

1                                   **JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT**

2                                   This Joint Stipulation of Class Action and PAGA Settlement (“Settlement,” “Agreement,” or  
3 “Settlement Agreement”) is made and entered into by and between Plaintiff Alfonso Herrera  
4 (“Plaintiff” or “Class Representative”), individually, and on behalf of all others similarly situated and  
5 on behalf of the State of California with respect to aggrieved employees, and Defendants W.L. Butler  
6 Construction, Inc. and All American Equipment Rental, LLC (together, “Defendants”) (collectively,  
7 Plaintiff and Defendants are referred to as “Parties” and individually as “Party”).

8                                   This Settlement Agreement shall be binding on Plaintiff, Settlement Class Members (as  
9 defined herein), the State of California as to the employment of PAGA Employees (as defined herein),  
10 and Defendants, subject to the terms and conditions hereof and the approval of the Court.

11   **RECITALS**

12                                   1.           On July 5, 2023, Plaintiff filed a Class Action Complaint for Damages in the action  
13 entitled *Alfonso Herrera v. W.L. Butler Construction, Inc., et al.*, Orange County Superior Court Case  
14 No. 30-2023-01335445-CU-OE-CXC (“Action”), thereby commencing a putative class action against  
15 Defendants. On May 1, 2024, Plaintiff provided written notice to the Labor and Workforce  
16 Development Agency (“LWDA”) by online submission and to Defendants by U.S. Certified Mail,  
17 pursuant to California Labor Code Section 2699.3, of the specific provisions of the California Labor  
18 Code alleged to have been violated by Defendants (“PAGA Letter”).

19                                   2.           The Parties agree that Plaintiff will file a First Amended Class and Representative  
20 Action Complaint (“Operative Complaint”) in the Action, which will add a cause of action under the  
21 Private Attorneys General Act of 2004 pursuant to California Labor Code Section 2698 *et seq.*  
22 (“PAGA”). The Operative Complaint alleges nine (9) causes of action for violations of the California  
23 Labor Code for failure to pay overtime wages, failure to pay minimum wages, failure to provide  
24 compliant meal periods and premium payments in lieu thereof, failure to provide compliant rest  
25 periods and premiums payments in lieu thereof, failure to timely pay wages upon termination, failure  
26 to provide accurate wage statements, and failure to reimburse necessary business expenses, for  
27 violations of California Business & Professions Code Section 17200, *et seq.* based on the  
28 aforementioned California Labor Code violations, and for civil penalties under PAGA based on the

1   aforementioned California Labor Code violations.

2           3.       Defendants deny all materials allegations set forth in the Action and have asserted  
3   numerous affirmative defenses. Notwithstanding, in the interest of avoiding further litigation,  
4   Defendants desire to fully and finally settle the Action, Released Class Claims (as defined herein), and  
5   Released PAGA Claims (as defined herein).

6           4.       Class Counsel diligently investigated the class and PAGA claims against Defendants,  
7   including any and all applicable defenses and the applicable law. The investigation included, *inter*  
8   *alia*, the exchange of information, data, and documents, and review of corporate policies and practices.  
9   The Parties have engaged in sufficient informal discovery and investigation to assess the relative  
10   merits of the claims and contentions of the Parties.

11          5.       On April 24, 2024, the Parties participated in mediation with Monique Ngo-Bonnici,  
12   Esq. (the “Mediator”), a respected mediator of complex wage and hour actions, and with the assistance  
13   of the Mediator’s evaluations, the Parties reached the settlement that is memorialized herein. The  
14   Parties’ settlement discussions were conducted at arms’ length, and the Settlement is the result of an  
15   informed and detailed analysis of Defendants’ potential liability and exposure in relation to the costs  
16   and risks associated with continued litigation. Based on Class Counsel’s investigation and evaluation,  
17   Class Counsel believes that the settlement with Defendants for the consideration and on the terms set  
18   forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the  
19   Class Members, State of California, and PAGA Employees in light of all known facts and  
20   circumstances, including the risk of significant delay and uncertainty associated with litigation and  
21   various defenses asserted by Defendants.

22          6.       The Parties expressly acknowledge that this Settlement Agreement is entered into  
23   solely for the purpose of compromising significantly disputed claims and that nothing herein is an  
24   admission of liability or wrongdoing by Defendants. If for any reason this Settlement Agreement is  
25   not approved, it will be of no force or effect, and the Parties shall be returned to their original respective  
26   positions.

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**DEFINITIONS**

7. The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement will also be effective.

a. “Attorneys’ Fees and Costs” means attorneys’ fees approved by the Court for Class Counsel’s litigation and resolution of the Action and all actual costs and expenses incurred and to be incurred by Class Counsel in connection with the Action, as set forth in Paragraph 10.

b. “Class” or “Class Member(s)” means all current and former non-exempt employees who worked for Defendants in the State of California at any time during the Class Period, but excluding all employees who signed a general release agreement with Defendants.

c. “Class Counsel” means Jonathan M. Genish, Miriam L. Schimmel, Joana Fang, Alexandra Rose, and Jared C. Osborne of Blackstone Law, APC, who will seek to be appointed counsel for the Class.

d. “Class List” means a complete list of all Class Members that Defendants will diligently and in good faith compile from its records and provide to the Settlement Administrator. The Class List will be formatted in a readable Microsoft Office Excel spreadsheet containing the following information for each Class Member: (1) full name; (2) last known mailing address; (3) Social Security number; (4) dates worked for Defendants during the Class Period; and (8) such other information as is necessary for the Settlement Administrator to calculate Workweeks and PAGA Workweeks (if applicable).

e. “Class Notice” means the Notice of Class Action Settlement, substantially in the form attached hereto as “**Exhibit A**.”

f. “Class Period” means the period from July 5, 2019 through April 24, 2024.

g. “Class Settlement” means the settlement and resolution of all Released Class Claims.

h. “Court” means the Superior Court of the State of California for the County of Orange.

i. “Defendants’ Counsel” means Michael J. Studenka, and Madison J. Rolapp of Newmeyer & Dillion LLP.

1 j. “Effective Date” means the following: (i) if no Settlement Class Member  
2 objects to the Class Settlement, then the Effective Date will be the date of Final Approval; or (ii) if  
3 any Settlement Class Member objects to the Class Settlement, the Effective Date will be the sixty-first  
4 (61st) calendar day after the date of Final Approval, provided no appeal is initiated by an objector; or  
5 (iii) if a timely appeal is initiated by an objector, then the Effective Date will be the day after final  
6 resolution of that appeal (including any requests for rehearing and/or petitions for certiorari), resulting  
7 in final judicial approval of the Settlement.

8 k. “Employer Taxes” means the employers’ share of taxes and contributions in  
9 connection with the wages portion of Individual Settlement Shares, which shall be paid by Defendants  
10 in addition to the Gross Settlement Amount.

11 l. “Enhancement Payment” means the amount to be paid to Plaintiff, in  
12 recognition of his effort and work in prosecuting the Action on behalf of Class Members and PAGA  
13 Employees, and general release of claims, as set forth in Paragraph 11.

14 m. “Exclusion Form” means the Request for Exclusion Form, substantially in the  
15 form attached hereto as “**Exhibit B.**”

16 n. “Final Approval” means the determination by the Court that the Settlement is  
17 fair, reasonable, and adequate, and entry of the Final Approval Order and Judgment based thereon.

18 o. “Final Approval Hearing” means the hearing at which the Court will consider  
19 and determine whether the Settlement should be granted Final Approval.

20 p. “Final Approval Order and Judgment” means the order granting final approval  
21 of the Settlement and entering judgment thereon, in a form and content mutually agreed to by the  
22 Parties, and subject to approval by the Court.

23 q. “Gross Settlement Amount” means the amount of One Million Four Hundred  
24 Seventy-Five Thousand Dollars and Zero Cents (\$1,475,000.00) to be paid by Defendants in full  
25 satisfaction of the Action, Released Class Claims, and Released PAGA Claims, which includes all  
26 Attorneys’ Fees and Costs, Enhancement Payment, PAGA Amount, Settlement Administration Costs,  
27 and Net Settlement Amount to be paid to the Settlement Class Members. Defendants shall pay the  
28 Employer Taxes separately and in addition to the Gross Settlement Amount. The Gross Settlement

1 Amount is non-reversionary; no portion of the Gross Settlement Payment will return to Defendants.  
2 The Gross Settlement Amount is subject to increase, as provided in Paragraph 14.

3 r. "Individual PAGA Payment" means the *pro rata* share of the PAGA Employee  
4 Amount that a PAGA Employee may be eligible to receive under the PAGA Settlement, to be  
5 calculated in accordance with Paragraph 16.

6 s. "Individual Settlement Payment" means the net payment of each Settlement  
7 Class Member's Individual Settlement Share, after reduction for the employee's share of taxes and  
8 withholdings with respect to the wages portion of the Individual Settlement Share, as provided in  
9 Paragraph 17.

10 t. "Individual Settlement Share" means the *pro rata* share of the Net Settlement  
11 Amount that a Class Member may be eligible to receive under the Class Settlement, to be calculated  
12 in accordance with Paragraph 15.

13 u. "LWDA Payment" means the amount of Thirty-Seven Thousand Five Hundred  
14 Dollars and Zero Cents (\$37,500.00), i.e., 75% of the PAGA Amount, that the Parties have agreed to  
15 pay to the LWDA under the PAGA Settlement, as set forth in Paragraph 12.

16 v. "Net Settlement Amount" means the portion of the Gross Settlement Amount  
17 that is available for distribution to Settlement Class Members, which is the Gross Settlement Amount  
18 less the Court-approved Attorneys' Fees and Costs, Enhancement Payment, PAGA Amount, and  
19 Settlement Administration Costs.

