.

1 ► *Smith v. Werner Enterprises*, Case No. 15-cv-02978-RS, United States District
2 Court, Northern District of California, Honorable Richard Seeborg, presiding.

3 7. In January 2018, I voluntarily resigned from Littler Mendelson in order to open my own
4 law firm, Lidman Law, APC, to represent employees with work-related claims, including primarily
5 wage and hour claims and almost exclusively on a class-action basis. I am the President and Shareholder
6 of Lidman Law. Currently, over ninety percent (90%) of my practice is dedicated exclusively to the
7 prosecution of wage and hour class actions, and I am currently responsible for prosecuting over sixty-
8 five (65) wage and hour class actions filed in State courts throughout California, with several of them
9 having been removed to Federal courts. I believe that my professional experience renders me more than
10 qualified to serve as class counsel in this lawsuit involving claims of underpaid overtime and minimum
11 wages, meal and rest period violations, and derivative penalty claims. Not only have I litigated dozens
12 of wage and hour cases throughout my career involving similar claims, including the wage and hour
13 class actions identified above, I have litigated similar claims from both plaintiff and defense
14 perspectives. As a result, I am able to realistically assess and evaluate the facts and legal arguments
15 that can be made in pursuit and defense of similar wage and hour claims, as well as those facts and
16 arguments in support and in opposition to class certification. Consequently, I am able to appreciate the
17 significant risks, uncertainties, and delay involved in wage and hour class action litigation.

18 8. I have been appointed Class Counsel in: *Guardado v. Wesley Allen, Inc.*, Case No.
19 BC683027, California Superior Court, County of Los Angeles, Honorable Judge Carolyn B. Kuhl
20 presiding; *Rodriguez v. Satco, Inc.*, Case No. BC682137, California Superior Court, County of Los
21 Angeles, Honorable Judge Ann I. Jones presiding; *Ong v. Howard's Appliances, Inc.*, Case No. 30-
22 2017-00964213-CU-OE-CXC, California Superior Court, County of Orange, Honorable Judge
23 William Claster presiding; *Hanke v. C&W Facility Services, Inc.*, Case No. CIVDS1814412,
24 California Superior Court, County of San Bernardino, Honorable Judge David Cohn presiding; *Molina*
25 *v. Mader News, Inc.*, Case No. BC685960, California Superior Court, County of Los Angeles,
26 Honorable Judge Yvette M. Palazuelos presiding; *Alvarez v. Salamander Fire Protection, Inc.*, Case
27 No. BC688326, California Superior Court, County of Los Angeles, Honorable Judge William F.

Highberger presiding; *Rodriguez v. H.F. Cox, Inc.*, Case No. BC653164, California Superior Court, County of Los Angeles, Honorable Judge Carolyn B. Kuhl presiding; *Fregoso v. Amerigas Propane, Inc.*, Case No. BC697973, California Superior Court, County of Los Angeles, Honorable Judge Rafael A. Ongkeko presiding; *Teran v. Western Plastics, Inc.*, Case No. RIC1722619, California Superior Court, County of Riverside, Honorable Judge Sunshine Sykes presiding; *Villegas de Torres v. El Monte Superstore Inc.*, Case No. BC688477, California Superior Court, County of Los Angeles, Honorable Judge Daniel J. Buckley presiding; *Huynh v. Polypeptide Laboratories, Inc.*, Case No. BC680872, California Superior Court, County of Los Angeles, Honorable Judge Rafael A. Ongkeko presiding; *Guzman v. Century Blinds*, Case No. RIC1723654, California Superior Court, County of Riverside, Honorable Judge Sunshine S. Sykes presiding; *George v. Convergence Marketing*, Case No. CIVDS1901039, California Superior Court, County of San Bernardino, Honorable Judge David S. Cohn presiding; *Coffee, et al. v. Flyers Transportation Energy, LLC*, Case No. 34-2017-00222084, California Superior Court, County of Sacramento, Honorable Judge Alan G. Perkins presiding; *Romero v. Fillmore Hospitality, LLC*, Case No. BC705667, California Superior Court, County of Los Angeles, Honorable Judge Maren E. Nelson presiding; *Wennerstrom, et al. v. Giant Inland Empire R.V. Center*, Case No. CIVDS1617291, California Superior Court, County of San Bernardino, Honorable Judge David S. Cohn presiding; *Contreras, et al. v. Letter Ride, LLC*, Case No. 37-2018-00020841-CU-OE-CTL, California Superior Court, County of San Diego, Honorable Judge Eddie C. Sturgeon presiding; *Davis v. WeDriveU*, Case No. 18CV322578, California Superior Court, County of Santa Clara, Honorable Judge Brian C. Walsh presiding; *Acuna v. Canton Food Co., Inc.*, Case No. BC685001, California Superior Court, County of Los Angeles, Honorable Judge David S. Cunningham presiding; and *Contreras v. Worldwide Flight Services, Inc.*, Case No. 2:18-cv-06036-PSG-SS, United States District Court for the Central District of California, the Honorable Judge Philip S. Gutierrez presiding.

9. As co-lead counsel for Plaintiff and the proposed Settlement Class, I have been intimately involved in every aspect of this case from its inception through the present, and I believe that the proposed Settlement is a favorable result for the Settlement Class Members under the circumstances presented.

1 10. On January 30, 2023, Plaintiff filed a putative class action complaint against
2 Defendants Demcon Concrete Contractors, Inc. and D and D Concrete Construction, Inc. (hereinafter
3 collectively referred to as “Defendants”) in San Diego County Superior Court. On April 6, 2023,
4 Plaintiff filed a First Amended Class and Representative Action Complaint. Plaintiff’s primary
5 allegations are that Defendants: (1) failed to pay all overtime wages owed; (2) failed to pay all
6 minimum wages owed; (3) failed to provide all legally required meal periods; (4) failed to authorize
7 and permit all legally required rest periods; (5) failed to provide accurate, itemized wage statements;
8 (6) failed to indemnify all necessary business expenses; (7) failed to pay all wages upon termination;
9 (8) engaged in unlawful business practices; and (9) is liable for civil penalties under the California
10 Labor Code Private Attorneys General Act of 2004 (“PAGA”).

11 11. As explained in detail in the Motion for Preliminary Approval, Plaintiff’s primary
12 theories of liability are related to Defendants’ alleged failure to pay Settlement Class members for all
13 time worked and its alleged failure provide Settlement Class members all legally compliant duty-free
14 meal and rest periods.

15 12. Specifically, Plaintiff alleges Defendants would keep track of his hours and the hours
16 of the other nonexempt employees, and would unlawfully shave their work time and/or round their
17 work time such that they would not be fully paid for all time worked. Plaintiff also alleges that this
18 time shaving and/or rounding practice utilized by Defendants was not-even handed over time and
19 would almost exclusively round and shave in Defendants’ favor such that the employees were
20 routinely underpaid for their time worked.

