

STIPULATION OF SETTLEMENT

This Stipulation of Settlement (“Settlement Agreement” or “Settlement”) is reached by and between Plaintiffs Manuel Marroquin, Hector Sanchez (collectively, “Plaintiffs” or the “Class Representatives”), individually and on behalf of all members of the Settlement Class (defined below), and Defendant Kern Pacific Construction Company (“Defendant”) (Plaintiffs and Defendant are referred to herein collectively as the “Parties”). Plaintiffs and the Settlement Class are represented by Paul K. Haines of Haines Law Group, APC, and Sam Sani of Sani Law, APC (“Class Counsel”). Defendant is represented by Daniel Klingenberg of LeBeau Thelen LLP (“Defense Counsel”).

Francisco Herrera filed a Class Action Complaint on June 26, 2019 against Defendant in Kern County Superior Court, in the matter entitled *Francisco Herrera, et al. v. Kern Pacific Construction Company*, Case No. BCV-19-101846. The Class Action Complaint alleged the following claims against Defendant: (1) minimum wage violations, (2) overtime wage violations, (3) meal period violations, (4) failure to reimburse necessary business expenses, (5) waiting time penalties, and (6) unfair competition.

Francisco Herrera filed a First Amended Class and Representative Action Complaint (“FAC”) on October 8, 2020 against Defendant. The FAC alleged two additional class representative plaintiff, Manual Marroquin and Hector Sanchez, and the following claims against Defendant: (1) minimum wage violations, (2) overtime wage violations, (3) meal period violations, (4) rest period violations, (5) failure to reimburse necessary business expenses, (6) wage statement violations, (7) waiting time penalties, (8) unfair competition, and (9) civil penalties pursuant to the Private Attorneys General Act (“PAGA”).

Francisco Herrera, Manual Marroquin, and Hector Sanchez filed a Second Amended Class and Representative Action Complaint (“SAC”) on February 14, 2022 against Defendant. The SAC alleges the same claims as the FAC, and added allegations that Defendant’s policies/practices failed to provide legally compliant second meal periods to putative class members.

Given the uncertainty of litigation, Plaintiffs and Defendant wish to settle both individually and on behalf of the Settlement Class. On July 29, 2022, the Parties participated in mediation before Lisa Klerman, a highly experienced class-action mediator. After a full-day mediation, the Parties were unable to reach a settlement.

The Parties continued their settlement negotiations beginning in September 2022 and they reached a final settlement in or around November 2022. Accordingly, Plaintiffs and Defendant agree as follows:

1. **Settlement Class.** For purposes of this Settlement Agreement only, Plaintiffs and Defendant stipulate to certification of the following Settlement Class (excluding those who opt out of the Settlement):

All persons employed in California by Defendant as hourly-paid (non-exempt)

employees at any time during the period from June 26, 2015 through July 29, 2022 (the “Class Period”)

The Parties agree that certification for the purpose of settlement is not an admission that class certification is proper under Section 382 of the California Code of Civil Procedure and shall not be admissible in this or in any other action except for the sole purpose of enforcing this Settlement Agreement. If for any reason this Settlement Agreement is not approved or is terminated, in whole or in part, this conditional agreement to class certification will be inadmissible and will have no effect in this matter or in any claims brought based on the same or similar allegations, and the Parties shall revert to the respective positions they held prior to entering into the Settlement Agreement. Defendant expressly reserves its rights and declares that it will continue to oppose class certification and the substantive merits of the case should the Court fail to issue Final Approval. Plaintiffs expressly reserve their rights and declare that they will continue to pursue class certification and representative treatment and a trial should the Court fail to issue Final Approval.

2. **Release.** Plaintiffs and each member of the Settlement Class (except those who opt out of the Settlement Agreement), will release and discharge Defendant, its divisions, subsidiaries, partnerships, parents, affiliated corporations, trusts, or other related entities, past and present, and each of them, as well as its and their directors, officers, shareholders, partners, members, representatives, executors, trustees, administrators, beneficiaries, assignees, successors, business managers, agents, contractors, accountants, insurers, attorneys, and employees, past and present, and each of them and their marital community (collectively the “Released Parties”) as follows:
 - A. Settlement Class Members, except those who opt-out pursuant to Section 9.D. herein, will release any and all federal and state wage-and-hour claims, demands, rights, liabilities, and causes of action of every nature and description, whether known or unknown, that were or could have been asserted based on the factual allegations in the SAC by Plaintiffs against Defendant, including, without limitation, all of the following: (a) statutory, constitutional, contractual, or common law claims for unpaid wages, overtime, restitution, interest, liquidated damages and/or penalties; (b) claims for any alleged underpayment of wages, including failure to pay all minimum wages and overtime wages owed; (c) claims for failure timely to pay wages when due; (d) claims for failure to provide compliant meal periods or pay meal period premiums for missed and/or non-compliant meal periods; (e) claims for failure to authorize and permit compliant rest periods or pay rest period premiums for missed and/or non-compliant rest periods; (f) claims for failure to keep accurate records of non-exempt employees’ hours worked and wages earned; (g) claims for wage statement violations; (h) waiting time penalties under Labor Code section 203 deriving from the same underlying violations; (i) claims for unreimbursed business expenses, (j) unfair business practices under California Business & Professions Code section 17200 et seq., and (k) liquidated damages, interest, attorney’s fees, litigation costs, restitution, or equitable relief (collectively, the “Released Claims”). The period of the Released Claims is from June 26, 2015 through July 29, 2022. This release will become effective as of the date the Court enters an order at or following the

