IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

DAVID LOPEZ ALZUARTE, individually and on behalf of those similarly situated, Plaintiff, v. **BROWN BROTHERS ASPHALT & CONCRETE, LLC; RAPID MATERIAL TRANSPORT, LLC** Defendants.	Case No. 1:25-cv-00639-SKC-KAS *Judge S. Kato Crews* *Magistrate Judge Kathryn A. Starnella*

This Settlement Agreement (all capitalized terms defined below) between Plaintiff David Lopez Alzuarte, on his own behalf and on behalf of the proposed Settlement Class, and Defendants Brown Brothers Asphalt & Concrete, LLC, and Rapid Material Transport, LLC, by the Parties' respective Counsel, sets forth the materials terms of the Parties' proposed settlement of this Action. This Settlement Agreement is intended by the Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims, upon and subject to the terms and conditions of this Settlement Agreement, and subject to the Court's approval.

RECITALS

A. On or about December 2, 2024, BBAC notified many of its employees at the Facility, including Plaintiff, that they would be laid off on December 6, 2024.

B. On or about December 6, 2024, BBAC laid off approximately 112 employees, including Plaintiff, at the Facility.

C. On February 26, 2025, Plaintiff filed the Action, alleging that Defendants' lack of notice to their employees at the Facility violated the WARN Act.

D. The Complaint seeks damages and civil penalties to the fullest extent allowed by the WARN Act on Plaintiff's behalf and on behalf of a putative class of all other employees at the Facility whom BBAC laid off on or about December 6, 2024, as well as reasonable attorneys' fees, as authorized by the WARN Act.

E. On July 28, 2025, Defendants answered the Complaint. Defendants' answers deny all liability to Plaintiff and the putative class; deny that the Action may be maintained as a class action; raise numerous affirmative defenses to liability, including the statutory unforeseeable business circumstance defense and faltering company defense; and raise the good faith defense.

F. The Parties filed the Joint Motion to Stay Proceedings [ECF No. 21] on June 25, 2025. The Motion was granted in part and denied in part on June 30, 2025. *See* Minute Order [ECF No. 23].

G. The Scheduling Conference in this matter was continued until October 7, 2025 in order to facilitate further settlement discussions between the Parties.

H. The Parties' Counsel has extensively investigated the facts relating to the claims and defenses alleged and the underlying events in the Action, have made a thorough study of the legal principles applicable to the claims and defenses asserted in the Action, and have conducted a thorough assessment of the strengths and weaknesses of their respective claims and defenses.

I. If the Action were litigated to judgment, Plaintiff would seek to prove that Defendants violated the WARN Act by failing to provide its employees at the Facility, including Plaintiff, at least 60 days' notice of the Facility's closure as required by the WARN Act. Plaintiff would further seek to prove that he and the putative class he seeks to represent are entitled to damages and civil penalties to the fullest extent allowed by the WARN Act. Plaintiff would further seek to prove that the Action may be maintained as a class action on behalf of all other employees laid off by BBAC after the Facility's closure. Plaintiff would further seek to recover reasonable attorneys' fees for Plaintiff's Counsel, as authorized by the WARN Act.

J. If the Action were litigated to judgment, Defendants would seek to prove that RMT employed no employees and therefore did not violate the WARN Act. Defendants would further seek to prove that the WARN Act's exceptions for faltering companies and unforeseeable business circumstances shield BBAC from any liability to Plaintiff and the putative class. Defendants would further argue that the Action cannot be maintained as a class action. Defendants would further seek to prove that, even if they were liable in damages, the Court should exercise its discretion and reduce damages in light of Defendants' good faith and reasonableness in announcing the closure of the Facility.

K. Absent settlement, the uncertain issues of fact and law presented by the Action would likely require extensive litigation to resolve, including fact and expert discovery as to class certification and the merits; motion practice under Rules 23 and 56, and Federal Rule of Evidence 702; a potential class trial on the merits; posttrial litigation, including as to attorneys' fees and costs; and potential appeals.

L. The Parties' Counsel have engaged in extensive arm's-length negotiations concerning the settlement of the claims asserted in the Action.