20 w. "Notice of Objection" means a Settlement Class Member's written objection to  
21 the Class Settlement, which must: (a) contain the case name and number of the Action; (b) contain the  
22 objector's full name, signature, address, telephone number, and the last four (4) digits of the objector's  
23 Social Security number; (c) contain a written statement of all grounds for the objection accompanied  
24 by any legal support for such objection; (d) contain copies of any papers, briefs, or other documents  
25 upon which the objection is based; and (e) be returned by mail to the Settlement Administrator at the  
26 specified address, postmarked on or before the Response Deadline.

27 x. "Notice Packet" means the Class Notice and Exclusion Form, substantially in  
28 the forms attached hereto as "Exhibit A" and "Exhibit B."

1 y. "PAGA Amount" means the allocation of Fifty Thousand Dollars and Zero  
2 Cents (\$50,000.00) from the Gross Settlement Amount for the PAGA Settlement. Seventy-five  
3 percent (75%) of the PAGA Amount, or \$37,500.00, will be paid to the LWDA (i.e., the LWDA  
4 Payment) and the remaining twenty-five percent (25%), or \$12,500.00, will be distributed to the  
5 PAGA Employees (i.e., the PAGA Employee Amount).

6 z. "PAGA Employee(s)" means all current and former non-exempt employees  
7 who worked for Defendants in the State of California at any time during the PAGA Period, but  
8 excluding all employees who signed a general release agreement with Defendants.

9 aa. "PAGA Employee Amount" means the amount of Twelve Thousand Five  
10 Hundred Dollars and Zero Cents (\$12,500.00), i.e., 25% of the PAGA Amount, to be distributed to  
11 PAGA Employees on a *pro rata* basis based on their PAGA Workweeks.

12 bb. "PAGA Period" means the period from July 5, 2022 through April 24, 2024.

13 cc. "PAGA Settlement" means the settlement and resolution of all Released PAGA  
14 Claims.

15 dd. "PAGA Workweeks" means the number of weeks each PAGA Employee  
16 worked for Defendants as a non-exempt employee in California during the PAGA Period. The PAGA  
17 Workweeks will be calculated by the Settlement Administrator based on each PAGA Employee's start  
18 date or the beginning of the PAGA Period, whichever is later, and separation date or the last day of  
19 the PAGA Period, whichever is earlier, based on the Class List provided by Defendant. In order to be  
20 counted as a PAGA Workweek, the PAGA Employee must have worked at least one day in that week.

21 ee. "Preliminary Approval" means the date on which the Court enters the  
22 Preliminary Approval Order.

23 ff. "Preliminary Approval Order" means the order granting preliminary approval  
24 of the Settlement, in a form and content mutually agreed to by the Parties, and subject to approval by  
25 the Court.

26 gg. "Released Class Claims" means any and all claims which were alleged or which  
27 could have been alleged based on the factual allegations in the Operative Complaint, arising during  
28 the Class Period, including but not limited to claims for Defendants' alleged failure to pay overtime

1 and minimum wages, provide compliant meal and rest periods and associated premium payments,  
2 timely pay wages upon termination, provide accurate wage statements, and reimburse necessary  
3 business-related expenses in violation of California Labor Code Sections 201, 202, 203, 226(a), 226.7,  
4 510, 512(a), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the applicable Industrial Welfare  
5 Commission Wage Order(s), and California Business and Professions Code sections 17200, *et seq.*

6 hh. “Released PAGA Claims” means any and all claims which were alleged or  
7 which could have been alleged based on the factual allegations in the Operative Complaint and PAGA  
8 Letter, arising during the PAGA Period, for civil penalties under the Private Attorneys General Act of  
9 2004, California Labor Code Sections 2698 *et seq.*, for Defendants’ alleged failure to pay overtime  
10 and minimum wages, provide compliant meal and rest periods and associated premium payments,  
11 timely pay wages upon termination, provide accurate wage statements, and reimburse necessary  
12 business-related expenses in violation of California Labor Code Sections 201, 202, 203, 226(a), 226.7,  
13 510, 512(a), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the applicable Industrial Welfare  
14 Commission Wage Order(s).

15 ii. “Released Parties” means Defendants, W.L. Butler, Inc., and any related  
16 entities, and their directors, officers, members, and investors.

17 jj. “Request for Exclusion” means an Exclusion Form or letter submitted by a  
18 Class Member indicating a request to be excluded from the Class Settlement, which must: (a) contain  
19 the case name and number of the Action; (b) contain the Class Member’s full name, signature, address,  
20 telephone number, and last four (4) digits of the Class Member’s Social Security number; (c) clearly  
21 state that the Class Member does not wish to be included in the Class Settlement; and (d) be returned  
22 by mail to the Settlement Administrator at the specified address, postmarked on or before the Response  
23 Deadline.

24 kk. “Response Deadline” means the deadline by which Class Members must submit  
25 a Request for Exclusion, Notice of Objection, and/or Workweeks Dispute, which shall be the date that  
26 is forty-five (45) calendar days from the initial mailing of the Notice Packet by the Settlement  
27 Administrator to Class Members, unless the 45<sup>th</sup> day falls on a Sunday or Federal holiday, in which  
28 case the Response Deadline will be extended to the next day on which the United States Postal service

1 is open. The Response Deadline may also be extended by express agreement between Class Counsel  
2 and Defendants' Counsel. Under no circumstances, however, will the Settlement Administrator have  
3 the authority to extend the Response Deadline. In the event that a Notice Packet is re-mailed to a Class  
4 Member, the Response Deadline for that Class Member shall be extended fifteen (15) calendar days  
5 from the original Response Deadline.

6 ll. "Settlement Administrator" means Apex Class Action LLC, or any other third-  
7 party class action settlement administrator agreed to by the Parties and approved by the Court for  
8 purposes of administering the Settlement. The Parties and their counsel each represent that they do  
9 not have any financial interest in the Settlement Administrator or otherwise have a relationship with  
10 the Settlement Administrator that could create a conflict of interest.

11 mm. "Settlement Administration Costs" means the costs payable from the Gross  
12 Settlement Amount to the Settlement Administrator for administering the Settlement, as set forth in  
13 Paragraph 13.

14 nn. "Settlement Class" or "Settlement Class Member(s)" means all Class Members  
15 who do not submit a timely and valid Request for Exclusion.

16 oo. "Workweeks" means the number of weeks each Class Member worked for  
17 Defendants as a non-exempt employee in California during the Class Period. The Workweeks will be  
18 calculated by the Settlement Administrator based on each Class Member's start date or the beginning  
19 of the Class Period, whichever is later, and separation date or the last day of the Class Period,  
20 whichever is earlier, based on the Class List provided by Defendant. In order to be counted as a  
21 Workweek, the Class Member must have worked at least one day in that week.

22 pp. "Workweeks Dispute" means a letter submitted by a Class Member disputing  
23 the number of Workweeks and/or PAGA Workweeks to which they have been credited, which must:  
24 (a) contain the case name and number of the Action; (b) contain the Class Member's full name,  
25 signature, address, telephone number, and the last four (4) digits of the Class Member's Social Security  
26 number; (c) clearly state that the Class Member disputes the number of Workweeks and/or PAGA  
27 Workweeks credited to the Class Member and what the Class Member contends is the correct number;  
28 and (d) be returned by mail to the Settlement Administrator at the specified address, postmarked on or



1 before the Response Deadline.

2 **CLASS CERTIFICATION**

3 8. For the purposes of this Settlement only, the Parties stipulate to the certification of the  
4 Class.

5 9. The Parties agree that certification for the purpose of settlement is not an admission  
6 that certification is proper under Section 382 of the California Code of Civil Procedure. Should, for  
7 whatever reason, the Court not grant Final Approval, the Parties' stipulation to class certification as  
8 part of the Settlement shall become null and void ab initio and shall have no bearing on, and shall not  
9 be admissible in connection with, the issue of whether or not certification would be inappropriate in a  
10 non-settlement context.

11 **TERMS OF THE AGREEMENT**

12 NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements set  
13 forth herein, the Parties agree, subject to the Court's approval, as follows:

14 10. Attorneys' Fees and Costs. Defendants agree not to oppose or impede any application  
15 or motion by Class Counsel for attorneys' fees in the amount up to thirty-five percent (35%) of the  
16 Gross Settlement Amount (i.e., \$516,250.00 if the Gross Settlement Amount is \$1,475,000.00) and  
17 reimbursement of actual costs and expenses associated with Class Counsel's litigation and settlement  
18 of the Action, in an amount not to exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00),  
19 both of which will be paid from the Gross Settlement Amount. These amounts will cover any and all  
20 work performed and any and all costs incurred by Class Counsel in connection with the litigation of  
21 the Action, including without limitation all work performed and costs incurred to date, and all work  
22 to be performed and all costs to be incurred in connection with obtaining the Court's approval of this  
23 Settlement Agreement, including any objections raised and any appeals necessitated by those  
24 objections. Class Counsel shall be solely and legally responsible for correctly characterizing this  
25 compensation for tax purposes and for paying any taxes on the amounts received. The Settlement  
26 Administrator shall issue an IRS Form 1099 to Class Counsel for the Attorneys' Fees and Costs. Any  
27 portion of the requested Attorneys' Fees and Costs that is not awarded by the Court to Class Counsel  
28 shall be reallocated to the Net Settlement Amount for the benefit of the Settlement Class Members.

1           11.     Enhancement Payment. Defendants agree not to oppose or impede any application or  
2 motion by Plaintiff for an Enhancement Payment in the amount up to Seven Thousand Five Hundred  
3 Dollars and Zero Cents (\$7,500.00). The Enhancement Payment, which will be paid from the Gross  
4 Settlement Amount, subject to Court approval, will be in addition to any other payment Plaintiff may  
5 be eligible to receive under the Settlement, e.g., his Individual Settlement Payment and/or Individual  
6 PAGA Payment. Plaintiff shall be solely and legally responsible for correctly characterizing this  
7 compensation for tax purposes and for paying any taxes on the amounts received. The Settlement  
8 Administrator shall issue an IRS Form 1099 to Plaintiff for the Enhancement Payment. Any portion  
9 of the requested Enhancement Payment that is not awarded by the Court to Plaintiff shall be reallocated  
10 to the Net Settlement Amount for the benefit of the Settlement Class Members.