Final Approval Hearing finally approving the Settlement as fair, reasonable, adequate, and in the best interests of the Settlement Class, and entry of a Judgment. Settlement Class Members, regardless of whether they opt-out pursuant to Section 9.D. herein, will also release all claims for civil penalties under the California Labor Code Private Attorney General Act, Labor Code section 2698 et seq (“PAGA”) with respect to the underlying wage and hour claims that were pled or that could have been pled in the SAC and in Plaintiff Hector Sanchez’s July 10, 2020 and July 31, 2020 letters to the Labor and Workforce Development Agency (the “PAGA Released Claims”). The period of the PAGA Released Claims shall extend from July 10, 2019 through July 29, 2022 (the “PAGA Period”).

- B. A Settlement Class Member’s cashing of his or her Individual Settlement Payment check shall be considered consent and an opt-in to the settlement of all related federal wage and hour claims under the Fair Labor Standards Act, and each Settlement Class Member who cashes and/or endorses by signature his or her Individual Settlement Payment check will waive his or her rights to bring related claims under the Fair Labor Standards Act for the Class Period. Each Individual Settlement Payment check will include the following disclaimer: “BY ENDORSING AND/OR CASHING THIS CHECK YOU ARE AGREEING TO THE TERMS OF THE SETTLEMENT REACHED IN *FRANCISCO HERRERA, ET AL. V. KERN PACIFIC CONSTRUCTION COMPANY*, CASE NO. BCV-19-101846 AND AGREE TO OPT-IN TO THE SETTLEMENT AND TO RELEASE ANY CLAIMS YOU MAY HAVE UNDER THE FAIR LABOR STANDARDS ACT.” A Settlement Class Member who does not cash and/or endorse by signature his or her Individual Settlement Payment check will retain all of his or her rights and claims under the Fair Labor Standards Act, but shall still be deemed to have accepted and agreed to all other terms of the Release in Paragraph 3.A. unless he or she submits a timely written request for exclusion, consistent with Paragraph 9.D.
- C. In exchange for the Class Representative Enhancement Payment, Plaintiffs do hereby, for themselves and for their respective spouses, domestic partners, marital community, children, estates, trusts, attorneys, heirs, successors, beneficiaries, devisees, legatees, executors, administrators, trustees, conservators, guardians, assigns, and representatives, forever completely release and discharge the Released Parties, from the Released Claims described above, and from any and all charges, complaints, claims, liabilities, obligations, promises, agreements, contracts, controversies, damages, actions, causes of action, suits, rights, demands, costs, losses, debts, and expenses (including for back wages, statutory penalties, civil penalties, liquidated damages, exemplary damages, interest, attorneys’ fees, and costs) of any nature whatsoever, from the beginning of time through the execution of this Agreement, whether known or unknown, suspected or unsuspected, concealed or hidden, including but not limited to all claims arising out of, based upon, or relating to those claims raised in the Lawsuit and those arising from or related to Plaintiffs’ employment with

Defendant or the termination thereof, including but not limited to claims arising under any federal, state, or local constitutional, statutory, regulatory, contractual or common law claims for unpaid wages, premium pay, wage deductions, unreimbursed business expenses, waiting-time penalties, or other penalties, for overtime, failure to provide meal period or pay meal period premiums for missed and/or non-compliant meal periods, failure to authorize and permit rest periods or pay rest period premiums for missed and/or non-compliant rest periods, for reimbursement of business expenses, improper wage statements, untimely payment of wages, inaccurate or incomplete recordkeeping, vacation forfeiture, personal day forfeiture, and other wage-and- hour violations; attorney's fees or injunctive relief; claims arising from or dependent on the Title VII of the Civil Rights Act of 1964, 42 U.S.C. §§ 2000, *et seq.*; the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.*; the Employee Retirement Income Security Act of 1974, 29 U.S.C. § 1001, *et seq.*; the Fair Labor Standards Act, 29 U.S.C. § 201, *et seq.*; the Civil Rights Act of 1991; 42 U.S.C. § 1981; Executive Order 11246; Executive Order 11141; the Age Discrimination in Employment Act, the Rehabilitation Act of 1973; the Equal Pay Act; the Federal Employee Polygraph Protection Act; the National Labor Relations Act; the Worker Adjustment and Retraining Notification Act; the Family and Medical Leave Act; the California Fair Employment and Housing Act, including Government Code sections 12900, *et seq.*; the California Family Rights Act; the California Labor Code; any applicable order of the California Industrial Welfare Commission and all of their implementing regulations; claims arising from or dependent on California, federal or local laws or regulations prohibiting discrimination or harassment in employment based on any protected status or otherwise, or enforcing express or implied contracts, requiring employers to deal fairly or in good faith, or restricting an employer's right to terminate employees, wrongful discharge, wrongful termination in violation of public policy, constructive termination, or retaliation; defamation; infliction of emotional distress (intentional or negligent); invasion of privacy; assault, battery, physical or personal injury; emotional distress; fraud, negligent misrepresentation, or misrepresentation; California Business & Professions Code section 17200 *et seq.*; or any other tort, or any other law.

