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2 SCOTT ERNEST WHEELER (SBN 187998)

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8 **THE WAND LAW FIRM**

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11 Culver City, California 90230

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15 *Attorneys for Plaintiff and the Settlement Class*

Received 6/10/2021

FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF RIVERSIDE

JUN 24 2021

S. Salazar



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JUL 08 2021
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11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **FOR THE COUNTY OF RIVERSIDE**

14 NAZARIO PEREZ, individually, and on
15 behalf of all others similarly situated,

16 Plaintiff,

17 v.

18 CONTERA CONSTRUCTION
19 CORPORATION, a California corporation;
20 and DOES 1 through 50, inclusive,

21 Defendants.

Case No.: RIC2002575

[Assigned for all purposes to the Honorable
Sunshine S. Sykes, Department 6]

**[PROPOSED] ORDER GRANTING
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Action Filed: July 10, 2020

Trial Date: None Set

1 **[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL**

2 The Court now has before it Plaintiff's unopposed Motion for Preliminary Approval of Class
3 Action Settlement ("Motion"). After reviewing the Motion, the Class Action Settlement Agreement
4 and Release ("Settlement Agreement") and exhibits attached thereto, and good cause appearing
5 therefore, the Court hereby finds and orders as follows:

6 1. The Court finds on a preliminary basis that the settlement memorialized in the
7 Settlement Agreement appears to be fair and adequate, and falls within the range of reasonableness,
8 and therefore meets the requirement for preliminary approval.

9 2. The Court conditionally certifies for settlement purposes the following class (the
10 "Class" or "Settlement Class"):

11 All non-exempt employees of Defendant who worked for Defendant in California from
12 July 10, 2016 until June 24, 2021.

13 3. The Court finds, for settlement purposes, that the Class meets the requirements for
14 certification under California Code of Civil Procedure § 382 in that: (1) the Class is so numerous
15 that joinder is impractical; (2) there are questions of law and fact that are common, or of general
16 interest, to the Class, which predominate over any individual issues; (3) Plaintiff's claims are typical
17 of the claims of the Class; (4) Plaintiff and Plaintiff's counsel will fairly and adequately protect the
18 interests of the Class; and (5) a class action is superior to other available methods for the fair and
19 efficient adjudication of the controversy.

20 4. The Court appoints, for settlement purposes, Plaintiff Nazario Perez as
21 Representative for the Class.

22 5. The Court appoints, for settlement purposes, the Law Office of Scott E. Wheeler
23 and the Wand Law Firm, as Co-Counsel for the Class.

24 6. The Parties are ordered to carry out the Settlement according to the terms of the
25 Settlement Agreement.

26 7. The Court appoints Simpluris, Inc. as the Settlement Administrator and is ordered to
27 carry out the administration of the settlement according to the terms of the Settlement Agreement.
28

1 8. The Court approves as to form and content: (1) Class Action Settlement Notice
2 (attached hereto as Exhibit A); (2) the Exclusion Form (attached hereto as Exhibit B); and (3) the
3 Objection Form (attached hereto as Exhibit C) (collectively, "the Notice Packet"). The Court
4 finds that the dates selected for the mailing and distribution of the Notice Packet meet the
5 requirements of due process, provide the best notice practicable under the circumstances, and shall
6 constitute due and sufficient notice to all persons entitled thereto.

7 9. The Class Action Settlement Notice (Exh. A) shall be accompanied by the
8 Exclusion Form (Exh. B) and shall instruct Class Members to submit Exh. B to the Settlement
9 Administrator, Simpluris, Inc., and not this Court. The Settlement Administrator shall direct
10 copies of any Exclusion Forms to counsel for the Parties. In the event that any Exclusion Forms
11 are received from Class Members, the Settlement Administrator is ordered to file a declaration
12 concurrently with the filing of Plaintiff's Motion for Final Approval, authenticating a copy of
13 every exclusion form received.

