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26 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

27 **FOR THE COUNTY OF RIVERSIDE**

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

Plaintiff,

v.

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

Defendants.

CASE NO.: RIC2002575

**CLASS ACTION SETTLEMENT
AGREEMENT AND RELEASE**

1 This Class Action Settlement and Release ("Settlement Agreement") is entered into by and
2 between Plaintiff Nazario Perez ("Plaintiff"), on behalf of himself and the Class, on the one hand,
3 and Defendant Contera Construction Corporation ("Defendant"), on the other hand. Plaintiff and
4 Defendant are collectively referred to herein as "Parties" and individually referred to herein as
5 "Party."

6 In consideration of the mutual covenants, promises, and agreements set forth herein, the
7 Parties agree that, pursuant to the terms and conditions set forth herein, which are subject to approval
8 of the Court, this Action and the Released Claims shall be settled and compromised as between
9 Plaintiff and the Class on the one hand and Defendant on the other hand.

10 **DEFINITIONS**

11 1. "Action" means *Perez v. Contera Construction Corporation*, Superior Court of the
12 State of California for the County of Riverside, Case No.: RIC2002575.

13 2. "Class" means: all non-exempt employees of Defendant who worked for Defendant
14 in California during the Class Period.

15 3. "Class Counsel" means the Law Office of Scott E. Wheeler and the Wand Law Firm,
16 P.C.

17 4. "Class Counsel Award" means attorneys' fees for Class Counsel's litigation and
18 resolution of this Action and Class Counsel's expenses and costs incurred in connection with this
19 Action.

20 5. "Class Information" means information regarding Class Members that Defendant
21 will in good faith compile from its records and provide to the Settlement Administrator. It shall be
22 formatted as a Microsoft Excel spreadsheet or Microsoft Word Document and shall include: each
23 Class Member's full name; social security number; last known address; last known telephone
24 number; last known email address; and number of Compensable Work Weeks.

25 6. "Class Member" means each person who is a member of the Class defined above and
26 who is eligible to participate in this Settlement.

27 7. "Class Period" means the time period from July 10, 2016 up to and including the
28 Preliminary Approval Date.

1 8. “Class Representative Service Award” means the amount that the Court authorizes
2 to be paid to Plaintiff, in addition to Plaintiff’s Individual Settlement Payment, in recognition of,
3 *inter alia*, Plaintiff’s efforts and risks in assisting with the prosecution of the Action and in return
4 for executing a general release with Defendant.

5 9. “Compensable Work Week” or “Compensable Work Weeks” mean a reasonable
6 estimate of weeks worked by each Class Member individually and collectively by all Class Members
7 during the Class Period based on Defendant’s records and used as a value to calculate Individual
8 Settlement Payments. The number of Compensable Work Weeks for each Class Member will be
9 determined by adding all the calendar days within the inclusive dates of employment for the
10 employee and dividing that number by seven. Any partial workweek will be expressed as a
11 percentage of a full workweek.

12 10. “Court” means the Superior Court for the County of Riverside, State of California.

13 11. “Defendant” means Contera Construction Corporation.

14 12. “Effective Date” means the date on which the Superior Court’s Final Approval Order
15 and Judgment becomes final. The Superior Court’s Final Approval Order and Judgment “becomes
16 final” upon the latter of: (a) if there is no Objection to the Settlement, or if there is an Objection but
17 it is withdrawn, then, the date that the Final Approval Order and Judgment is filed by the Court; (b)
18 if there is an Objection to the Settlement that is not withdrawn, but no appeal is commenced
19 thereafter, then, sixty-five (65) calendar days following the date that the Final Approval Order and
20 Judgment is filed by the Court; (c) if there is an Objection to the Settlement, that is not withdrawn,
21 and any appeal, writ, or other appellate proceeding opposing the Settlement has been filed within
22 sixty-five (65) calendar days following the date that the Final Approval Order and Judgment is filed
23 by the Court, then, when any such appeal, writ, or other appellate proceeding opposing the validity
24 of the Settlement has been resolved finally and conclusively with no right to pursue further remedies
25 or relief; or (d) the date that Defendant has fully funded the Gross Settlement Amount to the
26 Settlement Administrator, as set forth Paragraph 47 of this Agreement.

1 13. “Final Approval Order and Judgment” means an order and judgment that the Court
2 will file, substantially in the form attached hereto as **Exhibit 1**, which finally approves this
3 Settlement and enters a judgment in favor of Plaintiff.

4 14. “Gross Settlement Amount” means the maximum amount which Defendant is
5 obligated to pay under this Settlement Agreement, which is Three Hundred and Fifteen Thousand
6 Dollars (\$315,000.00), subject to increase under the circumstances as set forth in paragraph 52
7 below. This is a non-reversionary Settlement in which Defendant is required to pay the entire Gross
8 Settlement Amount. No portion of the Gross Settlement Amount will revert to Defendant under any
9 circumstances. Payments of any appropriate and lawfully-required employer share of the payroll
10 taxes on the taxable portion of the settlement payments shall be paid separately from the Gross
11 Settlement Amount by Defendant.