- D. Plaintiffs each expressly waive and relinquish all rights and benefits afforded by Section 1542 of the Civil Code of the State of California and they each do so understanding and acknowledging the significance of the waiver of Section 1542. Section 1542 of the Civil Code of the State of California states:

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

Notwithstanding the provisions of Section 1542, and for the purpose of

implementing a full and complete release and discharge of all parties, Plaintiffs and Class Counsel expressly acknowledge that this Settlement Agreement is intended to include in its effect, without limitation, all claims that Plaintiffs knew of, as well as all claims that they do not know or suspect to exist in their favor against the Released Parties, or any of them, for the time period from the beginning of time to the date of Plaintiffs' execution of this Settlement Agreement, and that this Settlement Agreement contemplates the extinguishment of any such Plaintiffs' claims.

- E. Plaintiffs' full release (and not the release of Settlement Class Members) specifically includes the waiver of any and all claims for age discrimination or other unlawful conduct under the Age Discrimination in Employment Act, 29 U.S.C. § 621 et seq. (the "ADEA") and accordingly this Agreement is subject to the terms of the Older Workers Benefit Protection Act of 1990 (the "OWBPA"). Among other things, the OWBPA provides that an individual cannot waive a right or claim under the Age Discrimination in Employment Act unless the waiver is knowing and voluntary. Pursuant to the terms of the OWBPA, Plaintiffs acknowledge and agree that they have executed this Agreement voluntarily, and with full knowledge of its consequences. In addition, Plaintiffs hereby acknowledge and agree that: (a) this Agreement has been written in a manner that is calculated to be understood, and that this Agreement is understood by Plaintiffs; (b) the release provisions of this Agreement apply to rights and claims that Plaintiffs may have under the ADEA, including the right to file a lawsuit against Defendant for age discrimination; (c) the release provisions of this Agreement do not apply to any rights or claims that Plaintiffs may have under the ADEA that arise after the date Plaintiffs execute this Agreement; (d) Defendant does not have a preexisting duty to pay the Class Representatives' Enhancement Payment identified in this Agreement; and (e) Defendant expressly advises Plaintiffs to consult with an attorney of Plaintiffs' choice and at Plaintiffs' sole expense prior to making a decision whether to enter into this Agreement.
- F. Plaintiffs acknowledge that they are entitled to take up to twenty-one (21) days to consider whether to accept this Agreement; provided however, that if Plaintiffs choose to sign this Agreement before the end of this 21-day period, Plaintiffs acknowledge that they do so knowingly and voluntarily and waive any claim to the effect that Plaintiffs were not given the full 21 calendar days to consider whether to sign this Agreement or did not use the entire period of time available to consider this Agreement or to consult with an attorney. Plaintiffs agree that any modifications, material or otherwise, made to this Agreement do not restart or affect in any manner the original twenty-one (21) calendar day consideration period.
- G. Seven Day Revocation Period. After signing this Agreement, Plaintiffs shall have a period of seven (7) calendar days to revoke their individual release in this Agreement by providing Defendant with written notice of Plaintiffs' revocation,

thereby forfeiting Plaintiffs' right to receive the Class Representative's Enhancement Payment or other benefits provided hereunder not otherwise required by law and rendering this Agreement's individual release provisions and requirement to pay Plaintiffs any amount other than as an individual class member null and void in its entirety. To be effective, such revocation must be in writing, must specifically revoke this Agreement, and must be received by counsel for Defendant at dklingenger@lebeauthelen.com prior to the eighth calendar day following Plaintiffs' execution of this Agreement. Unless timely revoked by Plaintiffs, this Agreement's individual release provisions shall become effective, enforceable, and irrevocable on the eighth calendar day following Plaintiffs' execution of this Agreement.

3. Maximum Settlement Amount. As consideration for the releases given by Plaintiffs and the Settlement Class Members, Defendant agrees to pay a non- reversionary maximum amount ("Maximum Settlement Amount") of \$500,000.00 in full and complete settlement of this matter, as follows:

- A. The Parties have agreed to engage CPT Group, Inc. as the "Claims Administrator" to administer this Settlement.
- B. Defendant will deposit the Maximum Settlement Amount in a Qualified Settlement Fund ("QSF") established and managed by the Claims Administrator within ten (10) business days of notification from the Claims Administrator that the QSF has been established and is available for deposit of the monies. ;
- C. The Maximum Settlement Amount includes:
 - (1) All payments (including interest, penalties and employee-side taxes) to the Settlement Class;
 - (2) All costs of the Claims Administrator associated with the administration of the Settlement, which are anticipated to be no greater than \$10,000.00;
 - (3) Up to \$12,500.00 for the Class Representatives' Enhancement Payments in recognition of Plaintiffs' contributions to the Lawsuit and their service to the Settlement Class. In the event that the Court reduces or does not approve the requested Class Representatives Enhancement Payments, the difference between \$12,500.00 and the amount approved by the Court will revert to the Net Settlement Amount, defined below, and Plaintiffs shall not have the right to revoke this Settlement and it will remain binding;
 - (4) Up to one-third (33.33%) of the Maximum Settlement Amount in attorneys' fees, which is currently estimated at \$166,666.66, plus actual costs and expenses related to the Lawsuit, which are not to exceed \$30,000.00, as supported by declaration. In the event that the Court

reduces or does not approve the requested attorneys' fees and costs, the difference between the requested and the amount approved by the court will revert to the Net Settlement Amount, and Plaintiffs shall not have the right to revoke this Settlement, and it will remain binding;