21 13. Defendants contend that they compensated Settlement Class members for all of their
22 time worked. Defendants also contend that their rounding practices were lawful, and any unpaid time
23 was *de minimis* and therefore non-compensable. Defendants further assert that Plaintiff would be
24 unable to certify this class given the individualized inquiries that would be required, and also that
25 Defendants rounding mechanism was, according to it, allegedly facially neutral.

26 14. Plaintiff alleges that he and Settlement Class members were not provided with all
27 legally-required off-duty first meal periods beginning before the end of the fifth hour of work.
28

Specifically, Plaintiff alleges Defendants had a policy and practice of not keeping track of Plaintiff's actual time worked. Moreover, Plaintiff alleges Defendants had a policy and practice of requiring their leads/foremen to record Settlement Class members' first meal periods occurring four hours into their shift and exactly 30-minutes in duration on their time sheets even when a timely meal period was not always provided.

15. Defendants counter that they have always provided non-exempt employees with an opportunity to take legally compliant meal periods, and any non-compliant meal periods reflected in employee timekeeping records, if any, were solely the result of employee choice, rather than any policy or practice of Defendant. Defendants point out that they are only required to "provide" the opportunity to take meal periods, not "ensure" meal periods are taken, and that they have always done so. Finally, Defendants contend that Plaintiff's meal period claim is not suited for class certification since individual inquiries would be required to assess which employees took non-compliant meal periods, how many meal periods were non-compliant or missed, and the reasons why a particular employee took a non-compliant meal period or missed a meal period during a particular shift.

16. Plaintiff alleges that he and Settlement Class members were also not authorized and permitted to take all required rest periods due to Defendants' rest period policies and practices that fail to authorize and permit all rest periods for every four hours worked, *or major fraction thereof*. Specifically, Plaintiff alleges that as a result of the work demands imposed by Defendants, he was prevented from taking his rest periods.

17. Defendants contend they have always maintained and enforced lawful rest period policies and practices, and that Settlement Class Members were authorized and permitted to take all off-duty rest periods in compliance with California law. Defendants argue that Plaintiff's rest period claim is inherently unsuited for class treatment because the claim requires an individualized inquiry into whether each Settlement Class Member was in fact authorized and permitted to take a compliant rest period, which would devolve into an unmanageable series of mini-trials.

18. Plaintiff alleges that Defendants failed to reimburse him and Settlement Class members for necessary business expenditures, including the use of their personal cellular phone for work

activities and that Defendants required Plaintiff to use his personal cellular phone to communicate with supervisors and customers.

19. Defendants contend that they provided employees did not have to use their personal cellular phones and would only do so at their own volition. Defendants also argue that this claim is not suitable for class treatment because it would require individualized determinations as to whether each employee used a personal cellular phone, how often, and how much of that use was a reasonable percentage of their individual monthly expenses.

20. Plaintiff further alleges that Defendants issued inaccurate wage statements in violation of Labor Code section 226 as a result of the alleged unpaid wages and meal and rest period premium wages described above. Specifically, Plaintiff contends that this conduct violated Labor Code section 226(a) because the wage statements issued to Settlement Class Members did not include all hours worked and the rate at which they were being paid.

21. Defendants argue that their alleged wage statement violations could not be shown to be “knowing and intentional,” and that Plaintiff cannot show that he or any other employee “suffer[ed] injury” as a result of the alleged wage statement violations, as required by Lab. Code § 226(e) for imposition of penalties.

22. Plaintiff alleges that Defendants are also liable for waiting time penalties under Labor Code section 203 as a result of its failure to pay all wages. Based on the data provided by Defendants, there were approximately 348 Settlement Class members who have separated their employment with Defendants during the relevant time period who could be entitled to waiting time penalties.

23. Defendants assert they have strong defenses to the waiting time claim because there exist good-faith disputes as to Plaintiff’s underlying claims, precluding imposition of penalties.

24. Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing alleged Labor Code violations.

25. Defendants argue that Plaintiff’s PAGA claim will fail for the same reasons that his underlying claims will fail. Defendants also maintain that, given their good faith defenses and their

1 financial condition, this Court would exercise its discretion to substantially reduce any PAGA
2 penalties if it were to find Defendants liable for any of Plaintiff's claims.

3 26. These considerations not only bore heavily on the negotiations leading to the
4 Settlement, but also confirm that the Settlement is fair, adequate, and reasonable compromise in view
5 of the risks of further litigation. As detailed in Plaintiff's Motion for Preliminary Approval, Plaintiff
6 carefully vetted the claims at issue and conducted a detailed statistical analysis of class-wide data to
7 arrive at the calculated damages figures. Thus, while these risks are far from exhaustive, they
8 demonstrate that the Settlement is fair, adequate, and reasonable in view of them.

9 27. After agreeing to participate in an early mediation, Defendants informally produced a
10 sampling of timekeeping and payroll data for the putative class, as well as relevant data points,
11 including without limitation, the number of workweeks and pay periods at issue and total class size.
12 Defendants also confirmed that they did not maintain any written wage and hour policies and practices
13 during the relevant time period. After the detailed review of the time and payroll records produced by
14 Defendants, Class Counsel drew on their extensive experience in similar cases to assess the strengths
15 and weaknesses of Plaintiff's case. This discovery allowed the parties to assess the merits and value
16 of Plaintiff's claims and Defendants' defenses thereto, if a settlement could not be reached.

17 28. On September 28, 2023, after extensive research and analysis, mediation was held with
18 Michael Ludwig, a well-respected wage and hour class action mediator. During mediation, the parties
19 vigorously debated their opposing legal positions, the likelihood of certification of Plaintiff's claims,
20 the legal basis for the claims and defenses, and Defendants' financial condition and ability to pay a
21 class-wide settlement. Ultimately, the Parties were able to reach a class-wide settlement at mediation.

22 29. Plaintiff submitted the Settlement to the Court with his Motion for Preliminary
23 Approval on November 27, 2023. On April 25, 2024, the Court granted preliminary approval of the
24 class action settlement. On April 29, 2024, the Court signed the Amended Order Granting Preliminary
25 Approval. Attached collectively hereto as **Exhibit A** is a true and correct copies of the Amended Order
26 Granting Preliminary Approval.

27 //

1 30. The Settlement Class encompasses “all current and former non-exempt, hourly
2 employees of Defendants Demcon Concrete Contractors, Inc. and D and D Concrete Construction,
3 Inc. who worked at any time in California during the Class Period. The “Class Period” shall mean the
4 time period of January 30, 2019 through December 17, 2023.

5 31. Pursuant to the Settlement Agreement, Defendants are required to fund the Gross
6 Settlement within the latter of: (i) eighteen (18) months after the Parties executed the Settlement
7 Agreement; or (ii) thirty (30) days after the Effective Date. The latter of these dates is May 1, 2025,
8 eighteen months after the Parties executed the Settlement. Funds remaining unclaimed will be
9 distributed to the California State Controller's Office – Unclaimed Property Fund in the name of the
10 Settlement Class member.