12 15. “Individual Settlement Payment” means the amount payable from the Net Settlement
13 Amount to each Settlement Class Member.

14 16. “LWDA” means the California Labor and Workforce Development Agency.

15 17. “Net Settlement Amount” means the Gross Settlement Amount, less the Class
16 Counsel Award, Class Representative Service Award, payment to the LWDA for PAGA penalties,
17 and Settlement Administration Costs.

18 18. “Notice of Class Settlement” means the notice, substantially in the form attached
19 hereto as **Exhibit 2**, which the Settlement Administrator will mail to each Class Member, and which
20 explains, *inter alia*, the terms of this Settlement Agreement, the settlement process, and each Class
21 Member’s estimated Individual Settlement Payment.

22 19. “Objection” means a letter or other written communication submitted by a Class
23 Member to the Settlement Administrator that contains a clear statement by the Class Member that
24 he or she is objecting to any of the terms of the Settlement.

25 20. “Parties” means Plaintiff and Defendant, collectively, and “Party” means either
26 Plaintiff or Defendant, individually.

1 21. “Payment Ratio” means the respective Compensable Work Weeks for each
2 Settlement Class Member divided by the total Compensable Work Weeks for all Settlement Class
3 Members.

4 22. “Plaintiff” means Nazario Perez.

5 23. “Preliminary Approval Date” means the date upon which the Court filed an order
6 substantially in the form attached hereto as **Exhibit 3**, and which grants preliminary approval of the
7 Settlement.

8 24. “Request for Exclusion” means a letter or other written communication submitted by
9 a Class Member to the Settlement Administrator that contains a clear statement by the Class Member
10 that he or she is electing to be excluded from the Settlement.

11 25. “Released Claims by Plaintiff” means: As of the Effective Date, Plaintiff, as a Class
12 Member, agrees to the Release of Claims by Settlement Class Members, which is set forth in
13 paragraph 26 below. In addition to Release of Claims by Settlement Class Members, Plaintiff agrees
14 to a general release, which includes any unknown claims that he did not know or suspect to exist in
15 his favor at the time of the general release, which, if known, might have affected his Settlement
16 with, and release of, the Released Parties. With respect to the general release, Plaintiff stipulates and
17 agrees that, upon the Effective Date, he shall be deemed to have expressly waived and relinquished,
18 to the fullest extent permitted by law, the provisions, rights and benefits of Section 1542 of the
19 California Civil Code, or any other similar provision under federal or state law as to the generally
20 released claims, which provides:

21 “A general release does not extend to claims which the creditor or releasing party
22 does not know or suspect to exist in his or her favor at the time of executing the
23 release, and that if known by him or her would have materially affected his or her
24 settlement with the debtor or released party.”

25 Plaintiff may hereafter discover facts in addition to or different from those now known or
26 believed to be true with respect to the subject matter of the general release, but upon the Effective
27 Date, he shall be deemed to have fully, finally, and forever settled and released any and all of the
28 claims released pursuant to the general release, whether known or unknown, suspected or
 unsuspected, contingent or non-contingent, which now exist, or heretofore have existed upon any

1 theory of law or equity. In addition, the general release applies to Plaintiff only. It does not apply
2 to the Released Claims by Settlement Class Members, which is set forth in paragraph 26 below.

3 26. “Released Claims by Settlement Class Members” means: As of the Effective Date,
4 Settlement Class Members shall fully and finally release and discharge Released Parties, from July
5 10, 2016 through the Preliminary Approval Date, from any and all claims, debts, liabilities,
6 demands, obligations, guarantees, costs, expenses, attorneys’ fees, damages, action or causes of
7 action arising out of the allegations and claims asserted in the operative Complaint, including
8 without limitation to, any and all claims for alleged unpaid wages (limited to minimum, overtime,
9 final pay upon termination), alleged unpaid meal and rest period premiums, failure to pay reporting
10 pay, failure to pay timely wages, failure to maintain required records, itemized wage statements,
11 and penalties arising under the California Labor Code (including PAGA), or Business & Professions
12 Code (including Section 17200 *et seq.*), and claims for restitution and other equitable relief,
13 liquidated damages, or penalties; predicated on the violations of the California Labor Code and
14 applicable IWC Wage Order as alleged in the Operative Complaint.

15 27. “Released Parties” collectively mean: (i) Defendant; (ii) Defendant’s respective past,
16 present and future parents, subsidiaries and affiliates, successors and assigns; (iii) the past, present
17 and future shareholders, managers, officers, partners, members, agents, employees, attorneys,
18 insurers, predecessors, successors and assigns of any of the following; and (iv) any individual or
19 entity which could be jointly liable with any of the foregoing.

20 28. “Response Deadline” means forty-five (45) days after the postmark date of the
21 Notice of Class Settlement that the Settlement Administrator shall mail to Class Members, and the
22 last date on which Class Members may: (a) submit a Request for Exclusion; or (b) submit an
23 Objection to the Settlement.