M. In light of the factual and legal uncertainties around Plaintiff's claims and Defendants' defenses, and wanting to avoid the costs and risks of continued litigation, the Parties have agreed to settle the Action on terms which are, in the opinion of Plaintiff's Counsel, in the best interest of the Settlement Class.

N. Plaintiff's Motion for a Preliminary Approval Order will include a request for the Court to certify the Settlement Class for purposes of effectuating this Settlement Agreement only, comporting with the definition agreed-upon by the Parties and mirroring the definition set forth below. This Settlement Agreement is expressly conditioned upon, and subject to, preliminary and final approval by the Court and entry of final judgment, as set forth herein. Absent such approvals, this Settlement Agreement shall be null, void, and of no further force or effect and the Parties shall be returned to their *status quo ante.*

O. BBAC has agreed to fund a settlement fund in the total amount of $307,500 to fund the settlement, which shall be used: (1) to pay Settlement Class Members; (2) to pay Attorneys' Fees and Costs as awarded by the Court, if any; (3) to pay the Service Awards to Plaintiff as awarded by the Court, if any; and (4) to pay the Settlement Administrator's Expenses.

Accordingly, it is hereby agreed that, in consideration of the agreements, promises, and covenants set forth in this Settlement Agreement, and subject to the terms and conditions set forth herein and the approval of the Court, the Action shall be fully and finally settled and dismissed with prejudice on a class-wide basis:

AGREEMENT

I. DEFINITIONS

1. "Action" means the civil action captioned David Lopez Alzuarte, individually and on behalf of those similarly situated v. Brown Brothers Asphalt & Concrete LLC and Rapid Material Transport, LLC, No. 1:25-cv-00639-SKC-KAS, pending in the Court.

2. "Allocation Plan" means the method for allocating the Net Settlement Fund to Settlement Class Members.

3. "Attorneys' Fees and Costs" means an award to Settlement Class Counsel by the Court of Settlement Class Counsel's reasonable attorneys' fees under Rule 23(h) or of Settlement Class Counsel's taxable and nontaxable costs under Rules 54(d) and 23(h).

4. "BBAC" means Defendant Brown Brothers Asphalt & Concrete LLC.

5. “Complaint” means the operative complaint in the Action, filed on February 26, 2025, and docketed at ECF No. 1.

6. “Court” means the United States District Court for the District of Colorado.

7. “Defendants” mean BBAC and RMT.

8. “Defendants’ Counsel” means Christian A. Garcia, Monica J. Frascona, and Patrick Richard Scully of the firm Foley Hoag LLP.

9. “Effective Date” means the later of (a) the date of the Final Approval Order, if no objections are timely filed; or (b) if objections are timely filed, the date when no further appellate review of the Final Approval Order is available to any objector, whether by reason of final dismissal of appellate proceedings, final affirmance of the Final Approval Order, or expiration of the time within which appellate review may be sought.

10. “Employment Taxes” means all federal, state, and local taxes on employee wages for which an employer is liable, including taxes imposed by the Federal Insurance Contributions Act and the Federal Unemployment Tax Act.

11. “Facility” means BBAC’s manufacturing facility located at 9190 Monaco Street, Henderson, CO 80640.

12. “Generally Released Claims” means any and all actual, potential, filed, known or unknown, fixed or contingent, clamed or unclaimed, suspected or unsuspected claims, demands, liabilities, rights, causes of action, contracts or agreements, extra contractual claims, damages, punitive, exemplary, or multiplied damages, expenses, costs, attorneys’ fees and/or obligations, whether in law or in equity, accrued or unaccrued, direct individual or representative, of every nature and description whatsoever, arising out of the layoffs that occurred on or around December 6, 2024 by Defendants.

13. “Net Settlement Fund” means the Settlement Fund less the Settlement Administrator’s Expenses, Attorneys’ Fees and Costs, Service Awards, and any other Court-approved deductions.

14. “Notice Plan” means the plan for notifying all Settlement Class Members of their rights under this Settlement Agreement and the applicable law, including the form, content, and manner of such notice.

15. “Parties’ Counsel” means Defendants’ Counsel and Plaintiff’s Counsel.

16. “Party” means any party to the Action.

17. “Plaintiff” means the plaintiff in the Action, David Lopez Alzuarte.