11 32. In my experience in wage and hour class action matters similar to this one, fee awards
12 generally average around one-third of the gross recovery.

13 33. My law firm’s and co-counsel’s work on this case includes, but is not limited to:
14 conducting pre-filing investigation, analyzing Plaintiff’s claims, conducting legal research, analyzing
15 Plaintiff’s timekeeping data and payroll records, preparing for and attending mediation, reviewing
16 Defendants’ financial records, negotiating and revising the long-form Settlement, preparing the
17 Motion for Preliminary Approval, preparing this Motion, and otherwise litigating the case.

18 34. Since undertaking representation of Plaintiff, my firm and/or co-counsel’s firm
19 dedicated substantial resources to this litigation, including expending a total of \$6,762.46, in actual
20 costs, have devoted substantial time to this litigation and expect to incur approximately \$300.00 in
21 future costs for filing the instant motion, filing the final declaration regarding distribution of
22 settlement, service and messenger fees, postage fees, parking, and mileage. A true and correct copy
23 of my firm’s and Haines Law Group’s costs summary in this matter is attached hereto as **Exhibit B**.

24 35. My experience in matters similar to this one was integral in evaluating the strengths
25 and weaknesses of this case and the reasonableness of the Settlement. Practice in the narrow field of
26 wage and hour litigation requires skill and knowledge concerning the rapidly evolving substantive
27 state and federal law, as well as the procedural law of class action litigation. This case involved
28

1 nuanced legal issues including questions surrounding Defendants' obligation to "provide" meal
2 periods, "authorize and permit" rest periods, and the propriety of statutory penalties, to name just a
3 few.

4 36. Given the considerable potential for adverse outcomes in this case, including, but not
5 limited to losing on class certification and/or merits issues, the contingent risk borne by Class Counsel
6 was great. In addition to the legal and procedural challenges this lawsuit presented, there were also
7 other practical challenges. There was a real risk that my firm and co-counsel's firm would not be
8 compensated for our work, because our firms handled this matter on a purely contingent basis. Thus,
9 Plaintiff was not responsible for paying my firm's attorneys' fees and my firm could only recover
10 attorneys' fees if Plaintiff was successful. By the time I (or someone from my firm) attend the final
11 approval hearing in this matter, my firm and co-counsel firm will have litigated this case for well over
12 one year with no payment, all while bearing the risk of non-payment if Plaintiff was unsuccessful.
13 Moreover, as discussed above, Class Counsel has advanced \$7,062.46 in litigation costs on a
14 contingency basis, which also carried risk because Class Counsel would not recoup its costs in the
15 event Plaintiff did not prevail in this lawsuit.

16 37. In this case, Class Counsel have a lodestar of \$176,227.50 without the use of any
17 multiplier. The following is a general summary showing the number of hours of work performed by
18 each attorney and paralegal in my firm and co-counsel's firm on this case:

Name	Rate	Hours	Pre-Multiplier Lodestar
Scott M. Lidman (26 th Year Attorney)	\$900	92.5	\$83,250
Paul K. Haines (17 th Year Attorney)	\$800	25.5	\$20,400
Milan Moore (9 th Year Attorney)	\$650	104.2	\$67,730
Paralegals	\$175	27.7	\$4,847.5

Total Lodestar

\$176,227.50

38. My proposed hourly rate of \$900, Mr. Haines' proposed hourly rate of \$800, and Ms. Moore's proposed hourly rate of \$650 are reasonable in light of our respective skills, wage and hour class action litigation experience, reputation, and fee awards to other attorneys of similar experience in California. Moreover, our requested hourly rates are in line with the *Laffey* Matrix, a true and correct copy of which is attached hereto as **Exhibit C**.

39. The attorneys' fee award requested is consistent with those routinely awarded by California superior courts. California superior courts frequently grant common fund awards of 33%. *See, e.g., Ochoa v. Haralambos Beverage Co.*, No. BC319588 (Super. Ct., Los Angeles County, Feb. 1, 2007) (33.3% fee award with no mention of lodestar crosscheck); *Jones v. Alliance Imaging, Inc.*, No. RG05210418 (Super. Ct., Alameda County, Nov. 27, 2006) (33% fee award with no mention of lodestar crosscheck); *Wisniewski v. Pacific Maritime Assoc.*, No. BC293134 (Super. Ct., Los Angeles County, Nov. 20, 2006) (30.7% fee award from \$12.9 million settlement with no mention of lodestar crosscheck); *Garcia v. Save Mart Supermarkets*, No. 312026 (Super. Ct., Stanislaus County, Aug. 3, 2004) (33% fee award with no mention of lodestar crosscheck); *Terrell v. Ocean's 11 Casino, Inc.*, No. GIC795732 (Super. Ct., San Diego County, Feb. 10, 2004) (approving 33% fee award); *Big Lots Overtime Cases*, JCC Proceeding No. 4283, San Bernardino County Superior Court, Feb 4, 2004) (approving a 33% fee recovery); *Tokar v. GEICO*, (San Diego Superior Court, No. GIC 810166, July 9, 2004) (approving award of 33-1/3%); *Davis v. The Money Store, Inc.*, (San Diego County Superior Court, No. 99AS01716, December 26, 2000) (33-13% of the settlement).

40. Indeed, numerous courts have awarded attorneys' fees of up to, or in excess of 40% of the common fund. *Ammari Electronics, et al. v. Pacific Bell Directory*, Alameda County Sup. Ct., Case No. RG05198014 (awarded 43.8%) (2015); *In re California Indirect Purchaser X Ray Film Antitrust Litigation*, San Francisco Sup. Ct. 1998 (citing *Abzug v. Kerkorian*, Los Angeles Sup. Ct., Nov. 19, 1990, Case No. CA-00981 (45%) and *Haitz v. Meyer*, Alameda County Sup. Ct., August 20, 1990, Case No. 5729683 (45%)); *Hall v. Cinema 7, Inc.*, San Francisco Sup. Ct., July 16, 2008,

Case No. CGC-01-409105 (53%); and *Rundberg v. Intrawest Napa Dev. Co.*, Napa County Sup. Ct., January 15, 2014, Case No. 26-56886 (40%).

41. Being a private law practice, my firm can only properly litigate a limited number of cases at one time. The professional demands of this case were significant, including a significant number of hours of attorney and paralegal time. This litigation precluded my firm from other employment due to the time and financial commitments required by the case. Indeed, because my firm takes on cases on a purely contingency fee, we are only compensated for our time if we successfully settle a case or prevail at trial. Accordingly, I believe the requested fees are reasonable.

42. The requested enhancement payment to Plaintiff of \$10,000.00 is also reasonable given Plaintiff's efforts in this case and the risks he undertook on behalf of Settlement Class members. Plaintiff gathered documents for use in the lawsuit, and attended meetings with Class Counsel discussing the case, the merits, the defenses, and the overall fairness of the settlement reached. Thus, the enhancement payment to Plaintiff is appropriate and justified as part of the Settlement and should be finally approved.