- (5) \$50,000.00 of the Maximum Settlement Amount has been set aside by the Parties as PAGA civil penalties. Per Labor Code Section 2699(i), 75% of such penalties, or \$37,500.00, will be payable to the California Labor & Workforce Development Agency ("LWDA") for its share of PAGA penalties, and the remaining 25%, or \$12,500.00, will be payable to the eligible members of the Settlement Class as the "PAGA Amount."

D. Defendant shall pay the standard employer share of payroll taxes on all wages paid as part of this Settlement Agreement, as calculated and directed by the Claims Administrator, separate and apart from its payment of the Maximum Settlement Amount.

E. **Escalator Clause.** Defendant represents that the approximately 239 Settlement Class Members have worked approximately 19,564 workweeks through during the Class Period. If the actual number of workweeks worked by Settlement Class Members during the Class Period grows by more than ten percent (10%), or more than the 21,520.40 workweeks, then Plaintiffs have the option to nullify this Agreement. Plaintiffs shall provide ten (10) business days' notice of such intent to nullify prior to taking any action with the court. During this 10-day nullification notice period, Defendant at its exclusive discretion may cure (1) by agreeing to increase the Gross Settlement Amount proportionately for any excess increase in the total number of workweeks worked by Settlement Class Members during the Class Period (for example, if the total number of workweeks worked by Settlement Class Members during the Class Period increases by 11% beyond 19,564 workweeks (i.e., approximately 21,716 workweeks), the Gross Settlement Amount will increase by 1% (actual increase minus the 10% tolerated increase), or (2) by electing to change the end date of the Class Period to a date before July 29, 2022 such that the number of workweeks worked by Settlement Class Members during the revised/shortened Class Period is no more than 21,520.40.

4. Payments to the Settlement Class. Settlement Class Members are not required to submit a claim form to receive a payment ("Individual Settlement Payment") from the Settlement. Individual Settlement Payments will be determined and paid as follows:

A. The Claims Administrator shall first deduct from the Maximum Settlement Amount the amounts approved by the Court for Class Counsel's attorneys' fees, Class Counsel's costs and expenses, the Class Representative Enhancement Payments, and the Claims Administrator's costs, and 75% of the amount attributable to settlement of the PAGA claim. The remaining amount shall be known as the "Net Settlement Amount."

B. From the Net Settlement Amount, the Claims Administrator will calculate each Settlement Class Member's Individual Settlement Payment based on the following formula:

- i. Wage Statement Amount: Ten percent (10%) of the Net Settlement Amount shall be designated as the "Wage Statement Amount." Each participating Settlement Class Member who was employed by Defendant at any time from June 26, 2018 to July 29, 2022 shall receive a portion of the Wage Statement Amount proportionate to the number of workweeks that he or she worked during the aforementioned time period

Waiting Time Amount: Fifteen percent (15%) of the Net Settlement Amount shall be designated as the "Waiting Time Amount." Each participating Settlement Class Member who separated their employment with Defendant between June 26, 2016 and July 29, 2022, shall receive an equal, pro-rata share of the Waiting Time Amount.

- ii. PAGA Amount: \$12,500.00 of the Maximum Settlement Amount has been designated as the "PAGA Amount" as described above. Each PAGA Settlement Class Member shall receive a portion of the PAGA Amount proportionate to the number of workweeks that he or she worked during the PAGA Period from July 10, 2019 through July 29, 2022. Each PAGA Settlement Class Member will be issued a check for their share of the PAGA Amount regardless of whether they submit a valid Request for Exclusion from the Settlement as set forth in Section 9.D. herein.

- iii. The remainder of the Net Settlement Amount will be distributed to each Settlement Class Member based on their proportionate number of workweeks worked during the Class Period, by multiplying the remaining Net Settlement Amount by a fraction, the numerator of which is the individual Settlement Class Member's total workweeks worked during the Class Period, and the denominator of which is the total workweeks worked by all Settlement Class Members during the Class Period. This remainder is considered non-wages and is payment for non-PAGA penalties and interest.

C. Within 14 calendar days following the deposit of the Maximum Settlement Amount with the Claims Administrator, the Claims Administrator will calculate each Settlement Class Member's Individual Settlement Payment and will prepare and mail Individual Settlement Payments to Settlement Class Members.