18. “Plaintiff’s Counsel” means Raina C. Borrelli, Strauss Borrelli, LLP; Lynn A. Toops and Ian R. Bensberg, CohenMalad, LLP; and J. Gerard Stranch, IV, Stranch, Jennings, & Garvey, PLLC.

19. “Preliminary Approval Order” means a Court order preliminarily approving the settlement embodied in this Settlement Agreement under Rule 23(e)(1).

20. “Released Claims” means the Generally Released Claims and the Specifically Released Claims.

21. “Released Parties” means Defendants, all Defendants’ acquired entities, affiliates, subsidiaries, parent companies, predecessors, successors, and all of their past or present assigns, officers, directors, shareholders, partners, members, employees, principals, consultants, independent contractors, insurers, directors, managing directors, attorneys, accountants, financial and other advisors, investment bankers, investors, underwriters, lenders, auditors, investment advisors, legal representatives, successors in interest, franchisees and persons, firms, trusts,

corporations, and any other agents, as well as their respective predecessors, successors, and assigns.

22. “Releasing Plaintiffs” means Plaintiff and the putative class and their predecessors, successors, assigns, heirs, estates, administrators, and other agents, as well as their respective predecessors, successors, and assigns.

23. “Releasing Settlement Class Members” means Settlement Class Members and their predecessors, successors, assigns, heirs, estates, administrators, and other agents, as well as their respective predecessors, successors, and assigns.

24. “RMT” means Defendant Rapid Material Transport, LLC.

25. “Rules” means the Federal Rules of Civil Procedure.

26. “Service Awards” means awards to Plaintiff by the Court for his service as representative of the Settlement Class.

27. “Settlement Administrator” means the individual or entity retained to administer the terms of the Settlement Agreement as described in the Settlement Agreement.

28. “Settlement Administrator’s Expenses” means expenses, costs, or fees incurred by the Settlement Administrator in administering the terms of the Settlement Agreement as described in the Settlement Agreement, including those specifically so designated below.

29. “Settlement Agreement” means this Class Action Settlement Agreement, embodying the material terms of the Parties’ agreement to settle the Action.

30. “Settlement Class” means:

> All employees of Defendants who were terminated pursuant to a mass layoff or plant closing (as those terms are defined in the WARN Act) within 90 days of December 6, 2024.

31. “Settlement Class Counsel” means the counsel appointed by the Court to serve as class counsel for the Settlement Class under Rule 23(g).

32. “Settlement Class Member” means a member of the Settlement Class.

33. “Settlement Fund” means the sum of $307,500 in United States dollars.

34. “Specifically Released Claims” means any claim, liability, right, demand, or cause of action, of every kind and description, that Settlement Class Members have or may have against Defendants which is pleaded in the Complaint or which materially relates to the facts or claims pleaded in the Complaint.

35. “WARN Act” means the Worker Adjustment and Retraining Notification Act, 29 U.S.C. §§ 2101–2109.

II. INTERPRETATION

36. “Including” shall not be interpreted as a limitation.

37. “Or” shall be interpreted inclusively.

38. The number of the noun or verb, and the number and gender of the pronoun, shall be interpreted as including the others when necessary to effect the Parties’ intent.

39. No Party or Parties’ Counsel shall be deemed the drafter of the Settlement Agreement for purposes of interpreting it.

40. All references to days shall be interpreted to mean calendar days, unless otherwise noted. When a deadline or date falls on a weekend or a legal Court holiday, the deadline or date shall be extended to the next business day that is not a weekend or legal Court holiday.

III. SETTLEMENT FUND

41. In consideration of a full, complete, and final settlement of the Action and dismissal of the Action with prejudice, and subject to the Court’s preliminary and final approval, within 30

days of execution of the Settlement Agreement, BBAC shall pay the Settlement Fund to the Settlement Administrator by ACH transfer.

42. The Settlement Administrator shall hold the Settlement Fund in an escrow account. All fees, costs, and taxes associated with the maintenance of the escrow account shall be Settlement Administrator's Expenses. Any income earned by the Settlement Fund in escrow shall be added to the Settlement Fund.

43. Defendants shall not be responsible for any payments or obligations other than the Settlement Fund under this Settlement Agreement for any reason.

