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SEP 08 2023

Filed
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN JOAQUIN

KENNETH WILBURN, individually, and on
behalf of all others similarly situated,

Plaintiff,

v.

CONCRETE, INC., d/b/a KNIFE RIVER
CONSTRUCTION, a California corporation,
MDU RESOURCES GROUP, INC., d/b/a
KNIFE RIVER CONSTRUCTION, a Delaware
corporation, KNIFE RIVER CONSTRUCTION,
a Delaware corporation, and DOES 1 through 10,
inclusive,

Defendants.

Case No.: STK-CV-UOE-2021-10183
[Consolidated with STK-CV-UOE-2022-
0002317]

CLASS ACTION

[Assigned for all purposes to Judge Robert T.
Waters, Dept. 11B]

**PROPOSED ORDER GRANTING
PLAINTIFF'S MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

[Filed concurrently with: Plaintiff's Notice of
Motion and Motion for Preliminary Approval
of Class Action Settlement; Memorandum of
Points and Authorities; and Declarations of
Justin F. Marquez, Kenneth Wilburn, Ryan L.
Eddings, and Julie Green]

PRELIMINARY APPROVAL HEARING

Date: ~~August 11, 2023~~ **SEP - 8 2023**
Time: ~~1:30 p.m.~~ **9:00 AM**
Dept: 11B

Complaint filed: October 29, 2021

1 The Court has before it Plaintiff Kenneth Wilburn's ("Plaintiff") Motion for Preliminary
2 Approval of Class Action Settlement. Having reviewed the Motion for Preliminary Approval
3 of Class Action Settlement, the Declarations of Justin F. Marquez, Kenneth Wilburn, and Julie
4 Green, the Class Action and PAGA Settlement Agreement and Class Notice and the Amendment
5 (which is referred to herein collectively as the "Settlement" or "Settlement Agreement"), and
6 good cause appearing, the Court hereby finds and orders as follows:

7 1. The Court finds on a preliminary basis that the Settlement Agreement appears to
8 be fair, adequate, and reasonable and therefore meets the requirements for preliminary approval.
9 The Court grants preliminary approval of the Settlement and the Settlement Class based upon
10 the terms set forth in the Settlement Agreement between Plaintiff and Defendants Concrete,
11 Inc., doing business as Knife River, MDU Resources Group, Inc., and Knife River Corporation
12 ("Defendants"), attached to the Declaration of Justin F. Marquez in Support of Plaintiff's
13 Motion for Preliminary Approval of Class Action Settlement as Exhibit 1.

14 2. The Settlement falls within the range of reasonableness of a settlement that could
15 ultimately be given final approval by this Court. The Court notes that Defendant has agreed to
16 create a common fund of \$535,000.00 to cover: (a) settlement payments to the class members
17 who do not validly opt-out; (b) a \$25,000.00 payment for the settlement of claims for penalties
18 under the Private Attorneys General Act ("PAGA"), with 75% of which (\$18,750.00) being paid
19 to the State of California, Labor & Workforce Development Agency ("LWDA") and 25%
20 (\$6,250.00) being paid to the Participating PAGA Members; (c) the Class Representative
21 service payment of up to \$10,000.00 for Plaintiff; (d) Class Counsel's attorneys' fees, not to
22 exceed 33 1/3% of the Gross Settlement Amount (\$178,333.33), and up to \$20,000.00 in costs
23 for actual litigation expenses incurred by Class Counsel; and (e) Settlement Administration
24 Costs of up to \$10,000.00.

25 3. The Court preliminarily finds that the terms of the Settlement appear to be within
26 the range of possible approval, pursuant to California Code of Civil Procedure § 382 and
27 applicable law. The Court finds on a preliminary basis that: (1) the settlement amount is fair
28 and reasonable to the class members when balanced against the probable outcome of further

1 litigation relating to class certification, liability, and damages issues, and potential appeals; (2)
2 significant informal discovery, investigation, research, and litigation have been conducted such
3 that counsel for the Parties at this time are able to reasonably evaluate their respective positions;
4 (3) settlement at this time will avoid substantial costs, delay, and risks that would be presented
5 by the further prosecution of the litigation; and (4) the proposed settlement has been reached as
6 the result of intensive, serious, and non-collusive negotiations between the Parties with the
7 assistance of a well-respected class action mediator. Accordingly, the Court preliminarily finds
8 that the Settlement Agreement was entered into in good faith.

9 4. A Final Fairness Hearing on the question of whether the proposed settlement,
10 attorneys' fees and costs to Class Counsel, payment to the LWDA for its share of the settlement
11 of claims for penalties under PAGA, and the class representative's enhancement award should
12 be finally approved as fair, reasonable and adequate as to the members of the class is hereby set
13 in accordance with the Implementation Schedule set forth below.

14 5. The Court provisionally certifies for settlement purposes only the following class
15 (the "Settlement Class"): "all persons employed by Defendants in California and classified as
16 an hourly-paid, non-exempt employee during the Class Period."

17 6. The Class Period "means the period that starts on May 4, 2017 and shall end on
18 January 31, 2023."

19 7. The Court finds, for settlement purposes only, that the Settlement Class meets the
20 requirements for certification under California Code of Civil Procedure § 382 in that: (1) the
21 members of the Settlement Class are so numerous that joinder is impractical; (2) there are
22 questions of law and fact that are common, or of general interest, to the Settlement Class, which
23 predominate over individual issues; (3) Plaintiff's claims are typical of the claims of the
24 Settlement Class; (4) Plaintiff and Class Counsel will fairly and adequately protect the interests
25 of the Settlement Class; and (5) a class action is superior to other available methods for the fair
26 and efficient adjudication of the controversy.

27 8. The Court appoints as Class Representative, for settlement purposes only,
28 Plaintiff Kenneth Wilburn. The Court further preliminarily approves Plaintiff's ability to

1 request an incentive award up to \$10,000.00.

2 9. The Court appoints, for settlement purposes only, Justin F. Marquez, Christina
3 Le, and Zachary Greenberg of Wilshire Law Firm, PLC as Class Counsel. The Court further
4 preliminarily approves Class Counsel's ability to request attorneys' fees of up to one-third of
5 the Total Settlement Amount (\$178,333.33) and costs not to exceed \$20,000.00.

6 10. The Court appoints CPT Group, Inc. as the Settlement Administrator with
7 reasonable administration costs estimated not to exceed \$10,000.00.

8 11. The Court approves as to form and content of the Class Notice which is part of
9 the Class Action and PAGA Settlement Agreement and Class Notice. The Court finds, on a
10 preliminary basis, that the plan for distribution in the Class Notice satisfies due process,
11 provides the best notice practicable under the circumstances, and shall constitute due and
12 sufficient notice to all persons entitled thereto.

13 12. The Parties are ordered to carry out the Settlement according to the terms of the
14 Settlement Agreement.

15 13. Any member of the Settlement Class who does not timely and validly request
16 exclusion from the Settlement may object to the Settlement Agreement.

17 14. The Court orders the following Implementation Schedule:

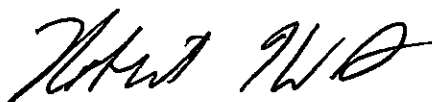
18 Defendant to provide Class List to the	
19 Settlement Administrator, as defined in the	August 28, 2023
20 Settlement Agreement	
21 Settlement Administrator to mail the Notice	
22 Packets	September 11, 2023
23 Response Deadline (Opt-out or dispute	
24 Workweeks)	October 26, 2023
25 Deadline to Provide Written Objections, if	
26 any	October 26, 2023
27 Deadline to file Motion for Final Approval,	16 court days before hearing on Motion for

Request for Attorneys' Fees and Costs, and Service Award to Plaintiff's	Final Approval, which is <u>January 12, 2024</u>
Final Approval Hearing	<u>1/12/2024</u> at <u>9:00 a.m.</u> /p.m., or first available date thereafter, in Department 11B

15. The Court further ORDERS that, pending further order of this Court, all proceedings in this lawsuit, except those contemplated herein and in the settlement, are stayed.

IT IS SO ORDERED.

DATE: September 8, 2023



Hon. Robert T. Waters
San Joaquin County Superior Court

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STATE OF CALIFORNIA)
) ss
COUNTY OF LOS ANGELES)

On July 20, 2023, I served the foregoing [PROPOSED] ORDER GRANTING PLAINTIFF'S MOTION FOR PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT, on the interested parties by placing a true copy thereof, enclosed in a sealed envelope by following one of the methods of service as follows:

Victoria A. Kovanis (SBN 289275)
ykovanis@littler.com
LITTLER MENDELSON, P.C.
 500 Capitol Mall Ste. 2000
 Sacramento, California 95814
 Tel: (916) 830-7200
 Fax: (916) 561-0828

(X) **BY E-MAIL:** I hereby certify that this document was served from Los Angeles, California, by e-mail delivery on the parties listed herein at their most recent known email address or e-mail of record in this action.

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


Sandy S. Sespene