D. For purposes of calculating applicable taxes and withholdings for Settlement Class Members, each Individual Settlement Payment will be allocated as follows: Twenty percent (20%) will be allocated as wages subject to withholding of all applicable local, state and federal taxes; and eighty percent (80%) will be allocated for interest and statutory penalties (pursuant to, e.g., California Labor

Code sections 203, 226) from which no taxes will be withheld or other deductions made. The Claims Administrator will issue to each Settlement Class Member an Internal Revenue Service Form W-2 with respect to the wage allocation and a Form 1099 to each Settlement Class Member with respect to the penalties and interest allocations. The Parties agree that it is the obligation of the Settlement Class Members to pay appropriate federal, state, and local income taxes on all payments they receive under this Settlement Agreement. Neither Class Counsel nor Defense Counsel intend anything contained in this Settlement to constitute legal advice regarding the taxability of any amount paid hereunder, nor shall anything in this Settlement be relied upon as such.

- E. Without prejudice to any other remedies, the Claims Administrator shall agree to be responsible for any breach of its obligations (whether committed by the Claims Administrator or its agents) and to indemnify and hold the Parties and their counsel harmless from and against all liabilities, claims, causes of action, costs and expenses (including legal fees and expenses) arising out of any breach committed by the Claims Administrator or its agents.
- F. CIRCULAR 230 DISCLAIMER: EACH PARTY TO THIS AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT: (1) NO PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) EACH PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS OWN INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS AGREEMENT; (B) HAS NOT ENTERED INTO THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY; AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY ATTORNEY OR ADVISER TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY THAT MAY BE IMPOSED; AND (3) NO ATTORNEY OR ADVISER TO ANY PARTY HAS IMPOSED ANY LIMITATION THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISER’S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING) UPON DISCLOSURE BY ANY OTHER PARTY OF THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

- G. **No Credit Toward Benefit Plans.** The Individual Settlement Payments made to Settlement Class Members under this Agreement, as well as any other payments made pursuant to this Agreement, shall not be utilized to calculate any additional benefits under any benefit plans to which any Settlement Class Member may be eligible, including, but not limited to: profit-sharing plans, bonus plans, 401(k) plans, pension plans, retirement plans, stock purchase or other types of equity plans, vacation plans, sick leave plans, PTO plans, and any other benefit or incentive plan. Rather, it is the Parties' intention that this Settlement will not affect any rights, contributions, or amounts to which any Settlement Class Members may be entitled under any benefit plans. The Parties agree that the amounts paid pursuant to this Settlement are not for days or hours worked, and are not included toward any regular rate of pay calculation, or any benefit vesting or accrual purpose.
- H. This is a "non-reversionary" settlement. Under no circumstance will any portion of the Maximum Settlement Amount revert to Defendant. Settlement Class Members will not have to make a claim in order to receive an Individual Settlement Payment. Distributions, in the form of Individual Settlement Payments will be made directly to each Settlement Class Member who does not exclude oneself. The Claims Administrator shall be responsible for any remittance obligations with respect to unclaimed funds as a result of a Settlement Class Member not cashing an Individual Settlement Payment by the check cashing deadline, as set forth herein.
- I. Each member of the Settlement Class who receives an Individual Settlement Payment shall have one hundred and eighty (180) days from the date the Claims Administrator mails it to cash the check. Any funds payable to Settlement Class Members whose checks remain uncashed one hundred and eighty (180) calendar days after such checks are mailed by the Claims Administrator ("Check Expiration Date") shall become void and a stop payment shall be issued, and the funds associated with such voided checks, plus any accrued interest that has not otherwise been distributed (together, "Unused Funds"), (1) shall be distributed, pursuant to California Code of Civil Procedure Section 384, to Court Appointed Special Advocates (CASA) of Kern County, a cy pres selected by the mutual agreement of the parties, subject to the Court's approval, or, (2) if such cy pres distribution is not approved by the Court, then the Unused Funds shall be distributed, pursuant to California Code of Civil Procedure Section 384, to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California Civil Code § 1500 et seq., for the benefit of those Settlement Class Members who did not cash their checks until such time that they claim their property. The Parties, Class Counsel and Defense Counsel represent that they have no interest or relationship, financial or otherwise, with the intended Cy Pres Recipient. A partner of the LeBeau Thelen LLP law firm serves as a volunteer Board member for CASA of Kern County but neither the partner nor the law firm have any financial interest in the organization. The

release will be binding upon all Settlement Class Members who do not cash their checks within the 180-day period. In the event that any settlement check is returned to the Claims Administrator within 180 days of mailing, the Claims Administrator will, within five (5) business days of receipt of the returned settlement check, perform a skip trace to locate the individual. If a new address is located by these means, the Claims Administrator will have ten (10) business days to re-issue the check and will notify Defense Counsel and Class Counsel that a re-issued check has been sent. Neither Defendant, Defense Counsel, Class Counsel, Plaintiffs, nor the Claims Administrator will have any liability for lost or stolen settlement checks, forged signatures on settlement checks, or unauthorized negotiation of settlement checks. Without limiting the foregoing, in the event a Settlement Class Member notifies the Claims Administrator that he or she believes that a settlement check has been lost or stolen, the Claims Administrator shall immediately stop payment on such check. If the check in question has not been negotiated prior to the stop payment order, the Claims Administrator will issue a replacement check.