43. Plaintiff served the proposed Settlement Agreement on the California Labor & Workforce Development Agency ("LWDA") on November 27, 2023, the same date as he filed his Motion for Preliminary Approval. A true and correct copy of the email generated by the LWDA website after Plaintiff submitted the Settlement Agreement to the LWDA is attached hereto as **Exhibit D**.

44. Plaintiff served the Order Granting Preliminary Approval on the LWDA on August 8, 2024. A true and correct copy of the email generated by the LWDA website after Plaintiff submitted the order Granting Preliminary Approval to the LWDA is attached hereto as **Exhibit E**.

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45. Plaintiff has provided written approval of the split of attorneys' fees in this action: 48% to Haines Law Group, APC, 32% to Lidman Law, APC, and 20% to Mitchell Law Corporation, APC. Mitchell Law Corporation, APC is the referring attorney.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on September 4, 2024, at El Segundo, California.


Scott M. Lidman

EXHIBIT A

EXHIBIT A

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Fax: (424) 292-2355

Attorneys for Plaintiff
LEONEL LUNA

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO**

LEONEL LUNA, as an individual and on
behalf of all others similarly situated,

Plaintiff,

vs.

DEMCON CONCRETE CONTRACTORS,
INC., a California corporation; D AND D
CONCRETE CONSTRUCTION, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

Case No.: 37-2023-00004126-CU-OE-CTL

*[Assigned for all purposes to Hon. Carolyn
Caietti, Dept. C-70]*

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

Date: April 26, 2024
Time: 10:30 a.m.
Dept.: C-70

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

04/29/2024 at 10:36:00 AM

Clerk of the Superior Court
By Mariejo Guyot, Deputy Clerk

1 The Motion of Plaintiff Leonel Luna (“Plaintiff”) for Preliminary Approval of Class
2 Action Settlement (“Motion”) came on regularly for hearing before this Court on April 26, 2024
3 in Department C-70. The Court, having considered the proposed Stipulation of Settlement (the
4 “Settlement”), attached as **Exhibit 2** to the Declaration of Scott M. Lidman filed concurrently
5 with the Motion; having considered Plaintiff’s Motion, Memorandum of Points and Authorities
6 in support thereof, and supporting declarations filed therewith; and good cause appearing,
7 **HEREBY ORDERS THE FOLLOWING:**

8 1. The Court GRANTS preliminary approval of the class action settlement as set
9 forth in the Settlement and finds it terms to be within the range of reasonableness of a settlement
10 that ultimately could be granted approval by the Court at a Final Fairness Hearing. For purposes
11 of the Settlement, the Court finds that the proposed Settlement Class is ascertainable and that
12 there is a sufficiently well-defined community of interest among the members of the Settlement
13 Class in questions of law and fact. Therefore, for settlement purposes only, the Court grants
14 conditional certification of the following Settlement Class:

15 All current and former non-exempt, hourly employees of Defendants
16 Demcon Concrete Contractors, Inc. and D and D Concrete Construction,
17 Inc. who worked at any time in California during the Class Period.

18 2. For purposes of the Settlement, the “Class Period” shall mean the time period of
19 January 30, 2019 through December 17, 2023.

20 3. For purposes of this Settlement, the group of PAGA Employees is defined as
21 follows:

22 All current and former non-exempt, hourly employees of Defendants
23 Demcon Concrete Contractors, Inc. and D and D Concrete Construction,
24 Inc. who worked at any time in California during the PAGA Period

25 4. For purposes of the Settlement, the “PAGA Period” shall mean the time period
26 of January 30, 2022 through December 17, 2023.

1 5. For purposes of the Settlement, the Court designates named Plaintiff Leonel Luna
2 as Class Representative, and Scott M. Lidman, and Milan Moore of Lidman Law, APC and Paul
3 K. Haines of Haines Law Group, APC as Class Counsel.

4 3. The Court designates Phoenix Settlement Administrators (“Phoenix”) as the third-
5 party Settlement Administrator for mailing notices.

6 4. The Court approves, as to form and content, the Notice of Pendency of Class
7 Action and Proposed Settlement and Notice of Individual Settlement Award attached to the
8 Settlement as **Exhibit A**.

9 5. The Court finds that the form of notice to the Settlement Class regarding the
10 pendency of the action and of the Settlement, and the methods of giving notice to Settlement Class
11 members, constitutes the best notice practicable under the circumstances, and constitute valid,
12 due, and sufficient notice to all members of the Settlement Class. The form and method of giving
13 notice complies fully with the requirements of California Code of Civil Procedure section 382,
14 California Civil Code section 1781, California Rules of Court 3.766 and 3.769, the California and
15 United States Constitutions, and other applicable law.

16 6. The Court further approves the procedures for Settlement Class members to opt
17 out of or object to the Settlement, as set forth in the Notice of Pendency of Class Action and
18 Proposed Settlement.

19 7. The procedures and requirements for filing objections in connection with the Final
20 Fairness Hearing are intended to ensure the efficient administration of justice and the orderly
21 presentation of any Settlement Class member’s objection to the Settlement, in accordance with
22 the due process rights of all Settlement Class members.

23 8. The Court directs the Settlement Administrator to mail the Notice of Pendency of
24 Class Action and Proposed Settlement and Notice of Individual Settlement Award to all of the
25 Class members in accordance with the terms of the Settlement.

26 9. The Class Notice shall provide at least 60 calendar days’ notice for Settlement
27 Class members to dispute, opt out of, or object to, the Settlement.
28

10. The Final Fairness Hearing on the question of whether the Settlement should be finally approved as fair, reasonable, and adequate is scheduled in Department C-70 of this Court, located at 330 West Broadway, San Diego, CA 92101 on September 26, 2024 at 10:30 a.m.

11. At the Final Fairness Hearing, the Court will consider: (a) whether the Settlement should be finally approved as fair, reasonable, and adequate for the Settlement Class; (b) whether a judgment granting final approval of the Settlement should be entered; and (c) whether Plaintiff's application for reasonable attorneys' fees, reimbursement of litigation expenses, service award to Plaintiff, and payment to the Labor and Workforce Development Agency ("LWDA") for penalties under the Labor Code Private Attorneys General Act ("PAGA") should be granted.

12. Counsel for the parties shall file memoranda, declarations, or other statements and materials in support of their request for final approval of the Settlement, attorneys' fees, litigation expenses, Plaintiff's service award, settlement administration costs, and payment to the LWDA for PAGA penalties prior to the Final Fairness Hearing according to the time limits set by the Code of Civil Procedure and the California Rules of Court.

13. An implementation schedule is below:

Event	Date
Defendant to provide Class Data to Settlement Administrator	10 business days after the Court enters an order granting preliminary approval.
Settlement Administrator to mail Notice Packets to Class Members	10 business days after receiving Class Data from Defendant
Deadline for Class Members to request exclusion from, submit disputes, or object to, the Settlement	60 calendar days after mailing of the Notice by the Settlement Administrator
Deadline for Plaintiff to file Motion for Final Approval of Class Action Settlement (and to respond to any objections):	16 Court days before the Final Fairness Hearing
Final Fairness Hearing:	September 26, 2024 at 10:30 a.m.