14 10. The Class Action Settlement Notice (Exh. A) shall be accompanied by the
15 Objection Form (Exh. C) and shall instruct Class Members to submit Exh. C to the Settlement
16 Administrator, Simpluris, Inc., and not this Court. The Settlement Administrator shall direct
17 copies of any Objection Forms to counsel for the Parties. In the event that any Objection Forms
18 are received from Class Members, the Settlement Administrator is ordered to file a declaration
19 concurrently with the filing of Plaintiff's Motion for Final Approval, authenticating a copy of
20 every Objection Form received.

21 11. If any Class Member objects to the Settlement Agreement, the objection party is
22 not required, either personally or through counsel: 1) to appear at the hearing on the motion for
23 final approval for that party's objection to be considered; or 2) to file or serve, or to state in the
24 objection, a notice of intention to appear at the hearing on the motion for final approval.

25 12. Simpluris, the Settlement Administrator, shall provide notice to any objecting party
26 of any continuance of the hearing of Plaintiff's Motion for Final Approval.

13. The Court orders the following implementation schedule:

Event	Date
Last day for Defendant to provide the Settlement Administrator with the Class Information	July 6, 2021
Last day for Settlement Administrator to mail Notice Packet	July 20, 2021
Last day for Class Members to submit a Request for Exclusion or Objection	September 3, 2021
Last Day to file Motion for Final Approval and Request for Attorneys' Fees and Costs	Per Code.
Final Approval Hearing	October 14, 2021

14. The Court approves as to form and content the Notice Packet (attached as Exhibits A, B and C).

15. The Court finds that the method of giving notice to the Class constitutes the best means practicable of providing notice under the circumstances. The Court further finds that the Notice Packet and the method of giving notice to the Class meet the requirements of California Code of Civil Procedure § 382, California Rules of Court, Rules 3.766 and 3.769, and due process under the California and United States Constitutions, and other applicable law.

16. At the Final Approval Hearing, the Court will consider, *inter alia*, whether the Settlement should be finally approved as fair, reasonable and adequate, whether a final judgment should be entered, and whether the payments provided for under the Settlement, including attorneys' fees and costs and class representative service awards, should be finally approved and granted.

17. Pending the Final Approval Hearing, all proceedings in this Action, other than proceedings necessary to implement the Settlement and this Order, are stayed.

IT IS SO ORDERED.

DATED: 6/24/2021

HONORABLE SUNSHINE S. SYKES
JUDGE OF THE SUPERIOR COURT

EXHIBIT A

NOTICE OF CLASS ACTION SETTLEMENT

A court authorized this Notice. This is not a solicitation by a lawyer. You are not being sued.

Why should you read this Notice?

A proposed settlement (the "Settlement") has been reached in the class action lawsuit entitled *Nazario Perez v. Contera Construction Corporation*, California Superior Court, County of Riverside, Case No. RIC2002575 (the "Action"). The purpose of this Notice of Class Action Settlement ("Notice") is to briefly describe the case, and to inform you of your rights and options in connection with the Action and the proposed Settlement. The proposed Settlement will resolve all claims in the Action. The Court has only determined that there is sufficient evidence to suggest that the proposed settlement might be fair, adequate, and reasonable, and that any final determination of those issues will be made at the final approval hearing.

SUMMARY OF YOUR LEGAL RIGHTS AND OPTIONS IN THIS SETTLEMENT:

DO NOTHING	If you do nothing, you will be considered part of the Settlement Class and will receive settlement benefits. You will also give up your rights to pursue a separate legal action against Contera Construction Company ("Defendant"), for the claims released under the Settlement.
EXCLUDE YOURSELF FROM THE SETTLEMENT CLASS	You may have the option to pursue separate legal action against Defendant about the claims in this lawsuit. If you choose to do so, you must exclude yourself, in writing, from the Settlement. However, if you do so, you will not receive any payment under the Settlement.
OBJECT	To object to the Settlement, you must write to the Settlement Administrator about why you don't like the Settlement. This option is available only if you do not exclude yourself from the Settlement.

Who is affected by this proposed Settlement?

The Court has certified, for settlement purposes only, the following Class:

All non-exempt employees of Defendant who worked for Defendant in California during the time period of July 10, 2016 through _____.