24 29. “Settlement” means the disposition of the Action pursuant to this Agreement.

25 30. “Settlement Administration Costs” means the amount to be paid to the Settlement
26 Administrator from the Gross Settlement Amount for administration of this Settlement.

27 31. “Settlement Administrator” means Simpluris, Inc. The Settlement Administrator
28 shall be responsible for, *inter alia*: (a) performing Spanish translations of the Notice of Class

1 Settlement; printing and mailing the Notice of Class Settlement to the Class; (b) receiving and
2 reporting the Requests for Exclusion and Objections submitted by Class Members; (c) providing
3 declaration(s) as necessary in support of preliminary and/or final approval of this Settlement; (d)
4 processing and mailing payments to Plaintiff, Class Counsel, the LWDA, and Settlement Class
5 Members; and (e) any other tasks as the Parties mutually agree or the Court orders the Settlement
6 Administrator to perform. The Settlement Administrator shall keep the Parties timely apprised of
7 the performance of all Settlement Administrator responsibilities. The Parties agree that they have
8 no financial interest or other relationship with Simpluris, Inc. that could create a conflict of interest.
9 Should a conflict of interest or other issue lead to the disqualification of the selected Settlement
10 Administrator, the Parties will meet and confer as to a suitable replacement.

11 32. "Settlement Class" or "Settlement Class Members" means all Class Members who
12 have not opted out of the Class by submitting a valid and timely Request for Exclusion.

13 **RECITALS**

14 33. Procedural History. On July 10, 2020, Plaintiff filed a complaint against Defendant
15 in Riverside County Superior Court, Case No.: RIC2002575. On September 4, 2020, Defendant
16 filed an answer to the complaint.

17 34. Investigation and Discovery. The Parties have conducted significant investigation
18 of the facts and law during the prosecution of this Action and before this Settlement was reached.
19 Such discovery and investigation includes, *inter alia*, the exchange of information and documents
20 pertaining to Plaintiff and the Class, and numerous meetings and informal conferences wherein the
21 Parties exchanged information, class data, and theories of the case. Plaintiff has also investigated
22 the law as applied to the facts of Plaintiff's claims and Defendant's potential defenses thereto.

23 35. The Parties participated in a private mediation session with Steven J. Rottman, on
24 February 23, 2021, and accepted a proposal from the mediator regarding the material terms for a
25 proposed class action settlement that would fully resolve this matter.

26 36. Benefits of Settlement to Class Members. Plaintiff and Class Counsel recognize the
27 expense and length of continued proceedings necessary to litigate Plaintiff's claims through trial
28 and any possible appeals. Plaintiff has also taken into account the uncertainty and risk of the

1 outcome of further litigation, and the difficulties and delays inherent in such litigation. Plaintiff and
2 Class Counsel are also aware of the burdens of proof necessary to establish liability for the claims
3 asserted in the Action, both generally and in response to Defendant's defenses thereto, and the
4 difficulties in establishing damages for the Class. Plaintiff and Class Counsel have also taken into
5 account Defendant's agreement to enter into a settlement that confers substantial relief upon the
6 members of the Class. Based on the foregoing, Plaintiff and Class Counsel have determined that the
7 Settlement set forth in this Settlement Agreement is a fair, adequate, and a reasonable settlement,
8 and is in the best interests of the Class.

9 37. Defendant's Reasons for Settlement. Defendant has concluded that any further
10 defense of this litigation would be protracted and expensive for all Parties. Substantial amounts of
11 Defendant's time, energy, and resources have been and, unless this Settlement is completed, will
12 continue to be devoted to the defense of the claims asserted by Plaintiff. Defendant has also taken
13 into account the risks of further litigation in reaching its decision to enter into this Settlement. Even
14 though Defendant continues to contend that it is not liable for any of the claims alleged by Plaintiff
15 in this Action, Defendant has agreed, nonetheless, to settle in the manner and upon the terms set
16 forth in this Settlement Agreement to put to rest the claims in this Action. As to the Released Claims,
17 Defendant denies and continues to deny each of those claims.

18 **STIPULATION AND AGREEMENT**

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

21 39. It is agreed by and among Plaintiff and Defendant that this Settlement shall bind the
22 Plaintiff, Settlement Class Members, and Defendant, subject to the terms and conditions hereof.

