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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]*

[PROPOSED] FINAL JUDGMENT

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

Complaint Filed: January 30, 2023

1 This matter came on regularly for hearing before this Court on September 26, 2024,
2 pursuant to California Rule of Court 3.769 and this Court’s April 29, 2024 Order Granting
3 Preliminary Approval of Class Action Settlement (“Preliminary Approval Order”). Having
4 considered the parties’ Stipulation of Settlement (referred to hereinafter as “Settlement” or
5 “Settlement Agreement”)¹ and the documents and evidence presented in support thereof, and the
6 submissions of counsel, the Court hereby ORDERS and enters JUDGMENT as follows:

7 1. Final judgment (“Judgment”) in this matter is hereby entered in conformity with
8 the Settlement, the Preliminary Approval Order, and this Court’s Order Granting Final Approval
9 of Class Action Settlement. The Settlement Class is defined as:

10 All current and former non-exempt, hourly employees of Defendants
11 Demcon Concrete Contractors, Inc. and D and D Concrete Construction,
12 Inc. who worked at any time during the Class Period.

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

15 3. Plaintiff Leonel Luna is hereby confirmed as Class Representative, and Scott M.
16 Lidman and Milan Moore of Lidman Law, APC and Paul K. Haines of Haines Law Group,
17 APC are hereby confirmed as Class Counsel.

18 4. Notice was provided to the Settlement Class as set forth in the Settlement. The
19 form and manner of notice were approved by the Court on April 29, 2024, and the notice process
20 has been completed in conformity with the Court’s Order. The Court finds that said notice was
21 the best notice practicable under the circumstances. The Notice Packet (consisted of the Notice
22 of Pendency of Class Action and Proposed Settlement and Notice of Settlement Award) provided
23 due and adequate notice of the proceedings and matters set forth therein, informed Settlement
24 Class members of their rights, and fully satisfied the requirements of California Code of Civil
25 Procedure § 1781(e), California Rule of Court 3.769, and due process.

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27 ¹ Unless otherwise indicated, all terms used in this Order shall have the same meaning as that
28 assigned to them in the Settlement.

1 5. The Court finds that no Settlement Class member objected to the Settlement, no
2 Settlement class member has opted out of the Settlement, and that the 100% participation rate in
3 the Settlement supports final approval.

4 6. The Court hereby approves the settlement as set forth in the Settlement
5 Agreement as fair, reasonable, and adequate, and directs the parties to effectuate the Settlement
6 Agreement according to its terms.

7 7. For purposes of settlement only, the Court finds that (a) the members of the
8 Settlement Class are ascertainable and so numerous that joinder of all members individually is
9 impracticable; (b) there are questions of law or fact common to the Settlement Class, and there
10 is a well-defined community of interest among members of the Settlement Class with respect to
11 the subject matter of the litigation; (c) the claims of the Class Representative are typical of the
12 claims of the members of the Settlement Class; (d) the Class Representative has fairly and
13 adequately protected the interests of the Settlement Class members; (e) a class action is superior
14 to other available methods for an efficient adjudication of this controversy; and (f) Class Counsel
15 are qualified to serve as counsel for the Class Representative and the Settlement Class.

16 8. The Court orders that Demcon Concrete Contractors, Inc. and D and D Concrete
17 Construction, Inc. deliver the Settlement Amount of \$1,100,000.00 to Phoenix Class Action
18 Administration Solutions, the Settlement Administrator, as provided for in the Settlement.
19 Specifically, Defendants shall fully fund the Gross Settlement Amount, including all amounts
20 necessary to fully pay Defendants' share of payroll taxes, by transmitting such funds to the
21 Administrator by May 1, 2025.

22 9. The Court finds that the settlement payments, as provided for in the Settlement,
23 are fair, reasonable, and adequate, and orders the Settlement Administrator to distribute the
24 individual payments in conformity with the terms of the Settlement. Any Settlement funds that
25 remain uncashed after 180 calendar days after they are mailed shall be delivered to the California
26 State Controller's Office – Unclaimed Property Fund in the name of the Settlement Class
27 member.
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1 10. The Court finds that an enhancement payment in the amount of \$10,000.00 for
2 Plaintiff Leonel Luna is appropriate for his risks undertaken and service to the Settlement Class.
3 The Court finds that this award is fair, reasonable, and adequate, and orders that the Settlement
4 Administrator make this payment in conformity with the terms of the Settlement.

5 11. The Court finds that attorneys' fees in the amount of \$366,666.67, and actual
6 litigation costs of \$7,062.46 for Class Counsel, are fair, reasonable, and adequate, and orders
7 that the Settlement Administrator distribute these payments to Class Counsel in conformity with
8 the terms of the Settlement.

9 12. The Court orders that the Settlement Administrator shall be paid \$10,000.00 from
10 the Settlement Amount for all of its work done and to be done until the completion of this matter,
11 and finds that sum appropriate.