15. Pending the Final Fairness Hearing, all proceedings in this action, other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement and this Order, are stayed.

1 16. Counsel for the parties are hereby authorized to utilize all reasonable procedures
2 in connection with the administration of the Settlement which are not materially inconsistent with
3 either this Order or the terms of the Settlement.

4 **IT IS SO ORDERED.**

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7 Dated: 04/29/2024

8 Honorable Carolyn Caietti
9 Judge of the Superior Court
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EXHIBIT A

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN DIEGO

LEONEL LUNA,

Plaintiff,

vs.

DEMCON CONCRETE CONTRACTORS, INC., a
California corporation; D AND D CONSTRUCTION,
INC., a California corporation; and Does 1 through
100,

Defendants.

Case No. 37-2023-00004126-CU-OE-CTL

**NOTICE OF PENDENCY OF CLASS
ACTION AND PROPOSED SETTLEMENT**

To: All current and former non-exempt, hourly employees of Defendants Demcon Concrete Contractors, Inc. and D and D Concrete Construction, Inc. who worked at any time in California between January 30, 2019 and December 17, 2023. Collectively, these employees will be referred to as "Settlement Class members."

**PLEASE READ THIS NOTICE CAREFULLY
YOUR LEGAL RIGHTS MAY BE AFFECTED WHETHER YOU ACT OR NOT**

Why should you read this notice?

The Court has granted preliminary approval of a proposed class action settlement (the "Settlement") in *Leonel Luna v. Demcon Concrete Contractors and D and D Construction, Inc.*, Case No. 37-2023-00004126-CU-OE-CTL (the "Lawsuit"). Because your rights may be affected by the Settlement, it is important that you read this notice carefully.

You may be entitled to money from this Settlement. Defendants' records show that you were employed with one or both of the Defendants as a non-exempt, hourly employee in California between January 30, 2019 and December 17, 2023 (the "Class Period"). The Court ordered that this Notice be sent to you because you may be entitled to money under the Settlement and because the Settlement affects your legal rights.

The purpose of this notice is to provide you with a brief description of the Lawsuit, to inform you of the terms of the Settlement, to describe your rights in connection with the Settlement, and to explain what steps you may take to participate in, object to, or exclude yourself from the Settlement. If you do not exclude yourself from the Settlement and the Court finally approves the Settlement, you will be bound by the terms of the Settlement and any final judgment.

What is this case about?

Plaintiff Leonel Luna ("Plaintiff") brought this Lawsuit against Defendants, seeking to assert claims on behalf of a class of current and former non-exempt, hourly employees who worked for one or both of the Defendants in California at any time between January 30, 2019 and December 17, 2023. Plaintiff Leonel Luna is known as the "Class Representative," and his attorneys, who also represent the interests of all Settlement Class members, are known as "Class Counsel."

The Lawsuit alleges that Defendants failed to pay Settlement Class members all minimum wages and overtime wages, and failed to provide all required meal and rest periods. The Lawsuit also alleges that Defendants failed to provide Settlement Class members with itemized wage statements in compliance with California law, failed to timely pay all wages owed to Settlement Class members upon their separation of employment from Defendants, and failed to reimburse all necessary business expenditures. As a result of the foregoing alleged violations, Plaintiff also alleges

that Defendants engaged in unfair business practices and are liable for civil penalties under the Labor Code Private Attorney General Act.

Defendants deny that they have done anything wrong. Defendants further deny that they owe Settlement Class members any wages, restitution, penalties, or other damages. Accordingly, the Settlement constitutes a compromise of disputed claims and should not be construed as an admission of liability on the part of Defendants, which expressly deny all liability.

The Court has not ruled on the merits of Plaintiff's claims or Defendants' defenses. However, to avoid additional expense, inconvenience, and interference with their business operations, Defendants have concluded that it is in their best interests and the interests of Settlement Class members to settle the Lawsuit on the terms summarized in this Notice. After Defendants provided relevant information to Class Counsel, the Settlement was reached after mediation between the parties.

The Class Representative and Class Counsel support the Settlement. Among the reasons for support are the defenses to liability potentially available to Defendants, the risk of denial of class certification, the inherent risks of trial on the merits, and the delays and uncertainties associated with litigation.

If you are still employed by Defendants, your decision about whether to participate in the Settlement will not affect your employment. California law and Defendants' policies strictly prohibit unlawful retaliation.

Defendants will not take any adverse employment action against or otherwise target, retaliate, or discriminate against any Settlement Class member because of the Settlement Class member's decision to either participate or not participate in the Settlement.

Who are the Attorneys?

Attorneys for the Plaintiff / Settlement Class Members:

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What are the terms of the Settlement?

On [INSERT DATE OF PRELIMINARY APPROVAL], the Court preliminarily certified a class, for settlement purposes only, of all current and former non-exempt, hourly employees who worked for Defendants in California at any time between January 30, 2019 and December 17, 2023. Settlement Class members who do not opt out of the Settlement pursuant to the procedures set forth in this Notice will be bound by the Settlement and will release their claims against Defendants as described below.

Defendants have agreed to pay \$1,100,000.00 (the “Gross Settlement Amount”) to fully resolve all claims in the Lawsuit, which includes payments to Settlement Class members, attorneys’ fees and expenses, payment to the Labor Workforce Development Agency (“LWDA”), settlement administration costs, the Class Representative’s Service Award and monies to be paid to the LWDA. Defendants’ share of employer-side payroll taxes associated with any wage payments to Settlement Class members shall be paid by Defendants separately from, and in addition to, the Gross Settlement Amount.

The following deductions from the Gross Settlement Amount will be requested by the parties:

Settlement Administration Costs. The Court has approved Phoenix Settlement Administrators to act as the “Settlement Administrator,” who is sending this Notice to you and will perform many other duties relating to the Settlement. The Court has approved setting aside up to \$10,000.00 from the Gross Settlement Amount to pay the Settlement administration costs.

Attorneys’ Fees and Expenses. Class Counsel have been prosecuting the Lawsuit on behalf of the Settlement Class Members on a contingency fee basis (that is, without being paid any money to date) and have been paying all litigation costs and expenses. The Court will determine the actual amount awarded to Class Counsel as attorneys’ fees, which will be paid from the Gross Settlement Amount. Settlement Class members are not personally responsible for any of Class Counsel’s attorneys’ fees or expenses. Class Counsel will ask for fees of up to one-third of the Gross Settlement Amount, which is currently estimated to be \$366,666.67, as reasonable compensation for the work Class Counsel performed and will continue to perform in this Lawsuit through Settlement finalization. Class Counsel also will ask for reimbursement in an amount not to exceed \$25,000.00 for verified costs Class Counsel incurred in connection with the Lawsuit.