11           12.     PAGA Amount. Subject to approval by the Court, the Parties agree that the amount of  
12 Fifty Thousand Dollars and Zero Cents (\$50,000.00) shall be allocated from the Gross Settlement  
13 Amount toward penalties under the Private Attorneys General Act, California Labor Code Section  
14 2698, *et seq.* (i.e., the PAGA Amount), of which seventy-five percent (75%), or \$37,500.00, will be  
15 paid to the LWDA (i.e., the LWDA Payment) and twenty-five percent (25%), or \$12,500.00, will be  
16 distributed to PAGA Employees (i.e., the PAGA Employee Amount) on a *pro rata* basis, based on the  
17 total number of PAGA Workweeks worked by each PAGA Employee during the PAGA Period (i.e.,  
18 the Individual PAGA Payments).

19           13.     Settlement Administration Costs. The Settlement Administrator will be paid for the  
20 reasonable costs of administration of the Settlement and distribution of payments under the Settlement,  
21 which are currently not to exceed Eight Thousand Dollars and Zero Cents (\$8,000.00). These costs,  
22 which will be paid from the Gross Settlement Amount, subject to Court approval, will include, *inter*  
23 *alia*, translating the Notice Packet to Spanish, printing, distributing, and tracking Notice Packets and  
24 other documents for the Settlement, calculating and distributing payments due under the Settlement,  
25 issuing of 1099 and W-2 IRS Forms and all required tax reporting, filings, withholdings, and  
26 remittances, providing necessary reports and declarations, and other duties and responsibilities set  
27 forth herein to process the Settlement, and as requested by the Parties. To the extent the actual  
28 Settlement Administrator's costs are greater than the estimated amount stated herein, such excess

1 amount will be deducted from the Gross Settlement Amount, subject to approval by the Court. Any  
2 portion of the estimated, designated, and/or awarded Settlement Administration Costs which are not  
3 in fact required to fulfill payment to the Settlement Administrator to undertake the required settlement  
4 administration duties shall be reallocated to the Net Settlement Amount for the benefit of the  
5 Settlement Class Members.

6 14. Escalator Clause. Defendants have represented that the Class Members worked a total  
7 of 12,380 Workweeks during the Class Period. If it is determined by the Settlement Administrator  
8 that the total number of Workweeks worked by the Class Members during the Class Period actually  
9 exceeds 12,380 by more than 10% (i.e., by more than 13,618 Workweeks), then the Gross Settlement  
10 Amount will be increased on a *pro rata* basis equal to the percentage increase in the number of  
11 Workweeks worked by the Class Members above 10%. For example, if the number of Workweeks  
12 increases by 11% to 13,742 Workweeks, then the Gross Settlement Amount will increase by 1%.  
13 Alternatively, Defendants may, at their option, and may only do so prior to the filing of Plaintiff's  
14 motion for preliminary approval, end the Class Period and PAGA Period on the date that the  
15 Workweeks do not exceed 13,618 Workweeks.

16 15. Individual Settlement Share Calculations. Individual Settlement Shares will be  
17 calculated and apportioned from the Net Settlement Amount based on the Class Members' number of  
18 Workweeks, as follows:

19 a. After Preliminary Approval, the Settlement Administrator will divide the Net  
20 Settlement Amount by the Workweeks of all Class Members to yield the "Estimated Workweek  
21 Value," and multiply each Class Member's individual Workweeks by the Estimated Workweek Value  
22 to yield each Class Member's estimated Individual Settlement Share that each Class Member may be  
23 entitled to receive under the Class Settlement.

24 b. After Final Approval, the Settlement Administrator will divide the final Net  
25 Settlement Amount by the Workweeks of all Settlement Class Members to yield the "Final Workweek  
26 Value," and multiply each Settlement Class Member's individual Workweeks by the Final Workweek  
27 Value to each Settlement Class Member's final Individual Settlement Share.

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1           16.   Individual PAGA Payment Calculations. Individual PAGA Payments will be  
2 calculated and apportioned from the PAGA Employee Amount based on the PAGA Employees'  
3 number of PAGA Workweeks, as follows: The Settlement Administrator will divide the PAGA  
4 Employee Amount, i.e., 25% of the PAGA Amount, by the PAGA Workweeks of all PAGA  
5 Employees to yield the "PAGA Workweek Value," and multiply each PAGA Employee's individual  
6 PAGA Workweeks by the PAGA Workweek Value to yield each PAGA Employee's Individual  
7 PAGA Payment.

8           17.   Tax Treatment of Individual Settlement Shares and Individual PAGA Payments. Each  
9 Individual Settlement Share will be allocated as follows: thirty-three and one-third percent (33 1/3%)  
10 wages and sixty-six and two-thirds percent (66 2/3%) penalties, interest, and non-wage damages. The  
11 portion allocated to wages will be reported on an IRS Form W-2 and the portions allocated to penalties,  
12 interest, and non-wage damages will be reported on an IRS Form 1099 (if applicable) by the Settlement  
13 Administrator. The Settlement Administrator will withhold the employee's share of taxes and  
14 withholdings with respect to the wages portion of the Individual Settlement Shares, and issue checks  
15 to Settlement Class Members for their Individual Settlement Payments (i.e., payment of their  
16 Individual Settlement Share net of these taxes and withholdings). The Employer Taxes will be paid  
17 separately and in addition to the Gross Settlement Amount. Each Individual PAGA Payment will be  
18 allocated as one hundred percent (100%) penalties and will be reported on an IRS Form 1099 (if  
19 applicable) by the Settlement Administrator.

20           18.   Administration of Taxes by the Settlement Administrator. The Settlement  
21 Administrator will be responsible for issuing to Plaintiff, Settlement Class Members, PAGA  
22 Employees, and Class Counsel any tax forms (i.e., IRS Forms W-2, IRS Forms 1099, etc.) as may be  
23 required by law for all amounts paid pursuant to this Settlement Agreement. The Settlement  
24 Administrator will also be responsible for calculating the Employer Taxes and forwarding all payroll  
25 taxes and other legally required withholdings to the appropriate government authorities.

26           19.   Tax Liability. Plaintiff, Class Counsel, Defendants, and Defendants' Counsel do not  
27 intend anything contained in this Settlement Agreement to constitute advice regarding taxes or  
28 taxability, nor shall anything in this Settlement Agreement be relied on as such. Plaintiff, Settlement

1 Class Members, and PAGA Employees are not relying on any statement, representation, or calculation  
2 by Defendants, the Settlement Administrator, or Class Counsel in this regard. Plaintiff, Settlement  
3 Class Members, and PAGA Employees understand and agree that Plaintiff, Settlement Class  
4 Members, and PAGA Employees will be solely responsible for the payment of any taxes and penalties  
5 assessed on the payments described in this Settlement Agreement. Plaintiff, Settlement Class  
6 Members, and PAGA Employees should consult with their tax advisors concerning the tax  
7 consequences of any payment they receive under the Settlement.

8       20. Circular 230 Disclaimer. EACH PARTY TO THIS SETTLEMENT AGREEMENT  
9 (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY  
10 TO THIS SETTLEMENT AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN  
11 “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS  
12 SETTLEMENT AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE  
13 BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS  
14 OR WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE  
15 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE  
16 MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART  
17 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY  
18 UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE  
19 (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS SETTLEMENT AGREEMENT, (B)  
20 HAS NOT ENTERED INTO THIS SETTLEMENT AGREEMENT BASED UPON THE  
21 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY  
22 OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR  
23 DISCLOSURE BY ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY  
24 TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO  
25 ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT  
26 PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISOR’S TAX  
27 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING)  
28 UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR

1 TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION  
2 CONTEMPLATED BY THIS SETTLEMENT AGREEMENT.

3 21. Settlement Awards Do Not Trigger Additional Benefits. All payments made under the  
4 Settlement shall be deemed to be paid to the payee solely in the year in which such payments actually  
5 are issued to the payee. It is expressly understood and agreed that payments made under this  
6 Settlement shall not in any way entitle Plaintiff, Settlement Class Members, or any PAGA Employee  
7 to additional compensation or benefits under any new or additional compensation or benefits, or any  
8 bonus, contest, or other compensation or benefit plan or agreement in place during the Class Period,  
9 nor will it entitle Plaintiff, Settlement Class Members, or any PAGA Employee to any increased  
10 retirement, 401K benefits or matching benefits, or deferred compensation benefits (notwithstanding  
11 any contrary language or agreement in any benefit or compensation plan document that might have  
12 been in effect during the Class Period).

13 22. Duties of the Parties with Respect to Obtaining Preliminary Approval of the Settlement.  
14 Upon execution of this Settlement Agreement, Plaintiff will obtain a hearing date from the Court for  
15 Plaintiff's motion for preliminary approval of the Settlement, which Plaintiff and Class Counsel will  
16 be responsible for drafting, and submit this Settlement Agreement to the Court in support of said  
17 motion. Class Counsel will provide Defendants' Counsel a draft of the preliminary approval motion  
18 before filing it with the Court. Defendants agree not to oppose the motion for preliminary approval  
19 of the Settlement consistent with this Settlement Agreement. By way of said motion, Plaintiff will  
20 apply for the entry of the Preliminary Approval Order seeking the following:

- 21 a. Conditionally certifying the Class for settlement purposes only;
- 22 b. Granting Preliminary Approval of the Settlement;
- 23 c. Preliminarily appointing Plaintiff as the representative of the Class;
- 24 d. Preliminarily appointing Class Counsel as counsel for the Class;
- 25 e. Approving as to form and content, the mutually-agreed upon and proposed  
26 Notice Packet and directing its mailing by First Class U.S. Mail;
- 27 f. Approving the manner and method for Class Members to request exclusion  
28 from or object to the Class Settlement as contained herein and within the Class Notice;

1 g. Scheduling a Final Approval Hearing at which the Court will determine whether  
2 Final Approval of the Settlement should be granted.