44. In the event that this Settlement Agreement is not finally approved or otherwise terminates, any amounts of the Settlement Fund that have not been spent, and are not required for amounts that are due and payable for reasonable and identified Settlement Administrator's Expenses already incurred, shall, within ten days, be returned by the Settlement Administrator to BBAC in the manner that BBAC directs. Except as otherwise provided above in this paragraph, no part of the Settlement Fund shall revert to Defendants.

IV. RELIEF TO THE SETTLEMENT CLASS

45. As soon as practicable after the Effective Date, the Settlement Administrator shall determine each Settlement Class Member's share of the Net Settlement Fund according to the Allocation Plan.

46. As soon as practicable after the Effective Date, and no later than 30 days after the Effective Date, the Settlement Administrator shall mail to each Settlement Class Member a check in the amount of the Settlement Class Member's share of the Net Settlement Fund according to the Allocation Plan, less withheld Employment Taxes (as described below), which shall be valid for 90 days from the date of issuance.

47. If more than 5 percent of funds remain in the Net Settlement Fund 91 days from the date the last check was issued under the preceding paragraph, those funds shall be distributed *pro rata* according to the Allocation Plan to all Settlement Class Members who deposited, endorsed, or negotiated their checks within 90 days from the date they were issued, in the manner described by the preceding paragraph.

48. If any funds remain in the Net Settlement Fund 91 days from the date the last check was issued through the second distribution provided for by the preceding paragraph, or if the funds remaining in the Net Settlement Fund after the first distribution total 5 percent or less of the Net Settlement Fund, such funds shall be disbursed by the Settlement Administrator to a charitable organization, approved by the Court, no later than 7 days after receiving Court approval.

49. Plaintiff's Counsel shall determine the Allocation Plan and provide it to the Settlement Administrator. The Parties shall cooperate in good faith to take all steps reasonably necessary to allowing Plaintiff's Counsel to determine a fair, reasonable, and adequate Allocation Plan.

50. The Settlement Administrator shall treat each payment to each Settlement Class Member from the Net Settlement Fund as back pay for tax purposes, including by issuing an appropriate Form W-2 for the payment, and by withholding and paying appropriate Employment Taxes on the payment.

51. Each Settlement Class Member who receives a payment from the Net Settlement Fund shall be responsible for calculating and paying all applicable federal, state, and local taxes on the payment.

V. RELEASES TO THE RELEASED PARTIES

52. As of the Effective Date, the Releasing Plaintiffs shall be deemed to have, and by operation of the Final Approval Order shall have, fully, finally, and forever released, resolved,

relinquished, and discharged each and all of the Released Parties from each and all of the Generally Released Claims. The Releasing Plaintiffs further agree that they will not institute any actions or causes of action (in law, in equity, or administratively), suits, debts, liens, or claims, known or unknown, fixed or contingent, which they may have or claim to have, in state or federal court, in arbitration, or with any state, federal, or local government agency or with any administrative or advisory body, arising from or reasonably related to the Generally Released Claims against the Released Parties

53. The obligations incurred by the Released Parties under this Settlement Agreement shall be a full and final disposition of the Action and all Generally Released Claims as against all Released Parties.

54. As of the Effective Date, the Releasing Settlement Class Members shall be deemed to have, and by operation of the Final Approval Order shall have, fully, finally, and forever released, resolved, relinquished, and discharged each and all of the Released Parties from each and all of the Specifically Released Claims. The Releasing Settlement Class Members further agree that they will not institute any actions or causes of action (in law, equity, or administratively), suits, debts, liens, or claims, known or unknown, fixed or contingent, which they may have or claim to have, in state or federal court, in arbitration, or with any state, federal, or local government agency or with any administrative or advisory body, arising from or reasonably related to the Specifically Released Claim, directly or indirectly, against the Released Parties.

55. The obligations incurred by the Released Parties under this Settlement Agreement shall be a full and final disposition of the Action and all Specifically Released Claims as against all Released Parties.