According to Defendant's records, you are a member of the Class (a "Class Member").

What is this case about?

In the Action, Plaintiff alleges on behalf of himself and the Class the following claims against Defendant: (1) failure to provide required meal periods; (2) failure to provide required rest periods; (3) failure to pay overtime wages; (4) failure to pay reporting time; (5) failure to pay all wages due to discharged and quitting employees; (6) failure to timely pay wages; (7) failure to maintain required records; (8) failure to furnish accurate, itemized wage statements; (9) violation of the California Unfair Competition Law; and (10) and violation of California Private Attorneys' General Act, California Labor Code § 2699 *et seq.*, predicated on any of the violations of the California Labor Code and applicable IWC Wage Order alleged in the Operative Complaint.

Defendant denies any and all wrongdoing, and maintains that it has complied with all laws alleged to have been violated in the Operative Complaint. Defendant notes that this Settlement was established specifically to avoid the cost of proceeding with litigation and does not constitute an admission of liability by Defendant. The Court has not ruled on the merits of Plaintiff's claims or Defendant's defenses, however, the Court has granted preliminary approval of this Settlement.

This Settlement is a compromise reached after good faith, arm's length negotiations between Plaintiff and Defendant (the "Parties"), through their attorneys. Both sides agree that in light of the risks and expenses associated with continued litigation, this Settlement is fair, adequate and reasonable. Plaintiff and Class Counsel believe this Settlement is in the best interests of the Class.

The Settlement does not prevent you from filing any actions or administrative claims or proceedings pending the final approval hearing on the Settlement in this action, or for any other period of time.

Who are the attorneys in this Lawsuit?

Class Counsel

LAW OFFICE OF SCOTT E. WHEELER

Scott E. Wheeler
250 West First Street, Suite 216
Claremont, California 91711
Telephone: (909) 621-4988

Defendant's Counsel

TYLER & BURSCH, LLP

Jennifer L. Bursch
Nathan R. Klein
25026 Las Brisas Road
Murrieta, California 92562
Telephone: (951) 600-2733
Facsimile: (951) 600-4996

THE WAND LAW FIRM, P.C.

Aubry Wand
400 Corporate Pointe, Suite 300
Culver City, California 90230
Telephone: (310) 590-4503

What will I receive under the Settlement?

Subject to final Court approval, Defendant will pay \$315,000 (the "Gross Settlement Amount"). It is estimated that, subject to Court approval, after deducting the attorney's fees and costs, a service award to Plaintiff, payment to the California Labor and Workforce Development Agency ("LWDA") for PAGA penalties, and settlement administration costs from Gross Settlement Amount, there will be a Net Settlement Amount of at least \$-----.

From this Net Settlement Amount, Individual Settlement Payments will be paid to each Class Member who does not opt out of the Settlement Class ("Settlement Class Member"). The Net Settlement Amount shall be divided among all Settlement Class Members based on the ratio of the number of Compensable Workweeks worked by each Settlement Class Member to the total number of Workweeks worked by all Settlement Class Members, calculated based on Defendant's records.

According to Defendant's records, during the period from July 10, 2016 through _____, you worked _____ Compensable Workweeks for Defendant in California as a non-exempt employee.

If you wish to dispute the number of Compensable Workweeks credited to you, you must submit a written dispute to the Settlement Administrator at _____ by mail, postmarked no later than [Response Deadline]. The dispute must: (1) contain your full name, current address, telephone number, the last four digits of your Social Security number or full employee ID number, and be signed by you; (2) contain the case name and case number; and (3) contain a clear statement explaining that you wish to dispute the number of Compensable Workweeks and the basis for your dispute. You may also wish to

attach any documentation demonstrating that you were not credited with the correct number of Compensable Workweeks.

Based on your Compensable Workweeks, your settlement payment is estimated to be \$_____.

Your settlement payment is only an estimate. Your actual settlement payment may be higher or lower than estimated.

When and how will I receive payment?

If the Court grants final approval of the Settlement, and only after the Effective Date of the Settlement defined below, the Settlement Administrator will send you a settlement check. The settlement approval process takes time so please be patient.