23 40. Circular 230 Disclaimer. Each Party to this Agreement (for purposes of this section,
24 the "acknowledging party" and each Party to this Agreement other than the acknowledging party,
25 an "other party") acknowledges and agrees that (1) no provision of this Agreement, and no written
26 communication or disclosure between or among the Parties or their attorneys and other advisers, is
27 or was intended to be, nor shall any such communication or disclosure constitute or be construed or
28 be relied upon as, tax advice within the meaning of United States Treasury Department Circular 230

1 (31 CFR Part 10, as amended); (2) the acknowledging party (a) has relied exclusively upon his, her,
2 or its own, independent legal and tax counsel for advice (including tax advice) in connection with
3 this Agreement, (b) has not entered into this Agreement based upon the recommendation of any
4 other party or any attorney or advisor to any other party, and (c) is not entitled to rely upon any
5 communication or disclosure by any attorney or advisor to any other party to avoid any tax penalty
6 that may be imposed on the acknowledging party; and (3) no attorney or advisor to any other party
7 has imposed any limitation that protects the confidentiality of any such attorney's or adviser's tax
8 strategies (regardless of whether such limitation is legally binding) upon disclosure by the
9 acknowledging party of the tax treatment or tax structure of any transaction, including any
10 transaction contemplated by this Agreement.

11 41. Class Certification. The Parties stipulate to class certification for purposes of
12 settlement only. If the Court does not grant either preliminary or final approval of this Settlement,
13 the Parties stipulate that this stipulation regarding class certification will be revoked and the Parties
14 will return to a point in litigation immediately prior to the execution of this Settlement Agreement.

15 42. Approval of Settlement. Plaintiff will move the Court to grant preliminary and final
16 approval of this class action Settlement. The Parties agree to work diligently and cooperatively to
17 have this matter presented to the Court for preliminary and final approval.

18 43. Release of Claims by Plaintiff. Plaintiff releases the "Released Claims by Plaintiff"
19 as of the Effective Date.

20 44. Release of Claims by Settlement Class Members. Settlement Class Members release
21 the "Released Claims by Settlement Class Members" as of the Effective Date.

22 45. Settlement Administration. Within ten (10) calendar days after the Preliminary
23 Approval Date, Defendant shall provide the Settlement Administrator with the Class Information.

24 46. Notice to the Class. Upon receipt of the Class Information, the Settlement
25 Administrator will perform a search based on the National Change of Address Database to update
26 and correct any known or identifiable address changes. Within fourteen (14) calendar days after
27 receiving the Class Information, the Settlement Administrator shall mail copies of the Notice of
28 Class Settlement to all Class Members via regular First Class U.S. Mail. The Settlement

1 Administrator shall exercise its best judgment to determine the current mailing address for each
2 Class Member. The address identified by the Settlement Administrator as the current mailing
3 address shall be presumed to be the best mailing address for each Class Member.

4 a. Undeliverable Notices. Any Notice of Class Settlement returned to the
5 Settlement Administrator as non-delivered on or before the Response Deadline shall be re-mailed
6 to the forwarding address affixed thereto within seven (7) calendar days. If no forwarding address
7 is provided, the Settlement Administrator shall promptly attempt to determine a correct address by
8 use of skip-tracing, or other search using the name, address and/or Social Security number of the
9 Class Member involved, and shall then perform a re-mailing, if another mailing address is identified
10 by the Settlement Administrator. Class Members who receive a re-mailed Notice of Class Settlement
11 shall have forty-five (45) days after the postmark date of the re-mailed Notice of Class Settlement
12 to: (a) submit a Request for Exclusion; or (b) submit an Objection to the Settlement.

13 b. Disputes Regarding Individual Settlement Payments. Class Members will
14 have the opportunity, should they disagree with Defendant's records regarding the dates of
15 employment stated in the Notice of Class Settlement, to provide documentation and/or an
16 explanation to show contrary information by the Response Deadline. The dispute form must: (a)
17 contain the full name, address, and telephone number of the Class Member, and the last four digits
18 of the Class Member's social security number or full employee ID number; (b) contain the case
19 name and case number; (c) a clear statement by the Class Member that he or she is disputing the
20 number of Compensable Workweeks and the basis for the dispute; (d) any documentation
21 demonstrating that the number of Compensable Workweeks listed in the Notice of Class Settlement
22 is incorrect; (e) be signed by the Class Member; and (f) be postmarked by the Response Deadline.
23 The date of the postmark on the return mailing envelope on the dispute form shall be the exclusive
24 means used to determine whether it has been timely submitted. If there is a dispute, the Settlement
25 Administrator will consult with the Parties to determine whether an adjustment is warranted. The
26 Settlement Administrator shall then determine the eligibility for, and the amounts of, any Individual
27 Settlement Payments under the terms of this Agreement. In the absence of circumstances indicating
28

1 fraud, manipulation or destruction, Defendant's records shall be given a rebuttable presumption of
2 accuracy.

3 c. Request for Exclusion. Class Members who wish to exclude themselves from
4 the Settlement must mail to the Settlement Administrator a Request for Exclusion by the Response
5 Deadline. The Request for Exclusion must: (a) contain the full name, address, and telephone number
6 of the Class Member, and the last four digits of the Class Member's social security number or full
7 employee ID number; (b) contain the case name and case number; (c) a clear statement by the Class
8 Member that he or she is electing to be excluded from the Settlement; (d) be signed by the Class
9 Member; and (e) be postmarked by the Response Deadline. The date of the postmark on the return
10 mailing envelope on the Request for Exclusion shall be the exclusive means used to determine
11 whether it has been timely submitted. The Request for Exclusion will be deemed invalid if it does
12 not contain the foregoing information. Any Class Member who requests to be excluded from the
13 Settlement Class shall not be entitled to any recovery under the Settlement and shall not be bound
14 by the terms of the Settlement or have any right to object, appeal or comment thereon. Class
15 Members who fail to submit a valid and timely Request for Exclusion on or before the Response
16 Deadline shall be bound by all terms of the Settlement and any Final Approval Order and Judgment
17 entered in this Action.