VI. NO ADMISSION OF LIABILITY

56. Defendants have agreed to the terms of this Settlement Agreement to end all controversy with Plaintiff and the Settlement Class Members and to avoid the burden and expense of litigation, without in any way acknowledging fault or liability. Nothing herein shall constitute an admission by Defendants that the Action was properly brought on a class or representative basis other than for settlement purposes. Defendants deny any liability or wrongdoing of any kind associated with the alleged claims in the Action. Defendants have denied and continue to deny each and every material factual allegation and all claims asserted against them in the Action. Nothing herein shall constitute an admission by Defendants of wrongdoing or liability, or of the truth of any allegations in the Action. The settlement of this Action, the negotiation and execution of this Agreement, and all acts performed or documents executed pursuant to or in furtherance of the settlement are not and shall not be deemed to be, and may not be used as, an admission or evidence of any wrongdoing or liability on the part of Defendants, or as a concession by Defendants as to the truth of any of the allegations in this Action, or the veracity of any claim for relief or defense, or as an admission regarding any other matter in this Action.

57. This Settlement Agreement, whether or not consummated, and any proceedings taken pursuant to it (i) shall not be offered or received against Defendants or any other Released Party as evidence of, or construed as, or deemed to be evidence of, any presumption, concession, or admission by Defendants or any other Released Party concerning the truth of any fact alleged by the Plaintiff or the validity of any claim that was or could have been asserted against Defendants or any Released Party in the Action or in any litigation, or of any liability, fault, misconduct, or wrongdoing of any kind of Defendants or any Released Party; (ii) shall not be offered or received against Defendants or any Released Party as evidence of a presumption, concession, or admission of any liability, fault, misconduct, or wrongdoing by Defendants or the Released Parties of any

kind, or against the Plaintiff or any Settlement Class Member as evidence of any infirmity in the claims of the Plaintiff or the other Settlement Class Members; and (iii) shall not be construed against Defendants or any Released Party, or against the Plaintiff or any other Settlement Class Members as an admission, concession, or presumption that the consideration to be given by this Settlement Agreement represents the amount which could be or would have been recovered after trial.

58. Notwithstanding the foregoing, this Settlement Agreement may be used as evidence for the purpose of enforcing its terms.

VII. SETTLEMENT ADMINISTRATOR

59. Plaintiff shall obtain bids from potential settlement administrators for administering the terms of this Settlement Agreement as provided in the Settlement Agreement, including effectuating the Notice Plan (and distributing the Net Settlement Fund to Settlement Class Members).

60. Plaintiff shall select a Settlement Administrator with Defendants' consent, which shall not be unreasonably withheld, and shall ask the Court to approve the Settlement Administrator in the Preliminary Approval Order.

61. The Settlement Administrator's fees shall be Settlement Administrator's Expenses.

62. All Settlement Administrator's Expenses shall be paid by the Settlement Administrator from the Settlement Fund.

63. It shall be the responsibility of the Settlement Administrator to respond to all non legal inquiries from or on behalf of the Settlement Class Members with respect to this Settlement Agreement. The Parties' Counsel must both approve any FAQs or other material the Settlement Administrator may use to answer inquiries and shall confer and assist the Settlement Administrator as it requests.

VIII. NOTICE OF SETTLEMENT

64. The Parties shall cooperate reasonably and in good faith to agree on the form and content of notices to be sent to Settlement Class Members under the Notice Plan that clearly and concisely state in plain, easily understood language, taking into account any special concerns about the language needs of the Settlement Class Members, (a) the nature of the action; (b) the definition of the Settlement Class; (c) the Settlement Class's WARN Act claim; (d) that any Settlement Class Member may enter an appearance through an attorney if desired; (e) that the Court will exclude from the Settlement Class any member who requests exclusion; (f) the time and manner for requesting exclusion; (g) the binding effect of a class judgment on Settlement Class Members; (h) the essential terms of the Settlement Agreement; (i) information regarding Attorneys' Fees and Costs; (j) the essential terms of the Allocation Plan and the manner of making distributions from the Net Settlement Fund; and (k) Plaintiff's Counsel's contact information.

65. The Parties shall cooperate reasonably and in good faith to agree on a manner of giving notice under the Notice Plan that is reasonable and reasonably calculated, under all the circumstances, to apprise Settlement Class Members of the pendency of the Action and to afford them an opportunity to present their objections.