Any and all settlement checks mailed to you under the Settlement shall remain negotiable for 180 days. If you do not negotiate (e.g. cash or deposit) a settlement check within this time period, you will be unable to receive those funds, but you will remain bound by the terms of the Settlement.

The settlement payment issued to you will be allocated as follows: thirty-three percent (33%) as wages, sixty-seven percent (67%) as penalties and interest. The wage portion of the Individual Settlement Payment shall be subject to withholding of applicable local, state, and federal taxes, and the Settlement Administrator shall deduct applicable payroll taxes from the wage portion of the Individual Settlement Payment. None of the Parties or attorneys make any representations concerning the tax implications of this payment. Settlement Class Members may wish to consult with their own tax advisors concerning the tax consequences of the Settlement.

How will the lawyers be paid and how will other funds under the Settlement be distributed?

Class Counsel will ask the Court to award attorneys' fees up to \$105,000 (1/3 of the Gross Settlement Amount) and reimbursement of reasonable litigation costs of up to \$20,000. In addition, Class Counsel will ask the Court to authorize a Class Representative Service Award payment of up to \$5,000 to Plaintiff for his efforts in representing the Class. The cost of administering the Settlement will not exceed \$5,000. A payment in the amount of \$11,250 will also be made to the LWDA for PAGA penalties. Any of these amounts not awarded by the Court will be included in the Net Settlement Amount and will be distributed to Settlement Class Members.

What claims are being released by the proposed Settlement?

As of the Effective Date, Settlement Class Members shall fully and finally release and discharge Released Parties, from July 10, 2016 through _____, from any and all claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages, action or causes of action arising out of the allegations and claims asserted in the operative Complaint, including without limitation to, any and all claims for alleged unpaid wages (limited to minimum, overtime, final pay upon termination), alleged unpaid meal and rest period premiums, failure to pay reporting pay, failure to pay timely wages, failure to maintain required records, itemized wage statements, and penalties arising under the California Labor Code (including PAGA), or Business & Professions Code (including Section 17200 *et seq.*), and claims for restitution and other equitable relief, liquidated damages, or penalties; predicated on the violations of the California Labor Code and applicable IWC Wage Order as alleged in the Operative Complaint.

The Effective Date is the date on which the Superior Court's Final Approval Order and Judgment becomes final. The Superior Court's Final Approval Order and Judgment "becomes final" upon the latter of: (1) if there is no Objection to the Settlement, or if there is an Objection but it is withdrawn, then, the date that the Final Approval Order and Judgment is filed by the Court; (2) if there is an Objection to the Settlement that is not withdrawn, but no appeal is commenced thereafter, then, sixty-five (65) calendar days following the date that the Final Approval Order and Judgment is filed by the Court; or (3) if there is an Objection to the Settlement, that is not withdrawn, and any appeal, writ, or other appellate proceeding opposing the Settlement has been filed within sixty-five (65) calendar days following the date that the Final Approval

Order and Judgment is filed by the Court, then, when any such appeal, writ, or other appellate proceeding opposing the validity of the Settlement has been resolved finally and conclusively with no right to pursue further remedies or relief; or (4) the date Defendant has fully funded the Settlement to the Settlement Administrator.

What are my options?

You have two options under this Settlement. You may: (A) remain in the Class and receive payment under the Settlement; or (B) exclude yourself from the Settlement. If you choose option (A), you may also object to the Settlement.

OPTION A. Remain in the Class. If you remain in the Class, you will be represented by Class Counsel. If you wish to remain in the Class and be eligible to receive a payment under the Settlement, you do *not* need to take any action. By remaining in the Class and receiving settlement monies, you consent to the release of the Released Claims as described above.