Service Award to Class Representative. Class Counsel will ask the Court to award the Class Representative a service award in the amount not to exceed \$10,000.00, to compensate him for his service and extra work provided on behalf of the Settlement Class members.

LWDA Payment. Class Counsel will ask the Court to approve a payment in the total amount of \$50,000.00 as and for alleged civil penalties, payable pursuant to the California Labor Code Private Attorney General Act (“PAGA”). Per Labor Code § 2699(i), seventy-five percent (75%) of such penalties, or \$37,500.00 will be payable to the LWDA, and the remaining twenty-five percent (25%), or \$12,500.00, will be payable to certain Settlement Class members as the “PAGA Amount,” as described below.

Calculation of Individual Settlement Class Members’ Settlement Award. After deducting the Court-approved amounts above, the balance of the Gross Settlement Amount will form the Net Settlement Amount (“NSA”), which will be distributed to all Settlement Class members who do not submit a valid and timely Request for Exclusion (described below). The NSA is estimated at approximately <<\$ >> to be shared among an up to << >> estimated Settlement Class members.

The NSA will be divided as follows: Each participating Settlement Class Member shall receive a proportionate settlement share based upon the number of Actual Workweeks (defined as any workweek in which the Settlement Class Member worked at least one day) the Settlement Class Member worked during the Class Period, the numerator of which is the Settlement Class Member’s total Actual Workweeks worked during the Class Period, and the denominator of which is the total Actual Workweeks worked by all Settlement Class Members (who do not opt out) who worked during the Class Period.

In addition, Twelve Thousand Five Hundred Dollars and Zero Cents (\$12,500.00) of the Gross Settlement Amount has been designated as the "PAGA Amount" as described above. Each Settlement Class Member who was employed by Defendant at any time from January 30, 2022 and December 17, 2023, shall receive a portion of the PAGA Amount proportionate to the number of pay periods that he or she worked during the period of January 30, 2022 through December 17, 2023, and which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the Settlement Class Members' number of pay periods worked during the time period from January 30, 2022 and December 17, 2023, and the denominator of which is the total number of pay periods worked by all Settlement Class Members during the time period of January 30, 2022 and December 17, 2023

Payments to Settlement Class Members. If the Court grants final approval of the Settlement, Settlement Awards will be mailed to all Settlement Class members who did not submit a valid and timely Request for Exclusion in approximately << >>.

If you submit a Request for Exclusion, you will still receive a proportionate share of the PAGA Payment regardless of whether you exclude yourself from the Settlement if you are a PAGA Employee.

Each Settlement Class Member and PAGA Employee who receives a Settlement Award must cash the check within 180 days from the date the Settlement Administrator mails it. Any funds payable to Settlement Class Members or PAGA Employees who checks were not cashed within 180 days after mailing will be transferred to the California State Controller's Office - Unclaimed Property Fund in the name of the Settlement Class Member or PAGA Employee.

Payment by Defendants of the Gross Settlement Amount. The Gross Settlement Amount shall be paid by Defendants to the Settlement Administrator within the latter of: (i) [insert date which is 18 months after the long form is signed]; or (ii) thirty (30) days after the Effective Date.

The "Effective Date" is defined as the latter of: a) the Court's final approval of the settlement if no objections by or on behalf of Class Members have been filed; (b) the time for appeal has expired if an objection has been filed and no appeal has been filed or withdrawn; or (c) the final resolution of any appeal that has been filed.

Based on the above, the Gross Settlement Amount is expected to be paid by approximately << >>.

Within ten (10) calendar days following Defendants' deposit of the Gross Settlement Amount and required employer-side payroll taxes with the Settlement Administrator, the Settlement Administrator will calculate Settlement Award amounts and provide the same to counsel for the Parties for review and approval. Within seven (7) calendar days of approval by counsel for the Parties, the Settlement Administrator will prepare and mail Settlement Awards, less applicable taxes and withholdings, to Participating Settlement Class members.

Allocation and Taxes. For tax purposes, each Settlement Award shall be allocated as follows: sixty-seven percent (67%) as penalties and interest; and thirty-three percent (33%) as wages. The Settlement Administrator will be responsible for issuing to participating Settlement Class members IRS Forms W-2 for amounts deemed "wages" and IRS Forms 1099 for the amounts allocated as penalties and interest. Settlement Class members are responsible for the proper income tax treatment of the Individual Settlement Awards. The Settlement Administrator, Defendants and their counsel, and Class Counsel cannot provide tax advice. Accordingly, Settlement Class members should consult with their tax advisors concerning the tax consequences and treatment of payments they receive under the Settlement.

Release. If the Court approves the Settlement, the Settlement Class, and each Settlement Class member except those who timely and properly submit a Request for Exclusion as set forth below) will fully and forever completely release and discharge Defendants, and all of their past and present owners, officers, directors, shareholders, managers, employees, agents, principals, heirs, representatives, accountants, auditors, consultants, and its respective successors and predecessors in interest, subsidiaries, affiliates, parents and attorneys (collectively the "Released Parties") from any and all claims, demands, rights, liabilities and causes of action that were pled in the operative First Amended Complaint or arising from the same operative facts and/or allegations as those set forth in the operative First Amended Complaint in the Action, that arose during the Class Period defined above including with respect to the following

claims: (a) failure to pay all overtime wages owed; (b) failure to pay all minimum wages owed; (c) failure to provide meal periods, or premium pay for non-compliant meal periods; (d) failure to authorize and permit all rest periods, or premium pay for non-compliant rest periods; (e) failure to provide accurate, itemized wage statements; (f) failure to indemnify all necessary business expenditures (g) failure to pay all wages owed upon termination; and (h) all claims for unfair business practices that could have been premised on the facts, claims, causes of action or legal theories described above (collectively, the “Released Claims”)

The time period of the Release shall be the same time as the Class Period.

PAGA Release and PAGA Employees. If the Court approves the Settlement, all PAGA Employees (including employees who submit a Request for Exclusion and Plaintiff), will release and forever discharge all claims, demands, rights, liabilities and causes of action under the California Labor Code Private Attorneys General Act of 2004 against the Released Parties based on the following (and as alleged in the letter to the Labor & Workforce Development Agency (“LWDA”) dated January 30, 2023): (a) failure to pay all overtime wages owed; (b) failure to pay all minimum wages owed; (c) failure to provide meal periods, or premium pay for non-compliant meal periods; (d) failure to authorize and permit rest periods, or premium pay for non-compliant rest periods; (e) failure to issue accurate, itemized wage statements; (f) failure to pay all wages upon separation of employment; and (g) failure to reimburse all necessary business expenditures, that occurred during the PAGA Period (collectively, “PAGA Released Claim”)

PAGA Employees includes all current and former non-exempt, hourly employees employed by Defendants in California at any time between January 30, 2022 and December 17, 2023. The time period of the PAGA Released Claim is January 30, 2022 through December 17, 2023. (“PAGA Period”).

The releases are null and void if Defendants fail to fully fund the Gross Settlement Amount.