18 d. Objections. Class Members who wish to object to the Settlement must mail
19 to the Settlement Administrator a written Objection by the Response Deadline. The Objection must:
20 (a) contain the full name, address, and telephone number of the Class Member, and the last four
21 digits of the Class Member's social security number or full employee ID number; (b) contain the
22 case name and case number; (c) the dates of employment of the Class Member; (d) state whether
23 the Class Member intends to appear at the final approval hearing; (e) be signed by the Class Member;
24 (f) state the basis for the Objection, including any legal briefs, papers or memoranda in support of
25 the Objection; and (g) be postmarked by the Response Deadline. The date of the postmark on the
26 return mailing envelope on the Objection shall be the exclusive means used to determine whether
27 the Objection has been timely submitted. Class Members who fail to make Objections in the manner
28 specified above shall be deemed to have waived any objections and shall be foreclosed from making

1 any objections (whether by appeal or otherwise) to the Settlement. Class Members who submit a
2 timely Objection will have a right to appear at the final approval hearing in order to have their
3 Objection heard by the Court. At no time shall any of the Parties or their counsel seek to solicit or
4 otherwise encourage Class Members to submit Objections to the Settlement or appeal from the Final
5 Approval Order and Judgment. Class Counsel shall not represent any Class Members with respect
6 to any such Objections. The Settlement Administrator will provide the Parties with any Objection
7 within five (5) calendar days of receipt of the Objection. Plaintiff will file any and all Objections
8 with the Court in advance of the Final Approval Hearing.

9 47. Funding Gross Settlement Amount. Within eighteen (18) months after the filing of
10 a Court order granting preliminary approval of the Settlement, Defendant shall wire transfer the full
11 Gross Settlement Amount to the Settlement Administrator.

12 48. Allocation of Settlement. Individual Settlement Payments will be paid from the Net
13 Settlement Amount and shall be paid pursuant to the settlement formula set forth herein. Individual
14 Settlement Payments shall be mailed by regular First Class U.S. Mail to Settlement Class Members'
15 last known mailing address.

16 a. The Settlement Administrator shall calculate the total Compensable Work
17 Weeks for all Settlement Class Members based on the Class Information provided by Defendant.
18 The respective Compensable Work Weeks for each Settlement Class Member will be divided by the
19 total Compensable Work Weeks for all Settlement Class Members, resulting in the Payment Ratio
20 for each Settlement Class Member. Each Settlement Class Member's Payment Ratio will then
21 multiplied by the Net Settlement Amount to determine his or her Individual Settlement Payment.

22 b. Individual Settlement Payments due to each Settlement Class Member shall
23 be designated as follows:

24 1. Thirty-three percent (33%) of the Individual Settlement Payment
25 shall represent payment for alleged unpaid wages. This payment shall be subject to the
26 withholding of all applicable local, state, and federal taxes. Applicable payroll taxes and/or
27 contributions will be deducted from the amount paid to Settlement Class Members. The
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1 Settlement Administrator will issue a W-2 Form to each Settlement Class Member in relation to
2 this payment.

3 2. Sixty-Seven percent (67%) of the Individual Settlement Payment
4 shall represent payment of all penalties and interest. These payments will not be subject to
5 withholding of local, state, and federal taxes. The Settlement Administrator will issue an IRS Form
6 1099 to each Settlement Class Member in relation to these payments.

7 c. Uncashed Settlement Checks. Individual Settlement Payment checks shall
8 remain negotiable for one hundred and eighty (180) days from the postmark date of issuance. If the
9 Settlement Check is not cashed, deposited, or otherwise negotiated within the 180-day deadline, the
10 check will be voided, and the funds associated with any such voided checks shall be distributed in
11 accordance with California Code of Civil Procedure § 384 to Inland Counties Legal Services, Inc.
12 (“ICLS”) is a nonprofit organization which provides legal services to low-income persons residing
13 in Riverside County, which maintains offices in Riverside and Indio. The Parties represent that they
14 do not have an interest in the governance or work of ICLS. Should a conflict of interest or other
15 issue lead to the disapproval of ICLS as a *cy pres* recipient, the Parties will meet and confer as to a
16 suitable replacement *cy pres* recipient.

17 d. Certification By Settlement Administrator. The Parties have the right to
18 monitor and review administration of the Settlement. Any disputes not resolved by the Settlement
19 Administrator concerning the administration of the Settlement will be resolved by the Court, under
20 the laws of the State of California. Prior to any such involvement of the Court, counsel for the Parties
21 will confer in good faith to resolve the disputes without the necessity of involving the Court. Upon
22 completion of administration of the Settlement, the Settlement Administrator shall provide written
23 certification of such completion to counsel for the Parties, and which shall be filed with the Court
24 as necessary.