66. The Notice Plan shall include: (a) a password-protected website at a URL agreed to by the Parties, where a detailed notice shall be posted; (b) a toll-free number and an email address at which Settlement Class Members may obtain information or contact the Settlement Administrator; and (c) emails, or, if email addresses are unavailable or emails are returned as undeliverable, mailings to Settlement Class Members containing a summary postcard notice.

67. If any emailed summary notice is returned as undeliverable, the Settlement Administrator shall promptly cause the summary postcard notice to be mailed to that Settlement Class Member. If any mailed summary postcard notice is returned as undeliverable with a

forwarding address, the Settlement Administrator shall promptly cause the summary postcard notice to be forwarded by mail to the listed forwarding address. If any mailed summary postcard notice is returned as undeliverable without a forwarding address, the Settlement Administrator must attempt to locate the correct address through a reasonable search and must promptly forward the summary postcard notice to the address obtained from the search.

68. Plaintiff shall ask the Court to approve the Notice Plan in the Preliminary Approval Order. The Settlement Administrator shall effectuate the Notice Plan as approved by the Court. The costs of effectuating the Notice Plan shall be Settlement Administrator's Expenses.

69. Defendants shall cooperate reasonably and in good faith with the Settlement Administrator to provide the Settlement Administrator with such information on Settlement Class Members as is reasonably necessary for effectuating the Notice Plan, including Settlement Class Members' full names, last known mailing and physical addresses, email addresses, and Social Security numbers. Neither Plaintiff nor Plaintiff's Counsel shall have access to such information. The Parties shall require the Settlement Administrator to agree in writing to keep such information in confidence; to use it only for the purposes of effectuating the terms of the Settlement Agreement; and to retain it no longer than is reasonably necessary to effectuate the terms of the Settlement Agreement.

70. With the good-faith and reasonable cooperation of the Parties, the Settlement Administrator shall serve notice of the Settlement Agreement that meets the requirements of 28 U.S.C. § 1715 on the appropriate federal and state officials no later than 10 days following the filing of the Settlement Agreement with the Court, and shall otherwise comply with the statute's terms.

71. The costs of serving the notice required by 28 U.S.C. § 1715 and of otherwise complying with its terms shall be Settlement Administrator's Expenses.

IX. ATTORNEYS' FEES AND COSTS, AND SERVICE AWARDS

72. Plaintiff's Counsel may seek an award from the Court of reasonable attorneys' fees under Rule 23(h), not to exceed one third of the Settlement Fund.

73. Plaintiff's Counsel may also seek an award from the Court of their taxable and nontaxable costs under Rules 54(d) and 23(h).

74. Plaintiff's Counsel may seek a Service Award, not to exceed $2,500, for the Plaintiff. Defendants will not oppose such a request.

75. All Attorneys' Fees and Costs, and Service Awards, shall be paid by the Settlement Administrator from the Settlement Fund.

76. The Settlement Administrator shall pay any Service Awards to Plaintiff in a manner directed by Plaintiff's Counsel within 10 days of entry of the Court's order granting Plaintiff's motion for Service Award. The Settlement Administrator shall issue appropriate Forms 1099 to Plaintiff for tax purposes.

77. The Settlement Administrator shall pay any Attorneys' Fees and Costs to Plaintiff's Counsel in a manner directed by Plaintiff's Counsel within 10 days of entry of the Court's order granting Plaintiff's motion for Attorneys' Fees and Costs.

X. PRELIMINARY APPROVAL, FINAL APPROVAL, AND FINAL JUDGMENT

78. The Parties shall cooperate in good faith to take all reasonably necessary steps to obtain the Court's approval of the Settlement Agreement.

79. Plaintiff shall move the Court for, and Defendants shall not oppose entry of, a Preliminary Approval Order which (a) preliminarily approves the settlement embodied in this Settlement Agreement under Rule 23(e)(1); (b) conditionally certifies the Settlement Class for

purposes of settlement under Rules 23(a) and 23(b)(3); (c) designates Plaintiff's Counsel as interim Settlement Class Counsel under Rule 23(g)(3); (d) approves the Notice Plan; (e) approves the Allocation Plan; (f) approves the Settlement Administrator; (g) directs that notice be given to the Settlement Class according to the Notice Plan; (h) establishes the time and manner for requesting exclusion from the Settlement Class; (i) schedules the hearing required by Rule 23(e)(2) in accordance with 28 U.S.C. § 1715 for hearing Plaintiff's motions for a Final Approval Order; and (j) schedules a hearing on Plaintiff's motion for Attorneys' Fees and Costs, and for Service Awards.