Conditions of Settlement. The Settlement is conditioned upon the Court entering an order at or following the Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate and in the best interests of the Settlement Class, and the entry of Judgment.

How can I claim money from the Settlement?

Do Nothing. If you do nothing, you will be entitled to your share of the Settlement based on the proportionate number of workweeks you worked during the Class Period (as explained above), and as stated in the accompanying Notice of Settlement Award. You also will be bound by the Settlement, including the release of claims stated above.

What other options do I have?

Dispute Information in Notice of Settlement Award. Your award is based on the proportionate number of Actual Workweeks you worked during the Class Period. The information contained in Defendants’ records regarding all of these factors, along with your estimated Settlement Award, is listed on the accompanying Notice of Settlement Award. If you disagree with the information in your Notice of Settlement Award, you may submit a dispute, along with any supporting documentation, in accordance with the procedures stated in the Notice of Settlement Award. Any disputes, along with supporting documentation, must be postmarked no later than **<<RESPONSE DEADLINE>>**. **DO NOT SEND ORIGINALS; DOCUMENTATION SENT TO THE SETTLEMENT ADMINISTRATOR WILL NOT BE RETURNED OR PRESERVED.**

The Parties and the Settlement Administrator will evaluate the evidence submitted and discuss in good faith how to resolve any disputes submitted by Settlement Class members. The Settlement Administrator’s decision regarding any dispute will be final.

Exclude Yourself from the Settlement. If you **do not** wish to take part in the Settlement, you may exclude yourself by sending to the Settlement Administrator a written “Request for Exclusion from the Class Action Settlement” letter or card postmarked no later than **<<RESPONSE DEADLINE>>**, with your name, address, telephone number, last four digits of your social security number, and your signature. The Request for Exclusion should state:

1 “I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE LUNA V. DEMCON LAWSUIT. I
2 UNDERSTAND THAT IF I ASK TO BE EXCLUDED FROM THE SETTLEMENT CLASS, I WILL NOT
RECEIVE ANY MONEY FROM THE CLASS ACTION SETTLEMENT OF THIS LAWSUIT.”

3 Send the Request for Exclusion directly to the Settlement Administrator at <<INSERT ADMINISTRATOR
4 CONTACT INFO>>. Any person who files a timely Request for Exclusion from the Settlement shall, upon receipt
5 by the Settlement Administrator, no longer be a Settlement Class member, shall be barred from participating in any
6 portion of the Settlement, and shall receive no benefits from the Settlement. **Do not submit both a Dispute and a
Request for Exclusion.** If you do, the Request for Exclusion will be invalid, you will be included in the Settlement
7 Class, and you will be bound by the terms of the Settlement.

8 You will still receive a portion of the PAGA Amount if you submit a Request for Exclusion and be bound by the
9 PAGA Release.

10 Objecting to the Settlement. You also have the right to object to the terms of the Settlement. However, if the Court
11 rejects your objection, you will still be bound by the terms of the Settlement. If you wish to object to the Settlement,
12 or any portion of it, you may mail a written objection to the Settlement Administrator. Your written objection must
13 include your name, address, as well as contact information for any attorney representing you regarding your
14 objection, the case name and number, each specific reason in support of your objection, and any legal or factual
15 support for each objection together with any evidence in support of your objection. Written objections must be
16 postmarked on or before <<RESPONSE DEADLINE>>.

17 If you choose to object to the Settlement, you may also appear at the Final Approval Hearing scheduled for <<FINAL
18 APPROVAL HEARING DATE/TIME>> in Department C-70 of the San Diego County Superior Court, located at
19 330 West Broadway, San Diego, California 92101. You have the right to appear either virtually, in person or through
20 your own attorney at this hearing. Any attorney who intends to represent an individual objecting to the Settlement
21 must file a notice of appearance with the Court and serve counsel for all parties on or before <<RESPONSE
22 DEADLINE>>. All objections or other correspondence must state the name and number of the case: *Leonel Luna v.*
23 *Demcon Concrete Contractors, Inc.*, Case No. 37-2023-00004126-CU-OE-CTL.

24 For information on how to access a hearing virtually, please visit the Court’s website at www.sdcourt.ca.gov and
25 click on “Covid-19 & Court Information” or visit
26 http://www.sdcourt.ca.gov/portal/page?_pageid=55.2053814&_dad=portal&_schema=PORTAL and click on “Civil
27 Independent Calendar Virtual Hearings”

28 If you object to the Settlement, you will remain a member of the Settlement Class, and if the Court approves the
Settlement, you will be bound by the terms of the Settlement in the same way as Settlement Class members who do
not object.

What is the next step?

21 The Court will hold a Final Approval Hearing on the adequacy, reasonableness, and fairness of the Settlement on
22 <<FINAL APPROVAL HEARING DATE/TIME>>, in Department C-70 of the San Diego County Superior Court,
23 located at 330 West Broadway, San Diego, California 92101. The Court also will be asked to rule on Class Counsel’s
24 request for attorneys’ fees and reimbursement of documented costs and expenses and the Service Award to the Class
25 Representative. The Final Approval Hearing may be postponed without further notice to Settlement Class members.
26 **You are not required to attend the Final Approval Hearing, although any Settlement Class member is welcome
to attend the hearing.**

27 The Court’s final judgment and any changes to the date, time, or location of the Final Approval Hearing will be
28 posted on the Settlement Administrator’s website at (<http://.com>).

How can I get additional information?

1 This Notice is only a summary of the Lawsuit and the Settlement. For more information, you may inspect the Court's
2 files and the Settlement Agreement at the Office of the Clerk of the San Diego County Superior Court, located at 330
3 West Broadway, San Diego, California 92101, during regular court hours. For more information on how to view the
4 file online, request a copy of the file to be mailed to you, or viewing the filing in person, please visit the Court's
5 website at www.sdcourt.ca.gov, and click on "General Info", "Access Court Records", and "Obtain a Copy of File".
6 You may also contact Class Counsel using the contact information listed above for more information.

7 **PLEASE DO NOT CALL OR WRITE THE COURT, DEFENDANTS, OR ITS ATTORNEYS FOR INFORMATION**
8 **ABOUT THIS SETTLEMENT OR THE SETTLEMENT PROCESS**

9 ***REMINDER AS TO TIME LIMITS***

10 The deadline for submitting any Disputes, Requests for Exclusion, or Objections is <<RESPONSE DEADLINE>>.
11 These deadlines will be strictly enforced.

12 **BY ORDER OF THE COURT ENTERED ON <<PRELIM APPROVAL DATE>>.**

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SAN DIEGO COUNTY SUPERIOR COURT CASE NO. 37-2023-00004126-CU-OE-CTL

Please complete, sign, date and return this form to **<<ADMINISTRATOR CONTACT INFO>>** **ONLY IF** (1) your personal contact information has changed, and/or (2) you wish to dispute any of the items listed in Section (III), below. It is your responsibility to keep a current address on file with the Settlement Administrator.

