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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 Caietti,
Dept. C-70]*

**DECLARATION OF SCOTT M.
LIDMAN IN SUPPORT OF MOTION
FOR PRELIMINARY APPROVAL OF
CLASS ACTION SETTLEMENT**

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

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

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

25 13. In the weeks that followed, the parties finalized and executed the Stipulation of Settlement
26 (“Settlement”). A true and correct copy of the Settlement is attached hereto as **Exhibit 2**. The Notice
27 of Pendency of Class Action and Proposed Settlement is attached as Exhibit A to the Settlement.
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14. The monetary terms of the Settlement are summarized below:

Gross Settlement Amount (“GSA”):	\$1,100,000.00
Minus Court-approved attorneys’ fees (1/3 of GSA):	\$366,666.67
Minus Court-approved, verified costs (up to \$25,000.00):	\$25,000.00
Minus Court-approved Class Representative Service Award:	\$10,000.00
Minus Settlement Administration Costs:	\$10,000.00
Minus PAGA payment to the LWDA:	\$37,500.00
Net Settlement Amount (“NSA”):	\$650,833.33

15. According to Defendants there are approximately 440 total Settlement Class members defined as:

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

Thus, the average Individual Settlement Award (assuming all Settlement Class members worked the same length of time) is projected to be approximately **\$1,479.17**.

Additionally, Twelve Thousand Five Hundred Dollars and Zero Cents (\$12,500.00) of the Gross Settlement Amount has been designated as the “PAGA Amount”. According to Defendants there are approximately 123 total PAGA Employees. Thus, the average PAGA payment is projected to be approximately **\$101.63**.

16. Settlement Class members’ claims arise from Defendants’ common, uniform policies and practices that applied to Settlement Class members during the class period. Lidman Decl., ¶ 16. Specifically, Plaintiff alleged that Defendants’ common and uniform policies and practices resulted in the following violations: (1) failure to pay all overtime wages owed; (2) failure to pay all minimum wages owed; (3) failure to provide all legally required meal periods; (4) failure to authorize and permit all legally required rest periods; (5) failure to provide accurate, itemized wage statements; (6) failure to indemnify all necessary business expenses; (7) failure to pay all wages upon termination; (8) unlawful business practices; and (9) liability for civil penalties under the PAGA.

1 17. As described in the accompanying Motion for Preliminary Approval, Plaintiff alleges
2 that he and Settlement Class members were not fully compensated for all of their time worked.
3 Specifically, Plaintiff alleges Defendants would keep track of his hours and the hours of the other non-
4 exempt employees, and would unlawfully shave their work time and/or round their work time such that
5 they would not be fully paid for all time worked. Plaintiff also alleges that this time shaving and/or
6 rounding practice utilized by Defendants was not-even handed over time and would almost exclusively
7 round and shave in Defendants' favor such that the employees were routinely underpaid for their time
8 worked. Plaintiff estimates he and other non-exempt employees were underpaid approximately 1.0
9 hours per workweek as a result of Defendants' timekeeping policies and practices. Accordingly,
10 Plaintiff calculated Defendants' maximum exposure for unpaid wages at \$536,096 ((21,648
11 workweeks x 1 hour underpaid/week x 13.90 average minimum wage = \$268,048 + Liquidated
12 Damages of \$268,048).

13 18. Defendants contend that they compensated Settlement Class members for all of their
14 time worked and. Defendants also contend that their rounding practices were lawful, and any unpaid
15 time was *de minimis* and therefore non-compensable. Defendants further assert that Plaintiff would be
16 unable to certify this class given the individualized inquiries that would be required, and also that
17 Defendants rounding mechanism was, according to it, allegedly facially neutral. In light of these
18 defenses, Plaintiff discounted the maximum exposure by 35% for the risk of non-certification, and an
19 additional 40% to account for Defendants' defenses on the merits, to arrive at an estimated exposure
20 of \$209,077.44.

21 19. Plaintiff alleges that he and Settlement Class members were not provided with all
22 legally-required off-duty first meal periods beginning before the end of the fifth hour of work.
23 Specifically, Plaintiff alleges Defendants had a policy and practice of not keeping track of Plaintiff's
24 actual time worked. Plaintiff also alleges that Defendants failed to maintain any written meal period
25 policy and failed to pay any meal period premiums during the relevant time period. Further, due to his
26 job duties, Plaintiff alleges he was often prevented from taking meal periods that commenced before
27 the end of the 5th hour of work and/or which were at least 30 minutes in length. Moreover, from the
28

1 records produced by Defendants, Defendants required their leads/foremen to record first meal periods
2 of exactly 30-minutes in duration occurring four hours into their shifts into their time sheets even when
3 a timely meal period was not always provided. Accordingly, Plaintiff estimates there was at least one
4 meal period violation during every shift over 6 hours during the relevant time period. Therefore,
5 Plaintiff calculated Defendants' maximum exposure for the alleged meal period violations at
6 approximately \$3,752,683 (19,824 workweeks x 5 meal period violations/week x \$37.86 average
7 hourly rate).

8 20. Defendants counter that they have always provided non-exempt employees with an
9 opportunity to take legally compliant meal periods, and any non-compliant meal periods reflected in
10 employee timekeeping records, if any, were solely the result of employee choice, rather than any policy
11 or practice of Defendant. Defendants point out that under they are only required to "provide" the
12 opportunity to take meal periods, not "ensure" meal periods are taken, and that they have always done
13 so. Finally, Defendants contend that Plaintiff's meal period claim is not suited for class certification
14 since individual inquiries would be required to assess which employees took non-compliant meal
15 periods, how many meal periods were non-compliant or missed, and the reasons why a particular
16 employee took a non-compliant meal period or missed a meal period during a particular shift.
17 Accordingly, Plaintiff discounted the maximum exposure by 45% for the risk of non-certification, and
18 an additional 55% to account for Defendants' defenses on the merits to arrive at an estimated exposure
19 of \$928,789.04.

20 21. Plaintiff alleges that he and Settlement Class members were also not authorized and
21 permitted to take all required rest periods due to Defendants' rest period policies and practices that fail
22 to authorize and permit all rest periods for every four hours worked, *or major fraction thereof*.
23 Specifically, Plaintiff alleges that as a result of the work demands imposed by Defendants, he was
24 prevented from taking his rest periods. Further, Defendants failed to maintain any written rest period
25 policy and failed to pay any rest period premiums during the relevant time period. From the records
26 produced by Defendants, 100% of the shifts worked were in excess of 3.5 hours. Accordingly, Plaintiff
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1 calculated Defendants' maximum exposure for rest period violations at \$3,752,683 (19,824 workweeks
2 x 5 meal period violations/week x \$37.86 average hourly rate).

3 22. Defendants contend they have always maintained and enforced lawful rest period
4 policies and practices, and that Settlement Class Members were authorized and permitted to take all
5 off-duty rest periods in compliance with California law. Defendants argue that Plaintiff's rest period
6 claim is inherently unsuited for class treatment because the claim requires an individualized inquiry
7 into whether each Settlement Class Member was in fact authorized and permitted to take a compliant
8 rest period, which would devolve into an unmanageable series of mini-trials. Accordingly, Plaintiff
9 discounted the maximum exposure by 55% for the risk of non-certification, and an additional 45% to
10 account for Defendants' defenses on the merits to arrive at an estimated exposure of \$928,789.04.