3 23. Notice of Settlement to the LWDA. Pursuant to California Labor Code § 2699(1)(2),  
4 Class Counsel shall notify the LWDA of the Settlement upon filing the motion for preliminary  
5 approval of the Settlement.

6 24. Delivery of Class List. Within fourteen (14) calendar days of Preliminary Approval,  
7 Defendants will provide the Class List to the Settlement Administrator.

8 25. Notice by First-Class U.S. Mail.

9 a. Within seven (7) calendar days after receiving the Class List from Defendants,  
10 the Settlement Administrator will perform a search based on the National Change of Address Database  
11 or any other similar services available, such as provided by Experian, for information to update and  
12 correct for any known or identifiable address changes, and will mail a Class Notice and Exclusion  
13 Form (i.e., Notice Packet) in English and Spanish (in the forms attached as **Exhibit A** and **Exhibit B**  
14 to this Settlement Agreement) to all Class Members via First-Class U.S. Mail, using the most current,  
15 known mailing addresses identified by the Settlement Administrator.

16 b. Any Notice Packet returned to the Settlement Administrator as undeliverable  
17 on or before the Response Deadline will be sent promptly via First-Class U.S. Mail to the forwarding  
18 address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing on  
19 the Class Notice. If no forwarding address is provided, the Settlement Administrator will promptly  
20 attempt to determine the correct address using a skip-trace or other search, using the name, address,  
21 and/or Social Security number of the Class Member, and perform a single re-mailing within five (5)  
22 calendar days.

23 c. Compliance with the procedures described herein above shall constitute due and  
24 sufficient notice to Class Members of the Settlement and shall satisfy the requirements of due process.  
25 Nothing else shall be required of or done by the Parties, Class Counsel, or Defendants' Counsel to  
26 provide notice of the Settlement.

27 26. Disputes Regarding Workweeks and/or PAGA Workweeks. Class Members will have  
28 an opportunity to dispute the number of Workweeks and/or PAGA Workweeks to which they have

1 been credited, as reflected in their respective Class Notices, by submitting a timely and valid  
2 Workweeks Dispute to the Settlement Administrator, by mail, postmarked on or before the Response  
3 Deadline. The date of the postmark on the return mailing envelope will be the exclusive means to  
4 determine whether a Workweeks Dispute has been timely submitted. Absent evidence rebutting the  
5 accuracy of Defendants' records and data as they pertain to the number of Workweeks and/or PAGA  
6 Workweeks to be credited to a disputing Class Member, Defendants' records will be presumed to be  
7 correct and determinative of the dispute. However, if a Class Member produces information and/or  
8 documents to the contrary, the Settlement Administrator will evaluate the materials submitted by the  
9 Class Member and the Settlement Administrator will jointly work with Class Counsel and Defendants'  
10 Counsel to resolve and determine the number of eligible Workweeks and/or PAGA Workweeks that  
11 the disputing Class Member should be credited with under the Settlement. If the dispute cannot be  
12 resolved, the Court will ultimately decide any unresolved dispute.

13       27.     Requesting Exclusion from the Class Settlement. Any Class Member wishing to be  
14 excluded from the Class Settlement must submit a timely and valid Request for Exclusion to the  
15 Settlement Administrator, by mail, postmarked on or before the Response Deadline. The date of the  
16 postmark on the return mailing envelope will be the exclusive means to determine whether a Request  
17 for Exclusion has been timely submitted. The Settlement Administrator will certify jointly to Class  
18 Counsel and Defendants' Counsel the number of timely and valid Requests for Exclusion that are  
19 submitted, and also identify the individuals who have submitted a timely and valid Request for  
20 Exclusion in a declaration that is to be filed with the Court in advance of the Final Approval Hearing.  
21 At no time will any of the Parties or their counsel seek to solicit or otherwise encourage Class Members  
22 to request exclusion from the Class Settlement. Any Class Member who submits a Request for  
23 Exclusion is prohibited from making any objection to the Class Settlement. Any Class Member who  
24 submits a timely and valid Request for Exclusion will not be bound by the Class Settlement and will  
25 not be issued an Individual Settlement Payment. Any Class Member who does not affirmatively  
26 request exclusion from the Class Settlement by submitting a timely and valid Request for Exclusion  
27 will be bound by all of the terms of the Class Settlement, including and not limited to those pertaining  
28 to the Released Class Claims, as well as any judgment that may be entered by the Court if it grants



1 Final Approval to the Settlement. Notwithstanding the above, all PAGA Employees will be bound to  
2 the PAGA Settlement and will be issued their Individual PAGA Payment, irrespective of whether they  
3 submit a Request for Exclusion.

4 28. Objecting to the Class Settlement. To object to the Class Settlement, Settlement Class  
5 Members must submit a timely and complete Notice of Objection to the Settlement Administrator, by  
6 mail, postmarked on or before the Response Deadline. The date of the postmark on the return mailing  
7 envelope will be the exclusive means to determine whether a Notice of Objection has been timely  
8 submitted. The Settlement Administrator will certify jointly to Class Counsel and Defendants'  
9 Counsel the number of Notices of Objection that are submitted (specifying which ones were timely  
10 and complete and which were not), and also attach them to a declaration that is to be filed with the  
11 Court in advance of the Final Approval Hearing. At no time will any of the Parties or their counsel  
12 seek to solicit or otherwise encourage Settlement Class Members to object to the Class Settlement or  
13 appeal from the Final Approval Order and Judgment. Settlement Class Members, individually or  
14 through counsel, may also present their objection orally at the Final Approval Hearing, regardless of  
15 whether they have submitted a Notice of Objection.

16 29. Reports by the Settlement Administrator. The Settlement Administrator shall provide  
17 weekly reports to counsel for the Parties providing: (a) the number of undeliverable and re-mailed  
18 Notice Packets; (ii) the number of Class Members who have submitted Workweeks Disputes; (iii) the  
19 number of Class Members who have submitted Requests for Exclusion; and (iv) the number of  
20 Settlement Class Members who have submitted Notices of Objection. Additionally, the Settlement  
21 Administrator will provide to counsel for the Parties any updated reports regarding the administration  
22 of the Settlement Agreement as needed or requested, and immediately notify the Parties when it  
23 receives a request from an individual or any other entity regarding inclusion in the Class and/or  
24 Settlement or regarding a Workweeks Dispute.

25 30. Defendants' Right to Rescind. If more than ten percent (10%) of the Class Members  
26 submit timely and valid Requests for Exclusion, Defendants may elect to rescind the Settlement  
27 Agreement. Defendants must exercise this right of rescission in writing that is provided to Class  
28 Counsel within fourteen (14) calendar days of the Settlement Administrator notifying the Parties of

1 the number of Class Members who have submitted timely and valid Requests for Exclusion following  
2 the Response Deadline. If Defendants exercises this option, Defendants shall pay any costs of  
3 settlement administration owed to the Settlement Administrator incurred up to that date.

4 31. Certification of Completion. Upon completion of administration of the Settlement, the  
5 Settlement Administrator will provide a written declaration under oath to certify such completion to  
6 the Court and counsel for all Parties.

7 32. Duties of the Parties with Respect to Obtaining Final Approval of the Settlement. After  
8 the Response Deadline, a Final Approval Hearing will be conducted to determine whether Final  
9 Approval of the Settlement should be granted, along with the amounts properly payable for: (a)  
10 Individual Settlement Shares; (b) Individual PAGA Payments; (c) LWDA Payment; (d) Attorneys'  
11 Fees and Costs; (e) Enhancement Payment; and (f) Settlement Administration Costs. The Final  
12 Approval Hearing will not be held earlier than thirty (30) calendar days after the Response Deadline.  
13 Plaintiff and Class Counsel will be responsible for drafting the motion seeking Final Approval of the  
14 Settlement. Class Counsel will provide Defendants' Counsel a draft of the final approval motion  
15 before filing it with the Court. By way of said motion, Plaintiff will apply for the entry of the Final  
16 Approval Order and Judgment, which will provide for, in substantial part, the following:

17 a. Approval of the Settlement as fair, reasonable, and adequate, and directing  
18 consummation of its terms and provisions;

19 b. Certification of the Settlement Class;

20 c. Approval of the application for Attorneys' Fees and Costs to Class Counsel;

21 d. Approval of the application for Enhancement Payment to Plaintiff;

22 e. Directing Defendants to fund all amounts due under the Settlement Agreement  
23 and ordered by the Court; and

24 f. Entering judgment in the Action, while maintaining continuing jurisdiction, in  
25 conformity with California Rules of Court 3.769 and the Settlement Agreement.

26 33. Funding of the Gross Settlement Amount. No later than thirty (30) calendar days after  
27 the Effective Date, Defendants will deposit the Gross Settlement Amount into a Qualified Settlement  
28 Fund ("QSF") within the meaning of Treasury Regulation Section 1.468B-1, *et seq.*, to be established

1 by the Settlement Administrator. Defendants shall provide all information necessary for the  
2 Settlement Administrator to calculate necessary payroll taxes including its official name, 8-digit state  
3 unemployment insurance tax ID number, and other information requested by the Settlement  
4 Administrator, no later than thirty (30) calendar days after the Effective Date.

5 34. Distribution of the Gross Settlement Amount. Within five (5) business days of the  
6 funding of the Gross Settlement Amount, the Settlement Administrator will issue the Individual  
7 Settlement Payments to Settlement Class Members, Individual PAGA Payments to PAGA Employees,  
8 LWDA Payment to the LWDA, Enhancement Payment to Plaintiff, Attorneys' Fees and Costs to Class  
9 Counsel, and Settlement Administration Costs to itself. The Settlement Administrator shall also set  
10 aside the Employer Taxes and all employee-side payroll taxes, contributions, and withholding, and  
11 timely forward these to the appropriate government authorities.