- J. The Parties agree that this disposition results in no “unpaid cash residue,” or “unclaimed or abandoned funds” under California Civil Procedure Code § 384, as amended effective June 27, 2018, as the entire Net Settlement Amount will be paid out to the Class Members or the Cy Pres or to the Controller of the State of California, whether or not they all cash their payment checks.

5. **Attorneys’ Fees and Costs.** Defendant will not object to Plaintiffs’ request to the Court for an award of Class Counsel’s attorneys’ fees amounting to no more than thirty-three and one-third percent (33.33%) of the Maximum Settlement Amount, which is currently estimated to be \$166,666.66, plus actual costs and expenses, which are not to exceed \$30,000.00. These amounts will cover any and all work performed and any and all costs incurred by Plaintiffs in connection with this litigation, including without limitation all work performed and all costs incurred to date, and all work to be performed and costs to be incurred in connection with obtaining the Court’s approval of this Settlement Agreement, including any objections raised and any appeals necessitated by those objections. Defendant will not be required to pay any additional amount in attorneys’ fees or costs to Class Counsel or any other attorney in connection with this matter (except as otherwise provided in this Agreement). Any Court order awarding less than the amount sought by Class Counsel shall not be grounds to rescind the Settlement Agreement or otherwise void the Settlement. In the event of a timely appeal of the amount of the awards of attorneys’ fees and costs (if any) approved by the Court in the Final Approval Order, final funding and administration of the portion of the attorneys’ fees and/or costs award in dispute will be segregated and stayed pending the exhaustion of appellate review. If, after the exhaustion of any such appellate review, the amount awarded as attorneys’ fees and/or costs is less than the amounts sought by Class Counsel then the additional amounts not awarded to as attorneys’ fees and costs shall be added to the Net Settlement Amount to be distributed to the Settlement Class Members. Class Counsel will be issued an IRS Form 1099 by the Claims Administrator when it pays the fee award allowed by the Court. Defendant will issue an IRS Form 1099 to the Claims Administrator and/or Class Counsel. Within 14 calendar days following the deposit of the Maximum Settlement Amount with the Claims Administrator,

the Claims Administrator will calculate, prepare, and mail payments for the Court-approved amount of Class Counsel's attorneys' fees and actual costs and expenses to Class Counsel. Class Counsel agrees that any allocation of fees between or among Class Counsel and any other attorney representing or claiming to represent the Class Members shall be the sole responsibility of Class Counsel.

6. **Class Representative Enhancement Payments.** Defendant will not object to a request for Class Representative Enhancement Payments of up to \$5,000.00 to Plaintiff Sanchez, and \$7,500.00 to Plaintiff Marroquin for their time and risks in prosecuting this case and their service to the Settlement Class. This award will be in addition to Plaintiffs' Individual Settlement Payment as a Settlement Class Member and shall be reported on an IRS Form 1099 by the Claims Administrator. This Class Representative Enhancement Payments also include compensation for Plaintiffs' individual releases of all claims. The Parties agree that any amount awarded by the Court as the Class Representative Enhancement Payments to Plaintiffs less than the requested amount shall not be a basis for Plaintiffs or Class Counsel to void this Settlement Agreement. Should the Court approve a lesser amount for the Class Representative Enhancement Payments, the difference shall be added to the Net Settlement Amount to be distributed to the Settlement Class Members. In the event of any appeal of the amount of the Class Representative Enhancement Amount (if any) approved by the Court, if, after the exhaustion of any such appellate review, additional amounts not awarded to Plaintiffs shall be added to the Net Settlement Amount to be distributed to the Settlement Class Members
7. **Claims Administrator.** Defendant will not object to the appointment of CPT Group, Inc. as Claims Administrator, nor to the request to seek approval to pay up to \$10,000.00 for its services from the Maximum Settlement Amount. The Claims Administrator shall be responsible for administering this Settlement, including, but not limited to, printing, distributing, and tracking documents for this Settlement, translating the class notice into Spanish, tax reporting, due diligence, reporting and remittance obligations, distributing the Settlement Amount, and providing necessary reports and declarations, as requested by the Parties. The Claims Administrator shall be authorized to pay itself the Court-approved amount from the Maximum Settlement Amount only after Individual Settlement Payments have been mailed to all Settlement Class Members.
8. **Preliminary Approval.** Upon execution of this Settlement Agreement, Plaintiffs shall apply to the Court for the entry of an Order:
 - A. Conditionally certifying the Settlement Class for purposes of this Settlement Agreement;
 - B. Appointing Paul K. Haines of Haines Law Group, APC, and Sam Sani of Sani Law, APC as Class Counsel;
 - C. Appointing Hector Sanchez, and Manuel Marroquin as Class Representatives for the Settlement Class;
 - D. Approving CPT Group, Inc. as Claims Administrator;

- E. Preliminarily approving this Settlement Agreement and its terms as fair, reasonable, and adequate;
- F. Approving the form and content of the Court-approved Notice Packet in a format substantially similar to that attached hereto as Exhibit A, and directing the mailing of same; and
- G. Scheduling a Final Approval hearing.