25 e. Settlement Awards Do Not Trigger Additional Benefits. All monies received
26 by Settlement Class Members shall be deemed to be income to such Settlement Class Members
27 solely in the year in which such awards actually are received by the Settlement Class Members. It
28 is expressly understood and agreed that the receipt of such Individual Settlement Payments will not

1 entitle any Settlement Class Member to additional compensation or benefits under any company
2 compensation or benefit plan or agreement in place during the period covered by the Settlement,
3 nor will it entitle any Settlement Class Member to any increased pension and/or retirement, or other
4 deferred compensation benefits. It is the intent of this Settlement that any Individual Settlement
5 Payments provided for in this Agreement are the sole payments to be made by Defendant to the
6 Settlement Class Members in connection with this Settlement, and that the Settlement Class
7 Members are not entitled to any new or additional compensation or benefits as a result of having
8 received the Individual Settlement Payments (notwithstanding any contrary language or agreement
9 in any benefit or compensation plan document that might have been in effect during the period
10 covered by this Settlement).

11 f. Class Representative Service Award. Defendant agrees not to oppose or
12 object to a Class Representative Service Award to Plaintiff of up to Five Thousand Dollars
13 (\$5,000.00), subject to Court approval. The Settlement Administrator shall issue an IRS Form 1099
14 – MISC to Plaintiff in connection with the Class Representative Service Award payment. Plaintiff
15 shall be solely and legally responsible to pay any and all applicable taxes on his Class Representative
16 Service Award and shall hold harmless Defendant and Class Counsel from any claim or liability for
17 taxes, penalties, or interest arising as a result of the Class Representative Service Award payment.
18 The Class Representative Service Award shall be in addition to Plaintiff's Individual Settlement
19 Payment. This Settlement is not contingent upon the Court awarding Plaintiff a Class Representative
20 Service Award in any amount, and any amount requested by Plaintiff for the Class Representative
21 Service Award that is not granted by the Court shall return to the Net Settlement Amount and be
22 distributed to Settlement Class Members as provided in this Agreement.

23 g. Class Counsel Award. Defendant agrees not to oppose or object to any
24 application or motion by Class Counsel for attorneys' fees not to exceed one-third from the Gross
25 Settlement Amount, or One Hundred and Five Thousand Dollars (\$105,000.00). Defendant further
26 agrees not to oppose any application or motion by Class Counsel for the reimbursement of any costs
27 or expenses associated with Class Counsel's prosecution of this matter from the Gross Settlement
28 Amount not to exceed Twenty Thousand Dollars (\$20,000.00). Class Counsel shall be solely and

1 legally responsible to pay all applicable taxes on the payment made pursuant to this paragraph. The
2 Settlement Administrator shall issue an IRS Form 1099 – MISC to Class Counsel for the payments
3 made pursuant to this paragraph. This Settlement is not contingent upon the Court awarding Class
4 Counsel any particular amount in attorneys’ fees and costs. Any amount requested by Class Counsel
5 for the Class Counsel Award and costs that is not granted by the Court shall return to the Net
6 Settlement Amount and be distributed to Settlement Class Members as provided in this Agreement.

7 h. Settlement Administration Costs. The Settlement Administrator shall be paid
8 for the costs of administration of the Settlement from the Gross Settlement Amount. The costs of
9 notice and administration for the disbursement of the Gross Settlement Amount shall not exceed
10 \$10,000. Prior to the filing of a motion for final approval of this Settlement, the Settlement
11 Administrator shall provide the Parties with a statement detailing the costs of administration.

12 i. Payment to the LWDA. Fifteen thousand dollars (\$15,000) from the Gross
13 Settlement Amount will be allocated to penalties under the Private Attorneys General Act of 2004.
14 Seventy-five percent (75%) of that amount, or \$11,250, will be paid to the LWDA and twenty-five
15 (25%) of that amount, or \$3,750, will be paid to the Settlement Class. This PAGA Payment is made
16 pursuant to California Labor Code § 2699(i).

17 49. Distribution of Settlement Payments. Individual Settlement Payments to Settlement
18 Class Members, the Class Representative Service Award, the Class Counsel Award, Settlement
19 Administration Costs, and payment to the LWDA, shall all be distributed by the Settlement
20 Administrator within fourteen (14) calendar days of receipt of the Gross Settlement Amount from
21 Defendant. No person shall have any claim against Defendant, Defendant’s Counsel, Plaintiff,
22 Settlement Class Members, Class Counsel, or the Settlement Administrator based on distributions
23 and payments made in accordance with this Agreement.