12 13. The Court finds that the payment to the California Labor & Workforce
13 Development Agency ("LWDA") in the amount of \$37,500.00 for its 75% share of the settlement
14 of Plaintiff's representative action under the California Labor Code Private Attorneys General
15 Act ("PAGA") is fair, reasonable, and adequate, and orders the Settlement Administrator to
16 distribute this payment to the LWDA in conformity with the terms of the Settlement. The
17 remaining 25% or \$12,500.00 of the PAGA Amount is to be distributed to the Aggrieved
18 Employees in conformity with the terms of the Settlement.

19 14. After the above deductions, attorneys' fees (\$366,666.67), attorneys' litigation
20 costs (\$7,062.46), incentive payment to Plaintiff (\$10,000.00), Settlement Administrator costs
21 (\$10,000.00), and the PAGA Amount to the LWDA (\$37,500.00), the Net Settlement Amount
22 of \$656,270.87 is to be distributed to the Settlement Class members in conformity with the terms
23 of the Settlement.

24 15. Pursuant to the terms of the Settlement, the employer's share of payroll taxes for
25 the portion of the Net Settlement Amount allocated to wages shall be paid by Defendants
26 separately, and in addition to, the Class Settlement Amount.

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1 16. The Court finds and determines that upon satisfaction of all obligations under the
2 Settlement and this Order, all Settlement Class members will be bound by the Settlement and
3 will have released the Released Claims as set forth in the Settlement.

4 17. Upon the date the Settlement is fully funded by Defendants and by virtue of this
5 Judgment, Plaintiff and Participating Class Members will fully and forever completely release
6 and discharge Defendants, and all of their past and present owners, their past and present officers,
7 directors, shareholders, managers, employees, agents, principals, heirs, representatives,
8 accountants, auditors, consultants, and its respective successors and predecessors in interest,
9 subsidiaries, affiliates, parents and attorneys (collectively the “Released Parties”) from any and
10 all claims, demands, rights, liabilities and causes of action that were pled in the operative First
11 Amended Complaint or arising from the same operative facts and/or allegations as those set forth
12 in the operative First Amended Complaint in the Action, that arose during the Class Period
13 including with respect to the following claims: (a) failure to pay all overtime wages owed; (b)
14 failure to pay all minimum wages owed; (c) failure to provide all meal periods; (d) failure to
15 authorize and permit all rest periods, or premium pay for non-compliant rest periods; (e) failure
16 to provide accurate, itemized wage statements; (f) failure to indemnify all necessary business
17 expenditures; (g) failure to pay all wages owed upon termination; and (h) all claims for unfair
18 business practices that could have been premised on the facts, claims, causes of action or legal
19 theories described above (“Released Claims”).

20 18. The time period for the release of the Released Claims against the Released
21 Parties shall be the same time period as the Class Period.

22 19. Upon the date the Settlement is fully funded by Defendants and by virtue of this
23 Judgment, all PAGA Employees will fully and forever completely release and discharge all
24 claims, demands, rights, liabilities and causes of action under the California Labor Code Private
25 Attorneys General Act of 2004 against the Released Parties based on the following (and as
26 alleged in the letter to the Labor & Workforce Development Agency (“LWDA”) dated January
27 30, 2023): (a) failure to pay all overtime wages owed; (b) failure to pay all minimum wages
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1 owed; (c) failure to provide all meal periods; (d) failure to authorize and permit all rest periods,
2 or premium pay for non-compliant rest periods; (e) failure to provide accurate, itemized wage
3 statements; (f) failure to pay all wages owed upon termination; and (g) failure to indemnify all
4 necessary business expenditures, that occurred during the PAGA Period. (For purposes of the
5 Settlement, the “PAGA Period” shall mean the time period of January 30, 2022 through
6 December 17, 2023.)

7 20. Upon the date the Settlement is fully funded by Defendants and by virtue of this
8 Judgment Plaintiff shall be deemed to have released the Released Parties, in addition to the
9 Released Claims described above, from any and all claims, transactions, or occurrences, whether
10 known or unknown, under federal law or state law. Further, by virtue of this Judgment,
11 Plaintiff’s release includes unknown claims, which includes waiving all rights and benefits
12 afforded by Section 1542 of the California Civil Code, which provides:

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

17 21. Notwithstanding the above, Plaintiff’s waiver and release in this Judgment does
18 not apply to (i) those rights that as a matter of law cannot be waived, including, but not limited
19 to, workers’ compensation claims, pending or otherwise; and (ii) rights or claims arising out of
20 the Settlement. This Judgment in no way affects Plaintiff’s entitlement and/or benefits to be
21 received by Plaintiff in workers’ compensation pursuant to the jurisdiction of workers’
22 compensation.

23 22. This document shall constitute a final judgment pursuant to California Rule of
24 Court 3.769(h), which provides, “If the court approves the settlement agreement after the final
25 approval hearing, the court must make and enter judgment. The judgment must include a
26 provision for the retention of the court’s jurisdiction over the parties to enforce the terms of the
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1 judgment. The court may not enter an order dismissing the action at the same time as, or after,
2 entry of judgment.”

3 23. The Court will retain jurisdiction to enforce the Settlement, the Final Approval
4 Order, and this Judgment.

5 **JUDGMENT IS SO ENTERED.**

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7 Dated: _____, 2024

8 Honorable Carolyn M. Caietti
9 Judge of the Superior Court
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