OPTION B. If You Do Not Want To Be Bound By The Settlement. If you do not want to be part of the Settlement, you must mail a Request for Exclusion to the Settlement Administrator at _____. In order to be valid, your Request for Exclusion must: (1) contain your full name, address, and telephone number, the last four digits of your social security number or full employee ID number, and be signed by you; (2), contain the case name and case number; and (3) a clear statement you are electing to be excluded from the Settlement. In order to be timely, your Request for Exclusion must be postmarked on or before _____. If you do not submit a valid and timely Request for Exclusion, your Request for Exclusion will be rejected, you will be deemed a member of the Settlement Class, and you will be bound by the release of Released Claims as described above. If you submit a valid and timely Request for Exclusion, you will not be entitled to any benefit as a result of the Settlement, but you will preserve all of the legal claims asserted in this Action against Defendant.

Objecting to the Settlement: If you believe the proposed Settlement is not fair, reasonable or adequate in any way, you may object to it. To object, you must mail to the Settlement Administrator at _____, a written statement of objection. In order to be valid, the Objection must: (1) contain your full name, address, and telephone number, the last four digits of your social security number or full employee ID number, and be signed by you; (2), contain the case name and case number; (3) the dates of your employment with Defendant; and (4) state the basis for the Objection, including any legal briefs, papers or memoranda in support of the Objection. In order to be timely, the Objection must be postmarked on or before _____. Class Counsel will provide the Court with your Objection prior to the final approval hearing. You can also hire an attorney at your own expense to represent you in your Objection. If you file an Objection, you will be notified by mail by the Settlement Administrator of the date, time and location of any continuance of the final approval hearing.

You cannot object to the Settlement if you request exclusion from the Settlement.

What is the next step in the approval of the Settlement?

The Court will hold a final approval hearing regarding the fairness, reasonableness and adequacy of the proposed Settlement and the plan of distribution of the payments described herein, on _____ in Department 6 of the Riverside Superior Court, Historic Court House, located at 4050 Main Street, Riverside, California 92501. The final approval hearing may be continued without further notice to Class Members unless filed an objection to the Settlement. You are not required to attend the Final Approval Hearing in order to receive payment under the Settlement.

How can I get additional information?

This Notice summarizes the Action and the basic terms of the Settlement. For more complete information, the pleadings and other records in this litigation may be examined during regular court hours at the Riverside Superior Court Historic Court House, located at 4050 Main Street, Riverside, California 92501. A copy of the Settlement Agreement was filed on _____, 2021 and is attached to the Declaration of Scott Ernest Wheeler In Support of Plaintiff's Motion for Preliminary Approval. You can also visit the Court's website at: www.riverside.courts.ca.gov for more information, including obtaining a copy of the Settlement Agreement and the Court's updated COVID-19 protocol.

PLEASE DO NOT CALL OR WRITE THE COURT ABOUT THIS NOTICE

EXHIBIT B

Nazario Perez v. Contera Construction Corporation
California Superior Court, County of Riverside, Case No. RIC2002575

EXCLUSION FORM

IF YOU DO NOT WANT TO PARTICIPATE IN THE SETTLEMENT, YOU MUST SIGN AND FILL OUT THIS FORM ACCURATELY AND IN ITS ENTIRETY, AND YOU MUST MAIL THIS FORM BY FIRST CLASS U.S. MAIL TO THE SETTLEMENT ADMINISTRATOR, SIMPLURIS, INC. AT THE ADDRESS BELOW AND IT MUST BE POSTMARKED ON OR BEFORE _____.

Simpluris, Inc. Re: Nazario Perez v. Contera Construction Corporation P.O. Box 26170 Santa Ana, CA 92799 Phone: (877) 645-1441 Fax: (714)824-8591
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IT IS MY DECISION TO BE EXCLUDED FROM THE CLASS AND NOT TO RECEIVE ANY MONEY UNDER THE SETTLEMENT.

I confirm that I was employed by and performed work for Defendant Contera Construction Corporation between July 10, 2016 and _____. I confirm that I have received notice of the proposed settlement in this action. I have decided to be excluded from the Class, and I have decided not to participate in the proposed Settlement. I understand that by submitting this Exclusion Form, I will be forever barred from receiving any money under the Settlement, and will not be bound by the Settlement.