24 50. Work Week Differential. It is currently estimated that Class Members have worked
25 (8654) Compensable Work Weeks. Defendant shall provide Plaintiff with the total number of Class
26 Members, and the total number of Compensable Work Weeks worked by them, ten (10) calendar
27 days before the date that Plaintiff informs Defendant that Plaintiff will file a motion for preliminary
28 approval. If more than 1,298 additional Compensable Work Weeks are identified at that time, the

1 Gross Settlement Amount will be increased on a pro rata basis according to the number of additional
2 Compensable Work Weeks identified (i.e., all Compensable Work Weeks beyond 9,952).

3 51. Enjoinment of Actions Pending Settlement Approval. Plaintiff and all Settlement
4 Class Members shall be enjoined from filing or prosecuting any other cases, claims, suits or
5 administrative proceedings regarding claims released by the Settlement unless and until such Class
6 Members have served valid and timely Requests for Exclusion with the Settlement Administrator.

7 52. Final Settlement Approval Hearing and Entry of Final Judgment. Upon expiration
8 of the Response Deadline, a final approval hearing shall be conducted to determine, *inter alia*, final
9 approval of the Settlement and amounts properly payable for: (a) Individual Settlement Payments;
10 (b) the Class Counsel Award; (c) the Class Representative Service Award; (d) payment to the
11 LWDA; and (e) the Settlement Administration Costs.

12 53. Nullification of Settlement Agreement. In the event: (a) the Court does not enter the
13 Order for preliminary approval of the Settlement; (b) the Court does not finally approve the
14 Settlement; (c) the Court does not enter a Final Approval Order and Judgment as provided herein;
15 or (d) the Settlement does not become final for any other reason, this Settlement Agreement shall
16 be null and void and any order or judgment entered by the Court in furtherance of this Settlement
17 shall be treated as void from the beginning. In such cases, the Parties and any funds to be awarded
18 under this Settlement shall be returned to their respective statuses as of the date and time
19 immediately prior to the execution of this Agreement, and the Parties shall proceed in all respects
20 as if this Agreement had not been executed, except that any fees already incurred by the Settlement
21 Administrator shall be paid by Defendant. In the event an appeal is filed from the Court's Final
22 Approval Order and Judgment, or any other appellate review is sought, administration of the
23 Settlement shall be stayed pending final resolution of the appeal or other appellate review, and any
24 fees incurred by the Settlement Administrator prior to it being notified of the filing of an appeal
25 from the Court's Final Approval Order and Judgment, or any other appellate review, shall be paid
26 to the Settlement Administrator by the party or person that filed the appeal, within thirty (30)
27 calendar days of said notification.

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1 54. No Effect on Employee Benefits. Amounts paid to Plaintiff or other Settlement Class
2 Members pursuant to this Agreement shall be deemed not to be pensionable earnings and shall not
3 have any effect on the eligibility for, or calculation of, any of the employee benefits (e.g., vacations,
4 holiday pay, retirement plans, etc.) of Plaintiff or Settlement Class Members.

5 55. No Admission by Defendant. Defendant denies any and all claims alleged in this
6 Action and denies all wrongdoing whatsoever. This Settlement Agreement is not a concession or
7 admission, and shall not be used against Defendant as an admission or indication with respect to any
8 claim of any fault, concession, or omission by any Defendant.

9 56. Exhibits and Headings. The terms of this Settlement Agreement include the terms
10 set forth in any attached Exhibits, which are incorporated by this reference as though fully set forth
11 herein. Any Exhibits to this Agreement are an integral part of the Settlement. The descriptive
12 headings of any paragraphs or sections of this Agreement are inserted for convenience of reference
13 only and do not constitute a part of this Agreement.

14 57. Interim Stay of Proceedings. The Parties agree to stay all proceedings in the Action,
15 except such proceedings necessary to implement and complete the Settlement, holding the Action
16 in abeyance pending the final approval hearing to be conducted by the Court.

17 58. Dispute Resolution. Except as otherwise set forth herein, all disputes concerning the
18 interpretation, calculation or payment of Settlement claims, or other disputes regarding compliance
19 with this Agreement shall be resolved as follows:

20 a. If Plaintiff or Class Counsel, on behalf of Plaintiff or any Settlement Class
21 Member, or Defendant's Counsel, on behalf of Defendant, at any time believe that the other Party
22 has breached or acted contrary to the Agreement, that Party shall notify the other Party in writing of
23 the alleged violation.

24 b. Upon receiving notice of the alleged violation or dispute, the responding
25 Party shall have ten (10) calendar days to correct the alleged violation and/or respond to the
26 initiating Party with the reasons why the Party disputes all or part of the allegation.

1 c. If the response does not address the alleged violation to the initiating Party's
2 satisfaction, the Parties shall negotiate in good faith for up to ten (10) calendar days to resolve their
3 differences.

4 d. If Class Counsel and Defendant's Counsel are unable to resolve their
5 differences after twenty (20) calendar days, either Party shall first contact the mediator (Steven J.
6 Rottman) to try to resolve the dispute. If that proves unsuccessful, the party may file an appropriate
7 motion for enforcement with the Court. The briefing of such motion should be in letter brief form
8 and shall not exceed five (5) single-spaced pages (excluding exhibits).