9. Notice to Settlement Class. Following the Court issuing its Order Granting Preliminary Approval, the Settlement Class shall be notified as follows:

- A. Within 30 calendar days after entry of an order preliminarily approving this Settlement, Defendant will provide the Claims Administrator with the names, last known addresses, last known telephone numbers, and social security numbers (in electronic format) of the members of the Settlement Class, including the dates of employment and the number of workweeks worked during the Class Period (the “Class Data”). The Class Data provided to the Claims Administrator will not be provided to Class Counsel and it will remain confidential. It shall be used solely to administer the Settlement, and it will not be used or disclosed to anyone, except as required by applicable tax authorities, pursuant to Defendant’s express written consent, or by order of the Court.
- B. Within 7 calendar days from receipt of this information, the Claims Administrator shall (i) run the names of all Settlement Class Members through the National Change of Address (“NCOA”) database to determine any updated addresses for Settlement Class Members, (ii) update the addresses of any Settlement Class Member for whom an updated address was found through the NCOA search, (iii) perform a Spanish translation of the Notice Packet, and (iv) mail the English and Spanish translation of the Notice Packet to each Settlement Class Member at his or her last known address or at the updated address found through the NCOA search, and retain proof of mailing.
- C. Any Notice Packets returned to the Claims Administrator as undelivered on or before the Response Deadline (defined below) shall be re-mailed to the forwarding address affixed thereto. If no forwarding address is provided, the Claims Administrator shall make reasonable efforts, including utilizing a “skip trace,” to obtain an updated mailing address within 5 business days of receiving the returned Notice Packet. If an updated mailing address is identified, the Claims Administrator shall resend the Notice Packet to the Settlement Class Member promptly, and in any event within 3 business days of obtaining the updated address. Settlement Class Members to whom Notice Packets are re-sent after having been returned as undeliverable to the Claims Administrator shall have 14 calendar days from the date of re-mailing, or until the Response Deadline has expired, whichever is later, to mail a Request for Exclusion,

objection, or dispute. Notice Packets that are re-sent shall inform the recipient of this adjusted deadline.

- D. Requests for Exclusion. Any Settlement Class Member who wishes to opt out of the Settlement must complete and mail a Request for Exclusion to the Claims Administrator within 60 calendar days of the date of the initial mailing of the Notice Packets (the “Response Deadline”).

The Request for Exclusion must include (1) the Class Member’s full name, (2) signature, (3) address, (4) telephone number, (5) last four digits of the Settlement Class Member’s social security number, (6) a written statement requesting to be excluded from this Settlement, and (7) a postmark by the Response Deadline and must be mailed to the Claims Administrator at the address specified in the Class Notice. If the Request for Exclusion does not contain the information listed in items (1)-(7), it will not be deemed valid for exclusion from this Settlement, except a Request for Exclusion form not containing a Class Member’s telephone number and/or last four digits of his or her social security number will be deemed valid. The date of the postmark on the Request for Exclusion shall be the exclusive means used to determine whether a Request for Exclusion has been timely submitted. Any potential Settlement Class Member who validly requests to be excluded from the Settlement will no longer be a member of the Settlement Class, will not be entitled to receive any payment under this Settlement Agreement, and will not be bound by the terms of the Settlement or have any right to object, appeal, or comment thereon, except as follows: each Class Member who was employed by Defendant during the PAGA Period will be issued a check for their share of the PAGA Amount regardless of whether they submit a valid Request for Exclusion from the Settlement, and such employees shall be deemed to have released the Released Parties of and from the PAGA Released Claims regardless of whether they submit a valid Request for Exclusion from the Settlement. The Settlement Administrator shall notify Class Counsel and Defendant’s Counsel of its receipt of all valid Requests for Exclusion within three (3) business days after having received each such Request for Exclusion

- i. At no time will the Parties or their counsel seek to solicit or otherwise encourage any Settlement Class Member to object to the Settlement or opt out of the Settlement Class, or encourage any Settlement Class Member to appeal from the final judgment.
- ii. Except for those Class Members who exclude themselves in compliance with the procedures set forth above, all Settlement Class Members will: (1) be deemed to be Settlement Class Members for all purposes under this Agreement; (2) will be bound by the terms and conditions of this Agreement, the Judgment, and the releases set forth herein; and (3) except as otherwise provided herein, will be deemed to have waived all objections and

oppositions to the fairness, reasonableness, and adequacy of the Settlement.