12 35. Settlement Checks. The Settlement Administrator will be responsible for undertaking  
13 appropriate deductions, required tax reporting, and issuing the Individual Settlement Payments by way  
14 of check to the Settlement Class Members and the Individual PAGA Payments by way of check to the  
15 PAGA Employees in accordance with this Settlement Agreement. When issuing payments, the  
16 Settlement Administrator may combine the Individual Settlement Payment and Individual PAGA  
17 Payment into one check if the intended recipient for both payments is one individual. Settlement Class  
18 Members and PAGA Employees are not required to submit a claim to be issued an Individual  
19 Settlement Payment and/or Individual PAGA Payment. Each Individual Settlement Payment and  
20 Individual PAGA Payment check will be valid and negotiable for one hundred and eighty (180)  
21 calendar days from the date the checks are issued, and thereafter, shall be canceled. Any funds  
22 associated with such canceled checks shall be distributed by the Settlement Administrator to the State  
23 of California's Unclaimed Property Division in the name of the Settlement Class Member and/or  
24 PAGA Employee. The Parties agree that this disposition results in no "unpaid residue" under  
25 California Civil Procedure Code § 384, as the entire Net Settlement Amount will be paid out to  
26 Settlement Class Members, whether or not they cash their settlement checks. Therefore, Defendants  
27 will not be required to pay any interest on such amounts. The Settlement Administrator shall undertake  
28 amended and/or supplemental tax filings and reporting required under applicable local, state, and  
federal tax laws that are necessitated due to the cancelation of any Individual Settlement Payment

1 and/or Individual PAGA Payment checks. Settlement Class Members whose Individual Settlement  
2 Payment checks are canceled shall, nevertheless, be bound by the Class Settlement, and PAGA  
3 Employees whose Individual PAGA Payment checks are cancelled shall, nevertheless, be bound by  
4 the PAGA Settlement.

5 36. Class Settlement Release. Upon the full funding of the Gross Settlement Amount,  
6 Plaintiff and all Settlement Class Members will be deemed to have fully, finally, and forever released,  
7 settled, compromised, relinquished, and discharged the Released Parties of all Released Class Claims.

8 37. PAGA Settlement Release. Upon the full funding of the Gross Settlement Amount,  
9 Plaintiff, the State of California with respect to all PAGA Employees, and all PAGA Employees will  
10 be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and  
11 discharged the Released Parties of all Released PAGA Claims.

12 38. Plaintiff's General Release. Upon the full funding of the Gross Settlement Amount,  
13 Plaintiff, individually and on his own behalf, will be deemed to have fully, finally, and forever  
14 released, settled, compromised, relinquished, and discharged the Released Parties from any and all  
15 claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages,  
16 or causes of action of any kind or nature whatsoever, known or unknown, suspected or unsuspected,  
17 asserted or unasserted, which Plaintiff, at any time of execution of this Settlement Agreement, had or  
18 claimed to have or may have, including but not limited to any and all claims arising out of, relating to,  
19 or resulting from his employment and/or separation of employment with the Released Parties,  
20 including any claims arising under any federal, state, or local law, statute, ordinance, rule, or regulation  
21 or Executive Order relating to employment, including, but in no way limited to, any claim under Title  
22 VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 1981; the Americans with Disabilities  
23 Act; the Family and Medical Leave Act; the Employee Retirement Income Security Act; the California  
24 Family Rights Act; the California Fair Employment and Housing Act; all claims for wages or penalties  
25 under the Fair Labor Standards Act; all claims for wages or penalties under the California Labor Code;  
26 Business and Professions Code sections 17200 *et seq.*; all laws relating to violation of public policy,  
27 retaliation, or interference with legal rights; any and all other employment or discrimination laws;  
28 whistleblower claims; any tort, fraud, or constitutional claims; and any breach of contract claims or

1 claims of promissory estoppel. It is agreed that this is a general release and is to be broadly construed  
2 as a release of all claims, provided that, notwithstanding the foregoing, this Paragraph expressly does  
3 not include a release of any claims that cannot be released hereunder by law. Plaintiff understands  
4 and expressly agrees that this Settlement Agreement extends to claims that he has against Defendants,  
5 of whatever nature and kind, known or unknown, suspected or unsuspected, vested or contingent, past,  
6 present, or future, arising from or attributable to an incident or event, occurring in whole or in part, on  
7 or before the execution of this Settlement Agreement. Any and all rights granted under any state or  
8 federal law or regulation limiting the effect of this Settlement Agreement, including the provisions of  
9 Section 1542 of the California Civil Code, ARE HEREBY EXPRESSLY WAIVED. Section 1542 of  
10 the California Civil Code reads as follows:

11 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR**  
12 **OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER**  
13 **FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM**  
14 **OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH**  
15 **THE DEBTOR OR RELEASED PARTY.**

16 39. Final Approval Order and Judgment. The Parties shall provide the Settlement  
17 Administrator with a copy of the Final Approval Order and Judgment once it is entered by the Court,  
18 and the Settlement Administrator shall post the Final Approval Order and Judgment on its website for  
19 sixty (60) calendar days. No individualized notice of the Final Approval Order and Judgment to the  
20 Class will be required.

21 40. Continued Jurisdiction. After entry of the judgment pursuant to the Settlement, the  
22 Court will have continuing jurisdiction pursuant to Rule 3.769 of the California Rules of Court and  
23 Section 664.6 of the California Code of Civil Procedure, for purposes of addressing: (a) the  
24 interpretation and enforcement of the terms of the Settlement, (b) settlement administration matters,  
25 and (c) such post-judgment matters as may be appropriate under court rules or as set forth in this  
26 Settlement Agreement.

27 41. Effects of Termination or Rescission of Settlement. Termination or rescission of the  
28 Settlement Agreement shall have the following effects:

1 a. The Settlement Agreement shall be void and shall have no force or effect, and  
2 no Party shall be bound by any of its terms;

3 b. In the event the Settlement Agreement is terminated, Defendants shall have no  
4 obligation to make any payments to any Party, Class Member, or attorney, except that the terminating  
5 Party shall pay the Settlement Administrator for services rendered up to the date the Settlement  
6 Administrator is notified that the Settlement has been terminated;

7 c. The Preliminary Approval Order, Final Approval Order and Judgment,  
8 including any order certifying the Class, shall be vacated;

9 d. The Settlement Agreement and all negotiations, statements, and proceedings  
10 relating thereto shall be without prejudice to the rights of any of the Parties, all of whom shall be  
11 restored to their respective positions in the Action prior to the execution of the Settlement Agreement;

12 e. Neither this Settlement Agreement, nor any ancillary documents, actions,  
13 statements, or filings in furtherance of the Settlement (including all matters associated with the  
14 mediation) shall be admissible or offered into evidence in the Action or any other action for any  
15 purpose whatsoever; and

16 f. Any documents generated to bring the Settlement into effect, will be null and  
17 void, and any order or judgment entered by the Court in furtherance of this Settlement Agreement will  
18 likewise be treated as void from the beginning.

19 42. No Prior Assignments. The Parties and their counsel represent, covenant, and warrant  
20 that they have not directly or indirectly assigned, transferred, encumbered, or purported to assign,  
21 transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause  
22 of action or right herein released and discharged.

23 43. Exhibits Incorporated by Reference. The terms of this Settlement include the terms set  
24 forth in any attached exhibits, which are incorporated by this reference as though fully set forth herein.  
25 Any exhibits to this Settlement Agreement are an integral part of the Settlement.

26 44. Entire Agreement. This Settlement Agreement and any attached exhibits constitute the  
27 entirety of the Parties' agreement relating to the settlement and transaction completed thereby, and all  
28 prior or contemporaneous agreements, understandings, representations, and statements, whether oral  
or written and whether by a Party or such Party's legal counsel, are merged herein. No other prior or

1 contemporaneous written or oral agreements may be deemed binding on the Parties. The Parties  
2 expressly recognize California Civil Code § 1625 and California Code of Civil Procedure § 1856(a),  
3 which provide that a written agreement is to be construed according to its terms and may not be varied  
4 or contradicted by extrinsic evidence, and the Parties agree that no such extrinsic oral or written  
5 representations or terms will modify, vary, or contradict the terms of this Settlement Agreement.

6 45. Interim Stay of Proceedings. The Parties agree to hold in abeyance all proceedings in  
7 the Action (including with respect to California Code of Civil Procedure § 583.310), except such  
8 proceedings necessary to implement and complete this Settlement Agreement, pending the Final  
9 Approval Hearing to be conducted by the Court.

10 46. Amendment or Modification. Prior to the filing of the motion for preliminary approval  
11 of the Settlement, the Parties may not amend or modify any provision of this Settlement Agreement  
12 except by written agreement signed by counsel for all Parties. After the filing of the motion for  
13 preliminary approval of the Settlement, the Parties may not amend or modify any provision of this  
14 Settlement Agreement except by written agreement signed by counsel for all the Parties and subject  
15 to Court approval. A waiver or amendment of any provision of this Settlement Agreement will not  
16 constitute a waiver of any other provision.

17 47. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and  
18 represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement  
19 Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant  
20 to this Settlement Agreement to effectuate its terms and to execute any other documents required to  
21 effectuate the terms of this Settlement Agreement. The Parties warrant that they understand and have  
22 full authority to enter into this Settlement Agreement, and further intend that this Settlement  
23 Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible  
24 and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation  
25 confidentiality provisions that otherwise might apply under state or federal law.

26 48. Signatories. It is agreed that because the members of the Class are so numerous, it is  
27 impossible or impractical to have each Settlement Class Member or PAGA Employee execute this  
28 Settlement Agreement. The Class Notice will advise all Class Members of the binding nature of the  
Class Settlement as to the Settlement Class Members and the binding nature of the PAGA Settlement  
as to the PAGA Employees, and the releases provided for by this Settlement Agreement shall have

1 the same force and effect as if this Settlement Agreement were executed by each Settlement Class  
2 Member and PAGA Employee.

3 49. Binding on Successors and Assigns. This Settlement Agreement will be binding upon,  
4 and inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

5 50. California Law Governs. All terms of this Settlement Agreement and attached exhibits  
6 hereto will be governed by and interpreted according to the laws of the State of California.