80. In accordance with the terms of the Preliminary Approval Order, Plaintiff shall move the Court for, and Defendants shall not oppose entry of, a Final Approval Order which (a) approves the settlement embodied in the Settlement Agreement under Rule 23(e)(2); (b) certifies the Settlement Class for purposes of settlement under Rules 23(a) and 23(b)(3); (c) designates Plaintiff's Counsel as Settlement Class Counsel under Rule 23(g)(1); and (d) provides for entry of final judgment as a separate document under Rule 58(a) dismissing the Action with prejudice, except retaining ancillary jurisdiction to decide Plaintiff's motion for Attorneys' Fees and Costs, and for Service Awards, and to enforce the terms of the Settlement Agreement.

81. For the avoidance of doubt, Defendants do not object to the certification of the Settlement Class strictly and solely for settlement purposes. Certification of the Settlement Class will be effective only with respect to the settlement of this Action and is without prejudice to the rights of Defendants to oppose class certification and/or to contest issues of liability in this Action should this Settlement Agreement be terminated, or the Effective Date not occur for any reason. In the event that this Settlement Agreement is terminated pursuant to its terms or the Effective Date does not occur for any reason, then certification of the Settlement Class, which is strictly and

solely for settlement purposes only, will be vacated and of no further force or effect, and the Action will proceed as it existed before execution of this Settlement Agreement.

82. Defendants' failure to oppose Plaintiff's request for entry of a Preliminary Approval Order and/or a Final Approval Order shall not constitute an admission by Defendants as to any matter.

83. Except as necessary to secure approval of this Settlement Agreement or as otherwise provided herein, the Parties shall take no further steps to prosecute the Action in this Court or any other court.

XI. TERMINATION

84. The Settlement Agreement shall terminate if the settlement it embodies is not approved by the Court; if its terms are materially altered by the Court in the Preliminary or Final Approval Order; or if the Court declines to certify the Settlement Class for settlement purposes.

85. Defendants may terminate the Settlement Agreement if more than 5 percent of potential Settlement Class Members request exclusion. Defendants must exercise this right within 10 days of the submission of the last exclusion request necessary to trigger this right.

86. Any ruling by the Court or any reviewing court as to Attorneys' Fees and Costs shall not in any way terminate or modify the Settlement Agreement.

87. If the Settlement Agreement is terminated, it shall have no force or effect, and the Parties shall be restored to the *status quo ante* that existed before they agreed to settle the Action.

XII. OTHER MATTERS

88. This Settlement Agreement shall be governed by the laws of the State of Colorado, without regard to its conflicts of law principles.

89. The Parties shall cooperate with each other in good faith to consummate the terms of this Settlement Agreement and all related transactions, and shall take all reasonably necessary steps to give effect to the terms of this Settlement Agreement.

90. This Settlement Agreement shall be inadmissible as evidence that Defendants have engaged in any wrongful conduct, or conduct that otherwise violates any federal, state, or local laws, regulations, or rules, and shall be inadmissible in any other action against Defendants, and shall not be construed as an admission by Defendants as to any matter.

91. This Settlement Agreement contains the full, complete, and integrated statement of each and every term and provision agreed to by and among the Parties and supersedes any prior writings or agreements (written or oral) between or among the Parties, which prior agreements may no longer be relied upon for any purpose.

92. This Settlement Agreement is executed voluntarily and without duress or undue influence on the part of or on behalf of the Parties, or of any other person, firm, or entity.

93. This Settlement Agreement shall bind and inure to the benefit or detriment of the Parties and the Settlement Class Members, and their respective agents, employees, representatives, trustees, members, managers, officers, directors, shareholders, divisions, parent corporations, subsidiaries, heirs, executors, assigns, and successors in interest. All of Defendants' affiliates shall be intended third-party beneficiaries of the Released Claims set forth in this Settlement Agreement.

94. The Parties acknowledge that they have been represented in negotiations for and in the preparation of this Settlement Agreement by independent counsel of their own choosing, that they have read this Settlement Agreement and have had it fully explained to them by such counsel, and that they are fully aware of the contents of this Settlement Agreement and of its legal effect.

95. Headings contained in this Settlement Agreement are for convenience of reference only and are not intended to alter or vary the construction and meaning of this Settlement Agreement.

96. Each Party warrants and represents that there are no liens or claims of lien or assignments, in law or equity or otherwise, of or against any of the claims or causes of action released herein, and, further, that each Party is fully entitled and duly authorized to give this complete and final release and discharge.

97. Plaintiff's Counsel will neither seek media attention for the settlement embodied in the Settlement Agreement nor publicly disseminate information about the Action in any way—including transmitting information through publicized interviews, websites, digital applications or services, or hard copy publications—except as otherwise provided by the terms of the Settlement Agreement or by order of the Court. However, nothing shall prevent Plaintiff's Counsel from responding to class member inquires about this matter or including it on a list of settled cases on their websites or resumes.

98. Plaintiff shall not disclose and shall keep confidential all information in his possession concerning Defendants, the Released Parties, the Action, and the Settlement Agreement, except as otherwise provided by the terms of the Settlement Agreement or by order of the Court.

99. Plaintiff shall not disparage or make defamatory or knowingly false statements about Defendants or the Released Parties to any person or entity under any circumstances.

100. Defendants may move to have some or all of the Settlement Agreement filed under seal or redacted. The Court's ruling on such motion shall not impair or alter the Settlement Agreement in any way.

101. If there is conflict between this Settlement Agreement and a Court order, the Court's order shall take precedence.

102. The Settlement Agreement may not be modified in any way except in writing signed by the Parties or Parties' Counsel, subject to Court approval, if required.

103. The Parties may mutually waive any provision of this Settlement Agreement by a written waiver signed by the Parties or Parties' Counsel, subject to Court approval, if required. A waiver of any provision of this Settlement Agreement will not constitute a waiver of any other provision.

104. This Settlement Agreement may be executed in counterparts, each of which shall constitute an original, but all of which together shall constitute one and the same instrument. The several signature pages may be collected and annexed to one or more documents to form a complete counterpart. Photocopies or electronic scans of executed copies of this Settlement Agreement may be treated as originals.

105. Each of the Recitals stated above are hereby incorporated into this Settlement Agreement as if stated fully herein.

106. Except as otherwise provided herein, all notices, demands, or other communications given or made under the Settlement Agreement shall be in writing and delivered by post, courier, facsimile, or electronically to the following:

If to Plaintiff or Plaintiff's Counsel:

Lynn A. Toops *and* J. Gerard Stranch, IV

If to Defendants or Defendants' Counsel:

Patrick Richard Scully
Monica J. Frascona
Foley Hoag LLP
1331 7th Street, Suite 600
Denver, CO 80202
pscully@foleyhoag.com
mfrascona@foleyhoag.com

Christian A. Garcia
Foley Hoag LLP
155 Seaport Boulevard
Boston, MA 02210
cgarcia@foleyhoag.com

[*Remainder of page intentionally left blank.*]

IN WITNESS WHEREOF, the undersigned Party has executed this Settlement Agreement on the date indicated below.

DAVID LOPEZ ALZUARTE

By: David Lopez Alzuarte ______________________

Name: David Lopez Alzuarte

Date: 11 / 14 / 2025 ______________________

IN WITNESS WHEREOF, the undersigned Parties have executed this Settlement Agreement on the date(s) indicated below.

BROWN BROTHERS ASPHALT & CONCRETE, LLC
By: Brown Brothers Holdings, LLC, its sole member
By: BBAC Resources Holdings, LLC, its sole member

DocuSigned by:
By: ______________________________
77041884D7CB441...
Name: A. David Kocen
Title: Manager

Date: November 6, 2025

RAPID MATERIAL TRANSPORT, LLC
By: Brown Brothers Holdings, LLC, its sole member
By: BBAC Resources Holdings, LLC, its sole member

DocuSigned by:
By: ______________________________
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Name: A. David Kocen
Title: Manager

Date: November 6, 2025