11 23. Plaintiff alleges that failed to reimburse him and Settlement Class members for
12 necessary business expenditures, including the use of their personal cellular phone for work activities,
13 as required under Labor Code section 2802 and by *Cochran v. Schwan's Home Service, Inc.* (2014)
14 228 Cal.App.4th 1137. Plaintiff contends that Defendants required Plaintiff to use his personal cellular
15 phone to communicate with supervisors and customers. Plaintiff estimates that, on average, Settlement
16 Class members should have been reimbursed approximately \$30 per month. Accordingly, Plaintiff
17 calculates Defendants' maximum exposure for this claim at approximately \$739,200 (440 employees
18 x 56 months x \$30/month).

19 24. Defendants contend that they provided employees did not have to use their personal
20 cellular phones and would only do so at their own volition. Defendants also argue that this claim is not
21 suitable for class treatment because it would require individualized determinations as to whether each
22 employee used a personal cellular phone, how often, and how much of that use was a reasonable
23 percentage of their individual monthly expenses. Accordingly, Plaintiff discounted the maximum
24 exposure by 50% for the risk of non-certification, and an additional 55% to account for Defendants'
25 defenses on the merits, to arrive at an estimated exposure of \$166,320.

26 25. Plaintiff further alleges that Defendants issued inaccurate wage statements in violation
27 of Labor Code section 226 as a result of the alleged unpaid wages and meal and rest period premium
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1 wages described above. Specifically, Plaintiff contends that this conduct violated Labor Code section
2 226(a) because the wage statements issued to Settlement Class Members did not include all hours
3 worked and the rate at which they were being paid. Plaintiff's data analysis reflected that there were
4 approximately 8,647 wage statements issued during the relevant time period. Therefore, Plaintiff
5 calculated Defendants' maximum exposure for wage statement violations at approximately \$842,700
6 $(\$50 \text{ initial violation rate} \times 440) + (\$100 \text{ subsequent violation rate} \times 8,207)$.

7 26. Defendants argue that their alleged wage statement violations could not be shown to be
8 "knowing and intentional," and that Plaintiff cannot show that he or any other employee "suffer[ed]
9 injury" as a result of the alleged wage statement violations, as required by Lab. Code § 226(e) for
10 imposition of penalties. As such, Plaintiff discounted the calculated exposure by 60% for a risk of
11 non-certification and an additional 40% for a risk of being unsuccessful on the merits, to arrive at an
12 estimated total of \$202,248.00.

13 27. Plaintiff alleges that Defendants are also liable for waiting time penalties under Labor
14 Code section 203 as a result of its failure to pay all wages. Based on the data provided by Defendants,
15 there were approximately 348 Settlement Class members who have separated their employment with
16 Defendants during the relevant time period who could be entitled to waiting time penalties. Therefore,
17 Plaintiff calculated Defendants' maximum exposure for waiting time penalties at approximately
18 \$3,162,067 $(\$37.86 \text{ average hourly rate} \times 8 \text{ hours} \times 30 \text{ days} \times 348 \text{ formers})$.

19 28. Defendants assert they have strong defenses to the waiting time claim because there
20 exist good-faith disputes as to Plaintiff's underlying claims, precluding imposition of penalties.
21 Accordingly, Plaintiff discounted the maximum exposure by 40% for the risk of non-certification, and
22 an additional 55% to account for Defendants' defenses on the merits, to arrive at an estimated exposure
23 of \$853,758.09.

24 29. Plaintiff also seeks civil penalties under the PAGA as a result of the foregoing alleged
25 Labor Code violations. Plaintiff calculated Defendants' maximum exposure at \$864,700 $(8,647 \text{ pay}$
26 $\text{periods} \times \$100 \text{ initial violation rate})$.

1 30. Defendants argue that Plaintiff's PAGA claim will fail for the same reasons that his
2 underlying claims will fail. Defendants also maintain that, given their good faith defenses and their
3 financial condition, this Court would exercise its discretion to substantially reduce any PAGA penalties
4 if it were to find Defendants liable for any of Plaintiff's claims. Therefore, Plaintiff discounted the
5 maximum exposure figure by 50% for a risk of being unsuccessful on the merits, and an additional
6 55% to account for the possibility of this Court reducing penalties, to arrive at an estimated exposure
7 of \$194,557.50.

8 31. Using these estimated figures for each of the claims described above, Plaintiff predicted
9 the realistic total recovery for the Settlement Class would be approximately \$3,483,539.12. The
10 proposed settlement of \$1,100,000.00 therefore represents approximately 32% of the reasonably
11 forecasted recovery for the Settlement Class. Further, in light of Defendants' financial condition, Class
12 Counsel believed that this is a fair settlement. Preliminary approval is appropriate as the settlement
13 will provide tangible monetary relief to Settlement Class members, and will still provide an average
14 recovery to Settlement Class members of nearly \$1,500.00 which is good result.

15 32. Here, Class Counsel will also apply for an attorneys' fees award of one-third of the
16 GSA, which is currently estimated to be \$366,666.67, and up to \$25,000.00 in verified costs
17 reimbursement. Plaintiff submits the requested fee is fair compensation for undertaking complex,
18 risky, expensive, and time-consuming litigation on a purely contingent fee basis. My office has
19 incurred substantial attorney fees conducting pre-filing investigation, analyzing Plaintiff's claims,
20 conducting legal research, analyzing Settlement Class members' timekeeping data and payroll records,
21 preparing for and attending mediation, reviewing Defendants' financial records, negotiating and
22 revising the long-form Settlement, preparing this Motion, and otherwise litigating the case. I also
23 anticipate my office incurring future attorneys' fees in overseeing the Notice process and fielding
24 questions from Settlement Class members, preparing the final approval papers and attending the Final
25 Approval hearing.

26 33. Plaintiff has provided written approval of the split of attorneys' fees in this action.
27
28

34. Plaintiff will seek a service award of \$10,000.00 at the time of seeking final approval, and I believe this is reasonable given Plaintiff's efforts in this case and the risks he undertook on behalf of the Settlement Class members, including the risk that he could be liable for Defendants' costs if this case was unsuccessful. Plaintiff was integral in the prosecution of this action, by, among other things, providing substantial factual information and documents to Class Counsel, attending multiple meetings with Class Counsel to discuss the claims and theories at issue in the litigation, and otherwise actively participating in the prosecution of their claims.

35. Although the parties engaged in some formal discovery and significant informal discovery throughout this action, the parties still had significant discovery to complete in formal litigation had the matter not settled. Moreover, Plaintiff still had to file for class certification, and faced the prospect of appeals in the wake of a disputed class certification ruling for Plaintiff and/or an adverse summary judgment ruling. Even if the classes sought to be certified by Plaintiff were in fact certified, the parties would incur considerably more attorneys' fees and costs through a possible decertification motion, trial, and possible appeal. This Settlement avoids those risks and the accompanying expense.

36. Plaintiff will serve the Motion for Preliminary Approval and proposed Settlement Agreement on the LWDA on the same date he files his Motion for Preliminary Approval.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct. Executed on November 27, 2023 at El Segundo, California.