7 51. Execution and Counterparts. This Settlement Agreement is subject only to the  
8 execution of all Parties. However, this Settlement Agreement may be executed in one or more  
9 counterparts. All executed counterparts and each of them, including facsimile, electronic, and scanned  
10 copies of the signature page, will be deemed to be one and the same instrument.

11 52. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this  
12 Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at  
13 this Settlement after arm's length negotiations and in the context of adversarial litigation, taking into  
14 account all relevant factors, present and potential. The Parties further acknowledge that they are each  
15 represented by competent counsel and that they have had an opportunity to consult with their counsel  
16 regarding the fairness and reasonableness of this Settlement Agreement. In addition, if necessary to  
17 obtain approval of the Settlement, the Mediator may execute a declaration supporting the Settlement  
18 and the reasonableness of the Settlement and the Court may, in its discretion, contact the Mediator to  
19 discuss the Settlement and whether or not the Settlement is objectively fair and reasonable.

20 53. Invalidity of Any Provision. Before declaring any provision of this Settlement  
21 Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent  
22 possible consistent with applicable precedents so as to define all provisions of this Settlement  
23 Agreement valid and enforceable.

24 54. Plaintiff's Cooperation. Plaintiff agrees to sign this Settlement Agreement and, by  
25 signing this Settlement Agreement, is hereby bound by the terms herein and agrees to fully cooperate  
26 to implement the Settlement.

27 55. Non-Admission of Liability. The Parties enter into this Settlement Agreement to  
28 resolve the dispute that has arisen between them and to avoid the burden, expense, and risk of



1 continued litigation. In entering into this Settlement Agreement, Defendants do not admit, and  
2 specifically deny, they have violated any federal, state, or local law; violated any regulations or  
3 guidelines promulgated pursuant to any statute or any other applicable laws, regulations, or legal  
4 requirements; breached any contract; violated or breached any duty; engaged in any misrepresentation  
5 or deception; or engaged in any other unlawful conduct with respect to its employees. Neither this  
6 Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations connected with  
7 it, shall be construed as an admission or concession by Defendants of any such violations or failures  
8 to comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this  
9 Settlement Agreement, this Settlement Agreement and its terms and provisions shall not be offered or  
10 received as evidence in any action or proceeding to establish any liability or admission on the part of  
11 Defendants or to establish the existence of any condition constituting a violation of, or a non-  
12 compliance with, federal, state, local or other applicable law.

13       56.    Captions. The captions and paragraph numbers in this Settlement Agreement are  
14 inserted for the reader's convenience, and in no way define, limit, construe, or describe the scope or  
15 intent of the provisions of this Settlement Agreement.

16       57.    Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and  
17 conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be  
18 construed more strictly against one Party than another merely by virtue of the fact that it may have  
19 been prepared by counsel for one of the Parties, it being recognized that, because of the arms-length  
20 negotiations between the Parties, all Parties have contributed equally to the preparation of this  
21 Settlement Agreement.

22       58.    Representation By Counsel. The Parties acknowledge that they have been represented  
23 by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and  
24 that this Settlement Agreement has been executed with the consent and advice of counsel, and  
25 reviewed in full.

26       59.    All Terms Subject to Final Court Approval. All amounts and procedures described in  
27 this Settlement Agreement herein will be subject to final Court approval.

28 ///

1           60.     Notices. All notices, demands, and other communications to be provided concerning  
2 the Settlement Agreement shall be in writing and deemed to have been duly given as of the third  
3 business day after mailing by First Class U.S. Mail, or the day sent by email or messenger, addressed  
4 as follows:

5                                   To Plaintiff and Class Counsel:

6                                   Jonathan M. Genish

7                                   jgenish@blackstonepc.com

8                                   Miriam L. Schimmel

9                                   mschimmel@blackstonepc.com

10                                  Joana Fang

11                                  jfang@blackstonepc.com

12                                  Alexandra Rose

13                                  arose@blackstonepc.com

14                                  Jared C. Osborne

15                                  josborne@blackstonepc.com

16                                  **BLACKSTONE LAW, APC**

17                                  8383 Wilshire Boulevard, Suite 745

18                                  Beverly Hills, California 90211

19                                  Tel: (310) 622-4278 / Fax: (855) 786-6356

20                                  To Defendants:

21                                  Michael J. Studenka

22                                  michael.studenka@ndlf.com

23                                  Madison J. Rolapp

24                                  madison.rolapp@ndlf.com

25                                  **NEUMEYER & DILLION LLP**

26                                  895 Dove Street, Second Floor

27                                  Newport Beach, California 92660

28                                  Tel: (949) 854-7000 / Fax: (949) 854-7099

29           61.     Cooperation and Execution of Necessary Documents. All Parties and their counsel will  
30 cooperate with each other in good faith and use their best efforts to implement the Settlement,  
31 including and not limited to, executing all documents to the extent reasonably necessary to effectuate  
32 the terms of this Settlement Agreement. If the Parties are unable to reach agreement on the form or  
33 content of any document needed to implement the Settlement Agreement, or on any supplemental  
34 provisions that may become necessary to effectuate the terms of this Settlement Agreement, the Parties  
35 may seek the assistance of the Mediator and then the Court to resolve such disagreement.

36           **IN WITNESS WHEREOF**, the Parties hereto knowingly and voluntarily executed this Joint  
37 Stipulation of Class Action and PAGA Settlement between Plaintiff and Defendants:  
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**IT IS SO AGREED.**

**PLAINTIFF ALFONSO HERRERA**

Dated: 07/08/2024

  
Plaintiff Alfonso Herrera

**DEFENDANT W.L. BUTLER  
CONSTRUCTION, INC.**

Dated: \_\_\_\_\_

Full Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
On behalf of Defendant W.L. Butler  
Construction, Inc.

**DEFENDANT ALL AMERICAN  
EQUIPMENT RENTAL, LLC**


Dated: \_\_\_\_\_

Full Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
On behalf of Defendant All American  
Equipment Rental, LLC

**APPROVED AS TO FORM ONLY:**

**BLACKSTONE LAW, APC**

Dated: July 9, 2024

  
Jonathan M. Genish  
*Attorneys for* Plaintiff Alfonso Herrera  
and Proposed Class Counsel

**NEWMAYER & DILLION LLP**

Dated: \_\_\_\_\_

Michael J. Studenka  
Madison J. Rolapp  
*Attorneys for* Defendants W.L. Butler  
Construction, Inc. and All American  
Equipment Rental, LLC

1 **IT IS SO AGREED.**

**PLAINTIFF ALFONSO HERRERA**

2  
3 Dated: \_\_\_\_\_

\_\_\_\_\_  
Plaintiff Alfonso Herrera

**DEFENDANT W.L. BUTLER  
CONSTRUCTION, INC.**

4  
5  
6  
7 Dated: 8/12/24

*Alina Henson*

Full Name: Alina Henson

Title: CFO  
On behalf of Defendant W.L. Butler  
Construction, Inc.

**DEFENDANT ALL AMERICAN  
EQUIPMENT RENTAL, LLC**

8  
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11  
12 Dated: 8/12/24

*[Signature]*  
Full Name: FRANK YORK

Title: PRESIDENT  
On behalf of Defendant All American  
Equipment Rental, LLC

13  
14  
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17 **APPROVED AS TO FORM ONLY:**

**BLACKSTONE LAW, APC**

18  
19  
20  
21 Dated: \_\_\_\_\_

\_\_\_\_\_  
Jonathan M. Genish  
*Attorneys for* Plaintiff Alfonso Herrera  
and Proposed Class Counsel

**NEWMAYER & DILLION LLP**

22  
23  
24  
25 Dated: 08/21/2024

*[Signature]*  
Michael J. Stenka  
Madison J. Rolapp  
*Attorneys for* Defendants W.L. Butler  
Construction, Inc. and All American  
Equipment Rental, LLC

# **EXHIBIT A**

## NOTICE OF CLASS ACTION SETTLEMENT

*Alfonso Herrera v. W.L. Butler Construction, Inc., et al.*

Superior Court of California for the County of Orange, Case No. 30-2023-01335445-CU-OE-CXC

### **PLEASE READ THIS CLASS NOTICE CAREFULLY.**

**You have received this Class Notice because Defendants' records indicate that you may be eligible to take part in the class action settlement reached in the above-referenced case.**

**You do not need to take any action to receive a settlement payment.**

**This Class Notice is designed to advise you of your rights and options with respect to the settlement, and how you can request to be excluded from the Class Settlement, object to the Class Settlement, and/or dispute the number of Workweeks and/or PAGA Workweeks that you are credited with, if you so choose.**

**YOU ARE NOTIFIED THAT:** A class and representative action settlement has been reached between Plaintiff Alfonso Herrera ("Plaintiff") and Defendants W.L. Butler Construction, Inc. and All American Equipment Rental, LLC (together, "Defendants") (Plaintiff and Defendants are collectively referred to as the "Parties") in the case entitled *Alfonso Herrera v. W.L. Butler Construction, Inc., et al.*, Orange County Superior Court, Case No. 30-2023-01335445-CU-OE-CXC ("Action"), which may affect your legal rights. On [date of Preliminary Approval], the Court granted preliminary approval of the settlement and scheduled a hearing on [hearing date] at [hearing time] ("Final Approval Hearing") to determine whether or not the Court should grant final approval of the settlement.

### **I. IMPORTANT DEFINITIONS**

"Class" or "Class Member(s)" means all current and former non-exempt employees who worked for Defendants in the State of California at any time during the Class Period, but excluding all employees who signed a general release agreement with Defendants.

"Class Period" means the period from July 5, 2019 through April 24, 2024.

"Class Settlement" means the settlement and resolution of all Released Class Claims.

"PAGA Employee(s)" means all current and former non-exempt employees who worked for Defendants in the State of California at any time during the PAGA Period, but excluding all employees who signed a general release agreement with Defendants.

"PAGA Period" means the period from July 5, 2022 through April 24, 2024.