DATED: _____

(Signature)

(Address)

(Type or Print Name)

(City, State, Zip)

(Employee ID or Last Four Social Security Numbers)

EXHIBIT C

Nazario Perez v. Contera Construction Corporation
California Superior Court, County of Riverside, Case No. RIC2002575

OBJECTION FORM

THIS FORM MUST BE POSTMARKED NO LATER THAN xxx.

ONLY RETURN THIS FORM IF YOU WANT TO OBJECT TO THE SETTLEMENT.

Name (First, Middle, Last)

[preprinted by settlement administrator]

OBJECT

If you choose, you may object to this Settlement. The Court may or may not agree with your objection. Objecting to the Settlement will not exclude you from the Settlement, and if you participate in the Settlement and receive a Settlement Share you do so in exchange for a release of the Released Claims as more fully discussed below.

If you wish to Object to the Settlement, you may send your own Objection to the Settlement Administrator. You may also object by using this Objection Form, stating why you object to the Settlement, and mailing the Objection Form to the Settlement Administrator at the address below. The Objection must be mailed to the Settlement Administrator and must be postmarked no later than _____, 2021. Late objections will not be considered. If your Objection is overruled, you will still receive your Settlement Share and you will have released the Released Parties from the Released Claims as provided for in the Notice of Class Action Settlement.

You may also, if you wish, appear at the Final Approval Hearing set for _____, 2021 at _____ in Dept. 6 of the Riverside County Superior Court and discuss your objections with the Court and the Parties. The Final Approval Hearing may be continued to another date. If you file a timely Objection, the Settlement Administrator will notify you of any continuance of the Final Approval Hearing. You may withdraw your objections at any time. You may not present an objection at the Final Approval Hearing unless you have filed a timely Objection that complies with the terms of this Agreement. If you have submitted a Request for Exclusion Form (as discussed above), you may not submit objections to the Settlement. You do not need to state an intent to appear at or appear at the Final Approval Hearing to have your Objection considered by the Court.

Please state all reasons for the objection below and sign, date and include your address and telephone number. The Settlement Administrator will stamp the date received on the original and send copies of each objection to Class Counsel and Counsel for Contera Construction Corporation, who will then file the objection with the Court.

Reason(s) for Objection: (you may include additional pages if necessary)

Dated: _____

(signature)

(typed or print name)

(Employee Id. or Last Four Social Security
Numbers)

(address)

If you wish to object to the Settlement, you must mail your Objection by _____, 2021 to:

Simpluris Re: <i>Nazario Perez v. Contera Construction Corporation</i> 
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**PROOF OF SERVICE
STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I am an employee in the County of Los Angeles, State of California. I am over the age of 18 and not a party to the within action; my business address is 250 West First Street, Suite 216, Claremont, California 91711.

On June 10, 2021, I served the foregoing documents, described as

**[PROPOSED] ORDER GRANTING PRELIMINARY APPROVAL OF CLASS ACTION
SETTLEMENT**

on all interested parties in this action by placing a true copy thereof enclosed in a sealed envelope addressed as follows:

Tyler & Bursch, LLP Nathan R. Klein 25026 Las Brisas Road Murrieta, California 92562	Attorney for CONTERA CONSTRUCTION CORPORATION
Labor Workforce Development Agency Department of Industrial Relations Private Attorneys General Act (PAGA) Filing Proposed Settlement of PAGA Case https://dir.tfaforms.net/271	

(BY PERSONAL SERVICE) I placed such documents in a sealed envelope and caused such envelope to be personally delivered to the party at the above listed address.

 X
(BY U.S. MAIL) I am "readily familiar" with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid at Claremont, California, in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation postage meter date is more than one day after date of deposit for mailing in affidavit.

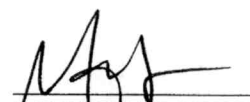
(BY FACSIMILE) I sent such document via facsimile mail to the number(s) noted above.

(BY ELECTRONIC MAIL) I sent such document via electronic mail to the electronic mail address(es) noted above.

 X
(STATE) I declare under penalty of perjury under the laws of the State of California that the above is true and correct.

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

Executed on June 10, 2021 at Claremont, California.


MINERVA LOPEZ