9 e. Reasonable attorneys' fees and costs for work done in resolving a dispute
10 under this Section may be recovered by any Party that prevails under the standards set forth within
11 the meaning of applicable law.

12 59. Amendment or Modification. This Agreement may be amended or modified only by
13 a written instrument signed by counsel for all Parties.

14 60. Entire Agreement. This Settlement Agreement and any attached Exhibits constitute
15 the entire Agreement among these Parties, and no oral or written representations, warranties, or
16 inducements have been made to any Party concerning this Agreement or its Exhibits other than the
17 representations, warranties, and covenants contained and memorialized in the Agreement and its
18 Exhibits.

19 61. Authorization to Enter Into Settlement Agreement. Counsel for all Parties warrant
20 and represent they are expressly authorized by the Parties whom they represent to negotiate this
21 Agreement and to take all appropriate actions required or permitted to be taken by such Parties
22 pursuant to this Agreement to effectuate its terms, and to execute any other documents required to
23 effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other
24 and use their best efforts to effect the implementation of the Settlement. In the event the Parties are
25 unable to reach agreement on the form or content of any document needed to implement the
26 Settlement, or on any supplemental provisions that may become necessary to effectuate the terms
27 of this Settlement, the Parties may seek the assistance of the Court or the mediator to resolve such
28 disagreement. The persons signing this Agreement on behalf of Defendant represent and warrant

1 that they are authorized to sign this Agreement on behalf of Defendant. Plaintiff represents and
2 warrants that he is authorized to sign this Agreement and that he has not assigned any claim, or part
3 of a claim, covered by this Settlement to a third-party.

4 62. Binding on Successors and Assigns. This Agreement shall be binding upon, and
5 inure to the benefit of, the successors or assigns of the Parties hereto, as previously defined.

6 63. California Law Governs. All terms of this Settlement Agreement and the Exhibits
7 hereto shall be governed by and interpreted according to the laws of the State of California.

8 64. Counterparts. This Settlement Agreement may be executed in one or more
9 counterparts. All executed counterparts and each of them shall be deemed to be one and the same
10 instrument.

11 65. This Settlement is Fair, Adequate and Reasonable. The Parties believe this
12 Settlement is a fair, adequate, and reasonable settlement of this Action and have arrived at this
13 Settlement after extensive arms-length negotiations, taking into account all relevant factors, present
14 and potential.

15 66. Jurisdiction of the Court. Pursuant to California Code of Civil Procedure section
16 664.6, the Court shall retain jurisdiction with respect to the interpretation, implementation, and
17 enforcement of the terms of this Settlement Agreement and all orders and judgments entered in
18 connection therewith, and the Parties and their counsel hereto submit to the jurisdiction of the Court
19 for purposes of interpreting, implementing, and enforcing the settlement embodied in this
20 Agreement and all orders and judgments entered in connection therewith. All terms of this
21 Settlement Agreement are subject to approval by the Court.

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

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4/13/2021

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6 **APPROVED AS TO FORM:**

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By:  _____
Nazario Perez

By: _____
Contera Construction Company

Title: _____

By: _____
Scott E. Wheeler
Law Office of Scott E. Wheeler
Counsel for Plaintiff Nazario Perez

By: _____
Aubry Wand
The Wand Law Firm, P.C.
Counsel for Plaintiff Nazario Perez

By: _____
Nathan R. Klein
Tyler & Bursch, LLP
Counsel for Defendant Contera Construction Corporation

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Dated: _____

By: _____
Nazario Perez

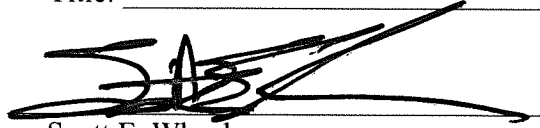
Dated: _____

By: _____
Contera Construction Company

Title: _____

APPROVED AS TO FORM:

Dated: April 15, 2021

By: 
Scott E. Wheeler
Law Office of Scott E. Wheeler

Counsel for Plaintiff Nazario Perez

Dated: _____

By: _____
Aubry Wand
The Wand Law Firm, P.C.

Counsel for Plaintiff Nazario Perez

Dated: _____

By: _____
Nathan R. Klein
Tyler & Bursch, LLP

Counsel for Defendant Contera Construction Corporation

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Dated: _____

Dated: 04/13/2021

APPROVED AS TO FORM:

Dated: _____

Dated: 4/15/2021

Dated: 04-14-21

By: _____
Nazario Perez

By: 
Contera Construction Company

Title: CFO

By: _____
Scott E. Wheeler
Law Office of Scott E. Wheeler

Counsel for Plaintiff Nazario Perez

By: 
Aubry Wand
The Wand Law Firm, P.C.

Counsel for Plaintiff Nazario Perez

By: 
Nathan R. Klein
Tyler & Bursch, LLP

Counsel for Defendant Contera Construction Corporation