Scott M. Lidman

EXHIBIT 1

EXHIBIT 1

LIDMAN LAW

2155 CAMPUS DRIVE, SUITE 150, EL SEGUNDO, CA 90245

OFFICE: (424) 322-4772

FAX: (424) 322-4775

January 30, 2023

VIA LWDA WEBSITE

Labor and Workforce Development Agency

Attn: PAGA Administrator

1515 Clay Street, Suite 801

Oakland, CA 94612

VIA U.S. CERTIFIED MAIL – RETURN RECEIPT REQUESTED

Demcon Concrete Contractors, Inc., a California corporation

c/o Edwin A. Stoughton, Agent for Service of Process

11376 Caspian Place

San Diego, CA 92131

VIA U.S. CERTIFIED MAIL – RETURN RECEIPT REQUESTED

D and D Concrete Construction, Inc., a California corporation

c/o Derek Leffler, Agent for Service of Process

13795 Blaisdell Place, Suite 201

Poway, CA 92064

Re: *Leonel Luna v. Demcon Concrete Contractors, Inc., et al.*

To Whom It May Concern:

Please be advised that this law firm represents Leonel Luna in claims arising from his employment with Demcon Concrete Contractors, Inc. and D and D Concrete Construction, Inc. (“Defendants”). Mr. Luna is an “aggrieved employee” as defined by Labor Code sections 2699, *et seq.* due to Defendants’ numerous violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code section 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. For purposes of this letter, if the LWDA decides not to investigate, Mr. Luna intends to pursue a lawsuit on behalf of other “Aggrieved Employees”, which should be considered to include all of Defendants’ all current and former non-exempt employees in California who have worked for Defendants, at least in part, during the one year immediately preceding the date of this letter through the date of trial, the date judgment is entered, the date of settlement and/or other date approved by the Court.

Mr. Luna was employed by Defendants as a non-exempt employee from approximately 1997 through approximately July 7, 2022. Mr. Luna was responsible for pouring concrete at the various locations of Defendants’ customers.

During Mr. Luna’s employment with Defendants, Defendants maintained a uniform policy or practice of failing to accurately record all time worked by Mr. Luna and other non-exempt employees. Throughout Mr. Luna’s employment with Defendants,

Defendants would keep track of Mr. Luna's and other non-exempt employees' time worked and would unlawfully shave their work time and/or round their work time such that they would not be fully paid for all time worked. Specifically, Defendants maintained a uniform policy or practice of having the foreman record Mr. Luna's and other non-exempt employees' hours. The foreman would record rounded hours and not the actual time Mr. Luna and other non-exempt employees began working and/or stopped working. This time shaving/rounding practice utilized by Defendants was not-even handed over time and would round and shave in Defendants' favor such that Mr. Luna and other non-exempt employees were routinely underpaid for their time worked. Further, during Mr. Luna's employment with Defendants, he and other non-exempt employees often worked in excess of 8 hours per workday and/or 40 hours per work week, and therefore, had Mr. Luna and other non-exempt employees been properly paid for all of the time that they actually worked, they would have been paid additional minimum and/or overtime wages. This practice by Defendants resulted in Defendants not properly tracking the time worked by Mr. Luna and other non-exempt employees, and also resulted in Defendants paying Mr. Luna and other non-exempt employees less than they were owed for the work they performed, including failing to pay them all required minimum and overtime wages.

Throughout Mr. Luna's employment with Defendants, Mr. Luna and other non-exempt employees were not provided all required meal periods due to Defendants' meal period policies and practices, which fail to provide 30-minute first meal periods before the end of the fifth hour of work. Specifically, due to the work demands imposed by Defendants and the nature of the work, including without limitation, pouring concrete, the meal periods were untimely, short and/or otherwise unlawful. Further, Defendants did not require Mr. Luna and the other non-exempt employees to clock in and out for their meal periods. Therefore, despite Defendants' failure to keep any records of Mr. Luna's and other non-exempt employees' meal periods, Mr. Luna is informed and believes that Defendants unlawfully and automatically deducted thirty minutes from Mr. Luna's and other non-exempt employees' work time each shift for a purported meal period regardless of whether or not a meal period was taken and regardless of whether the meal period, if taken, was less than 30 minutes in length.

Further, Defendants' meal period policies and practices fail to provide Mr. Luna and the other non-exempt employees a second meal period for shifts over 10.0 hours. As a result, when Mr. Luna and other non-exempt employees worked in excess of 10.0 hours, they were not provided with a second 30-minute meal period in violation of California law.

Although Mr. Luna and other non-exempt employees were not provided with all legally-compliant meal periods to which they were entitled, Defendants failed to compensate Mr. Luna and other non-exempt employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7.

Mr. Luna and other non-exempt employees were also not authorized and permitted to take all required rest periods due to Defendants' rest period policies and practices. Defendants' rest period policies and practices fail to authorize and permit all rest periods

for every four hours worked, or *major fraction thereof*. Further, Mr. Luna and other non-exempt employees were unable to take any of his required rest periods due to heavy work demands.

On those occasions when Mr. Luna and other non-exempt employees were not authorized and permitted to take all legally-compliant rest periods to which they were entitled, Defendants failed to compensate Mr. Luna and other non-exempt employees with the required rest period premium for each workday in which they experienced a rest period violation as mandated by Labor Code § 226.7.

Defendants also failed to reimburse Mr. Luna and other non-exempt employees for necessary business expenses incurred during the relevant time period. Specifically, Defendants required Mr. Luna and other non-exempt employees to use their personal cellular phones to communicate with their supervisors in discharge of their duties. Additionally, Defendants also required Mr. Luna and other non-exempt employees to purchase tools to discharge their duties without reimbursement for such expenses. Accordingly, despite the non-exempt employees being required to use their personal cellular phones and/or personal tools, Defendants did not reimburse Mr. Luna or other non-exempt employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of their duties, or of their obedience to the directions of the employer in violation of California law.

As a result of Defendants' failure to pay all overtime and/or minimum wages owed, as well as meal and rest period premium wages, Defendants maintained inaccurate payroll records and issued inaccurate wage statements to Mr. Luna and other non-exempt employees.

As a further result of Defendants' failure to pay all overtime and/or minimum wages owed, and failure to pay all meal and rest period premium wages, Defendants failed to provide pay Mr. Luna and other former non-exempt employees all wages owed upon their separation of employment with Defendants.

As described above, Defendants committed the following violations of the Labor Code and Industrial Welfare Commission Wage Order No. 1 ("Wage Order 1"):

Overtime Violations

Defendants were required to pay Mr. Luna and other Aggrieved Employees overtime wages for all hours worked in excess of eight hours per workday and/or forty hours per workweek. *See* Labor Code §§ 1194(a) and 1198; the Wage Order 1, § 3. According to Labor Code § 510(a), "Any work in excess of eight hours in one workday and any work in excess of 40 hours in any one workweek and the first eight hours worked on the seventh day of work in any one workweek shall be compensated at the rate of no less than one and one-half times the regular rate of pay for an employee." This Section further provides, "Any work in excess of 12 hours in one day shall be compensated at the rate of no less than twice the regular rate of pay for an employee. In addition, any work in

excess of eight hours on any seventh day of a workweek shall be compensated equal to one and one-half times their regular rate of pay for all overtime hours worked.” As explained above, Mr. Luna and other Aggrieved Employees often worked over eight hours in a day and/or 40 hours in a week, and Defendants’ policy and practice of failing to compensate them for all hours worked also deprived them of all overtime wages owed due to Defendants’ unlawful time shaving/rounding practice. This practice by Defendants resulted in Defendants not properly tracking the time worked by Mr. Luna, and also resulted in Defendants not paying Mr. Luna for all wages owed for the work he performed, including failing to pay him all required overtime wages. Further, Mr. Luna and other Aggrieved Employees often worked over eight hours in a day and/or 40 hours in a week, and Defendants’ policy and practice of failing to compensate them for all hours worked also deprived them of all overtime wages owed.

Minimum Wage Violations

Defendants were required to pay Mr. Luna and other Aggrieved Employees an hourly rate at least equal to the minimum wage for each hour actually worked. *See* Labor Code §§ 1194; 1194.2, 1197; The Wage Order 1, § 4. Mr. Luna and other Aggrieved Employees were not paid for all hours worked due to Defendants’ timekeeping and compensation practices. As alleged above, Mr. Luna was not fully paid for all time worked due to Defendants’ timekeeping policies and practices because Defendants would unlawfully shave Mr. Luna’s work time and/or round Mr. Luna’s work time such that Mr. Luna would not be fully paid all wages he was rightfully owed. This time shaving/rounding practice utilized by Defendants was not-even handed over time and would round and/or shave in Defendants’ favor such that Mr. Luna was routinely underpaid for his time worked, including minimum wages. This practice resulted in Defendants not properly tracking the time worked by Mr. Luna, and also resulted in Defendants not paying Mr. Luna for all wages owed for the work he performed, including all required minimum wages. Further, Mr. Luna and other Aggrieved Employees often worked over eight hours in a day and/or 40 hours in a week, and Defendants’ policy and practice of failing to compensate them for all hours worked also deprived them of all minimum wages owed.

Meal Period Violations

As alleged above, Defendants failed to provide Mr. Luna and other Aggrieved Employees with all required and compliant meal periods. *See* Labor Code §§ 226.7 and 512; Wage Order 1, § 11. S Specifically, due to the work demands imposed by Defendants and the nature of the work, including without limitation, pouring concrete, the meal periods were untimely, short and/or otherwise unlawful. Further, Defendants did not require Mr. Luna and other Aggrieved Employees to clock in and out for their meal periods. Therefore, despite Defendants’ failure to keep any records of Mr. Luna’s meal periods, Mr. Luna is informed and believes that Defendants unlawfully and automatically deducted thirty minutes from Mr. Luna’s work time each shift for a purported meal period regardless of whether or not a meal period was taken and regardless of whether the meal period, if taken, was less than 30 minutes in length. Further, Defendants’ meal period policies and practices

fail to provide Mr. Luna and the other Aggrieved Employees a second meal period for shifts over 10.0 hours. As a result, when Mr. Luna worked in excess of 10.0 hours, he was not provided with a second 30-minute meal period in violation of California law. Therefore, Mr. Luna and other Aggrieved Employees are owed an additional hour of wages at their regular rate of compensation for each workday they experienced a meal period violation. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal or rest or recovery period in accordance with ... [an] order of the Industrial Welfare Commission ... the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest or recovery period is not provided.”). Although Mr. Luna and other Aggrieved Employees were not provided with all legally-compliant meal periods to which they were entitled, Defendants failed to compensate Mr. Luna and other Aggrieved Employees with the required meal period premium for each workday in which they experienced a meal period violation as mandated by Labor Code § 226.7.

Rest Period Violations

Defendants also failed to authorize and permit Mr. Luna and other Aggrieved Employees to take all required rest periods. *See* Labor Code §§ 226.7 and 516; Wage Order 1, § 12. As alleged above, Defendants’ rest period policies/practices fail to authorize and permit all rest periods for every four hours worked, or *major fraction thereof*. Specifically, as a result of the work demands imposed by Defendants, Defendants did not authorize and permit one rest period for every four hours worked, or *major fraction thereof*. As a result, Mr. Luna and other Aggrieved Employees are owed an additional hour of wages at their regular rate of compensation for each workday that they were not authorized and permitted to take all legally required rest periods. *See* Labor Code § 226.7 (“If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest period is not provided.”)

Wage Statement Violations

Defendants knowingly and intentionally, as a matter of uniform practice and policy, failed to furnish Mr. Luna and other Aggrieved Employees with accurate and complete, itemized wage statements that included, among other requirements, all minimum and overtime wages earned, meal and rest period premiums, and total gross and net wages earned, in violation of Labor Code § 226 *et seq.* Defendants’ failure to furnish Mr. Luna and other aggrieved employees with complete and accurate, itemized wage statements resulted in actual injury, as said failures led to, among other things, the non-payment of all minimum and overtime wages earned, and meal and rest period premium wages, and deprived them of the information necessary to identify discrepancies in Defendants’ reported data.

Failure to Reimburse Business Expenses

Defendants failed to reimburse Mr. Luna and other Aggrieved Employees for necessary work expenses, including, but not limited to, expenses incurred for the reasonable portion of cellular phone expenses incurred in the direct discharge of the job duties of such employees. Accordingly, despite the Aggrieved Employees being required to use their personal cellular phones, Defendants did not reimburse Mr. Luna or other Aggrieved Employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of their duties, or of their obedience to the directions of the employer in violation of California law. Defendants' policy of not providing reimbursement for necessary work-related expenses is in violation of Wage Order 1, § 9, and Labor Code § 2802 ("An employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.") Mr. Luna and other Aggrieved Employees are therefore entitled to reimbursement of such unpaid work expenses with interest.

Waiting Time Penalties

Labor Code §§ 201 and 202 require that employees receive all of their final wages at the time of their separation of employment. Defendants failed to timely pay Mr. Luna and other Aggrieved Employees all of their final wages at the time of separation, which included, among other things, underpaid minimum and overtime wages, and meal and rest period premium wages. Pursuant to Labor Code § 203, Defendants' failure to pay all final wages due to Mr. Luna and other Aggrieved Employees was willful and, consequently, entitles Mr. Luna and other Aggrieved Employees to waiting time penalties equal to one day of wages at their standard hourly rate for each day Defendants failed to pay their final wages after their separation, up to a maximum of thirty days.

As an "aggrieved employee," Mr. Luna will initiate a civil action on behalf of himself and other Aggrieved Employees to recover damages, statutory penalties, and civil penalties resulting from the wage and hour violations alleged herein. Based on Mr. Luna's own investigation, and on information and belief, Defendants committed the following Labor Code violations:

- a) Defendants violated Labor Code §§ 1194, 1194.2, and 1197 by failing to pay Mr. Luna and other Aggrieved Employees the statutory minimum wage for all hours worked;
- b) Defendants violated Labor Code §§ 204, 510, 558, 1194, and 1198 by failing to pay Mr. Luna and other Aggrieved Employees all overtime compensation earned;

- c) Defendants violated Labor Code §§ 226.7, 512, and 558 by failing to provide all legally required meal periods and failing to pay meal period premiums to Mr. Luna and other Aggrieved Employees;
- d) Defendants violated Labor Code §§ 226.7, 516, and 558 by failing to provide all legally required rest periods and failing to pay rest period premiums to Mr. Luna and other Aggrieved Employees;
- e) Defendants violated Labor Code § 2802 by failing to reimburse Mr. Luna and other Aggrieved Employees for necessary work expenditures;
- f) Defendants violated Labor Code § 226 by failing to furnish Mr. Luna and other Aggrieved Employees with accurate and compliant itemized wage statements;
- g) Defendants violated Labor Code §§ 201, 202 and 203 by failing to timely pay all final wages due to Mr. Luna and other Aggrieved Employees;
- h) Defendants violated Labor Code § 204 by failing to pay Mr. Luna and other Aggrieved Employees all earned wages at least twice during each calendar month;
- i) Defendants violated Labor Code § 1174 by failing to maintain accurate records on behalf of Mr. Luna and other Aggrieved Employees.

Pursuant to Labor Code section 2699.3(a)(2)(A), please notify us and Defendants if the LWDA intends to investigate these alleged violations of the Labor Code. Please contact me should you require additional information.

Very truly yours,

LIDMAN LAW, APC



Scott M. Lidman

EXHIBIT 2

EXHIBIT 2

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement” or “Settlement”) is reached by and between Plaintiff Leonel Luna (“Plaintiff”), individually and on behalf of all members of the Settlement Class (defined below), on the one hand, and Defendants Demcon Concrete Contractors, Inc. and D and D Concrete Construction, Inc. (collectively, “Defendants”), on the other hand. Plaintiff and Defendants are referred to herein collectively as the “Parties.” Plaintiff and the Settlement Class are represented by Paul K. Haines of Haines Law Group, APC and Scott M. Lidman, Elizabeth Nguyen, and Milan Moore of Lidman Law, APC (collectively, “Class Counsel”). Defendants are represented by Mark D. Campbell and Abigail J. Hudson of Shook, Hardy & Bacon L.L.P.

On January 30, 2023, Plaintiff filed a Complaint against Defendant in San Diego County Superior Court, in the matter entitled *Leonel Luna v. Demcon Concrete Contractors, Inc.; D and D Concrete Construction, Inc.*, Case No. 37-2023-00004126-CU-OE-CTL (the “Action”). On April 6, 2023, Plaintiff filed the operative First Amended Class and Representative Action Complaint alleging that Defendants: (i) failed to pay all overtime wages owed; (ii) failed to pay all minimum wages owed; (iii) failed to provide all required meal periods; (iv) failed to authorize and permit all required rest periods; (v) failed to issue accurate, itemized wage statements; (vi) failed to pay all wages owed upon termination of employment; and (vii) failed to indemnify all necessary business expenditures. As a result of the foregoing alleged violations, Plaintiff contends that Defendants are further liable to Plaintiff and the Settlement Class (defined below) because they engaged in unlawful business practices. Plaintiff further alleges that Defendants are liable for civil penalties pursuant to the Labor Code Private Attorneys General Act, Cal. Labor Code § 2698 *et seq.* (“PAGA”) as a result of the aforementioned alleged violations of the California Labor Code. Defendants deny Plaintiff’s claims.

Given the uncertainty of litigation, Plaintiff and Defendants wish to settle both individually and on behalf of the Settlement Class. Accordingly, Plaintiff and Defendants agree as follows:

1. **Settlement Class.** For the purposes of this Settlement Agreement only, Plaintiff and Defendants stipulate to the certification of the following Settlement Class:

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 during the Class Period.

For purposes of this Settlement Agreement, the “Class Period” shall mean the time period of January 30, 2019 through December 17, 2023 or the date of preliminary approval by the Court of the Settlement, whichever is earlier.

The Parties agree that certification for purposes of this Settlement Agreement is not an admission that class certification is proper under Section 382 of the Code of Civil Procedure. If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement.

2. **PAGA Employees.** For the purposes of this Settlement Agreement only, Plaintiff and Defendants stipulate to the following definition of PAGA Employees:

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 during the PAGA Period.

For purposes of this Settlement Agreement, the “PAGA Period” and release under the PAGA shall mean the time period between January 30, 2022 and December 17, 2023 or the date of preliminary approval by the Court of the Settlement, whichever is earlier.

3. **Release by Settlement Class Members and Plaintiff.** Plaintiff and every member of the Settlement Class (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 their past and present 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”), as follows:

- A. Settlement Class Members’ Release: Settlement Class Members (except those who timely and properly submit a Request for Exclusion as set forth below) and Plaintiff will release 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”).
- B. The time period release for the release of the Released Claims against the Released Parties shall be the same time period as the Class Period (as defined above in Paragraph 1).
- C. PAGA Release: 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”).

- D. The time release for the release of the PAGA Released Claims against the Released Parties shall be the same time period as the PAGA Period (as defined above in Paragraph 2).
- E. In light of the Class Representative Service Award, Plaintiff agrees to release, in addition to the Released Claims described above, all claims, whether known or unknown, under federal law or state law against the Released Parties through the date Plaintiff signs this Agreement. Notwithstanding the foregoing, Plaintiff understands that this release includes unknown claims, which includes waiving all rights and benefits afforded by Section 1542 of the California Civil Code, which provides:

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

- F. Notwithstanding the above, nor anything else in this Settlement, the waiver and release in this Settlement does not apply to (i) those rights that as a matter of law cannot be waived, including, but not limited to, workers’ compensation claims, pending or otherwise; and (ii) rights or claims arising out of this Settlement. The Agreement in no way affects Plaintiff’s entitlement and/or benefits to be received by Plaintiff in workers’ compensation pursuant to the jurisdiction of workers’ compensation.

4. **Gross Settlement Amount.** As consideration, Defendants agree, jointly and severally, to pay a “Gross Settlement Amount” of One Million One Hundred Thousand Dollars and Zero Cents (\$1,100,000.00) in full and complete settlement of the Action, as follows:

- A. The Parties have agreed to engage Phoenix Settlement Administrators as the “Settlement Administrator” to administer this Settlement. All administrative costs shall be paid from the Gross Settlement Amount.
- B. The Gross Settlement Amount (and employer-side taxes separate from the Gross Settlement Amount) shall be deposited by Defendants into a qualified settlement fund set up by the Settlement Administrator for the benefit of participating Settlement Class Members. Defendants shall fund the Gross Settlement Payment within the latter of: (i) eighteen (18) months after the Parties execute this Agreement; or (ii) thirty (30) days after the Effective Date (as defined below).

- C. This Settlement shall become effective on the “Effective Date” which 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.
- D. This is a non-reversionary settlement. The Gross Settlement Amount includes:
- (1) All payments (including interest) to the Settlement Class Members;
 - (2) All costs of the Settlement Administrator and settlement administration, which are anticipated to be no greater than Ten Thousand Dollars and Zero Cents (\$10,000.00);
 - (3) Up to Ten Thousand Dollars and Zero Cents (\$10,000.00) for Plaintiff’s Class Representative Service Award, in recognition of his contributions to the Action, and his service to the Settlement Class. In the event that the Court reduces or does not approve the requested Class Representative Service Award, Plaintiff shall not have the right to revoke this Settlement Agreement, and this Settlement shall remain binding;
 - (4) Up to one-third of the Gross Settlement Amount (including one-third of any increase to the Gross Settlement Amount pursuant to the Escalator Clause in Paragraph 4.F. below) in Class Counsel’s attorneys’ fees, plus actual costs and expenses incurred by Class Counsel related to the Action as supported by declaration, which are currently estimated to be no greater than Twenty Five Thousand Dollars and Zero Cents (\$25,000.00). In the event that the Court reduces or does not approve the requested Class Counsel attorneys’ fees or costs, Class Counsel shall not have the right to revoke this Settlement Agreement, and it will remain binding; and
 - (5) Fifty Thousand Dollars and Zero Cents (\$50,000.00) of the Gross Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code § 2699(i), seventy-five percent (75%) of such penalties, or Thirty-Seven Thousand Five Hundred Dollars and Zero Cents (\$37,500.00) will be payable to the Labor & Workforce Development Agency (“LWDA”), and the remaining twenty-five percent (25%), or Twelve Thousand Five Hundred Dollars and Zero Cents (\$12,500.00), will be payable to certain Settlement Class Members as the “PAGA Amount,” as described below.
- E. Defendants’ share of payroll taxes shall be paid by Defendant separately from, and in addition to, the Gross Settlement Amount.
- F. **Escalator Clause.** Defendants represent that there are an estimated 19,824 Actual Workweeks (defined as any week in which a Class Member actually worked at least one day during a workweek) worked by Class Member from January 30, 2019 through September 2023. If the number of Actual Workweeks during the

Class Period is more than 10% greater than this figure (i.e., if there are 21,806 or more Actual Workweeks worked by the settlement Class Members during the Class Period), Defendants agree that, in their sole discretion, they will: (i) increase the Gross Settlement Amount on a proportional basis (i.e., if there was an 11% increase in the number workweeks during the Class Period, Defendants would increase the Gross Settlement Amount by 11%) or, in the alternative, (ii) elect to end the Class Period on the date the increase in Actual Workweeks during the Class Period reaches 22,142 Actual Workweeks. If ten percent (10%) or more of the Settlement Class Members opt out of the Settlement, Defendant shall have the option to terminate and rescind the Settlement Agreement and proceed with litigating the Action or renegotiating the terms thereof. If Defendant wishes to exercise its option to rescind the Settlement or renegotiating the terms of the Settlement, it shall notify counsel for Plaintiff of its intent to do so in writing within 10 days of receiving notice from the Settlement Administrator that ten percent (10%) or more of the Settlement Class Members have submitted Requests for Exclusions.

5. **Financial Status.** The Parties agree that this Settlement was based, in part upon Plaintiff's counsel's review of Defendants' financial information to confirm it is consistent with the representations made by Defendants at the mediation.

6. **Payments to the Settlement Class.** Settlement Class Members are not required to submit a claim form to receive a payment ("Settlement Award") from the Settlement. Settlement Awards will be determined and paid as follows:

- A. The Settlement Administrator shall first deduct from the Gross Settlement Amount the amounts approved by the Court for Class Counsel's attorneys' fees, Class Counsel's costs and expenses, Plaintiff's Class Representative Service Award, the Settlement Administrator's fees and expenses for administration, and the amount designated as PAGA civil penalties payable to the LWDA. The remaining amount shall be known as the "Net Settlement Amount."
- B. From the Net Settlement Amount, the Settlement Administrator will calculate each Settlement Class member's Settlement Award based on the following formula:
 - i. The Net Settlement Amount, not including the PAGA Amount payable to PAGA Employees, shall be allocated to Settlement Class Members who worked during the Class Period, as follows: each participating Settlement Class member shall receive a proportionate settlement share based upon the number of Actual Workweeks 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 worked during the Class Period.
 - ii. PAGA Amount: 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 participating Settlement Class member who was employed by Defendants at any time during the PAGA Period shall receive a portion of the PAGA Amount proportionate to the number of any periods that he or she worked during the PAGA Period, and which will be calculated by multiplying the PAGA Amount by a fraction, the numerator of which is the PAGA Employee’s number of pay periods worked during this time period, and the denominator of which is the total number of pay periods worked by all PAGA Employees during the PAGA Period.

- C. Within seven (7) 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. The Settlement Administrator shall simultaneously pay the withholdings to the applicable authorities with the necessary reports, submitting copies to Defendants’ counsel.
- D. For purposes of calculating applicable taxes and withholdings, 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. Each Settlement Class member who receives a Settlement Award will be responsible for correctly characterizing the payment for tax purposes and for payment of any taxes owing on said amount. Notwithstanding the treatment of the payments to each Settlement Class member above, none of the payments called for by this Settlement Agreement, including the wage portion, are to be treated as earnings, wages, pay or compensation for any purpose of any applicable benefit or retirement plan, unless required by such plans.
- E. Each member of the Settlement Class who receives a Settlement Award must cash the check(s) within 180 days from the date the Settlement Administrator mails it/them. Any funds payable to Settlement Class Members whose checks were not cashed within 180 days after mailing will escheat to the California State Controller’s Office - Unclaimed Property Fund under the unclaimed property laws in the name of the Settlement Class member.
- F. Neither Plaintiff nor Defendants shall bear any liability for lost or stolen checks, forged signatures on checks, or unauthorized negotiation of checks. Unless responsible by its own acts of omission or commission, the same is true for the Settlement Administrator.

7. **Attorneys’ Fees and Costs.** Defendants will not object to Class Counsel’s request for a total award of attorneys’ fees of one-third of the Gross Settlement Amount (including one-third of

any increase to the Gross Settlement Amount pursuant to the Escalator Clause in Paragraph 4.F. above), which is currently estimated to be Three Hundred Sixty-Six Thousand, Six Hundred Sixty-Six Dollars and Sixty-Seven Cents (\$366,666.67). Additionally, Class Counsel will request an award of actual costs and expenses as supported by declaration, in an amount not to exceed Twenty-Five Thousand Dollars and Zero Cents (\$25,000.00) from the Gross Settlement Amount. These amounts will cover any and all work performed and any and all costs incurred in connection with this litigation, including without limitation: all work performed and all costs incurred to date; and all work to be performed and costs to be incurred in connection with obtaining the Court's approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Class Counsel will be issued an IRS Form 1099 by the Settlement Administrator when the Settlement Administrator pays the fee award allowed by the Court.

8. **Class Representative Service Award.** Defendants will not object to a request for a Class Representative Service Award of up to Ten Thousand Dollars and Zero Cents (\$10,000.00) to Plaintiff for his time and risk in prosecuting this case, and his service to the Settlement Class. This award will be in addition to Plaintiff's Settlement Award as a Settlement Class member and shall be reported on an IRS Form 1099 issued by the Settlement Administrator. In the event that the Court reduces or does not approve the requested Service Award, Plaintiff shall not have the right to revoke this Settlement, and it will remain binding.

9. **Settlement Administrator.** Defendants will not object to the appointment of Phoenix Settlement Administrators as the Settlement Administrator. Defendant will not object to Plaintiff's seeking permission to pay up to Ten Thousand Dollars and Zero Cents (\$10,000.00) for its services from the Gross Settlement Amount. The Settlement Administrator shall be responsible for sending notices and for calculating Settlement Awards and preparing all checks and mailings, calculating Defendants' share of taxes payable on the wages, which shall be paid by Defendants separate and apart from the Gross Settlement Amount, and other duties as described in this Settlement Agreement. The Settlement Administrator shall be authorized to pay itself from the Gross Settlement Amount by Class Counsel only after Settlement Awards have been mailed to all participating Settlement Class Members.

10. **Preliminary Approval.** Within a reasonable time after execution of this Settlement Agreement by the Parties, Plaintiff shall apply to the Court for the entry of an Order:

- A. Conditionally certifying the Settlement Class for purposes of this Settlement Agreement;
- B. Appointing Paul K. Haines of Haines Law Group, APC and Scott M. Lidman, Milan Moore and Elizabeth Nguyen of Lidman Law, APC as Class Counsel;
- C. Appointing Leonel Luna as Class Representative for the Settlement Class;
- D. Approving Phoenix Settlement Administrators as Settlement Administrator;
- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;

- F. Approving the form and content of the Notice Packet (which is comprised of the Notice of Pendency of Class Action and Settlement and Notice of Settlement Award, drafts of which are attached collectively hereto as Exhibit A), and directing the mailing of same; and
- G. Scheduling a Final Approval hearing.

11. **Notice to Settlement Class.** Following preliminary approval, the Settlement Class shall be notified as follows:

- A. Within ten (10) business days after entry of an order preliminarily approving this Agreement, Defendants will provide the Settlement Administrator with the names, last known addresses, phone numbers, social security numbers, the dates of employment and the number of Actual Workweeks worked by each Settlement Class member while employed during the Class Period (the “Class Data”). The Class Data shall be provided to the Settlement Administrator in an electronic format satisfactory to the Settlement Administrator.
- B. Within ten (10) business days from receipt of this information, the Settlement Administrator shall (i) run the names of all Settlement Class Members through the National Change of Address (“NCOA”) database to determine any updated addresses for Settlement Class Members; (ii) update the address of any Settlement Class member for whom an updated address was found through the NCOA search; (iii) calculate the estimated Settlement Award for each Settlement Class member; and (iv) mail a Notice Packet to each Settlement Class member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.
- C. Requests for Exclusion. Any Settlement Class member who wishes to opt-out of the Settlement must complete and mail a Request for Exclusion (defined below) to the Settlement Administrator within sixty (60) calendar days of the date of the initial mailing of the Notice Packets (the “Response Deadline”).
 - i. The Notice Packet shall state that Settlement Class Members who wish to exclude themselves from the Settlement must submit a Request for Exclusion by the Response Deadline. The Request for Exclusion must: (1) contain the name, address, telephone number and the last four digits of the Social Security number of the Settlement Class member; (2) contain a statement that the Settlement Class member wishes to be excluded from the Settlement; (3) be signed by the Settlement Class member; and (4) be postmarked by the Response Deadline and mailed to the Settlement Administrator at the address specified in the Class Notice. If the Request for Exclusion does not contain the information listed in (1)-(3), it will not be deemed valid for exclusion from the Settlement, except a Request for Exclusion not containing a Class Member’s telephone number and/or last four digits of the Social Security number will be deemed valid. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been

timely submitted. Any Settlement Class member who requests to be excluded from the Settlement Class will not be entitled to any recovery under this Settlement Agreement and will not be bound by the terms of the Settlement or have any right to object, appeal or comment thereon.

- D. Objections. Members of the Settlement Class who do not request exclusion may object to this Settlement Agreement as explained in the Class Notice by filing a written objection with the Settlement Administrator (who shall serve all objections as received on Class Counsel and Defendants' counsel, as well as file all such objections with the Court). Defendants' counsel and Class Counsel shall file any responses to objections no later than the deadline to file the Motion for Final Approval. To be valid, any written objection must: (1) contain the objecting Settlement Class member's full name and current address, as well as contact information for any attorney representing the objecting Settlement Class member for purposes of the objection; (2) include all objections and the factual and legal bases for same; (3) include any and all supporting papers, briefs, written evidence, declarations, and/or other evidence; and (4) be postmarked no later than the Response Deadline. Members of the Settlement Class who do not request exclusion may also object to the Settlement by appearing at the Final Approval Hearing irrespective of whether they submitted any written objections.
- E. Notice of Settlement Award / Disputes. Each Notice Packet mailed to a Settlement Class member shall disclose the amount of the Settlement Class member's estimated Settlement Award as well as all of the information that was used from Defendants' records in order to calculate the Settlement Award, including the Settlement Class member's number of Actual Workweeks worked during the Class Period and the number of pay periods worked during the PAGA Period. Settlement Class Members will have the opportunity, should they disagree with Defendants' records regarding the information stated in the Notice of Settlement Award, to provide documentation and/or an explanation to show contrary information. Any such dispute, including any supporting documentation, must be mailed to the Settlement Administrator and postmarked by the Response Deadline. If there is a dispute, the Settlement Administrator will consult with the Parties to determine whether an adjustment is warranted. The Settlement Administrator shall determine the eligibility for, and the amounts of, any Settlement Awards under the terms of this Settlement Agreement. The Settlement Administrator's determination of the eligibility for and amount of any Settlement Award shall be binding upon the Settlement Class member and the Parties, unless the Court determines otherwise.
- F. Any Notice Packets returned to the Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator shall make reasonable efforts, including utilizing a "skip trace," to obtain an updated mailing address within five (5) business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Settlement Administrator shall resend the Notice Packet to the Settlement Class member immediately, and in any event within three (3) business days of obtaining the

updated address. The address identified by the Settlement Administrator as the current mailing address shall be presumed to be the best mailing address for each Settlement Class member. Settlement Class Members to whom Notice Packets are re-mailed after having been returned as undeliverable to the Settlement Administrator shall have fourteen (14) calendar days from the date of re-mailing, or until the Response Deadline has expired, whichever is later, to submit a Request for Exclusion, Objection, or dispute. Notice Packets that are re-mailed shall inform the recipient of this adjusted deadline. Nothing else shall be required of, or done by, the Parties, Class Counsel, or Defendants' Counsel to provide notice of the proposed settlement.

12. **Final Approval.** Following preliminary approval and the close of the period for filing requests for exclusion, objections, or disputes under this Settlement Agreement, Plaintiff shall apply to the Court for entry of an Order:

- A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate;
- B. Approving Plaintiff's and Class Counsel's application for attorneys' fees and costs, Class Representative Service Award, and settlement administration costs; and
- C. Entering judgment pursuant to California Rule of Court 3.769.

13. **Non-Admission of Liability.** Nothing in this Settlement Agreement shall operate or be construed as an admission of any liability or that class certification is appropriate in any context other than this Settlement. In particular, but without limiting the generality of the foregoing, nothing about this Settlement Agreement shall be offered or construed as an admission of liability, wrongdoing, impropriety, responsibility, or fault whatsoever on the part of Defendants and/or the Released Parties, and it shall not be construed as or deemed to be evidence of, or an admission or concession that the any Settling Class member has suffered any damage. Each of the Parties has entered into this Settlement Agreement to avoid the burden and expense of further litigation. Pursuant to California Evidence Code Section 1152, this Settlement Agreement is inadmissible in any proceeding, except a proceeding to approve, interpret, or enforce this Settlement Agreement. If Final Approval does not occur, the Parties agree that this Settlement Agreement is void, but remains protected by California Evidence Code Section 1152.

14. **Non-disclosure and Non-publication.** Plaintiff and Class Counsel agree not to disclose or publicize the Settlement Agreement contemplated herein, the fact of the Settlement Agreement, its terms or contents, or the negotiations underlying the Settlement Agreement, in any manner or form, directly or indirectly, to any person or entity, except to Settlement Class Members and as shall be contractually required to effectuate the terms of the Settlement Agreement as set forth herein. However, for the limited purpose of allowing Class Counsel to prove adequacy as class counsel in other actions, Class Counsel may disclose the names of the Parties in this Action, the venue/case number of this Action, and a general description of the Action, to a court in a declaration by Class Counsel. Class Counsel may also include a general description of the Settlement on their respective websites but may not include the name(s) of any of the Parties, or the case name or case number of the Action.

15. **Legal Developments.** The Parties agree that Plaintiff will submit to the Court a motion for preliminary approval of this Settlement containing all of the terms and conditions contained herein notwithstanding any new legal developments regarding the Released Claims.

16. **Waiver and Amendment.** The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

17. **Attorneys' Fees:** In the event of any dispute arising out of the interpretation, performance, or breach of any provision of this Settlement Agreement, the prevailing party in such dispute(s) shall be entitled to recover her and/or its reasonable attorneys' fees and costs incurred arising from such dispute. The Parties further agree that the time within which to bring the Action to trial under CCP Section 583.310 shall be tolled from the date of the signing of this Agreement by all Parties until the entry of the final approval order and judgment or the Court's denial of a preliminary approval motion or final approval motion, whichever is later.

18. **Notices.** All notices, demands, and other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

if to Defendants: Mark D. Campbell and Abigail J. Hudson of Shook, Hardy & Bacon L.L.P., 2049 Century Park East., Suite 3000, Los Angeles, CA 90067; mdcampbell@shb.com and ahudson@shb.com;

if to Plaintiff: Scott M. Lidman, Elizabeth Nguyen, and Milan Moore of Lidman Law, APC, 2155 Campus Drive, Suite 150, El Segundo, California 90245; slidman@lidmanlaw.com and enguyen@lidmanlaw.com

Paul K. Haines, Haines Law Group, APC, 2155 Campus Drive, Suite 180, El Segundo, California 90245; phaines@haineslawgroup.com

19. **Cooperation.** The Parties agree to work cooperatively, diligently and in good faith to ensure that all documents necessary to effectuate this Settlement are properly and timely filed.

20. **Entire Agreement.** This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof.

21. **Counterparts.** This Settlement Agreement may be executed by one or more of the Parties on any number of separate counterparts by facsimile, electronic signature, scan or email, and delivered electronically, and all of said counterparts taken together shall be deemed to constitute one and the same instrument.

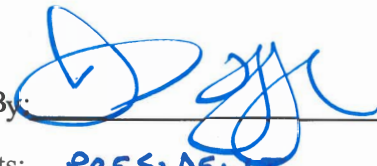
DATED: October 31, 2023

DEFENDANT DEMCON CONCRETE
CONTRACTORS, INC.

By: 
Its: PRESIDENT

DATED: October 31, 2023

DEFENDANT D AND D CONCRETE
CONSTRUCTION, INC.

By: 
Its: PRESIDENT

DATED:

PLAINTIFF LEONEL LUNA

By: _____
Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED: October 30, 2023

SHOOK, HARDY & BACON, L.L.P.

By: 
Mark D. Campbell
Attorneys for Defendants

DATED:

HAINES LAW GROUP, APC

By: _____
Paul K. Haines
Attorneys for Plaintiff

DATED:

DEFENDANT DEMCON CONCRETE
CONTRACTORS, INC.

By: _____

Its: _____

DATED:

DEFENDANT D AND D CONCRETE
CONSTRUCTION, INC.

By: _____

Its: _____

DATED: Nov 1, 2023

PLAINTIFF LEONEL LUNA

leonel luna

By: leonel luna (Nov 1, 2023 12:04 PDT)
Plaintiff and Settlement Class Representative

APPROVED AS TO FORM:

DATED:

SHOOK, HARDY & BACON, L.L.P.

By: _____

Mark D. Campbell
Attorneys for Defendants

DATED: November 1, 2023

HAINES LAW GROUP, APC

By:  _____

Paul K. Haines
Attorneys for Plaintiff

DATED: November 1, 2023

LIDMAN LAW, APC

By: 

Scott M. Lidman
Attorneys for Plaintiff

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: LIDMAN LAW, APC Scott M. Lidman slidman@lidmanlaw.com Elizabeth Nguyen enguyen@lidmanlaw.com Milan Moore mmoore@lidmanlaw.com 2155 Campus Drive, Suite 150 El Segundo, California 90245 Tel: (424) 322-4772 Fax: (424) 322-4775 www.lidmanlaw.com HAINES LAW GROUP, APC Paul K. Haines phaines@haineslawgroup.com 155 Campus Drive, Suite 180 El Segundo, California 90245 Tel: (424) 292-2350 Fax: (424) 292-2355 www.haineslawgroup.com	Attorneys for Defendants Demcon Concrete Contractors, Inc. and D and D Concrete Construction, Inc. Shook, Hardy & Bacon L.L.P. Mark D. Campbell mdcampbell@shb.com Abigail J. Hudson ahudson@shb.com 2049 Century Park East, Suite 3000, Los Angeles, CA 90067 Tel: (424) 285-8330 Fax: (424) 204-9093
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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:

“I WISH TO BE EXCLUDED FROM THE SETTLEMENT CLASS IN THE LUNA V. DEMCON LAWSUIT. I 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.”

Send the Request for Exclusion directly to the Settlement Administrator at **<<INSERT ADMINISTRATOR CONTACT INFO>>**. Any person who files a timely Request for Exclusion from the Settlement shall, upon receipt by the Settlement Administrator, no longer be a Settlement Class member, shall be barred from participating in any 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 Class, and you will be bound by the terms of the Settlement.

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

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

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

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

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?

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

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

How can I get additional information?

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

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

REMINDER AS TO TIME LIMITS

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

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

NOTICE OF INDIVIDUAL SETTLEMENT AWARD

LEONEL LUNA v. DEMCON CONCRETE CONTRACTORS, INC., ET AL.

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.

(I) Please type or print your name:

(First, Middle, Last)

(II) Please type or print the following identifying information if your contact information has changed:

Former Names (if any)

New Street Address

City

State

Zip Code

(III) Information Used to Calculate Your Individual Settlement Award:

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 [] workweeks between January 30, 2019 and December 17, 203; and
- (b) You were employed by one or both Defendants and worked a total of [] 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>>.**