"PAGA Settlement" means the settlement and resolution of all Released PAGA Claims.

### **II. BACKGROUND OF THE ACTION**

On July 5, 2023, Plaintiff commenced a putative class action lawsuit by filing a Class Action Complaint for Damages in the Action. On May 1, 2024, Plaintiff provided written notice to the California Labor and Workforce Development Agency ("LWDA") and Defendants of the specific provisions of the California Labor Code that Plaintiff contends were violated ("PAGA Letter"). On [redacted], Plaintiff filed a First Amended Class and Representative Action Complaint ("Operative Complaint"), adding a cause of action under the Private Attorneys General Act of 2004 pursuant to California Labor Code Section 2698, *et seq.* ("PAGA").

Plaintiff contends that Defendants failed to properly pay minimum and overtime wages, provide compliant meal and rest breaks and associated premiums, timely pay wages upon termination of employment, provide accurate wage statements, and reimburse necessary business expenses, and thereby engaged in unfair business practices in violation of the California Business and Professions Code section 17200, *et seq.*, and conduct that gives rise to penalties under PAGA. Plaintiff seeks, among other things, recovery of unpaid wages and meal and rest period premiums, unreimbursed business expenses, restitution, penalties, interest, and attorneys' fees and costs.

Defendants deny all of the allegations in the Action or that they violated any law.

The Parties participated in mediation with a respected class action mediator, and as a result, the Parties reached a settlement. The Parties have since entered into a Joint Stipulation of Class Action and PAGA Settlement (“Settlement” or “Settlement Agreement”).

On [Date of Preliminary Approval], the Court entered an order preliminarily approving the Settlement. The Court has appointed Apex Class Action LLC as the administrator of the Settlement (“Settlement Administrator”), Plaintiff Alfonso Herrera as representative of the Class (“Class Representative”), and the following Plaintiff’s attorneys as counsel for the Class (“Class Counsel”):

Jonathan M. Genish  
Miriam L. Schimmel  
Joana Fang  
Alexandra Rose  
Jared C. Osborne  
**Blackstone Law, APC**  
8383 Wilshire Boulevard, Suite 745  
Beverly Hills, California 90211  
Tel: (310) 622-4278 / Fax: (855) 786-6356

If you are a Class Member, you need not take any action to receive an Individual Settlement Payment, but you have the opportunity to request exclusion from the Class Settlement (in which case you will not receive an Individual Settlement Payment), object to the Class Settlement, and/or dispute the Workweeks and/or PAGA Workweeks credited to you, if you so choose, as explained more fully in Sections III and IV below. If you are a PAGA Employee, you do not need to take any action to receive an Individual PAGA Payment; you will not have the opportunity to object or seek exclusion from the PAGA Settlement and all PAGA Employees will be bound to the PAGA Settlement if the Court grants final approval of the Settlement.

The Settlement represents a compromise and settlement of highly disputed claims. Nothing in the Settlement is intended or will be construed as an admission by Defendants that the claims in the Action have merit or that Defendants have any liability to Plaintiff, Class Members, or PAGA Employees. Plaintiff and Defendants, and their respective counsel, have concluded and agree that, in light of the risks and uncertainties to each side of continued litigation, the Settlement is fair, reasonable, and adequate, and is in the best interests of the Class Members, the State of California, and PAGA Employees.

### **III. SUMMARY OF THE PROPOSED SETTLEMENT**

#### **A. Settlement Formula**

The total gross settlement amount is One Million Four Hundred Seventy-Five Thousand Dollars and Zero Cents (\$1,475,000.00) (the “Gross Settlement Amount”). The portion of the Gross Settlement Amount that is available for payment to Class Members is referred to as the “Net Settlement Amount.” The Net Settlement Amount will be the Gross Settlement Amount less the following payments which are subject to approval by the Court: (1) attorneys’ fees, in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount (i.e., \$516,250.00 if the Gross Settlement Amount is \$1,475,000.00), and reimbursement of litigation costs and expenses, in an amount not to exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00) to Class Counsel; (2) Enhancement Payment in an amount not to exceed Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to Plaintiff for his services in the Action; (3) the amount of Fifty Thousand Dollars and Zero Cents (\$50,000.00) allocated toward civil penalties under the Private Attorneys General Act (“PAGA Amount”), of which the LWDA will be paid 75% (\$37,500.00) (“LWDA Payment”) and the remaining 25% (\$12,500.00) will be distributed to PAGA Employees (“PAGA Employee Amount”); and (4) Settlement Administration Costs in an amount not to exceed Eight Thousand Dollars and Zero Cents (\$8,000.00) to the Settlement Administrator.

Class Members are eligible to receive payment under the Class Settlement of their *pro rata* share of the Net Settlement Amount (“Individual Settlement Share”) based on the number of weeks each Class Member worked for Defendants as a non-exempt employee in California during the Class Period (“Workweeks”). The Settlement Administrator has divided the Net Settlement Amount by the Workweeks of all Class Members to yield the “Estimated Workweek Value,” and multiplied

each Class Member's individual Workweeks by the Estimated Workweek Value to yield an estimated Individual Settlement Share that each Class Member may be entitled to receive under the Class Settlement (which is listed in Section III.C below). Class Members who do not submit a timely and valid Request for Exclusion ("Settlement Class Members") will be issued their final Individual Settlement Payment.

Each Individual Settlement Share will be allocated as thirty-three and one-third percent (33 1/3%) as wages, which will be reported on an IRS Form W-2, and sixty-six and two-thirds percent (66 2/3%) as penalties, interest, and non-wage damages, which will be reported on an IRS Form 1099 (if applicable). Each Individual Settlement Share will be subject to reduction for the employee's share of payroll taxes and withholdings with respect to the wages portion of the Individual Settlement Shares resulting in a net payment to the Settlement Class Member ("Individual Settlement Payment"). The employers' share of taxes and contributions in connection with the wages portion of Individual Settlement Shares ("Employer Taxes") will be paid by Defendants separately and in addition to the Gross Settlement Amount.

PAGA Employees are eligible to receive payment under the PAGA Settlement of their *pro rata* share of the PAGA Employee Amount ("Individual PAGA Payment") based on the number of weeks each PAGA Employee worked for Defendants as a non-exempt employee in California during the PAGA Period ("PAGA Workweeks"). The Settlement Administrator had divided the PAGA Employee Amount, i.e., 25% of the PAGA Amount, by the PAGA Workweeks of all PAGA Employees to yield the "PAGA Workweek Value," and multiplied each PAGA Employee's individual PAGA Workweeks by the PAGA Workweek Value to yield each PAGA Employee's Individual PAGA Payment.

Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties, will not be subject to taxes or withholdings, and will be reported on IRS Form 1099 (if applicable).

If the Court grants final approval of the Settlement, Individual Settlement Payments will be mailed to Settlement Class Members and Individual PAGA Payments will be mailed to PAGA Employees at the address that is on file with the Settlement Administrator. **If the address to which this Class Notice was mailed is not correct, or if you move after you receive this Class Notice, you must provide your correct mailing address to the Settlement Administrator as soon as possible to ensure you receive any payment that you may be entitled to under the Settlement.**

#### **B. Your Workweeks and PAGA Workweeks (if applicable) Based on Defendants' Records**

According to Defendants' records:

- **From July 5, 2019 through April 24, 2024 (i.e., the Class Period), you are credited as having worked [REDACTED] Workweeks.**
- **From July 5, 2022 through April 24, 2024 (i.e., the PAGA Period), you are credited as having worked [REDACTED] PAGA Workweeks.**

If you wish to dispute the Workweeks and/or PAGA Workweeks credited to you, you must submit your dispute in writing to the Settlement Administrator ("Workweeks Dispute"). The Workweeks Dispute must: (a) contain the case name and number of the Action (*Herrera v. W.L. Butler Construction, Inc., et al.*, Case No. 30-2023-01335445-CU-OE-CXC); (b) contain your full name, signature, address, telephone number, and the last four (4) digits of your Social Security number; (c) clearly state that you dispute the number of Workweeks and/or PAGA Workweeks credited to you and what you contend is the correct number; and (d) be returned by mail to the Settlement Administrator at the specified address listed in Section IV.B below, postmarked **on or before [Response Deadline]**.

The Settlement Administrator and the Parties will attempt to resolve any Workweeks Dispute, however, the Court will ultimately decide any unresolved Workweeks Dispute.

#### **C. Your Estimated Individual Settlement Share and Individual PAGA Payment (if applicable)**

As explained above, your estimated Individual Settlement Share and Individual PAGA Payment (if applicable) is based on the number of Workweeks and PAGA Workweeks (if applicable) credited to you.

**Under the terms of the Settlement, your Individual Settlement Share is estimated to be \$ [REDACTED]. The Individual Settlement Share is subject to reduction for the employee's share of taxes and**



**withholdings with respect to the wages portion of the Individual Settlement Share and will only be distributed if the Court approves the Settlement and after the Settlement goes into effect.**

**Under the terms of the Settlement, your Individual PAGA Payment is estimated to be \$ [REDACTED] and will only be distributed if the Court approves the Settlement and after the Settlement goes into effect.**

The settlement approval process may take multiple months. Your Individual Settlement Share and Individual PAGA Payment (if applicable) reflected in this Class Notice is only an estimate. Your actual Individual Settlement Payment and Individual PAGA Payment (if applicable) may be higher or lower.

**D. Release of Claims**

Upon the full funding of the Gross Settlement Amount, Plaintiff and all Settlement Class Members will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released Class Claims.

Upon the full funding of the Gross Settlement Amount, Plaintiff, the State of California with respect to all PAGA Employees, and all PAGA Employees will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released PAGA Claims.