(First, Middle, Last)

Former Names (if any)

New Street Address

City	State	Zip Code
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According to the records of Demcon Concrete Contractors, Inc. and D and D Concrete Construction, Inc. (“Defendants”):

- (a) You were employed by one or both Defendants and worked a total of [REDACTED] workweeks between January 30, 2019 and December 17, 2023; and
- (b) You were employed by one or both Defendants and worked a total of [REDACTED] pay periods between January 30, 2022 and December 17, 2023.

Based on the above, your Individual Settlement Award is estimated to be \$ **.**

(IV) If you disagree with items (a) – (b) in Section (III) above, please explain why in the space provided below and include copies of any supporting evidence or documentation with this form:

If you dispute the above information from Defendants' records, Defendants' records will control unless you are able to provide documentation that establishes that Defendants' records are mistaken. If there is a dispute about whether Defendants' information or yours is accurate, and the dispute cannot be resolved informally, the dispute will be resolved by the Parties and the Settlement Administrator as described in the "Notice of Pendency of Class Action and Proposed Settlement" that accompanies this Form. Any unresolved disputes will be submitted to the Court for a final determination.

**ANY DISPUTES, ALONG WITH ANY SUPPORTING DOCUMENTATION, MUST BE POSTMARKED
NO LATER THAN <<RESPONSE DEADLINE>>.**

EXHIBIT B

EXHIBIT B

Expense Summary
Leonel Luna v. Demcon Concrete Contractors, Inc., et al.

EXPENSE	AMOUNT
Mediation Costs (including Plaintiff's portion of mediator expenses)	\$4,250.00
Filing, Service and Messenger Fees	\$2,288.44
Jury Fees	\$168.79
Copying Costs	\$18.50
Postage Costs	\$34.73
Document Purchase Costs	\$2.00
Anticipated Costs for court appearances, filing of instant motion, service fees, copying and postage	\$300.00
TOTAL:	\$7,062.46

EXHIBIT C

EXHIBIT C

LAFFEY MATRIX

History

Case Law

See the Matrix

Contact us

Home

			Years Out of Law School *				
Year	Adjustmt Factor**	Paralegal/ Law Clerk	1-3	4-7	8-10	11-19	20 +
6/01/23- 5/31/24	1.059295	\$239	\$437	\$538	\$777	\$878	\$1057
6/01/22- 5/31/23	1.085091	\$225	\$413	\$508	\$733	\$829	\$997
6/01/21- 5/31/22	1.006053	\$208	\$381	\$468	\$676	\$764	\$919
6/01/20- 5/31/21	1.015894	\$206	\$378	\$465	\$672	\$759	\$914
6/01/19- 5/31/20	1.0049	\$203	\$372	\$458	\$661	\$747	\$899
6/01/18- 5/31/19	1.0350	\$202	\$371	\$455	\$658	\$742	\$894
6/01/17- 5/31/18	1.0463	\$196	\$359	\$440	\$636	\$717	\$864
6/01/16- 5/31/17	1.0369	\$187	\$343	\$421	\$608	\$685	\$826
6/01/15- 5/31/16	1.0089	\$180	\$331	\$406	\$586	\$661	\$796
6/01/14- 5/31/15	1.0235	\$179	\$328	\$402	\$581	\$655	\$789
6/01/13- 5/31/14	1.0244	\$175	\$320	\$393	\$567	\$640	\$771
6/01/12- 5/31/13	1.0258	\$170	\$312	\$383	\$554	\$625	\$753
6/01/11- 5/31/12	1.0352	\$166	\$305	\$374	\$540	\$609	\$734
6/01/10- 5/31/11	1.0337	\$161	\$294	\$361	\$522	\$589	\$709
6/01/09- 5/31/10	1.0220	\$155	\$285	\$349	\$505	\$569	\$686
6/01/08- 5/31/09	1.0399	\$152	\$279	\$342	\$494	\$557	\$671
6/01/07-5/31/08	1.0516	\$146	\$268	\$329	\$475	\$536	\$645
6/01/06-5/31/07	1.0256	\$139	\$255	\$313	\$452	\$509	\$614
6/1/05-5/31/06	1.0427	\$136	\$249	\$305	\$441	\$497	\$598
6/1/04-5/31/05	1.0455	\$130	\$239	\$293	\$423	\$476	\$574
6/1/03-6/1/04	1.0507	\$124	\$228	\$280	\$405	\$456	\$549
6/1/02-5/31/03	1.0727	\$118	\$217	\$267	\$385	\$434	\$522
6/1/01-5/31/02	1.0407	\$110	\$203	\$249	\$359	\$404	\$487
6/1/00-5/31/01	1.0529	\$106	\$195	\$239	\$345	\$388	\$468
6/1/99-5/31/00	1.0491	\$101	\$185	\$227	\$328	\$369	\$444
6/1/98-5/31/99	1.0439	\$96	\$176	\$216	\$312	\$352	\$424
6/1/97-5/31/98	1.0419	\$92	\$169	\$207	\$299	\$337	\$406
6/1/96-5/31/97	1.0396	\$88	\$162	\$198	\$287	\$323	\$389
6/1/95-5/31/96	1.032	\$85	\$155	\$191	\$276	\$311	\$375

6/1/94-5/31/95	1.0237	\$82	\$151	\$185	\$267	\$301	\$363
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The methodology of calculation and benchmarking for this Updated Laffey Matrix has been approved in a number of cases. See, e.g., *DL v. District of Columbia*, 267 F.Supp.3d 55, 69 (D.D.C. 2017)

* $\frac{1}{2}$ Years Out of Law School $\frac{1}{2}$ is calculated from June 1 of each year, when most law students graduate. $\frac{1}{2}$ 1-3" includes an attorney in his 1st, 2nd and 3rd years of practice, measured from date of graduation (June 1). $\frac{1}{2}$ 4-7" applies to attorneys in their 4th, 5th, 6th and 7th years of practice. An attorney who graduated in May 1996 would be in tier $\frac{1}{2}$ 1-3" from June 1, 1996 until May 31, 1999, would move into tier $\frac{1}{2}$ 4-7" on June 1, 1999, and tier $\frac{1}{2}$ 8-10" on June 1, 2003.

** The Adjustment Factor refers to the nation-wide Legal Services Component of the Consumer Price Index produced by the Bureau of Labor Statistics of the United States Department of Labor.

EXHIBIT D

EXHIBIT D

From: [DIR PAGA Unit](#)
To: [Dana Joudi](#)
Subject: Thank you for your Proposed Settlement Submission
Date: Monday, November 27, 2023 2:36:22 PM

11/27/2023 02:35:17 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm

EXHIBIT E

EXHIBIT E

From: [DIR PAGA Unit](#)
To: [Marlyn Ajanel](#)
Subject: Thank you for your Court Order or Judgment Submission
Date: Thursday, August 8, 2024 10:01:38 AM

08/08/2024 10:01:16 AM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Court Order or Judgment

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm