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8
9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF CONTRA COSTA**

11 JOSE BELTRAN individually, and on behalf
12 of other members of the general public
similarly situated,

13 Plaintiff,

14 vs.

15 MONUMENT CONSTRUCTION, INC., dba
16 TECHCON CONSTRUCTION, a California
Corporation; and DOES 1 through 100,
17 inclusive,

18 Defendants.

Case No.: MSC21-01751

*Assigned for All Purposes to: Hon. Charles S.
Treat, Dept. 12*

**DECLARATION OF CODY PAYNE IN
SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Hearing Date:
Hearing Time:
Dept.: 12

Complaint Filed: August 27, 2021
Trial Date: None Set

1 **DECLARATION OF CODY PAYNE**

2 I, Cody Payne, declare as follows:

3 1. I am an attorney duly admitted to the Bar of the State of California and all United
4 States District Courts in the State of California. I am a partner with Payne Nguyen, LLP, counsel
5 of record for Plaintiff Jose Beltran (“Plaintiff”). I have personal knowledge of the facts stated
6 herein and if called as a witness I could and would competently testify thereto.

7 2. I have worked as an employment litigation attorney for approximately seven years.
8 Of that time, the majority of my practice consists of litigating wage-and-hour claims, including
9 representative and class claims. Therefore, I am experienced in analyzing, litigating, and resolving
10 wage-and-hour claims, including claims for civil penalties under PAGA.

11 **CLASS COUNSEL’S BACKGROUND AND EXPERIENCE**

12 3. I am a duly licensed attorney and have been a member of the California State Bar
13 and Nevada State Bar since 2012. I graduated from the University of San Diego School of Law
14 in 2011 and I am licensed to practice before all courts of the State of California.

15 4. Prior to opening my law firm, I developed particular experience working almost
16 exclusively in class actions, representative actions, and multi-district litigations throughout
17 California and the United States focusing on product liability and subsequently wage and hour
18 violations.

19 5. I developed particular experience in the area of wage and hour litigation. For
20 instance, between 2015 and 2017, and again between 2018 and 2020 as Of Counsel, I joined the
21 law firm of Protection Law Group, LLP, a plaintiff law firm specifically devoted to the
22 representation of employees against employers in California involving claims relating to
23 violations of the California Labor Code.

24 6. During my employment with Protection Law Group, LLP, I continued my practice
25 of representative actions and began to focus on employment law and was responsible for dozens
26 of complex class actions involving representative and class actions brought under the California
27 Labor Code, including meal and rest break violations, overtime, minimum wage claims, off the
28 clock work and other related wage claims. My practice included the management of class actions

1 and PAGA actions. My management of these cases included taking and defending depositions
2 and interviews of hundreds of putative class members as well as extensive briefing on wage and
3 hour issues involving class actions and PAGA actions.

4 7. During my employment at Protection Law Group, LLP, I played a significant role
5 in the class actions and PAGA actions for which I was responsible. In particular, I was often
6 involved in the strategy of the cases and drafting all of the briefs. I received a wide-array of wage
7 and hour class action experience performing the following types of tasks: drafting oppositions to
8 demurrers; oppositions to motions to strike and/or dismiss/demurrer; oppositions to removing
9 actions from state court to federal court; drafting remands from federal court to state court;
10 drafting and responding to written discovery; drafting and opposing discovery related motions;
11 arguing discovery related motions; drafting motions to consolidate related matters; interviewing
12 hundreds of putative class members and obtaining declarations in connection with class
13 certification; drafting motions for class certification; conducting exposure analyses to assess the
14 strengths and weaknesses of asserted claims, the likelihood of prevailing at class certification and
15 potential damages resulting from such claims; drafting mediation briefs; deposing corporate
16 Person Most Qualified, Senior Management, and percipient witnesses; deposing and defending
17 retained expert witnesses; and defending the depositions of Plaintiff and putative class members.
18 In short, I played an integral role in all aspects of litigation from the inception of a matter through
19 and beyond class certification.

20 8. During my practice and continuing today, I have been primarily devoted to
21 working in employment law and on complex class action and representative litigation and multi-
22 plaintiff work.

23 9. Payne Nguyen, LLP is a law firm specifically devoted to the representation of
24 employees against employers in California involving claims relating to violations of the
25 California Labor Code, including claims for failure to pay all wages owed, failure to pay overtime
26 premiums, failure to pay meal and rest premiums and failure to provide accurate wage records.
27 The practice of employment law is a very specific, narrow field which requires diligence in an
28 ever-evolving field of substantive and procedural law.

1 10. Although not exhaustive, below is a representative list of several of the wage and
2 hour class actions that I performed substantial work on while I was an attorney with Protection
3 Law Group, LLP, including, but not limited to:

- 4 • *Kesheshian, et al v. S. Cal. Logistics*, BC557981 (Los Angeles Superior Court wage and
5 hour class action appointing Protection Law Group, LLP as class counsel in settlement);
- 6 • *Sampson v. 24 HR Homecare LLC*, BC586019 (Los Angeles County Superior Court wage
7 and hour class action appointing Protection Law Group, LLP as class counsel in
8 settlement);
- 9 • *Torres v. Auto Rescue et al.*, RIC 1509900 (Riverside County Superior Court wage and
10 hour class action appointing Protection Law Group, LLP as class counsel in settlement);
- 11 • *Kashanian v. Plus Labs, Inc.*, (Santa Clara County Superior Court wage and hour class
12 action appointing Protection Law Group, LLP as class counsel in settlement);
- 13 • *Cadena v. Tetra Property Management*, 257425 (Tulare County Superior Court wage and
14 hour class action appointing Protection Law Group, LLP as class counsel in settlement).
- 15 • *Drayton v. Hollywood Park Casino*, BC593935 (Los Angeles Superior Court wage and
16 hour class action appointing Protection Law Group, LLP as class counsel in settlement);
- 17 • *Holzer v. Wedbush Securities, Inc.*, BC 550462 (Los Angeles Superior Court wage and
18 hour class action certifying class and appointing Protection Law Group, LLP as class
19 counsel);
- 20 • *Byrd v. Masonite Corp.*, 5:16-cv-00035-JGBKK (United States District Court, Central
21 District of California appointing Protection Law Group, LLP as class counsel in
22 settlement);
- 23 • *Hadrick v. Woodmont Real Estate Serv., et al.*, CIV 530405 (San Mateo County Superior
24 Court wage and hour class action appointing Protection Law Group, LLP as class counsel
25 in settlement);
- 26 • *Stone v. Universal Protection Services*, AAA Case No. 01-15-0002-7497 (American
27 Arbitration Association wage and hour class action appointing Protection Law Group,
28 LLP as class counsel in settlement); and

- *Commick v. Prometheus Real Estate Group, Inc.*, CIV531264 (San Mateo Superior Court wage and hour class action appointing Protection Law Group, LLP as class counsel in settlement).

11. I have served as class counsel in wage and hour class and/or representative actions seeking wages and penalties owed on behalf of employees for which preliminary and/or final approval of the settlement or class certification has been granted, including, but not limited to the following:

- *Gomez v. Fairway Staffing Services, Inc.*, BC689771 (Los Angeles Superior Court wage and hour class action appointing, in part, Cody Payne, Esq., as class counsel in settlement);
- *Gonzalez v. Queens Land Builder, Inc., et al.*, BC685765 (Los Angeles Superior Court wage and hour class action appointing, in part, Cody Payne, Esq., as class counsel in settlement);
- *Hansen v. General Electric International Inc., et al.*, BC713269 (Los Angeles Superior Court wage and hour class action appointing, in part, Cody Payne, Esq. as class counsel in settlement);
- *Nunez v. Creative Dry Process, Inc.*, 20STCV15787 (Los Angeles Superior Court wage and hour class action appointing Payne Nguyen, LLP as class counsel in settlement);
- *Torres v. California Rice Center, Inc.*, 20STCV18638 (Los Angeles Superior Court wage and hour class action appointing Payne Nguyen, LLP as class counsel in settlement);
- *Olivares v. Sarko Construction, Inc.*, 20STCV19958 (Los Angeles Superior Court wage and hour class action appointing Payne Nguyen, LLP as class counsel in settlement);
- *Pimentel v. IBH Rome, LLC*, 21STCV01656 (Los Angeles Superior Court wage and hour class action appointing Payne Nguyen, LLP as class counsel in settlement);
- *Castellanos v. Devil Mountain Wholesale Nursery, Inc.*, MSC20-02078 (Contra Costa Superior Court wage and hour class action appointing Payne Nguyen, LLP as class counsel in settlement);
- *Guardado v. Multi-Pak Corporation, et al.*, 20STCV45681 (Los Angeles Superior Court wage and hour class action appointing Payne Nguyen, LLP as class counsel in settlement);

- 1 • *Portillo de Hernandez v. Quadrtech Corporation*, 21STCV06572 (Los Angeles Superior
2 Court wage and hour class action appointing Payne Nguyen, LLP as class counsel in
3 settlement);
- 4 • *Schulte v. Cortez Growers Association*, 22CV-00313 (Merced Superior Court wage and
5 hour class action appointing, in part, Payne Nguyen, LLP as class counsel in settlement);
- 6 • *Aquino v. Total Labor Force, Inc.*, 56-2022-00563174-CU-OE-VTA (Ventura Superior
7 Court wage and hour class action appointing Payne Nguyen, LLP as class counsel in
8 settlement);
- 9 • *Tovar v. Premier Wall Systems, Inc.*, CIVSB2128418 (San Bernardino Superior Court
10 wage and hour class action appointing, in part, Payne Nguyen, LLP as class counsel in
11 settlement);
- 12 • *Ramirez v. American Qualified Builders Inc.*, 20STCV34433 (Los Angeles Superior Court
13 wage and hour class action appointing Payne Nguyen, LLP as class counsel in settlement);
14 and
- 15 • *Chay v. Yen-Nhai, Inc. dba Nathan Anthony Furniture*, 22STCV02417 (Los Angeles
16 Superior Court wage and hour class action appointing, in part, Payne Nguyen, LLP as class
17 counsel in settlement).

18 12. I am fully familiar with the legal and factual issues in this matter, and have specific
19 experience litigating complex wage and hour actions as class actions, including employment cases
20 as set forth above.

21 13. The Settlement presented here only resulted after having engaged in extensive
22 informal discovery and investigation and is the product of hard-fought litigation and extensive
23 arms' length negotiations. In my opinion as an experienced class counsel, the Settlement is fair,
24 reasonable, adequate, and in the best interests of the Class, Aggrieved Employees, and State of
25 California.

26 **PROCEDURAL HISTORY AND FACTUAL BACKGROUND**

27 14. Defendant Monument Construction, Inc. dba Techcon Construction (“Defendant”)
28 is a full-service commercial site construction company that provides various construction services

1 in the greater San Francisco Bay Area. Defendant employed Plaintiff to work as a general laborer
2 and landscaper from approximately 2016 through approximately 2020.

3 15. On August 27, 2021, Plaintiff filed a wage and hour class action complaint with
4 the Contra Costa Superior Court, Case No. MSC21-01751 (“the Action”) against Defendant
5 alleging the following causes of action: (1) Unpaid Overtime; (2) Unpaid Meal Period Premiums;
6 (3) Unpaid Rest Period Premiums; (4) Unpaid Minimum Wages; (5) Final Wages Not Timely
7 Paid; (6) Wages Not Timely Paid During Employment; (7) Non-Compliant Wage Statements; (8)
8 Failure to Keep Requisite Payroll Records; (9) Failure to Reimburse Expenses; and (10) Violation
9 of Business and Professions Code § 17200, et seq.

10 16. On December 4, 2023, the Court granted Plaintiff’s request to amend the
11 Complaint and on December 12, 2023, Plaintiff provided notice to the LWDA and Defendant of
12 his intent to seek civil penalties under Labor Code section 2699, et seq. (“PAGA”). On March 5,
13 2024, Plaintiff filed a First Amended Complaint (“Operative Complaint”), adding a PAGA cause
14 of action.

15 17. Following the filing of the Action, Plaintiff and Defendant (collectively, “the
16 Parties”) met and conferred with respect to the potential early resolution of this Action and agreed
17 to informally stay formal discovery, exchange informal discovery, and engage in a private
18 mediation with Marc Feder, Esq., a well-respected mediator with substantial experience handling
19 wage and hour matters, for October 30, 2023.

20 18. Pursuant to this agreement and in advance of mediation, Defendant provided my
21 office with extensive informal discovery including all relevant policies and handbooks in place
22 during the Class Period, which included all applicable policies relating to meal breaks, rest breaks,
23 timekeeping, the payment of wages and other relevant areas of investigation, Plaintiff’s personnel
24 file, a 20% sampling of time and payroll data for the putative class, and figures and information
25 regarding the class size and composition. The randomly selected sampling included records for
26 putative class members who were employed throughout different time periods during the Class
27 Period, that is representative of the Class. With this data for the Class, my office was able to
28 perform a comprehensive damages analysis and estimate Defendant’s potential violations,

1 liability, and exposure, including, and not limited to, analyzing time and pay data, considering
2 potential meal period violations, potential rest period violations, potential synthetic meal period
3 recordings, unpaid meal and rest period premiums, rounding, overtime and premium payments,
4 etc. Therefore, this discovery and investigation allowed my office to perform a comprehensive
5 damages analysis and estimate Defendant's potential liability.

6 19. After extensive review of these documents, on October 30, 2023, the Parties
7 attended mediation with Marc Feder, Esq. At the mediation, Defendant maintained it had
8 substantial defenses to the alleged violations. At the mediation, the Parties also engaged in
9 intensive settlement discussions and debated their respective positions and exchanged views
10 regarding the strengths and weaknesses of the alleged claims.

11 20. After a full day of mediation, and with the help of the mediator, the Parties were
12 able to reach an agreement to jointly resolve the Actions on a class and representative basis for a
13 Gross Settlement Amount of \$1,000,000.00 and shortly thereafter executed a memorandum of
14 understanding memorializing the key settlement terms.

15 21. Thereafter, the Parties utilized the Los Angeles Superior Court's class action and
16 PAGA settlement form and worked diligently to negotiate and memorialize the terms of a long
17 form settlement agreement. On May 15, 2024, after extensive discussions and multiple revisions
18 to the agreement, the Parties entered into a fully executed Class Action and PAGA Settlement
19 Agreement.

20 22. Pursuant to California Labor Code § 2699(1)(2), a copy of the proposed Class
21 Action and PAGA Settlement Agreement, as well as information regarding the preliminary
22 approval hearing on this matter, were submitted to the California Labor Workforce Development
23 Agency via online filing at <https://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html> on May 24, 2024.

25 **SUMMARY OF THE TERMS OF SETTLEMENT**

26 23. Plaintiff seeks preliminary approval of the proposed Class Action and PAGA
27 settlement. Attached hereto as **Exhibit 1** is a true and correct copy of the fully executed Class
28 Action and PAGA Settlement Agreement (hereinafter "Agreement" or "Settlement"). A true and

1 correct copy of the Court Approved Notice of Class Action Settlement and Hearing Date for Final
2 Court Approval (“Class Notice”) is attached to the Agreement as **Exhibit A**.

3 24. Plaintiff seeks to provisionally certify the following class for settlement purposes:
4 “all current and former non-exempt employees of Defendant who were employed by Defendant
5 in the state of California at any time during the Class Period.” *See* Agreement ¶ 1.5. The Class
6 Period and release of claims covers the time period from August 27, 2017 to the date of
7 preliminary approval. *See id.* ¶¶ 1.13, 5.2. It is estimated that there are approximately 540 Class
8 Members.

9 25. The Parties have agreed that Aggrieved Employees shall be defined as: all current
10 and former non-exempt employees of Defendant who were employed by Defendant in the state
11 of California at any time during the PAGA Period. *See* Agreement ¶ 1.4. The PAGA Period and
12 release of PAGA claims covers the time period from August 27, 2020 to the date of preliminary
13 approval. *See id.* ¶¶ 1.31, 5.3. It is estimated that there are approximately 312 Aggrieved
14 Employees.

15 26. Subject to Court approval, the Parties have agreed to settle the Class and PAGA
16 claims at issue in the Action for a non-reversionary Gross Settlement Amount of \$1,000,000,
17 exclusive of any employer-side payroll taxes. *See* Agreement ¶¶ 1.22, 3.1.

18 27. The Gross Settlement Amount will initially be allocated as follows:

- 19 a. Class Counsel’s attorneys’ fees in an amount of thirty-three and one-third
20 percent (33 1/3%) of the Gross Settlement Amount, amounting to
21 \$333,333.33.
- 22 b. Class Counsel’s actual litigation costs and expenses, not to exceed
23 \$30,000.
- 24 c. Administration Expenses Payment, not to exceed \$9,500.00.
- 25 d. A Class Representative Service Payment in the amount of \$10,000.00 to
26 Plaintiff Beltran.
- 27 e. PAGA Penalties of \$75,000, including the distribution of \$56,250 to the
28 LWDA, which constitutes 75% of the settlement amount allocated to the

1 PAGA claims, and \$18,750 to Aggrieved Employees.

2 See Agreement ¶¶ 3.1, 3.2.

3 28. After deducting these amounts from the Gross Settlement Amount, the Net
4 Settlement Amount of approximately \$542,166.67 shall be distributed to the Participating Class
5 Members. The Net Settlement Amount will be distributed and paid to Participating Class
6 Members on a *pro-rata* basis based on the number of weekly pay periods worked during the Class
7 Period. See Agreement ¶¶ 1.28, 3.2.4.

8 29. The payment to each Participating Class Member will vary based on the number
9 of pay periods the Class Member worked and whether they are entitled to a share of the PAGA
10 Penalties, but will provide an estimated payment of \$1,004.01.

11 30. Payments to Participating Class Members shall be allocated as ten percent (10%)
12 wages and ninety percent (90%) penalties and interest. See Agreement ¶ 3.2.4.1.

13 31. Defendant shall be responsible for all employer-side payroll taxes on the wage
14 portion of each settlement payment; employer-side payroll taxes shall be paid by Defendant
15 separately from and in addition to the Gross Settlement Amount. See Agreement ¶ 3.1.

16 32. Additionally, as stated above, Aggrieved Employees will receive a *pro-rata* share
17 of the funds from the PAGA Penalties allocated for distribution to aggrieved employees based on
18 the number of pay periods worked during the PAGA Period. Payments to Aggrieved Employees
19 shall be allocated one hundred percent (100%) as penalties. See Agreement ¶¶ 3.2.5.1, 3.2.5.2.

20 33. Defendant shall fund the Settlement in two installments. Pursuant to the terms of
21 the Agreement, Defendant shall pay \$500,000 no later than fourteen (14) days after Plaintiff
22 provides written notice to Defense Counsel of the Court’s Final Approval Order, and then pay the
23 remaining \$500,000 of the Gross Settlement Amount and Defendant’s share of payroll taxes no
24 later than 180 days after the first payment due date. See Agreement ¶ 4.3. Within fourteen (14)
25 days after Defendant funds the Gross Settlement Amount, the Administrator will issue payments
26 to: (a) the Participating Class Members; (b) Aggrieved Employees; (c) the LWDA; (d) Plaintiff;
27 (e) Class Counsel, and (f) itself. See *id.* at ¶ 4.4.

28 34. The proposed Settlement is a non-reversionary, non-claims made settlement. All

1 money from the Net Settlement Amount will be distributed to the Class Members. No money will
2 revert to Defendant. *See* Agreement ¶ 3.1.

3 35. Any residue from Individual Class Payment checks or Individual PAGA Payment
4 checks issued to Class Members and Aggrieved Employees remaining uncashed after 180 days
5 will be distributed to the State Controller’s Office Unclaimed Property Fund to be held in trust
6 for such Class Members and Aggrieved Employees pursuant to California’s Unclaimed Property
7 Law. As such, no “unpaid residue” under California Code of Civil Procedure §384 will result
8 from the Settlement. *See* Agreement ¶ 4.4.1, 4.4.3.

9 36. In exchange for participating in the Settlement, Participating Class Members will
10 release their wage and hour claims against Defendant and the Released Parties, as defined in the
11 Agreement. However, the release for Participating Class Members will only occur upon the
12 complete funding of the Gross Settlement Amount and is narrowly tailored to only release claims
13 based upon the facts alleged in the Operative Complaint in the Action, for the Class Period. The
14 proposed Settlement also resolves all of the Aggrieved Employees’ claims arising under PAGA
15 for the PAGA Period. *See* Agreement ¶¶ 5, 5.2, 5.3.

16 **THE SETTLEMENT IS REASONABLE**

17 **Method of Distribution**

18 37. The proposed settlement is based on the number of Class Pay Periods worked by
19 each Class Member. This method is commonly used in wage and hour class actions because it
20 relies upon objective evidence of the total days of employment, which Class Members can easily
21 review and confirm for themselves. This information is readily available from Defendant’s
22 records, and the Administrator can apply the formula in a fair and transparent manner.

23 38. Additionally, this method of distribution is commonly used in wage and hour class
24 actions because it allows for a distribution that corresponds closely to the alleged damages since
25 employees experience the same working conditions, so their damages are directly related to the
26 amount of time they were employed.

27 39. The effectiveness of my office in prosecuting this matter has translated into
28 monetary benefits for the Class, Aggrieved Employees, and State of California in the following

1 respects: (1) the Class, Aggrieved Employees, and State of California will recover over a
2 reasonably short period of time as opposed to waiting additional years for the same, or possibly,
3 a worse, result; (2) a guaranteed result that compares favorably with other similar class action
4 settlements of this type, (3) significant savings in Class Counsel's fees and costs which would
5 have only increased significantly had the cases progressed through trial, appeals, and continued
6 litigation.

7 **Discovery and Informed Arms-Length Negotiations**

8 40. Settlement was reached in this matter only after extensive informal discovery and
9 investigations. Prior to mediation, Defendant produced a 20% random sampling of time records
10 and payroll records, written policies including the employee handbooks in effect during the Class
11 Period, stand-alone wage and hour policies, and other relevant documents. Defendant also
12 provided information regarding the number of putative class members, the number of current
13 versus former employees; the total weekly pay periods worked by the Class and Aggrieved
14 Employees, the putative class members' average rate of pay, and additional information regarding
15 the Class Members' various job positions and job duties. The randomly selected data sampling
16 included records for putative class members who were employed throughout different time
17 periods during the Class Period, that is representative of the Class. This discovery and
18 investigation allowed Plaintiff to conduct a class-wide assessment and analysis of potential
19 damages with the help of our retained expert, Berger Consulting Group. The Parties extensively
20 briefed issues regarding class certification and liability and provided their analyses to the mediator
21 who helped the Parties debate the strengths and weakness of their positions.

22 41. The Parties engaged in a full day of private mediation with Marc Feder, Esq., a
23 highly respected mediator with particular experience in wage and hour class actions, during which
24 the Parties engaged in extensive settlement negotiations. This litigation was hotly contested, and
25 settlement negotiations were at all times arm's length and, although conducted in a professional
26 manner, were adversarial. Defendant at all times maintained that it had complied with California
27 wage and hour laws. Likewise, Plaintiff was willing and prepared to vigorously litigate this
28 dispute. The proposed settlement was reached at the end of a process that was neither fraudulent

1 nor collusive and was reached only after a full day of mediation that allowed the Parties to reach
2 a compromise of the hotly disputed claims with the help of the mediator. Following mediation,
3 the Parties engaged in extensive negotiations before finalizing the long-form agreement presently
4 before the Court.

5 **Estimate of Potential Value**

6 42. My office analyzed all available data and estimated Defendant's maximum
7 potential exposure with respect to the class claims at issue, with all claims adjudicated in favor of
8 the Class, at approximately \$8,591,244.38, assuming the litigation was successful at trial on the
9 claims at issue, and then reduced this exposure analysis based on the likelihood of obtaining class
10 certification, prevailing at trial, and other attendant risks. Based on the information provided by
11 Defendant, my office estimated the maximum total meal break damages of \$1,378,797.75 for all
12 Class Members. Rest breaks were unrecorded and were thus difficult to gauge. However, based
13 on the same types of practices that were leading to employees missing meal breaks, or receiving
14 short and late meal periods, my office estimated there would be similar damages with respect to
15 rest breaks and estimated total rest break damages of \$1,378,797.75. Plaintiff's claims for
16 overtime and minimum wage were based on off-the-clock work and non-neutral rounding. Based
17 on these practices, my office estimated that Defendant owed the Class approximately \$689,398.88
18 in unpaid wages and overtime, and Plaintiff estimated there was approximately \$20,250 in
19 unreimbursed business expenses. Waiting time penalties amounted to \$2,187,000. Penalties for
20 inaccurate wage statements amounted to \$1,248,000. Finally, my office also analyzed
21 Defendant's potential non-duplicative penalties arising under PAGA, including Labor Code
22 sections 204 and 1174(d), which could have amounted to approximately \$1,689,000. However,
23 during the mediation and throughout the course of litigation, Defendant raised several issues
24 which impacted the risks attendant to proceeding on a class-wide basis which Plaintiff had to take
25 into consideration for a more realistic damages analysis as detailed below.

26 **Analysis of Specific Claims and Risks Considered**

27 43. Although the investigation and information discovered supports Plaintiff's
28 contentions, Defendant raised potential defenses that impacted the risk of proceeding on a class-

1 wide basis. Defendant proffered defenses to both certification and the merits of Plaintiff's claims.

2 44. Defendant contended that Plaintiff's claims were not suitable for class certification
3 because individual issues and affirmative defenses would predominate should these cases go to
4 trial. As with all class actions, these complex cases raise difficult management and proof issues
5 and consideration of these risks factored into the decision to enter this settlement.

6 ***Meal Period Analysis***

7 45. A large portion of Defendant's overall liability lies in Plaintiff's meal period claim.
8 Plaintiff's meal period theory of liability was based upon Defendant's failure to provide timely,
9 full, and/or uninterrupted meal periods. Plaintiff contended that Defendant's practices throughout
10 the Class Period were unlawful, required employees to perform work during their meal periods
11 and interfered with employees' rights to take meal breaks where they were completely relieved
12 of their duties. Plaintiff contended that Defendant failed to pay meal period premiums for missed,
13 late, short, or interrupted meal periods that arose as a result of these practices. Based on a review
14 and analysis of the time and payroll data, my office estimated potential meal period damages of
15 \$1,378,797.75.

16 46. However, meal period claims have become increasingly difficult to certify in
17 recent years and Defendant argued that its meal period policies and practices throughout the Class
18 Period were lawful. Defendant contended that to the extent that putative class members failed to
19 take their meal periods or took a short or late meal period, they did so voluntarily. As such,
20 Defendant contended that these highly individualized questions of fact would prevent class
21 certification and serve as a defense even if this claim was certified.

22 47. While my office disagreed with Defendant's arguments and factual contentions,
23 my office recognized the circumstances and realities of the case, applicable case law and
24 regulations, costs and expenses of further litigation and certification, and risks to recovery
25 associated with this claim. Accordingly, Plaintiff applied a 50% discount for risks associated with
26 certification of this claim and a 65% discount associated with the risks of succeeding on the
27 merits, establishing liability, and proving damages, leaving a resulting value of \$241,289.61 with
28 respect to these claims.

1 ***Rest Period Analysis***

2 48. Similar to Plaintiff's meal period claims, the alleged rest period violations were
3 based primarily on what Plaintiff believed was Defendant's practice of having employees work
4 during purported breaks. Plaintiff contended that Defendant failed to provide Class Members with
5 timely, full, and uninterrupted rest periods. Plaintiff also contended that Defendant utilized
6 unlawful rest period policies. Plaintiff further contended that rest periods, when provided, were
7 regularly interrupted or cut short. While rest periods were not required to be recorded, and were
8 thus difficult to analyze, Plaintiff estimated that the types of practices leading to meal period
9 violations would likely have a similar impact on employees' ability to take a compliant rest
10 period. Therefore, as noted above, Plaintiff estimated rest period damages would amount to
11 \$1,378,797.75.

12 49. In contrast, Defendant claimed that its practices were lawful and that all employees
13 were provided an opportunity to take a rest period for every four hours worked or major fraction
14 thereof. Defendant argued that whether employees had received a compliant rest period, the
15 reasons why an employee failed to receive a compliant rest period, and whether such rest period
16 was waived raised individual issues that could not be certified and that even if such a claim could
17 be certified, Plaintiff would be unable to adequately prove the alleged damages given the lack of
18 records.

19 50. Litigating rest period claims is inherently difficult as an employer's records, as is
20 the case here, do not usually indicate when a rest period is short, late, interrupted or missed
21 entirely. While my office disagrees with Defendant's arguments and factual contentions, there
22 were significant risks associated with this claim. Accordingly, my office applied a 50% discount
23 for risks associated with certification of this claim and a 65% discount associated with the risks
24 of succeeding on the merits, establishing liability, and proving the extent of damages and
25 ultimately obtaining this award. This resulted in a risk-based estimate of approximately
26 \$241,289.61 with respect to these claims.

27 ***Minimum Wage and Overtime Claims***

28 51. Plaintiff alleged that Defendant failed to pay putative Class Members overtime

1 and minimum wages as a result of uniform policies, practices, and procedures, that required
2 putative Class Members to perform work before clocking in and after clocking out. This off-the-
3 clock work was work for which Plaintiff alleges he and other putative Class Members failed to
4 receive any payment at all and additionally regularly caused Plaintiff and other putative Class
5 Members to work more than eight hours in a day or 40 hours in a week thereby incurring
6 additional overtime compensation. Plaintiff also alleged that Defendant utilized non-neutral
7 rounding practices for at least a portion of the Class Period and that its practices substantially
8 favored Defendant. Plaintiff estimated that as a result of this off-the-clock work and non-neutral
9 rounding practices, class members incurred approximately \$689,398.88 in damages.

10 52. Defendant contended that its overtime and rounding policies and practices comply
11 with the law and that it paid putative Class Members over the minimum wage for all hours
12 worked. Defendant further contended its rounding practices were neutral and that such practices
13 have been widely upheld. Defendant also produced wage records reflecting overtime
14 compensation paid to many of the putative Class Members. Defendant further contended that all
15 employees were required to record all time worked, and that Defendant was not aware that any
16 work had been performed off-the-clock. Defendant also argued that individual liability issues
17 predominate, including: (1) whether each employee worked off-the-clock; (2) whether Defendant
18 knew or should have known about each employee's off-the-clock work; (3) whether each
19 employee worked overtime; and (4) whether Defendant knew or should have known that each
20 putative class member performed overtime work. Moreover, given that these claims were based
21 on off-the-clock work not reflected in Defendant's time records, Defendant argued that proving
22 damages at trial would not be manageable.

23 53. Plaintiff disagrees with Defendant's contentions but acknowledges that claims
24 regarding off-the-clock work and rounding involve substantial challenges in obtaining and
25 maintaining class certification, establishing liability and providing damages, in light of potential
26 individualized issues and the lack of records. Accordingly, my office discounted our initial
27 valuation of this claim by 50% to account for risks regarding certification and by 65% for the
28 risks associated with succeeding on the merits, establishing liability, proving the extent of

1 damages, and ultimately obtaining this award. This resulted in a risk-based estimate of
2 approximately \$120,644.80 with respect to these claims.

3 ***Business Expense Claims***

4 54. Plaintiff contended that Defendant failed to reimburse Plaintiff and other putative
5 Class Members for necessary business expenses such as the purchase and use of construction
6 related tools and personal cellphones, and on occasion, use of personal vehicles, required for
7 putative class members to perform their job duties. Defendant disputed that Plaintiff and any
8 putative Class member were required to incur these expenses. Defendant further contended that
9 the reason for why a putative class member undertook certain expenses and failed to receive
10 reimbursement for certain expenses would raise individual issues that could not be certified.
11 Plaintiff estimated that if it could be established that employees were required to undertake these
12 expenses, unreimbursed business expenses could potentially amount to approximately
13 \$20,250.00. My office then discounted this amount by 50% for issues relating to certification of
14 this claim and by 75% for issues pertaining to the merits, establishing liability, proving damages,
15 and obtaining an award. This resulted in a risk-based adjustment of \$2,531.25 for this claim.

16 ***Waiting Time Penalties Claims***

17 55. Plaintiff alleged that Defendant intentionally and willfully failed to pay Plaintiff
18 and other putative Class Members all wages due to them during employment and due to them
19 upon termination, within the time period permissible under California law as a result of
20 Defendant's failure to pay employees all wages due from off-the-clock work, as well as unpaid
21 meal and rest period premiums. Based on the information provided by Defendant at mediation,
22 Plaintiff estimated waiting time penalties incurred by former employees could have totaled as
23 much as \$2,187,000.

24 56. However, there were substantial risks associated with Plaintiff's waiting time
25 penalties claims. These claims were derivative of Plaintiff's previous claims and if certification
26 was denied on those underlying claims, these claims would also likely fail. Further, even if
27 Plaintiff prevailed on his underlying off-the-clock claims, he would still be required to
28 demonstrate that Defendant's violations of Labor Code § 203 were willful violations, a difficult

1 prospect. Accordingly, Plaintiff's initial valuation of this claim was discounted by 50% to account
2 for risks regarding certification and 75% for risks associated with succeeding on the merits,
3 establishing liability, proving the extent of damages, and ultimately obtaining this award. This
4 resulted in a risk-based estimate of approximately \$273,375 with respect to this claim.

5 ***Wage Statement Claims***

6 57. Plaintiff contended that throughout the Class Period there were derivative
7 violations arising from the claims alleged above such that the wage statements failed to list the
8 total number of hours worked, the actual gross wages earned, and the correct rates of pay. Based
9 on these claims and assuming a violation could be proven once per pay period for each of the
10 employees employed during the 1-year time period employees were eligible for penalties,
11 Plaintiff estimated potential penalties for wage statement violations of approximately \$1,248,000.

12 58. Defendant contended that derivative wage statement violations would rise or fall
13 based on the prior claims and that it could not be demonstrated that these violations for items such
14 as off-the-clock work were knowing and intentional. Wage statement claims have also seen
15 varying treatment at the appellate level because such claims have an element of discretion
16 attached to them rather than a pure calculation of damages after liability is proven. *Cf., Jaimez v.*
17 *DAIOHS USA, Inc.*, 181 Cal.App.4th 1286 (2010) *with Price v. Starbucks Corp.*, 192 Cal.App.4th
18 1136 (2011). While my office does not agree with this assessment, in light of the risks raised
19 by Defendant, my office discounted our initial valuation by 50% for risks pertaining to
20 certification and 75% for risks pertaining to succeeding on the merits, establishing liability,
21 proving the extent of damages, and ultimately obtaining this award. This resulted in a risk-based
22 estimate of approximately \$156,000 with respect to this claim.

23 ***PAGA Claims***

24 59. My office also separately contemplated the risks of proceeding with the PAGA
25 claims and the potential liability Defendant could face from these claims. The Parties agreed
26 during settlement negotiations to allocate \$75,000 of the Settlement towards the PAGA claims,
27 which represents approximately 7.5% of the Gross Settlement Amount. The percentage of the
28 settlement allocated to the PAGA claims is well above the range in PAGA settlements regularly

1 approved in both state and federal court for cases that include both a class and PAGA action.
2 Courts have approved allocations of as little as 1% of the Gross Settlement Amount. *See, e.g.,*

- 3 • *Davis v. Brown Shoe Co.*, 2015 U.S. Dist. LEXIS 149010 (E.D. Cal. 2015) (PAGA
4 Payment of \$5,000 in a \$1.5 million class settlement);
- 5 • *Zamora v. Ryder Integrated Logistics, Inc.*, 2014 U.S. Dist. LEXIS 184096 (S.D. Cal.
6 2014) (\$7,500 payment to LWDA for PAGA on a \$1.5 million class settlement);
- 7 • *Lusby v. Gamestop Inc.*, 2015 U.S. Dist. LEXIS 42637 (N.D. Cal. 2015) (PAGA
8 Payment of \$5,000 in a \$500,000 class settlement);
- 9 • *Cruz v. Sky Chefs, Inc.*, 2014 U.S. Dist. Lexis 17693 (N.D. Cal. 2014) (approving
10 payment of \$10,000 to the LWDA for PAGA out of \$1,750,000 class settlement);
- 11 • *Chu v. Wells Fargo Investments, LLC*, 2011 WL 672645, *1 (N.D. Cal. 2011)
12 (approving PAGA payment of \$7,500 to the LWDA out of \$6.9 million common-fund
13 settlement);
- 14 • *Martino v. Ecolab Inc.*, No. 3:14CV04358 (N.D. Cal. 2017) (\$100,000 allotted as
15 PAGA penalties or 0.48% of \$21,000,000 settlement amount);
- 16 • *East v. Comprehensive Educational Services Inc.*, Case No. 11-CECG-04226 (2015)
17 (\$10,000 allotted as PAGA penalties or 0.13% of \$7,595,846 settlement amount);
- 18 • *Bararsani v. Coldwell Banker Residential Brokerage Company*, Case No. BC495767
19 (2016) (\$10,000 allotted as PAGA penalties or 0.22% of \$4,500,000 settlement
20 amount);
- 21 • *Rico v. Cardinal Health 200 Inc.*, No. CIVRS-14-01451 (2017) (\$5,000 allotted as
22 PAGA penalties or 0.14% of \$3,500,000 settlement amount);
- 23 • *Moppin v. Los Robles Medical Center*, No. 5:15CV01551 (C.D. Cal. 2017) (\$15,000
24 allotted as PAGA penalties or 0.40% of \$3,775,000 settlement amount);
- 25 • *Scott-George v. PVH Corporation*. No., 2:13CV00441 (E.D. Cal. 2017) (\$15,000
26 allotted as PAGA penalties or 0.46% of \$3,250,000 settlement amount);
- 27 • *Hart v. Parkview Community Hospital Medical Center*, No. RIC-14-06044 (2016)
28 (\$10,000 allotted as PAGA penalties or 0.39% of \$2,550,000 settlement amount);

- 1 • *Nehrlich v. RPM Mortgage Inc.*, No. 30-2013-00666783-CU-OE-CXC (2017)
2 (\$10,000 allotted as PAGA penalties or 0.40% of \$2,500,000 settlement amount);
- 3 • *Kelley v. The Related Companies of California L.L.C.*, No. CIVDS-13-07167 (2016)
4 (\$10,000 allotted as PAGA penalties or 0.50% of \$2,000,000 settlement amount); and
- 5 • *Castrejon v. O'Connell Landscape Maintenance Inc.*, No. RIC-12-12798 (2015)
6 (\$5,000 allotted as PAGA penalties or 0.33% of \$1,500,000 settlement amount.

7 60. In allocating \$75,000 to Plaintiff's PAGA claims, my office considered that PAGA
8 penalties would be subject to the same defenses and risks as Plaintiff's class claims, as well as
9 defenses unique to PAGA.

10 61. For instance, Defendant contended that violations of multiple provisions of the
11 California Labor Code do not give rise to cumulative penalties, but that instead, the initial
12 violation penalty and subsequent violation penalty provided by statute, should only apply once
13 per pay period, if at all, rather than cumulatively for each separate California Labor Code
14 provision that is, arguably, violated during a pay period. For example, as part of the valuation of
15 the potential PAGA claims, my office included claims under Labor Code § 204 could be
16 recovered either through Labor Code § 210 or PAGA, but as a matter of law, Plaintiff is not
17 entitled to a duplicative recovery. *See* Labor Code § 210(c) (permitting recovery of penalties
18 through § 210 or PAGA, but not both). Plaintiff's claims under Labor Code § 1174(d) were
19 arguably only recoverable under PAGA. *See Caliber Bodyworks, Inc. v. Superior Court*, 134
20 Cal.4th 365, 383 (2005).

21 62. Moreover, since Defendant denied and continued to deny that it ever violated any
22 provision of the California Labor Code, Defendant argued, that, even if, *arguendo*, such violations
23 occurred, heightened penalties should not apply because Defendant had not received notice from
24 a labor agency or Court that they were violating the law. *See, e.g., Amaral v. Cintas Corp. No. 2*,
25 163 Cal.4th 1157, 1209 (2008).

26 63. Defendant also contended that when determining whether or not to assess a
27 penalty, the court exercises the same discretion as the Labor Commissioner and may reduce the
28 penalties to be assessed against the employer pursuant to California Labor Code section

1 2699(e)(1)-(2). As such, Defendant contended that, with respect to a PAGA claim, the Court was
2 unlikely to assess cumulative penalties for the maximum number of possible, separate California
3 Labor Code violations, because it would be unjust, arbitrary, oppressive, and/or confiscatory,
4 especially where certain conduct may be governed by multiple provisions of the California Labor
5 Code that are interrelated and work in tandem.

6 64. Defendant also contended that adjudication of claims arising under PAGA would
7 not be manageable and that the individualized inquiries Defendant argued would defeat
8 certification of the alleged claims would also prevent Plaintiff from demonstrating that the PAGA
9 claim could be successfully managed and adjudicated without abridging Defendant's due process
10 rights.

11 65. Defendant maintained that, in addition to its strong arguments against the
12 underlying claims, taking the current unsettled state of law, it would be unjust to award the
13 maximum potential PAGA penalties. There was a dearth of law and guidance regarding trials
14 and/or assessment of penalties under the PAGA statute, and there is no clearly-established
15 methodology for the valuation and/or assessment of PAGA penalties.

16 66. Based upon the violations alleged above, Plaintiff estimated PAGA penalties for
17 claims under Labor Code sections 204 and penalties for Defendant's failure to keep accurate
18 payroll records in this matter could potentially exceed \$1,689,000. However, a discount of 50%
19 was applied to account for the risks associated with establishing manageability, a discount of 50%
20 was applied to account for the risks associated with succeeding on the merits, establishing
21 liability, proving the extent of penalties that are warranted, and a discount of 75% was applied in
22 light of the potential appellate challenges and likely discretionary reduction of penalties by the
23 Court given the circumstances of the Action and outside considerations. This brought the relative
24 value of the PAGA claim to approximately \$105,562.50. This resulted in an overall adjusted
25 liability of \$1,140,692.77.

26 ***General Considerations***

27 67. For all claims and when considering the settlement generally, my office
28 recognized that, even if Plaintiff prevailed at class certification, proving the amount of wages due

1 to each Class Member would be an expensive, time-consuming, and extremely uncertain
2 proposition. In order to prove liability and damages, my office will need to request and analyze
3 thousands of pages of documents, obtain the Class Members' contact information, contact them
4 and obtain numerous declarations at great expense. Obtaining the cooperation of current
5 employees would also be difficult, given the likely reluctance to aid prosecution of a lawsuit
6 against a current employer. On the other hand, Defendant would likely be able to obtain the
7 cooperation of its employees. Moreover, even if Plaintiff prevailed at class certification and trial,
8 possible appeals would substantially delay any recovery by the Class.

9 68. Based on these factors, I therefore submit that the Settlement is fair, reasonable,
10 and adequate. The Settlement is in the best interest of the Class Members, Aggrieved Employees,
11 and State of California and is within the accepted range of recoveries for this type of litigation
12 given the inherent risk of litigation, the risk of obtaining and maintaining class certification, and
13 the costs of further litigation.

14 **REQUESTED CLASS REPRESENTATIVE SERVICE PAYMENT**

15 69. As part of the Agreement, Plaintiff is requesting a reasonable service payment of
16 \$10,000. Plaintiff initiated and has stepped forward in this litigation to serve as a class
17 representative on behalf of his former co-workers, who will now benefit from the Settlement.
18 Plaintiff invested substantial time and effort into this litigation, including his own research,
19 reviewing documents, providing my office with relevant documents and information related to
20 his employment with Defendant, providing the facts and evidence necessary to attempt to prove
21 his allegations, and having numerous and extensive discussions with my office about the case.
22 Plaintiff made himself available, actively monitored the status of the case, assisted in preparation
23 for mediation, and reviewed the Settlement and discussed its terms with my office. In short,
24 Plaintiff played an instrumental role in the successful litigation to this case. Further, the requested
25 amount is also extremely reasonable given the benefit gained by other Class Members. The Class
26 Representative Service Payment also serves to recognize the actual risk Plaintiff assumed by
27 putting himself on the public record in a class and representative employment lawsuit. *See*
28 Declaration of Plaintiff Jose Beltran in support of Motion for Preliminary Approval (“Beltran

1 Decl.”). Notice of the requested payment to Plaintiff is disclosed to the Class Members in the
2 Class Notice and should be preliminarily approved by the Court. *See* Agreement, Ex. A.

3 **ATTORNEYS’ FEES AND COSTS**

4 70. The attorneys’ fees incurred by my office are in line with the common fund
5 requested. My office is seeking thirty-three and one-third (33 1/3%) of the Gross Settlement
6 Amount or \$333,333.33. My office has achieved an excellent result for the Class during hard
7 fought negotiations. My office has extensive experience in wage and hour disputes and was able
8 to use our extensive experience and skills to achieve this result. The Motion for Final Approval
9 will elaborate on the nature of the legal services provided, the time incurred in performing those
10 services, and my office’s hourly rates. The Motion for Final Approval will also elaborate on the
11 reimbursement for costs sought by my office, which are estimated not to exceed \$30,000. Notice
12 of Class Counsel’s requested fees and costs are disclosed to the Class in the Class Notice. *See*
13 Agreement, Ex. A.

14 **THE METHOD OF NOTICE IS VERY LIKELY TO GIVE ACTUAL NOTICE**

15 71. Subject to the Court’s Approval, the Parties have agreed to having Apex Class
16 Administration administer the Settlement. My office does not have any financial interest in the
17 Administrator or otherwise have a relationship with the Administrator that could create a conflict
18 of interest. *See* Agreement ¶ 7.1.

19 72. No later than seven (7) days after the Court grants preliminary approval of the
20 Settlement, Defendant will provide the Class Data to the Administrator including the Class
21 Member’s name, last-known mailing address, Social Security number, number of pay periods
22 worked during the Class Period, and number of pay periods worked during the PAGA Period. *See*
23 Agreement ¶¶ 1.8, 4.2.

24 73. The Administrator shall perform any searches necessary for confirmation of the
25 Class Members’ addresses and shall mail the Class Notice in both English and Spanish to all Class
26 Members within ten (10) days of receiving the Class Data from Defendant. *See* Agreement ¶
27 7.4.2.

28 74. I am not aware of an alternative method of providing notice to the Class which

1 would result in a higher likelihood of actual notice. The original source of the mailing addresses
2 is from each Class Member, who provided the information to Defendant. As a fail-safe to this
3 highly reliable method, additional searches will be performed on any notice returned as non-
4 deliverable. *See* Agreement ¶ 7.4.3.

5 75. Any Class Member who wishes to be excluded from the Settlement must mail the
6 Administrator a signed and dated written request for exclusion including their name, address, and
7 email address or telephone number. The request for exclusion must be postmarked no later than
8 sixty (60) calendar days after mailing of the Class Notice. Aggrieved Employees who opt-out of
9 the class settlement shall still receive a payment from the PAGA Penalties, if eligible, and will
10 release the Released PAGA Claims regardless of their decision to opt-out of the class settlement.
11 *See* Agreement ¶¶ 7.5.1, 7.5.4.

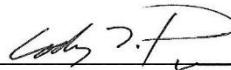
12 76. Any Class Member wishing to object to the approval of this Settlement must send
13 to the Administrator a signed written statement containing their name, address, and phone number
14 and state the specific reason for the objection. Such written objections must be mailed to the
15 Administrator within sixty (60) calendar days following the initial mailing of the Class Notice.
16 Class Members may also appear and object at the final approval hearing, regardless of whether
17 they have submitted a written objection. *See* Agreement ¶ 7.7.2.

18 **NOTICE TO THE LWDA**

19 77. On May 24, 2024, my office submitted a copy of the fully executed Class Action
20 and PAGA Settlement Agreement, as well as information regarding the preliminary approval
21 hearing on this matter, to the California Labor Workforce Development Agency via online filing.
22 A true and correct copy of an email confirming submission of the Settlement to the LWDA on
23 May 24, 2024 is attached hereto as **Exhibit 2**.

24 I declare under penalty of perjury under the laws of the State of California that the
25 foregoing is true and correct.

26 Executed on May 30, 2024 at Manhattan Beach, California.

27 

28 _____
Cody Payne

EXHIBIT 1

CLASS ACTION AND PAGA SETTLEMENT AGREEMENT AND CLASS NOTICE

This Class Action and PAGA Settlement Agreement (“Agreement”) is made by and between plaintiff Jose Beltran (“Plaintiff”) and defendant Monument Construction, Inc. dba Techcon Construction (“Techcon”). The Agreement refers to Plaintiff and Techcon collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS.

- 1.1 “Action” means the Plaintiff’s lawsuit alleging wage and hour violations against Techcon captioned *Beltran v. Monument Construction, Inc. dba Techcon Construction*, Case No. MSC21-01751 initiated on August 27, 2021 and pending in Superior Court of the State of California, County of Contra Costa.
- 1.2 “Administrator” means Apex Class Action Administration, the neutral entity the Parties have agreed to appoint to administer the Settlement.
- 1.3 “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with Preliminary Approval of the Settlement.
- 1.4 “Aggrieved Employees” means all current and former non-exempt employees of Techcon who were employed by Techcon in the state of California at any time during the PAGA Period.
- 1.5 “Class” means all current and former non-exempt employees of Techcon who were employed by Techcon in the state of California at any time during the Class Period.
- 1.6 “Class Counsel” means Payne Nguyen, LLP.
- 1.7 “Class Counsel Fees Payment” and “Class Counsel Litigation Expenses Payment” mean the amounts allocated to Class Counsel for reimbursement of reasonable attorneys’ fees and expenses, respectively, incurred to prosecute the Action.
- 1.8 “Class Data” means Class Member identifying information in Techcon’s possession including the Class Member’s name, last-known mailing address, Social Security number, and number of Class Pay Periods and PAGA Pay Periods.
- 1.9 “Class Member” or “Settlement Class Member” means a member of the Class, as either a Participating Class Member or Non-Participating Class Member (including a Non-Participating Class Member who qualifies as an Aggrieved Employee).
- 1.10 “Class Member Address Search” means the Administrator’s investigation and search for current Class Member mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Class Members.
- 1.11 “Class Notice” means the COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL, to be mailed to

Class Members in English with a Spanish translation in the form, without material variation, attached as Exhibit A and incorporated by reference into this Agreement.

- 1.12 “Class Pay Period” means any Pay Period during which a Class Member worked for Techcon for at least one day, during the Class Period.
- 1.13 “Class Period” means the period from August 27, 2017 to the date of Preliminary Approval.
- 1.14 “Class Representative” means the named Plaintiff in the operative complaint in the Action seeking Court approval to serve as a Class Representative.
- 1.15 “Class Representative Service Payment” means the payment to the Class Representative for initiating the Action and providing services in support of the Action.
- 1.16 “Court” means the Superior Court of California, County of Contra Costa.
- 1.17 “Defense Counsel” means Freeman Mathis & Gary, LLP.
- 1.18 “Final Approval” means the Court’s order granting final approval of the Settlement.
- 1.19 “Final Approval Hearing” means the Court’s hearing on the Motion for Final Approval of the Settlement.
- 1.20 “Final Judgment” means the Judgment Entered by the Court upon Granting Final Approval of the Settlement.
- 1.21 “Techcon” means named Defendant Monument Construction, Inc. dba Techcon Construction.
- 1.22 “Gross Settlement Amount” means \$1,000,000 which is the total amount Techcon agrees to pay under the Settlement except as provided in Paragraph 9 below. The Gross Settlement Amount will be used to pay Individual Class Payments, Individual PAGA Payments, the LWDA PAGA Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, Class Representative Service Payment and the Administration Expenses Payment.
- 1.23 “Individual Class Payment” means the Participating Class Member’s pro rata share of the Net Settlement Amount calculated according to the number of Class Pay Periods worked during the Class Period.
- 1.24 “Individual PAGA Payment” means the Aggrieved Employee’s pro rata share of 25% of the PAGA Penalties calculated according to the number of Pay Periods worked during the PAGA Period.
- 1.25 “Judgment” means the judgment entered by the Court based upon the Final Approval.
- 1.26 “LWDA” means the California Labor and Workforce Development Agency, the agency entitled, under Labor Code section 2699, subd. (i).
- 1.27 “LWDA PAGA Payment” means the 75% of the PAGA Penalties paid to the LWDA under Labor Code section 2699, subd. (i).

- 1.28 “Net Settlement Amount” means the Gross Settlement Amount, less the following payments in the amounts approved by the Court: Individual PAGA Payments, the LWDA PAGA Payment, Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be paid to Participating Class Members as Individual Class Payments.
- 1.29 “Non-Participating Class Member” means any Class Member who opts out of the Settlement by sending the Administrator a valid and timely Request for Exclusion.
- 1.30 “PAGA Pay Period” means any Pay Period during which an Aggrieved Employee worked for Techcon for at least one day during the PAGA Period.
- 1.31 “PAGA Period” means the period from August 27, 2020 to the date of Preliminary Approval.
- 1.32 “PAGA” means the Private Attorneys General Act (Labor Code §§ 2698, et seq.).
- 1.33 “PAGA Notice” means Plaintiff’s December 12, 2023 letter to Techcon and the LWDA providing notice pursuant to Labor Code section 2699.3, subd.(a).
- 1.34 “PAGA Penalties” means the total amount of PAGA civil penalties to be paid from the Gross Settlement Amount, allocated 25% to the Aggrieved Employees (\$18,750) and the 75% to LWDA (\$56,250) in settlement of PAGA claims.
- 1.35 “Participating Class Member” means a Class Member who does not submit a valid and timely Request for Exclusion from the Settlement.
- 1.36 “Plaintiff” means Jose Beltran, the named plaintiff in the Action.
- 1.37 “Preliminary Approval” means the Court’s Order Granting Preliminary Approval of the Settlement.
- 1.38 “Preliminary Approval Order” means the proposed Order Granting Preliminary Approval and Approval of PAGA Settlement.
- 1.39 “Released Class Claims” means the claims being released as described in Paragraph 5.2 below.
- 1.40 “Released PAGA Claims” means the claims being released as described in Paragraph 5.3 below.
- 1.41 “Released Parties” means: Techcon and any and all of its officers, owners, directors, shareholders, members, partners, principals, agents, employees, insurers, accountants, attorneys, spouses, heirs, subsidiaries, parents, successors, and predecessors.
- 1.42 “Request for Exclusion” means a Class Member’s submission of a written request to be excluded from the Class Settlement signed by the Class Member.
- 1.43 “Response Deadline” means 60 days after the Administrator mails the Notice to Class Members and Aggrieved Employees, and shall be the last date on which Class Members may: (a) fax, email, or mail Requests for Exclusion from the Settlement, or (b) fax, email, or mail his or her

Objection to the Settlement. Class Members to whom Notice Packets are resent after having been returned undeliverable to the Administrator shall have an additional 14 calendar days beyond the Response Deadline has expired.

1.44 “Settlement” means the disposition of the Action effected by this Agreement and the Judgment.

2. RECITALS

- 2.1 On August 27, 2021, Plaintiff commenced this Action by filing a Complaint alleging causes of action against Techcon for (1) Unpaid Overtime; (2) Unpaid Meal Period Premiums; (3) Unpaid Rest Period Premiums; (4) Unpaid Minimum Wages; (5) Final Wages Not Timely Paid; (6) Wages Not Timely Paid During Employment; (7) Non-Compliant Wage Statements; (8) Failure to Keep Requisite Payroll Records; (9) Failure to Reimburse Business Expenses; and (10) Unfair Business Practices. On March 5, 2024, for the purposes of the settlement reached as outlined by this Agreement, Plaintiff filed a First Amended Complaint alleging a cause of action against Techcon for violation of Private Attorneys General Act. The First Amended Complaint is the operative complaint in the Action (the “Operative Complaint”).
- 2.2 Techcon denies the allegations in the Operative Complaint, denies any failure to comply with the laws identified in the Operative Complaint and denies any and all liability for the causes of action alleged.
- 2.3 Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written notice to Techcon and the LWDA by sending the PAGA Notice.
- 2.4 On October 30, 2023, the Parties participated in an all-day mediation presided over by Marc Feder which led to this Agreement to settle the Action.
- 2.5 Prior to mediation, Plaintiff obtained, through informal discovery, a 20% sampling of time and payroll data for the putative class, policies, personnel files, and figures and information regarding the class size and composition. Plaintiff’s investigation was sufficient to satisfy the criteria for court approval set forth in *Dunk v. Foot Locker Retail, Inc.* (1996) 48 Cal.App.4th 1794, 1801 and *Kullar v. Foot Locker Retail, Inc.* (2008) 168 Cal.App.4th 116, 129-130 (“*Dunk/Kullar*”).
- 2.6 The Court has not granted class certification because the Parties engaged in mediation before any class certification briefing.
- 2.7 The Parties, Class Counsel and Defense Counsel represent that they are not aware of any other pending matter or action asserting claims that will be extinguished or affected by the Settlement.

3. MONETARY TERMS.

- 3.1 Gross Settlement Amount. Except as otherwise provided by Paragraph 9 below, Techcon promises to pay \$1,000,000 and no more as the Gross Settlement Amount and to separately pay any and all employer payroll taxes owed on the Wage Portions of the Individual Class Payments. Techcon has no obligation to pay the Gross Settlement Amount (or any payroll taxes) prior to the deadline stated in Paragraph 4.3 of this Agreement. The Administrator will disburse the

entire Gross Settlement Amount without asking or requiring Participating Class Members or Aggrieved Employees to submit any claim as a condition of payment. None of the Gross Settlement Amount will revert to Techcon.

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

3.2.1 To Plaintiff: Class Representative Service Payment to the Class Representative of not more than \$10,000 (in addition to any Individual Class Payment and any Individual PAGA Payment the Class Representative is entitled to receive as a Participating Class Member). Techcon will not oppose Plaintiff's request for a Class Representative Service Payment that does not exceed this amount. As part of the motion for Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment, Plaintiff will seek Court approval for any Class Representative Service Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Representative Service Payment less than the amount requested, the Administrator will retain the remainder in the Net Settlement Amount. The Administrator will pay the Class Representative Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and liability for employee taxes owed on the Class Representative Service Payment.

3.2.2 To Class Counsel: A Class Counsel Fees Payment of not more than 33.33% of the Gross Settlement Amount, which is currently estimated to be \$333,333.33 and a Class Counsel Litigation Expenses Payment of not more than \$30,000. Techcon agrees that it will not oppose requests for these payments provided that they do not exceed these amounts. Plaintiff and/or Class Counsel will file a motion for Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment no later than 16 court days prior to the Final Approval Hearing. If the Court approves a Class Counsel Fees Payment and/or a Class Counsel Litigation Expenses Payment less than the amounts requested, the Administrator will allocate the remainder to the Net Settlement Amount. Released Parties shall have no liability to Class Counsel or any other Plaintiff's Counsel arising from any claim to any portion any Class Counsel Fee Payment and/or Class Counsel Litigation Expenses Payment. The Administrator will pay the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment using one or more IRS 1099 Forms. Class Counsel assumes full responsibility and liability for taxes owed on the Class Counsel Fees Payment and the Class Counsel Litigation Expenses Payment and holds Techcon harmless, and indemnifies Techcon, from any dispute or controversy regarding any division or sharing of any of these Payments.

3.2.3 To the Administrator: An Administration Expenses Payment not to exceed \$9,500 except for a showing of good cause and as approved by the Court.

To the extent the Administration Expenses are less or the Court approves payment less than \$9,500, the Administrator will retain the remainder in the Net Settlement Amount.

3.2.4 To Each Participating Class Member: An Individual Class Payment calculated by (a) dividing the Net Settlement Amount by the total number of Pay Periods worked by all Participating Class Members during the Class Period and (b) multiplying the result by each Participating Class Member's Class Pay Periods.

3.2.4.1 Tax Allocation of Individual Class Payments. 10% of each Participating Class Member's Individual Class Payment will be allocated to settlement of wage claims (the "Wage Portion"). The Wage Portions are subject to tax withholding and will be reported on an IRS W-2 Form. 60% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for penalties and 30% of each Participating Class Member's Individual Class Payment will be allocated to settlement of claims for interest (the "Non-Wage Portions"). The Non-Wage Portions are not subject to wage withholdings and will be reported on IRS 1099 Forms. Participating Class Members assume full responsibility and liability for any employee taxes owed on their Individual Class Payment.

3.2.4.2 Effect of Non-Participating Class Members on Calculation of Individual Class Payments. Non-Participating Class Members will not receive any Individual Class Payments. The Administrator will retain amounts equal to their Individual Class Payments in the Net Settlement Amount for distribution to Participating Class Members on a pro rata basis.

3.2.5 To the LWDA and Aggrieved Employees: PAGA Penalties in the amount of \$75,000 to be paid from the Gross Settlement Amount, with 75% (\$56,250) allocated to the LWDA PAGA Payment and 25% (\$18,750) allocated to the Individual PAGA Payments.

3.2.5.1 The Administrator will calculate each Individual PAGA Payment by (a) dividing the amount of the Aggrieved Employees' 25% share of PAGA Penalties (\$18,750) by the total number of PAGA Pay Periods worked by all Aggrieved Employees during the PAGA Period and (b) multiplying the result by each Aggrieved Employee's PAGA Pay Periods. Aggrieved Employees assume full responsibility and liability for any taxes owed on their Individual PAGA Payment.

3.2.5.2 If the Court approves PAGA Penalties of less than the amount requested, the Administrator will allocate the remainder to the Net Settlement Amount. The Administrator will report the Individual PAGA Payments on IRS 1099 Forms.

4. SETTLEMENT FUNDING AND PAYMENTS.

- 4.1 Class Pay Periods. Based on a review of its records to date, Techcon estimates there are approximately 36,047 Class Pay Periods.
- 4.2 Class Data. Not later than 7 days after the Court grants Preliminary Approval of the Settlement, Techcon will simultaneously deliver the Class Data to the Administrator, in the form of a Microsoft Excel spreadsheet. To protect Class Members' privacy rights, the Administrator must maintain the Class Data in confidence, use the Class Data only for purposes of this Settlement and for no other purpose, and restrict access to the Class Data to Administrator employees who need access to the Class Data to effect and perform under this Agreement. Techcon has a continuing duty to immediately notify Class Counsel if it discovers that the Class Data omitted class member identifying information and to provide corrected or updated Class Data as soon as reasonably feasible. Without any extension of the deadline by which Techcon must send the Class Data to the Administrator, the Parties and their counsel will expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related to missing or omitted Class Data.
- 4.3 Funding of Gross Settlement Amount. Techcon shall fund the Gross Settlement Amount in two equal installment payments of \$500,000 each by transmitting the funds to the Administrator. Techcon shall pay the first installment of \$500,000 not later than 14 calendar days after Plaintiff provides written notice to Defense Counsel of the Court's Final Approval Order, and shall pay the second installment of \$500,000, as well as the amounts necessary to fully pay Techcon's share of payroll taxes, not later than 180 days after the first payment due date.
- 4.4 Payments from the Gross Settlement Amount. Within 14 days after Techcon funds the Gross Settlement Amount, the Administrator will mail checks for all Individual Class Payments, all Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment, the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment. Disbursement of the Class Counsel Fees Payment, the Class Counsel Litigation Expenses Payment, and the Class Representative Service Payment shall not precede disbursement of Individual Class Payments and Individual PAGA Payments.
 - 4.4.1 The Administrator will issue checks for the Individual Class Payments and/or Individual PAGA Payments and send them to the Class Members via First Class U.S. Mail, postage prepaid. The face of each check shall prominently state the date (not less than 180 days after the date of mailing) when the check will be voided. The Administrator will cancel all checks not cashed by the void date. The Administrator will send checks for Individual Settlement Payments to all Participating Class Members (including those for whom Class Notice was returned undelivered). The Administrator will send checks for Individual PAGA Payments to all Aggrieved Employees including Non-Participating Class Members who qualify as Aggrieved Employees (including those for whom Class Notice was returned undelivered). The Administrator may send Participating Class Members a single check combining the Individual Class Payment and the Individual

PAGA Payment. Before mailing any checks, the Settlement Administrator must update the recipients' mailing addresses using the National Change of Address Database.

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

4.4.3 For any Class Member whose Individual Class Payment check or Individual PAGA Payment check is uncashed and cancelled after the void date, the Administrator shall transmit the funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Class Member thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, subd. (b).

4.4.4 The payment of Individual Class Payments and Individual PAGA Payments shall not obligate Techcon to confer any additional benefits or make any additional payments to Class Members (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. RELEASES OF CLAIMS. Effective on the date when Techcon fully funds the entire Gross Settlement Amount and funds all employer payroll taxes owed on the Wage Portion of the Individual Class Payments, Plaintiff, Class Members, and Class Counsel will release claims against all Released Parties as follows:

5.1 Plaintiff's Release. Plaintiff and his respective former and present spouses, representatives, agents, attorneys, heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred during the Class Period, including, but not limited to: (a) all claims that were, or reasonably could have been, alleged, based on the facts contained, in the Operative Complaint and (b) all PAGA claims that were, or reasonably could have been, alleged based on facts contained in the Operative Complaint, Plaintiff's PAGA Notice, or ascertained during the Action and released under paragraph 5.2, below ("Plaintiff's Release"). Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, workers' compensation benefits that arose at any time, or based on occurrences outside the Class Period. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

5.1.1 Plaintiff's Waiver of Rights Under California Civil Code Section 1542. For

purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights, and benefits, if any, of section 1542 of the California Civil Code, which reads:

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

5.2 Release by Participating Class Members Who Are Not Aggrieved Employees: All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint and ascertained in the course of the Action. Except as set forth in paragraph 5.3 of this Agreement, Participating Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

5.3 Release by Aggrieved Employees: All Class Members who are Aggrieved Employees, regardless of whether they are Participating Class Members or Non-Participating Class Members, are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint, the PAGA Notice, and ascertained in the course of the Action.

6. MOTION FOR PRELIMINARY APPROVAL. The Parties agree to jointly prepare and file a motion for preliminary approval ("Motion for Preliminary Approval") that complies with the Court's current checklist for Preliminary Approvals.

6.1 Techcon's Declaration in Support of Preliminary Approval. Within 14 days of the full execution of this Agreement, Techcon will prepare and deliver to Class Counsel signed declarations from Techcon and Defense Counsel disclosing all facts relevant to any actual or potential conflicts of interest with the Administrator. In their Declarations, Defense Counsel and Techcon shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

6.2 Plaintiff's Responsibilities. Plaintiff will prepare and deliver to Defense Counsel all documents necessary for obtaining Preliminary Approval, including: (i) a draft of the notice, and memorandum in support, of the Motion for Preliminary Approval that includes an analysis of the Settlement under *Dunk/Kullar* and a request for approval of the PAGA Settlement under Labor Code Section 2699, subd. (f)(2)); (ii) a draft proposed Order Granting Preliminary Approval and Approval of PAGA Settlement; (iii) a draft proposed Class Notice; (iv) a signed declaration from the Administrator attaching its "not to exceed" bid for administering the Settlement and attesting to its willingness to serve; competency;

operative procedures for protecting the security of Class Data; amounts of insurance coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential conflicts of interest with Class Members; and the nature and extent of any financial relationship with Plaintiff, Class Counsel or Defense Counsel; (v) a signed declaration from Plaintiff confirming willingness and competency to serve and disclosing all facts relevant to any actual or potential conflicts of interest with Class Members and/or the Administrator; (vi) a signed declaration from each Class Counsel firm attesting to its competency to represent the Class Members; its timely transmission to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (1)(1)), this Agreement (Labor Code section 2699, subd. (1)(2)); and (vii) all facts relevant to any actual or potential conflict of interest with Class Members and the Administrator. In their Declarations, Plaintiff and Class Counsel shall aver that they are not aware of any other pending matter or action asserting claims that will be extinguished or adversely affected by the Settlement.

- 6.3 Responsibilities of Counsel. Class Counsel and Defense Counsel are jointly responsible for expeditiously finalizing and filing the Motion for Preliminary Approval no later than 30 days after the full execution of this Agreement; obtaining a prompt hearing date for the Motion for Preliminary Approval; and for appearing in Court to advocate in favor of the Motion for Preliminary Approval. Class Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.
- 6.4 Duty to Cooperate. If the Parties disagree on any aspect of the proposed Motion for Preliminary Approval and/or the supporting declarations and documents, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to resolve the disagreement. If the Court does not grant Preliminary Approval or conditions Preliminary Approval on any material change to this Agreement, Class Counsel and Defense Counsel will expeditiously work together on behalf of the Parties by meeting in person or by telephone, and in good faith, to modify the Agreement and otherwise satisfy the Court's concerns.

7. SETTLEMENT ADMINISTRATION.

- 7.1 Selection of Administrator. The Parties have jointly selected Apex Class Action Administration to serve as the Administrator and verified that, as a condition of appointment, Apex Class Action Administration agrees to be bound by this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in exchange for payment of Administration Expenses. The Parties and their Counsel represent that they have no interest or relationship, financial or otherwise, with the Administrator other than a professional relationship arising out of prior experiences administering settlements.
- 7.2 Employer Identification Number. The Administrator shall have and use its own Employer Identification Number for purposes of calculating payroll tax withholdings and providing reports to state and federal tax authorities.
- 7.3 Qualified Settlement Fund. The Administrator shall establish a settlement fund that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury Regulation

section 468B-1.

7.4 Notice to Class Members.

- 7.4.1 No later than three (3) business days after receipt of the Class Data, the Administrator shall notify Class Counsel that the list has been received and state the number of Class Members, PAGA Members, and Pay Periods in the Class Data.
- 7.4.2 Using best efforts to perform as soon as possible, and in no event later than 10 days after receiving the Class Data, the Administrator will send to all Class Members identified in the Class Data, via first-class United States Postal Service (“USPS”) mail, the Class Notice with Spanish translation, substantially in the form attached to this Agreement as Exhibit A. The first page of the Class Notice shall prominently estimate the dollar amounts of any Individual Class Payment and any Individual PAGA Payment payable to the Class Member, and the number of Class Pay Periods and PAGA Pay Periods (if applicable) used to calculate these amounts. Before mailing Class Notices, the Administrator shall update Class Member addresses using the National Change of Address database.
- 7.4.3 Not later than 3 business days after the Administrator’s receipt of any Class Notice returned by the USPS as undelivered, the Administrator shall re-mail the Class Notice using any forwarding address provided by the USPS. If the USPS does not provide a forwarding address, the Administrator shall conduct a Class Member Address Search, and re-mail the Class Notice to the most current address obtained. The Administrator has no obligation to make further attempts to locate or send Class Notice to Class Members whose Class Notice is returned by the USPS a second time.
- 7.4.4 The deadlines for Class Members’ written objections, Challenges to Class Pay Periods and/or PAGA Pay Periods, and Requests for Exclusion will be extended an additional 14 days beyond the 60 days otherwise provided in the Class Notice for all Class Members whose notice is re-mailed. The Administrator will inform the Class Member of the extended deadline with the re-mailed Class Notice.
- 7.4.5 If the Administrator, Techcon or Class Counsel is contacted by or otherwise discovers any persons who believes they should have been included in the Class Data and should have received Class Notice, the Parties will expeditiously meet and confer in person or by telephone, and in good faith, in an effort to agree on whether to include them as Class Members. If the Parties agree, such persons will be Class Members entitled to the same rights as other Class Members, and the Administrator will send, via email or overnight delivery, a Class Notice requiring them to exercise options under this Agreement not later than 14 days after receipt of Class Notice, or the deadline dates in the Class Notice, which ever are later.

7.5 Requests for Exclusion (Opt-Outs).

- 7.5.1 Class Members who wish to exclude themselves (opt-out of) the Class Settlement must send the Administrator, by fax, email, or mail, a signed written Request for Exclusion not later than 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed). A Request for Exclusion is a letter from a Class Member or his/her representative that reasonably communicates the Class Member's election to be excluded from the Settlement and includes the Class Member's name, address and email address or telephone number. To be valid, a Request for Exclusion must be timely faxed, emailed, or postmarked by the Response Deadline.
- 7.5.2 The Administrator may not reject a Request for Exclusion as invalid because it fails to contain all the information specified in the Class Notice. The Administrator shall accept any Request for Exclusion as valid if the Administrator can reasonably ascertain the identity of the person as a Class Member and the Class Member's desire to be excluded. The Administrator's determination shall be final and not appealable or otherwise susceptible to challenge. If the Administrator has reason to question the authenticity of a Request for Exclusion, the Administrator may demand additional proof of the Class Member's identity. The Administrator's determination of authenticity shall be final and not appealable or otherwise susceptible to challenge.
- 7.5.3 Every Class Member who does not submit a timely and valid Request for Exclusion is deemed to be a Participating Class Member under this Agreement, entitled to all benefits and bound by all terms and conditions of the Settlement, including the Participating Class Members' Releases under Paragraphs 5.2 and 5.3 of this Agreement, regardless whether the Participating Class Member actually receives the Class Notice or objects to the Settlement.
- 7.5.4 Every Class Member who submits a valid and timely Request for Exclusion is a Non-Participating Class Member and shall not receive an Individual Class Payment or have the right to object to the class action components of the Settlement. Because future PAGA claims are subject to claim preclusion upon entry of the Judgment, Non-Participating Class Members who are Aggrieved Employees are deemed to release the claims identified in Paragraph 5.3 of this Agreement and are eligible for an Individual PAGA Payment.
- 7.6 Challenges to Calculation of Pay Periods. Each Class Member shall have 60 days after the Administrator mails the Class Notice (plus an additional 14 days for Class Members whose Class Notice is re-mailed) to challenge the number of Class Pay Periods and PAGA Pay Periods (if any) allocated to the Class Member in the Class Notice. The Class Member may challenge the allocation by communicating with the Administrator via fax, email or mail. The Administrator must encourage the challenging Class Member to submit supporting documentation. In the absence of any contrary documentation, the Administrator is entitled to presume that the Class Pay Periods contained in the Class Notice are correct so long as they are consistent with the Class Data. The Administrator's determination of each Class Member's allocation of Class Pay Periods and/or PAGA Pay Periods shall be final and not appealable or otherwise susceptible to challenge. The Administrator shall promptly provide copies of all challenges to calculation of Class Pay Periods and/or PAGA Pay Periods to

Defense Counsel and Class Counsel and the Administrator's determination of the challenges.

7.7 Objections to Settlement.

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

7.7.2 Participating Class Members may send written objections to the Administrator, by fax, email, or mail. In the alternative, Participating Class Members may appear in Court (or hire an attorney to appear in Court) to present verbal objections at the Final Approval Hearing. A Participating Class Member who elects to send a written objection to the Administrator must do so not later than 60 days after the Administrator's mailing of the Class Notice (plus an additional 14 days for Class Members whose Class Notice was re-mailed).

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

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

7.8.1 Website, Email Address and Toll-Free Number. The Administrator will establish and maintain and use an internet website to post information of interest to Class Members including the date, time and location for the Final Approval Hearing and copies of the Settlement Agreement, Motion for Preliminary Approval, the Preliminary Approval, the Class Notice, the Motion for Final Approval, the Motion for Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment, and Class Representative Service Payment, the Final Approval and the Judgment. The Administrator will also maintain and monitor an email address and a toll-free telephone number to receive Class Member calls, faxes and emails.

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

7.8.3 Weekly Reports. The Administrator must, on a weekly basis, provide written reports to Class Counsel and Defense Counsel that, among other things, tally the number of: Class Notices mailed or re-mailed, Class Notices returned undelivered, Requests for Exclusion (whether valid or invalid) received, objections received, challenges to

Class Pay Periods and/or PAGA Pay Periods received and/or resolved, and checks mailed for Individual Class Payments and Individual PAGA Payments (“Weekly Report”). The Weekly Reports must provide the Administrator’s assessment of the validity of Requests for Exclusion and attach copies of all Requests for Exclusion and objections received.

7.8.4 Class Pay Period and/or PAGA Pay Period Challenges. The Administrator has the authority to address and make final decisions consistent with the terms of this Agreement on all Class Member challenges over the calculation of Class Pay Periods and/or PAGA Pay Periods. The Administrator’s decision shall be final and not appealable or otherwise susceptible to challenge.

7.8.5 Administrator’s Declaration. Not later than 14 days before the date by which Plaintiff is required to file the Motion for Final Approval of the Settlement, the Administrator will provide to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its due diligence and compliance with all of its obligations under this Agreement, including, but not limited to, its mailing of Class Notice, the Class Notices returned as undelivered, the re-mailing of Class Notices, attempts to locate Class Members, the total number of Requests for Exclusion from Settlement it received (both valid or invalid), the number of written objections and attach the Exclusion List. The Administrator will supplement its declaration as needed or requested by the Parties and/or the Court. Class Counsel is responsible for filing the Administrator’s declaration(s) in Court.

7.8.6 Final Report by Settlement Administrator. Within 10 days after the Administrator disburses all funds in the Gross Settlement Amount, the Administrator will provide Class Counsel and Defense Counsel with a final report detailing its disbursements by employee identification number only of all payments made under this Agreement. At least 15 days before any deadline set by the Court, the Administrator will prepare, and submit to Class Counsel and Defense Counsel, a signed declaration suitable for filing in Court attesting to its disbursement of all payments required under this Agreement. Class Counsel is responsible for filing the Administrator’s declaration in Court.

8. CLASS SIZE ESTIMATES and ESCALATOR CLAUSE. Based on its records, Techcon estimates that, as of the date of this Settlement Agreement, there are approximately 36,047 Pay Periods during the Class Period. If the actual number of Pay Periods in the Class Period exceeds 36,047 by more than 15%, then either, at the option of Techcon: (1) the Gross Settlement Amount will be increased proportionally. In other words, if the excess is 16%, the Gross Settlement Amount will increase by 1%, if the excess is 17%, the Gross Settlement Amount will increase by 2%; or (2) the Class Period will end on the date the actual number of Pay Periods in the Class Period exceeds 36,047 by 15% (i.e., the number of Class Pay Periods increases above 41,815).

9. TECHCON’S RIGHT TO WITHDRAW. If the number of valid Requests for Exclusion identified in the Exclusion List exceeds 10% of the total of all Class Members, Techcon may, but is not obligated, elect to withdraw from the Settlement. The Parties agree that, if Techcon withdraws, the Settlement shall be void ab initio, have no force or effect whatsoever, and that

neither Party will have any further obligation to perform under this Agreement; provided, however, Techcon will remain responsible for paying all Settlement Administration Expenses incurred to that point. Techcon must notify Class Counsel and the Court of its election to withdraw not later than seven days after the Administrator sends the final Exclusion List to Defense Counsel; late elections will have no effect.

10. MOTION FOR FINAL APPROVAL. Not later than 16 court days before the calendared Final Approval Hearing, Plaintiff will file in Court, a motion for final approval of the Settlement that includes a request for approval of the PAGA settlement under Labor Code section 2699, subd. (1), a Proposed Final Approval Order and a proposed Judgment (collectively “Motion for Final Approval”). Plaintiff shall provide drafts of these documents to Defense Counsel not later than seven days prior to filing the Motion for Final Approval. Class Counsel and Defense Counsel will expeditiously meet and confer in person or by telephone, and in good faith, to resolve any disagreements concerning the Motion for Final Approval.

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

10.2 Duty to Cooperate. If the Court does not grant Final Approval or conditions Final Approval on any material change to the Settlement (including, but not limited to, the scope of release to be granted by Class Members), the Parties will expeditiously work together in good faith to address the Court’s concerns by revising the Agreement as necessary to obtain Final Approval. The Court’s decision to award less than the amounts requested for the Class Representative Service Payment, Class Counsel Fees Payment, Class Counsel Litigation Expenses Payment and/or Administration Expenses Payment shall not constitute a material modification to the Agreement within the meaning of this paragraph.

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

10.4 Waiver of Right to Appeal. Provided the Judgment is consistent with the terms and conditions of this Agreement, specifically including the Class Counsel Fees Payment and Class Counsel Litigation Expenses Payment set forth in this Settlement, the Parties, their respective counsel, and all Participating Class Members who did not object to the Settlement as provided in this Agreement, waive all rights to appeal from the Judgment, including all rights to post-judgment and appellate proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such motions, writs or appeals. If an objector appeals the Judgment, the Parties’ obligations to perform under this Agreement will be suspended until such time as the appeal is finally resolved and the Judgment becomes final, except as to matters that do

not affect the amount of the Net Settlement Amount.

- 10.5 Appellate Court Orders to Vacate, Reverse, or Materially Modify Judgment. If the reviewing Court vacates, reverses, or modifies the Judgment in a manner that requires a material modification of this Agreement (including, but not limited to, the scope of release to be granted by Class Members), this Agreement shall be null and void. The Parties shall nevertheless expeditiously work together in good faith to address the appellate court's concerns and to obtain Final Approval and entry of Judgment, sharing, on a 50-50 basis, any additional Administration Expenses reasonably incurred after remittitur. An appellate decision to vacate, reverse, or modify the Court's award of the Class Representative Service Payment or any payments to Class Counsel shall not constitute a material modification of the Judgment within the meaning of this paragraph, as long as the Gross Settlement Amount remains unchanged.

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

12. ADDITIONAL PROVISIONS.

- 12.1 No Admission of Liability, Class Certification or Representative Manageability for Other Purposes. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or should be construed as an admission by Techcon that any of the allegations in the Operative Complaint have merit or that Techcon has any liability for any claims asserted; nor should it be intended or construed as an admission by Plaintiff that Techcon's defenses in the Action have merit. The Parties agree that class certification and representative treatment is for purposes of this Settlement only. If, for any reason the Court does not grant Preliminary Approval, Final Approval or enter Judgment, Techcon reserves the right to contest certification of any class for any reasons, and Techcon reserves all available defenses to the claims in the Action, and Plaintiff reserves the right to move for class certification on any grounds available and to contest Techcon's defenses. The Settlement, this Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be admissible in connection with, any litigation (except for proceedings to enforce or effectuate the Settlement and this Agreement).
- 12.2 Confidentiality Prior to Preliminary Approval. Plaintiff, Class Counsel, Techcon and Defense Counsel separately agree that, until the Motion for Preliminary Approval of Settlement is filed, they and each of them will not disclose, disseminate and/or publicize, or cause or permit another person to disclose, disseminate or publicize, any of the terms of the Agreement directly or indirectly, specifically or generally, to any person, corporation, association, government agency, or other entity except: (1) to the Parties' attorneys, accountants, or spouses, all of whom will be instructed to keep this Agreement confidential; (2) counsel in a related matter; (3) to the extent necessary to report income to appropriate taxing authorities; (4) in response to a court order or subpoena; or (5) in response to an inquiry or subpoena issued by a state or federal government agency. Each Party agrees to immediately notify each other Party of any

judicial or agency order, inquiry, or subpoena seeking such information. Plaintiff, Class Counsel, Techcon and Defense Counsel separately agree not to, directly or indirectly, initiate any conversation or other communication, before the filing of the Motion for Preliminary Approval, with any third party regarding this Agreement or the matters giving rise to this Agreement except to respond only that “the matter was resolved,” or words to that effect. This paragraph does not restrict Class Counsel’s communications with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members.

- 12.3 No Solicitation. The Parties separately agree that they and their respective counsel and employees will not solicit any Class Member to opt out of or object to the Settlement, or appeal from the Judgment. Nothing in this paragraph shall be construed to restrict Class Counsel’s ability to communicate with Class Members in accordance with Class Counsel’s ethical obligations owed to Class Members.
- 12.4 Integrated Agreement. Upon execution by all Parties and their counsel, this Agreement together with its attached exhibits shall constitute the entire agreement between the Parties relating to the Settlement, superseding any and all oral representations, warranties, covenants, or inducements made to or by any Party.
- 12.5 Attorney Authorization. Class Counsel and Defense Counsel separately warrant and represent that they are authorized by Plaintiff and Techcon, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents reasonably required to effectuate the terms of this Agreement including any amendments to this Agreement.
- 12.6 Cooperation. The Parties and their counsel will cooperate with each other and use their best efforts, in good faith, to implement the Settlement by, among other things, modifying the Settlement Agreement, submitting supplemental evidence and supplementing points and authorities as requested by the Court. In the event the Parties are unable to agree upon the form or content of any document necessary to implement the Settlement, or on any modification of the Agreement that may become necessary to implement the Settlement, the Parties will seek the assistance of a mediator and/or the Court for resolution.
- 12.7 No Prior Assignments. The Parties separately represent and warrant that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity and portion of any liability, claim, demand, action, cause of action, or right released and discharged by the Party in this Settlement.
- 12.8 No Tax Advice. Neither Plaintiff, Class Counsel, Techcon nor Defense Counsel are providing any advice regarding taxes or taxability, nor shall anything in this Settlement be relied upon as such within the meaning of United States Treasury Department Circular 230 (31 CFR Part 10, as amended) or otherwise.

- 12.9 Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their representatives, and approved by the Court.
- 12.10 Agreement Binding on Successors. This Agreement will be binding upon, and inure to the benefit of, the successors of each of the Parties.
- 12.11 Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the internal laws of the state of California, without regard to conflict of law principles.
- 12.12 Cooperation in Drafting. The Parties have cooperated in the drafting and preparation of this Agreement. This Agreement will not be construed against any Party on the basis that the Party was the drafter or participated in the drafting.
- 12.13 Confidentiality. To the extent permitted by law, all agreements made, and orders entered during this Action and in this Agreement relating to the confidentiality of information shall survive the execution of this Agreement.
- 12.14 Use and Return of Class Data. Information provided to Class Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the Class Data provided to Class Counsel by Techcon in connection with the mediation, other settlement negotiations, or in connection with the Settlement, may be used only with respect to this Settlement, and no other purpose, and may not be used in any way that violates any existing contractual agreement, statute, or rule of court. Not later than 90 days after the date when the Court discharges the Administrator's obligation to provide a Declaration confirming the final pay out of all Settlement funds, Plaintiff shall destroy, all paper and electronic versions of Class Data received from Techcon unless, prior to the Court's discharge of the Administrator's obligation, Techcon makes a written request to Class Counsel for the return, rather than the destructions, of Class Data.
- 12.15 Headings. The descriptive heading of any section or paragraph of this Agreement is inserted for convenience of reference only and does not constitute a part of this Agreement.
- 12.16 Calendar Days. Unless otherwise noted, all reference to "days" in this Agreement shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the first business day thereafter.
- 12.17 Notice. All notices, demands or other communications between the Parties in connection with this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, or the day sent by email or messenger, addressed as follows:

To Plaintiff:
Cody Payne

cody@paynellp.com
Kim Nguyen
kim@paynellp.com
PAYNE NGUYEN, LLP
100 Wilshire Boulevard, Suite 700
Santa Monica, CA 90401

To Techcon:

Julie A. Marquis
jmarquis@fmglaw.com
Dane M. Willis
Dane.willis@fmglaw.com
FREEMAN MATHIS & GARY, LLP
1010 B Street, Suite 400
San Rafael, CA 94901

- 12.18 Execution in Counterparts. This Agreement may be executed in one or more counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this Agreement shall be accepted as an original. All executed counterparts and each of them will be deemed to be one and the same instrument if counsel for the Parties will exchange between themselves signed counterparts. Any executed counterpart will be admissible in evidence to prove the existence and contents of this Agreement.
- 12.19 Stay of Litigation. The Parties agree that upon the execution of this Agreement the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the date to bring a case to trial under CCP section 583.310 for the entire period of this settlement process.
- 12.20 Conditional Addition and/or Dismissal of PAGA Claims: The Parties agree that the addition of the Private Attorneys General Act (PAGA) claim is a term of the settlement agreement reached at mediation. In the event the Settlement is not approved by the Court, or the settlement of the PAGA claims is deemed ineffective or void, Plaintiff shall voluntarily dismiss the PAGA claims from this action within 30 days upon receiving a written request from Techcon.

Dated: 03/15/24

By: JOSE BELTRAN
Plaintiff Jose Beltran

Dated: 03/15/24

By: _____
Defendant Monument Construction, Inc. dba
Techcon Construction

Name:

Title:

cody@paynellp.com
Kim Nguyen
kim@paynellp.com
PAYNE NGUYEN, LLP
100 Wilshire Boulevard, Suite 700
Santa Monica, CA 90401

To Techcon:

Julie A. Marquis
jmarquis@fmglaw.com
Dane M. Willis
Dane.willis@fmglaw.com
FREEMAN MATHIS & GARY, LLP
1010 B Street, Suite 400
San Rafael, CA 94901

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

By: _____
Plaintiff Jose Beltran

Dated: 4/30/2024

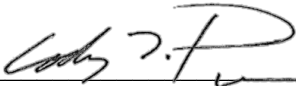
By:  _____
Defendant Monument Construction, Inc. dba
Techcon Construction

Name: Diane Swing


Title: Controller

AS TO FORM:

Dated: May 15, 2024

By: 
Cody Payne, Esq.
Kim Nguyen, Esq.
PAYNE NGUYEN, LLP
Counsel for Plaintiff

Dated: May 15, 2024

By: 
Julie A. Marquis, Esq.
Dane M. Willis, Esq.
FREEMAN MATHIS & GARY, LLP
Counsel for Defendant

COURT APPROVED NOTICE OF CLASS ACTION SETTLEMENT AND HEARING DATE FOR FINAL COURT APPROVAL

Beltran v. Monument Construction, Inc. dba Techcon Construction, Case No. MSC21-01751

The Superior Court for the State of California authorized this Notice. Read it carefully! It's not junk mail, spam, an advertisement, or solicitation by a lawyer. You are not being sued.

You may be eligible to receive money from an employee class action lawsuit (“Action”) against Monument Construction, Inc. dba Techcon Construction (“Techcon”) for alleged wage and hour violations. The Action was filed by a former Techcon employee Jose Beltran (“Plaintiff”) and seeks payment of (1) back wages and other relief for a class of current and former non-exempt employees (“Class Members”) who worked for Techcon during the Class Period (August 27, 2017 to the date of Preliminary Approval); and (2) penalties under the California Private Attorney General Act (“PAGA”) for all current and former non-exempt employees who worked for Techcon during the PAGA Period (December 12, 2022 to the date of Preliminary Approval) (“Aggrieved Employees”).

The proposed Settlement has two main parts: (1) a Class Settlement requiring Techcon to fund Individual Class Payments, and (2) a PAGA Settlement requiring Techcon to fund Individual PAGA Payments and pay penalties to the California Labor and Workforce Development Agency (“LWDA”).

Based on Techcon’s records, and the Parties’ current assumptions, **your Individual Class Payment is estimated to be \$_____ (less withholding) and your Individual PAGA Payment is estimated to be \$_____.** The actual amount you may receive likely will be different and will depend on a number of factors. (If no amount is stated for your Individual PAGA Payment, then according to Techcon’s records you are not eligible for an Individual PAGA Payment under the Settlement because you didn’t work during the PAGA Period.)

The above estimates are based on Techcon’s records showing that **you worked _____ pay periods** during the Class Period and **you worked _____ pay periods** during the PAGA Period. If you believe that you worked more pay periods during either period, you can submit a challenge by the deadline date. See Section 4 of this Notice.

The Court has already preliminarily approved the proposed Settlement and approved this Notice. The Court has not yet decided whether to grant final approval. Your legal rights are affected whether you act or not act. Read this Notice carefully. You will be deemed to have carefully read and understood it. At the Final Approval Hearing, the Court will decide whether to finally approve the Settlement and how much of the Settlement will be paid to Plaintiff and Plaintiff’s attorneys (“Class Counsel”). The Court will also decide whether to enter a judgment that requires Techcon to make payments under the Settlement and requires Class Members and Aggrieved Employees to give up their rights to assert certain claims against Techcon.

If you worked for Techcon during the Class Period and/or the PAGA Period, you have two basic options under the Settlement:

- (1) **Do Nothing.** You don’t have to do anything to participate in the proposed Settlement and be eligible for an Individual Class Payment and/or an Individual PAGA Payment. As a Participating Class Member, though, you will give up your right to assert Class Period wage claims and PAGA Period penalty claims against Techcon.
- (2) **Opt-Out of the Class Settlement.** You can exclude yourself from the Class Settlement (opt-out) by submitting the written Request for Exclusion or otherwise notifying the Administrator in writing. If you opt-out of the Settlement, you will not

receive an Individual Class Payment. You will, however, preserve your right to personally pursue Class Period wage claims against Techcon, and, if you are an Aggrieved Employee, you will remain eligible for an Individual PAGA Payment. You cannot opt-out of the PAGA portion of the proposed Settlement.

Techcon will not retaliate against you for any actions you take with respect to the proposed Settlement.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT

<p>You Don't Have to Do Anything to Participate in the Settlement</p>	<p>If you do nothing, you will be a Participating Class Member, eligible for an Individual Class Payment and an Individual PAGA Payment (if any). In exchange, you will give up your right to assert the wage claims against Techcon that are covered by this Settlement (Released Claims).</p>
<p>You Can Opt-out of the Class Settlement but not the PAGA Settlement</p> <p>The Opt-out Deadline is _____</p>	<p>If you don't want to fully participate in the proposed Settlement, you can opt-out of the Class Settlement by sending the Administrator a written Request for Exclusion. Once excluded, you will be a Non-Participating Class Member and no longer eligible for an Individual Class Payment. Non-Participating Class Members cannot object to any portion of the proposed Settlement. See Section 6 of this Notice.</p> <p>You cannot opt-out of the PAGA portion of the proposed Settlement. Techcon must pay Individual PAGA Payments to all Aggrieved Employees and the Aggrieved Employees must give up their rights to pursue Released Claims (defined below).</p>
<p>Participating Class Members Can Object to the Class Settlement but not the PAGA Settlement</p> <p>Written Objections Must be Submitted by _____</p>	<p>All Class Members who do not opt-out ("Participating Class Members") can object to any aspect of the proposed Settlement. The Court's decision whether to finally approve the Settlement will include a determination of how much will be paid to Class Counsel and Plaintiff who pursued the Action on behalf of the Class. You are not personally responsible for any payments to Class Counsel or Plaintiff, but every dollar paid to Class Counsel and Plaintiff reduces the overall amount paid to Participating Class Members. You can object to the amounts requested by Class Counsel or Plaintiff if you think they are unreasonable. See Section 7 of this Notice.</p>

<p>You Can Participate in the Final Approval Hearing</p>	<p>The Court’s Final Approval Hearing is scheduled to take place on _____. You don’t have to attend but you do have the right to appear (or hire an attorney to appear on your behalf at your own cost), in person, by telephone or by using the Court’s virtual appearance platform. Participating Class Members can verbally object to the Settlement at the Final Approval Hearing. See Section 8 of this Notice.</p>
<p>You Can Challenge the Calculation of Your Class Pay Periods and PAGA Pay Periods</p> <p>Written Challenges Must be Submitted by</p> <p>_____</p>	<p>The amount of your Individual Class Payment and PAGA Payment (if any) depend on how many Pay Periods you worked at least one day during the Class Period and how many Pay Periods you worked at least one day during the PAGA Period, respectively. The number of Class Pay Periods and number of PAGA Pay Periods you worked according to Techcon’s records is stated on the first page of this Notice. If you disagree with either of these numbers, you must challenge it by _____. See Section 4 of this Notice.</p>

1. WHAT IS THE ACTION ABOUT?

Plaintiff is a former Techcon employee. The Action accuses Techcon of violating California labor laws by failing to pay overtime wages, minimum wages, wages during employment and due upon termination, and reimbursable expenses and failing to provide meal periods, rest breaks and accurate itemized wage statements. Based on the same claims, Plaintiff has also asserted a claim for civil penalties under the California Private Attorneys General Act (Labor Code §§ 2698, et seq.) (“PAGA”). Plaintiff is represented by attorneys in the Action: Payne Nguyen, LLP (“Class Counsel”).

Techcon strongly denies violating any laws or failing to pay any wages and contends it complied with all applicable laws.

2. WHAT DOES IT MEAN THAT THE ACTION HAS SETTLED?

So far, the Court has made no determination whether Techcon or Plaintiff is correct on the merits. In the meantime, Plaintiff and Techcon hired an experienced, neutral mediator in an effort to resolve the Action by negotiating an end to the case by agreement (settle the case) rather than continuing the expensive and time-consuming process of litigation. The negotiations were successful. By signing a lengthy written settlement agreement (“Agreement”) and agreeing to jointly ask the Court to enter a judgment ending the Action and enforcing the Agreement, Plaintiff and Techcon have negotiated a proposed Settlement that is subject to the Court’s Final Approval. Both sides agree the proposed Settlement is a compromise of disputed claims. By agreeing to settle, Techcon does not admit any violations or concede the merit of any claims.

Plaintiff and Class Counsel strongly believe the Settlement is a good deal for you because they believe that: (1) Techcon has agreed to pay a fair, reasonable and adequate amount considering the strength of the claims and the risks and uncertainties of continued litigation; and (2) Settlement is in the best interests of the Class Members and Aggrieved Employees. The Court preliminarily approved the proposed Settlement as fair, reasonable and adequate, authorized this Notice, and scheduled a hearing to determine Final Approval.

3. WHAT ARE THE IMPORTANT TERMS OF THE PROPOSED SETTLEMENT?

1. Techcon Will Pay \$1,000,000 as the Gross Settlement Amount (Gross Settlement). Techcon has agreed to deposit the Gross Settlement into an account controlled by the Administrator of the Settlement. The Administrator will use the Gross Settlement to pay the Individual Class Payments, Individual PAGA Payments, Class Representative Service Payment, Class Counsel's attorney's fees and expenses, the Administrator's expenses, and penalties to be paid to the California Labor and Workforce Development Agency ("LWDA"). Assuming the Court grants Final Approval, Techcon will fund the Gross Settlement not more than 194 days after Plaintiff provides written notice to Defense Counsel of the Court's Final Approval Order.
2. Court Approved Deductions from Gross Settlement. At the Final Approval Hearing, Plaintiff and/or Class Counsel will ask the Court to approve the following deductions from the Gross Settlement, the amounts of which will be decided by the Court at the Final Approval Hearing:
 - A. Up to \$333,333.33 (33.33% of the Gross Settlement) to Class Counsel for attorneys' fees and up to \$30,000 for their litigation expenses. To date, Class Counsel have worked and incurred expenses on the Action without payment.
 - B. Up to \$10,000 to Plaintiff as a Class Representative Service Payment for filing the Action, working with Class Counsel and representing the Class. A Class Representative Service Payment will be the only monies Plaintiff will receive other than Plaintiff's Individual Class Payment and any Individual PAGA Payment.
 - C. Up to \$9,500 to the Administrator for services administering the Settlement.
 - D. Up to \$75,000 for PAGA Penalties, allocated 75% to the LWDA PAGA Payment and 25% in Individual PAGA Payments to the Aggrieved Employees based on their PAGA Pay Periods.

Participating Class Members have the right to object to any of these deductions. The Court will consider all objections.

3. Net Settlement Amount Distributed to Class Members. After making the above deductions in amounts approved by the Court, the Administrator will distribute the rest of the Gross Settlement Amount (the "Net Settlement Amount") by making Individual Class Payments to Participating Class Members based on their Class Pay Periods.
4. Taxes Owed on Payments to Class Members. Plaintiff and Techcon are asking the Court to approve an allocation of 10% of each Individual Class Payment to taxable wages ("Wage Portion") and 90% to interest and penalties ("Non-Wage Portions"). The Wage Portion is subject to withholdings and will be reported on IRS W-2 Forms. Techcon will separately pay employer payroll taxes it owes on the Wage Portion. The Individual PAGA Payments are counted as penalties rather than wages for tax purposes. The Administrator will report the Individual PAGA Payments and the Non-Wage Portions of the Individual Class Payments on IRS 1099 Forms.

Although Plaintiff and Techcon have agreed to these allocations, neither side is giving you any advice on whether your Payments are taxable or how much you might owe in taxes. You are responsible for paying all taxes (including penalties and interest on back taxes) on any Payments received from the proposed Settlement. You should consult a tax advisor if you have any questions about the tax consequences of the proposed Settlement.

5. Need to Promptly Cash Payment Checks. The front of every check issued for Individual

Class Payments and Individual PAGA Payments will show the date when the check expires (the void date). If you don't cash it by the void date, your check will be automatically cancelled, and the monies will be deposited with the California Controller's Unclaimed Property Fund in your name.

If the monies represented by your check is sent to the Controller's Unclaimed Property, you should consult the rules of the Unclaimed Property Fund for instructions on how to retrieve your money.

6. Requests for Exclusion from the Class Settlement (Opt-Outs). You will be treated as a Participating Class Member, participating fully in the Class Settlement, unless you notify the Administrator in writing, not later than _____, that you wish to opt-out. The easiest way to notify the Administrator is to send a written and signed Request for Exclusion by the _____ Response Deadline. The Request for Exclusion should be a letter from a Class Member or his/her representative setting forth a Class Member's name, present address, telephone number, and a simple statement electing to be excluded from the Settlement. Excluded Class Members (i.e., Non-Participating Class Members) will not receive Individual Class Payments, but will preserve their rights to personally pursue wage and hour claims against Techcon.

You cannot opt-out of the PAGA portion of the Settlement. Class Members who exclude themselves from the Class Settlement (Non-Participating Class Members) remain eligible for Individual PAGA Payments and are required to give up their right to assert PAGA claims against Techcon based on the PAGA Period facts alleged in the Action.

7. The Proposed Settlement Will be Void if the Court Denies Final Approval. It is possible the Court will decline to grant Final Approval of the Settlement or decline enter a Judgment. It is also possible the Court will enter a Judgment that is reversed on appeal. Plaintiff and Techcon have agreed that, in either case, the Settlement will be void: Techcon will not pay any money and Class Members will not release any claims against Techcon.
8. Administrator. The Court has appointed a neutral company, Apex Class Action Administration (the "Administrator") to send this Notice, calculate and make payments, and process Class Members' Requests for Exclusion. The Administrator will also decide Class Member Challenges over Pay Periods, mail and re-mail settlement checks and tax forms, and perform other tasks necessary to administer the Settlement. The Administrator's contact information is contained in Section 9 of this Notice.
9. Participating Class Members' Release. After the Judgment is final and Techcon has fully funded the Gross Settlement and separately paid all employer payroll taxes, Participating Class Members will be legally barred from asserting any of the claims released under the Settlement. This means that unless you opted out by validly excluding yourself from the Class Settlement, you cannot sue, continue to sue, or be part of any other lawsuit against Techcon or related entities for wages based on the Class Period facts and PAGA penalties based on PAGA Period facts, as alleged in the Action and resolved by this Settlement.

The Participating Class Members will be bound by the following release:

All Participating Class Members, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, release Released Parties from all claims that were alleged, or reasonably could have been alleged, based on the Class Period facts stated in the Operative Complaint and ascertained in the course of the Action. Except as set forth in Section 6.3 of the Settlement Agreement, Participating

Class Members do not release any other claims, including claims for vested benefits, wrongful termination, violation of the Fair Employment and Housing Act, unemployment insurance, disability, social security, workers' compensation, or claims based on facts occurring outside the Class Period.

10. Aggrieved Employees' PAGA Release. After the Court's judgment is final, and Techcon has paid the Gross Settlement and separately paid the employer-side payroll taxes, all Aggrieved Employees will be barred from asserting PAGA claims against Techcon, whether or not they exclude themselves from the Settlement. This means that all Aggrieved Employees, including those who are Participating Class Members and those who opt-out of the Class Settlement, cannot sue, continue to sue, or participate in any other PAGA claim against Techcon or its related entities based on the PAGA Period facts alleged in the Action and resolved by this Settlement.

The Aggrieved Employees' Releases for Participating and Non-Participating Class Members are as follows:

All Aggrieved Employees, regardless of whether they are Participating Class Members or Non-Participating Class Members, are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors, and assigns, the Released Parties, from all claims for PAGA penalties that were alleged, or reasonably could have been alleged, based on the PAGA Period facts stated in the Operative Complaint, the PAGA Notice and ascertained in the course of the Action.

4. HOW WILL THE ADMINISTRATOR CALCULATE MY PAYMENT?

1. Individual Class Payments. The Administrator will calculate Individual Class Payments by (a) dividing the Net Settlement Amount by the total number of Class Pay Periods worked by all Participating Class Members, and (b) multiplying the result by the number of Class Pay Periods worked by each individual Participating Class Member.
2. Individual PAGA Payments. The Administrator will calculate Individual PAGA Payments by (a) dividing \$625 by the total number of PAGA Pay Periods worked by all Aggrieved Employees and (b) multiplying the result by the number of PAGA Pay Periods worked by each individual Aggrieved Employee.
3. Pay Period Challenges. The number of Class Pay Periods you worked during the Class Period and the number of PAGA Pay Periods you worked during the PAGA Period, as recorded in Techcon's records, are stated in the first page of this Notice. You have until _____ to challenge the number of Class Pay Periods and/or PAGA Pay Periods credited to you. You can submit your challenge by signing and sending a letter to the Administrator via mail, email or fax. Section 9 of this Notice has the Administrator's contact information.

You need to support your challenge by sending copies of pay stubs or other records. The Administrator will accept Techcon's calculation of Class Pay Periods and/or PAGA Pay Periods based on Techcon's records as accurate unless you send copies of records containing contrary information. You should send copies rather than originals because the documents will not be returned to you. The Administrator will resolve Class Pay Period and/or PAGA Pay Period challenges based on your submission and on input from Class Counsel (who will advocate on behalf of Participating Class Members) and Techcon's Counsel. The Administrator's decision is final. You can't appeal or otherwise challenge its final decision.

5. HOW WILL I GET PAID?

1. Participating Class Members. The Administrator will send, by U.S. mail, a single check to every Participating Class Member (i.e., every Class Member who doesn't opt-out) including those who also qualify as Aggrieved Employees. The single check will combine the Individual Class Payment and the Individual PAGA Payment.
2. Non-Participating Class Members. The Administrator will send, by U.S. mail, a single Individual PAGA Payment check to every Aggrieved Employee who opts out of the Class Settlement (i.e., every Non-Participating Class Member).

Your check will be sent to the same address as this Notice. If you change your address, be sure to notify the Administrator as soon as possible. Section 9 of this Notice has the Administrator's contact information.

6. HOW DO I OPT-OUT OF THE CLASS SETTLEMENT?

Submit a written and signed letter with your name, present address, telephone number, and a simple statement that you do not want to participate in the Settlement. The Administrator will exclude you based on any writing communicating your request be excluded. Be sure to personally sign your request, identify the Action as *Beltran v. Monument Construction, Inc. dba Techcon Construction*, Case No. MSC21-01751 and include your identifying information (full name, address, telephone number, approximate dates of employment, and social security number for verification purposes). You must make the request yourself. If someone else makes the request for you, it will not be valid. **The Administrator must be sent your request to be excluded by _____, or it will be invalid.** Section 9 of the Notice has the Administrator's contact information.

7. HOW DO I OBJECT TO THE SETTLEMENT?

Only Participating Class Members have the right to object to the Settlement. Before deciding whether to object, you may wish to see what Plaintiff and Techcon are asking the Court to approve. At least 16 court days before the _____ Final Approval Hearing, Class Counsel and/or Plaintiff will file in Court (1) a Motion for Final Approval that includes, among other things, the reasons why the proposed Settlement is fair, and (2) a Motion for Fees, Litigation Expenses and Service Payment stating (i) the amount Class Counsel is requesting for attorneys' fees and litigation expenses; and (ii) the amount Plaintiff is requesting as a Class Representative Service Payment. Upon reasonable request, Class Counsel (whose contact information is in Section 9 of this Notice) will send you copies of these documents at no cost to you. You can also view them on the Administrator's Website _____ (url) or the Court's website <https://www.cc-courts.org/>.

A Participating Class Member who disagrees with any aspect of the Agreement, the Motion for Final Approval and/or Motion for Fees, Litigation Expenses and Service Payment may wish to object, for example, that the proposed Settlement is unfair, or that the amounts requested by Class Counsel or Plaintiff are too high or too low. **The deadline for sending written objections to the Administrator is _____.** Be sure to tell the Administrator what you object to, why you object, and any facts that support your objection. Make sure you identify the Action *Beltran v. Monument Construction, Inc. dba Techcon Construction*, Case No. MSC21-01751 and include your name, current address, telephone number, and approximate dates of employment for Techcon and sign the objection. Section 9 of this Notice has the Administrator's contact information.

Alternatively, a Participating Class Member can object (or personally retain a lawyer to object

at your own cost) by attending the Final Approval Hearing. You (or your attorney) should be ready to tell the Court what you object to, why you object, and any facts that support your objection. See Section 8 of this Notice (immediately below) for specifics regarding the Final Approval Hearing.

8. CAN I ATTEND THE FINAL APPROVAL HEARING?

You can, but don't have to, attend the Final Approval Hearing on _____ at (time) in Department 12 of the Contra Costa Superior Court, Wakefield Taylor Courthouse located at 725 Court Street, Martinez, CA 94553. At the Hearing, the judge will decide whether to grant Final Approval of the Settlement and how much of the Gross Settlement will be paid to Class Counsel, Plaintiff, and the Administrator. The Court will invite comment from objectors, Class Counsel and Defense Counsel before making a decision. You can attend (or hire a lawyer to attend) either personally or virtually if you wish. Please check the Court's website <https://www.cc-courts.org/calendars/court-calendars.aspx> for the most current information.

It's possible the Court will reschedule the Final Approval Hearing. You should check the Administrator's website _____ beforehand or contact Class Counsel to verify the date and time of the Final Approval Hearing.

9. HOW CAN I GET MORE INFORMATION?

The Agreement sets forth everything Techcon and Plaintiff have promised to do under the proposed Settlement. The easiest way to read the Agreement, the Judgment or any other Settlement documents is to go to the Administrator's website at _____ (url) _____. You can also telephone or send an email to Class Counsel or the Administrator using the contact information listed below, or consult the Superior Court website by going to <https://odyportal.cc-courts.org/Portal/Home/Dashboard/29> and entering the Case Number for the Action, Case No. MSC21-01751.

10. DO NOT TELEPHONE THE SUPERIOR COURT TO OBTAIN INFORMATION ABOUT THE SETTLEMENT.

Class Counsel:

Cody Payne
cody@paynellp.com
Kim Nguyen
kim@paynellp.com
PAYNE NGUYEN, LLP
100 Wilshire Boulevard, Suite 700
Santa Monica, CA 90401
Telephone: (310) 360-9882

Settlement Administrator:

Name of Company: Apex Class Action Administration
Email Address:
Mailing Address:
Telephone:
Fax Number:

11. WHAT IF I LOSE MY SETTLEMENT CHECK?

If you lose or misplace your settlement check before cashing it, the Administrator will replace it as long as you request a replacement before the void date on the face of the original check. If your check is already void, you should consult the Unclaimed Property Fund for instructions on how to

retrieve the funds.

12. WHAT IF I CHANGE MY ADDRESS?

To receive your check, you should immediately notify the Administrator if you move or otherwise change your mailing address.

EXHIBIT 2

Subject: Thank you for your Proposed Settlement Submission
Date: Friday, May 24, 2024 at 1:35:41 PM Pacific Daylight Time
From: DIR PAGA Unit
To: cody@paynellp.com

05/24/2024 01:35:27 PM

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

Item submitted: Proposed Settlement

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

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

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