“Released Class Claims” means any and all claims which were alleged or which could have been alleged based on the factual allegations in the Operative Complaint, arising during the Class Period, including but not limited to claims for Defendants’ alleged failure to pay overtime and minimum wages, provide compliant meal and rest periods and associated premium payments, timely pay wages upon termination, provide accurate wage statements, and reimburse necessary business-related expenses in violation of California Labor Code Sections 201, 202, 203, 226(a), 226.7, 510, 512(a), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the applicable Industrial Welfare Commission Wage Order(s), and California Business and Professions Code sections 17200, *et seq.*

“Released PAGA Claims” means any and all claims which were alleged or which could have been alleged based on the factual allegations in the Operative Complaint and PAGA Letter, arising during the PAGA Period, for civil penalties under the Private Attorneys General Act of 2004, California Labor Code Sections 2698 *et seq.*, for Defendants’ alleged failure to pay overtime and minimum wages, provide compliant meal and rest periods and associated premium payments, timely pay wages upon termination, provide accurate wage statements, and reimburse necessary business-related expenses in violation of California Labor Code Sections 201, 202, 203, 226(a), 226.7, 510, 512(a), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the applicable Industrial Welfare Commission Wage Order(s).

“Released Parties” means Defendants, W.L. Butler, Inc., and any related entities, and their directors, officers, members, and investors.

**E. Attorneys’ Fees and Costs to Class Counsel**

Class Counsel will seek attorneys’ fees in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount (i.e., \$516,250.00 if the Gross Settlement Amount is \$1,475,000.00) and reimbursement of litigation costs and expenses in an amount not to exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00) (collectively, “Attorneys’ Fees and Costs”), subject to approval by the Court. The Attorneys’ Fees and Costs granted by the Court will be paid from the Gross Settlement Amount. Class Counsel has been prosecuting the Action on behalf of Plaintiff, Class Members, and PAGA Employees on a contingency fee basis (that is, without being paid any money to date) and has been paying all litigation costs and expenses.

**F. Enhancement Payment to Plaintiff**

Plaintiff will seek the amount of Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) (“Enhancement Payment”), in recognition of his services in connection with the Action. The Enhancement Payment will be paid from the Gross Settlement Amount, subject to approval by the Court, and if awarded, it will be paid to Plaintiff in addition to his Individual Settlement Payment and/or Individual PAGA Payment that he may be eligible to receive under the Settlement.

**G. Settlement Administration Costs to Settlement Administrator**

Payment to the Settlement Administrator is estimated not to exceed Eight Thousand Dollars and Zero Cents (\$8,000.00) (“Settlement Administration Costs”) for the costs of the notice and settlement administration process, including and not limited to, the expense of notifying the Class Members of the Settlement, processing Requests for Exclusion, Notices of Objection, and Workweeks Disputes, calculating Individual Settlement Shares, Individual Settlement Payments, and Individual PAGA Payments, and distributing payments and tax forms under the Settlement, and shall be paid from the Gross Settlement Amount, subject to approval by the Court.

**IV. WHAT ARE YOUR RIGHTS AND OPTIONS AS A CLASS MEMBER?**

**A. Participate in the Settlement**

**If you want to participate in the Class Settlement and receive money from the Class Settlement, you do not have to do anything.** You will automatically be included in the Class Settlement and issued your Individual Settlement Payment unless you decide to exclude yourself from the Class Settlement.

Unless you elect to exclude yourself from the Class Settlement and if the Court grants final approval of the Settlement, you will be bound by the terms of the Class Settlement and any judgment that may be entered by the Court based thereon, and you will release the Released Class Claims against the Released Parties as described in Section III.D above.

If you are a PAGA Employee and the Court grants final approval of the Settlement, you will automatically be included in the PAGA Settlement and issued your Individual PAGA Payment. This means you will be bound by the terms of the PAGA Settlement and any judgment that may be entered by the Court based thereon, and you will release the Released PAGA Claims against the Released Parties as described in Section III.D above.

As a Class Member and PAGA Employee (if applicable), you will not be separately responsible for the payment of attorney’s fees or litigation costs and expenses, unless you retain your own counsel, in which event you will be responsible for your own attorney’s fees and expenses.

**B. Request Exclusion from the Class Settlement**

Class Members may request to be excluded from the Class Settlement by submitting a letter indicating a request to be excluded from the Class Settlement, as described below, or by completing and submitting the accompanied Request for Exclusion Form (both of which are referred to as a “Request for Exclusion”) to the Settlement Administrator, at the following address:

[Settlement Administrator]  
[Mailing Address]

A Request for Exclusion must: (a) contain the case name and number of the Action (*Herrera v. W.L. Butler Construction, Inc., et al.*, Case No. 30-2023-01335445-CU-OE-CXC); (b) contain your full name, signature, address, telephone number, and last four (4) digits of your Social Security number; (c) clearly state that you do not wish to be included in the Class Settlement; and (d) be returned by mail to the Settlement Administrator at the specified address above, postmarked **on or before** [Response Deadline].

If the Court grants final approval of the Settlement, any Class Member who submits a timely and valid Request for Exclusion will not be issued an Individual Settlement Payment, will not be bound by the Class Settlement (and the release of Released Class Claims described in Section III.D above), and will not have any right to object to, appeal, or comment on the Class Settlement. Class Members who do not submit a timely and valid Request for Exclusion will be deemed Settlement Class Members and will be bound by all terms of the Class Settlement, including those pertaining to the release of claims described in Section III.D above, as well as any judgment that may be entered by the Court based thereon.

PAGA Employees cannot request exclusion from the PAGA Settlement (and the release of Released PAGA Claims described in Section III.D above) and will still be issued an Individual PAGA Payment, irrespective of whether they submit a Request for Exclusion.

### C. Object to the Class Settlement

You can object to the Class Settlement as long as you have not submitted a Request for Exclusion by submitting a written objection (“Notice of Objection”) to the Settlement Administrator.

The Notice of Objection must: (a) contain the case name and number of the Action (*Herrera v. W.L. Butler Construction, Inc., et al.*, Case No. 30-2023-01335445-CU-OE-CXC); (b) contain your full name, signature, address, telephone number, and the last four (4) digits of your Social Security number; (c) contain a written statement of all grounds for the objection accompanied by any legal support for such objection; (d) contain copies of any papers, briefs, or other documents upon which the objection is based; and (e) be returned by mail to the Settlement Administrator at the specified address listed in Section IV.B above, postmarked **on or before [Response Deadline]**.

The Court will hear from any Settlement Class Member who attends the Final Approval Hearing and asks to speak regarding their objection, regardless of whether they have submitted a written Notice of Objection.

### V. FINAL APPROVAL HEARING

The Court will hold a Final Approval Hearing in Department CX05 of the Orange County Superior Court, located at Civil Complex Center, 751 W. Santa Ana Blvd., Santa Ana, CA 92701, on **[date]**, at **[time]**, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court also will be asked to approve and grant the Attorneys’ Fees and Costs to Class Counsel, Enhancement Payment to Plaintiff, and Settlement Administration Costs to the Settlement Administrator.

The Final Approval Hearing may be continued without further notice to the Class Members and PAGA Employees. It is not necessary for you to appear at the Final Approval Hearing, although you may appear if you wish to.

You can find more information regarding appearing remotely through Zoom online at: <https://www.occourts.org/general-information/covid-19-response/civil-covid-19-response/civil-remote-hearings>.

### VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement Agreement, you should review the detailed Settlement Agreement and other papers, which are on file with the Court.

You may view the Settlement Agreement and other documents filed in the Action for a fee by using the computer terminals at the Central Justice Center, 700 Civic Center Drive West, Santa Ana, CA 92701. The documents filed in the Action can also be accessed online at the Orange County Superior Court’s website, known as “Public Case Access System,” at the following web address:

<https://civilwebshopping.occourts.org/Login.do>

After navigating to the Orange County Superior Court’s Public Case Assess System website and clicking on ‘Accept Terms,’ enter Case No. ‘01335445’ in the box provided, then enter the year ‘2023’ in the box provided, click on the ‘I’m not a robot’ box, and then click ‘SEARCH.’ Thereafter, you should be able to view documents filed in the case which have been imaged by the Court and information that has been made available by the Court, for free or at a minimal charge.

You may also visit the Settlement Administrator’s website at **[redacted]** for more information and documents relating to the Settlement.

**PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT.**

**IF YOU HAVE ANY QUESTIONS, YOU MAY CALL THE SETTLEMENT ADMINISTRATOR AT THE FOLLOWING TOLL-FREE NUMBER: [INSERT], OR YOU MAY ALSO CONTACT CLASS COUNSEL.**

## **EXHIBIT B**

**REQUEST FOR EXCLUSION FORM**

*Alfonso Herrera v. W.L. Butler Construction, Inc., et al.*

Superior Court of California for the County of Orange, Case No. 30-2023-01335445-CU-OE-CXC

**USE THIS FORM ONLY IF YOU WISH TO EXCLUDE YOURSELF FROM THE CLASS SETTLEMENT.**

**If you wish to exclude yourself from the Class Settlement**, you must read and sign the following statement and return this form to the Settlement Administrator, by mail, postmarked on or before **[Response Deadline]**, at the following mailing address:

**[Settlement Administrator]**  
**[Mailing Address]**

I request to be excluded from the class action settlement in the matter of *Alfonso Herrera v. W.L. Butler Construction, Inc., et al.* By excluding myself from the class action settlement, I understand that I will not be bound by the settlement and release of the Released Class Claims, and I will not receive an Individual Settlement Payment. I understand that, nevertheless, if I am a PAGA Employee, I will still be bound by the settlement and release of the Released PAGA Claims and will be issued an Individual PAGA Payment.

Date: \_\_\_\_\_

Full Name: \_\_\_\_\_

Address: \_\_\_\_\_  
\_\_\_\_\_

Phone Number: \_\_\_\_\_

Signature: \_\_\_\_\_

To ensure that this form is properly processed on your behalf and to avoid confusion in the event that multiple individuals having the same or similar names submit this form, please provide the last 4 digits of your Social Security Number to the administrator so that your identify may be confirmed:

\_\_\_\_\_

**If you do not wish to exclude yourself from the Class Settlement (and you wish to receive payment from the Class Settlement), you should not return this form – you do not need to take any action.**