- E. Objections. Settlement Class Members who do not opt out may object to this Settlement Agreement as explained in the Class Notice by (i) submitting a written objection to the Claims Administrator (who shall provide all objections as received to Class Counsel and Defense Counsel within three (3) business days of receipt, as well as file all such objections with the Court as part of its declaration of due diligence), or (ii) by offering oral comments at the Final Approval Hearing whether or not they have filed a written objection as outlined herein. Defense Counsel and Class Counsel shall submit any responses to written objections no later than five (5) court days before the hearing on the Motion for Final Approval. To be valid, any written objection must be postmarked no later than the Response Deadline. Any Settlement Class Member who files an objection remains eligible to receive monetary compensation from the Settlement. Plaintiffs and Defendant shall not be responsible for any fees, costs, or expenses incurred by any Class Member and/or his or her counsel related to any objections to the Settlement.
- F. Submitting an objection does not preserve the right to appeal a final judgment.
- G. Notice of Settlement Award/Disputes. Each Notice Packet mailed to Settlement Class Members shall contain an English and Spanish translation of the Notice of Settlement Award, which shall disclose the amount of the Settlement Class Member's estimated Individual Settlement Payment, as well as the information that was used from Defendant's records in order to calculate the Individual Settlement Payment, including the Settlement Class Member's number of workweeks worked during the Class Period. Settlement Class Members may dispute their weeks worked if they feel they worked more workweeks in the Class Period than Defendant's records show by timely submitting evidence to the Claims Administrator. Defendant's records will be presumed determinative absent reliable evidence to rebut Defendant's records, but the Claims Administrator will evaluate the evidence submitted by the Settlement Class Member and provide the evidence submitted to Class Counsel and Defense Counsel who agree to meet and confer in good faith about the evidence to determine the Class Member's actual number of workweeks worked and estimated Individual Settlement Amount. If Class Counsel and Defense Counsel are unable to agree, they agree to submit the dispute to the Claims Administrator to render a final decision. Settlement Class Members will have until the Notice Response Deadline to dispute workweeks worked, object or opt out, unless extended by the Court. In the event that the Claims Administrator increases the number of workweeks worked for any Settlement Class Member, then the Claims Administrator will recalculate the Settlement Class Members' Individual Settlement Amounts; accordingly, in no event will Defendant be required to increase the Gross Settlement Amount.
- H. If ten percent (10%) or more of the Settlement Class Members, by number or by

value, timely submit a Request for Exclusion, Defendant shall have the option of terminating this Agreement without prejudice to its pre-settlement positions and defenses in the Action. If Defendant exercises such option, it shall be relieved of any obligation to pay the Settlement Amount or any other obligations from the Settlement by giving notice to Class Counsel and the Claims Administrator within ten (10) days of the Notice Response Deadline. If Defendant exercises its option under this paragraph, Defendant shall be solely responsible for all Claims Administration Costs incurred to date.

- 10. Final Approval.** Following preliminary approval and the close of the period for filing Requests for Exclusion, objections, or disputes under this Settlement Agreement, Plaintiffs shall apply to the Court for entry of an Order:
- A. Granting final approval to the Settlement Agreement and adjudging its terms to be fair, reasonable, and adequate and directing consummation of its terms and provisions;
 - B. Approving Plaintiffs' and Class Counsel's application for attorneys' fees and reimbursement of costs, the Class Representatives' Enhancement Payments, and the payment to the Claims Administrator for costs of administering the settlement; and
 - C. Entering judgment approving the settlement pursuant to California Rule of Court 3.769, thereby permanently barring all Settlement Class Members from prosecuting any Settlement Class Released Claims against any of the Released Parties.
- 11. Full and Complete Defense.** This Agreement may be pleaded by any Released Party as a full and complete defense to, and may be used as the basis for an injunction against, any action, suit or other proceeding that has been or may be instituted, prosecuted or attempted, asserting any Settlement Class Released Claims.
- 12. No Admission.** Defendant denies any and all liability to Plaintiffs and/or any Settlement Class Member in this Action, as to any and all causes of action that were asserted or that might have been asserted in this Action. Nonetheless, Defendant wishes to settle and compromise the matters at issue in the Action to avoid further substantial expense and the inconvenience and distraction of protracted and burdensome litigation. Defendant also has taken into account the uncertainty and risks inherent in litigation, and without conceding any infirmity in the defenses that it has asserted or could assert against Plaintiffs, has determined that it is desirable and beneficial that Plaintiffs' claims be settled in the manner and upon the terms and conditions set forth in this Agreement.
- 13. Inadmissibility of Agreement.** Whether or not the Court issues the Final Approval Order, nothing contained herein, nor the consummation of this Settlement Agreement, is to be construed or deemed an admission of liability, culpability, negligence, or wrongdoing on the part of Defendant or any of the other Released Parties. Each of the Parties hereto has entered

into this Settlement Agreement with the intention of avoiding further disputes and litigation with the attendant inconvenience and expenses. This Settlement Agreement is a settlement document, and it, along with all related documents such as the notices, and motions for preliminary and final approval, shall, pursuant to California Evidence Code Section 1152, be inadmissible in evidence in any proceeding, except an action or proceeding to approve the settlement, and/or interpret or enforce this Settlement Agreement. The stipulation for class certification as part of this Settlement Agreement is for settlement purposes only and if, for any reason the settlement is not approved, the stipulation will be of no force or effect.

14. Waiver and Amendment. The Parties may not waive, amend, or modify any provision of this Settlement Agreement except by a written agreement signed by all of the Parties, and subject to any necessary Court approval. A waiver or amendment of any provision of this Settlement Agreement will not constitute a waiver of any other provision. The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

15. Notices. Unless otherwise specifically provided herein, all notices, demands, or other communications to be provided concerning this Settlement Agreement shall be in writing and delivered by receipted delivery and by e-mail at the addresses set forth below, or such other addresses as either Party may designate in writing from time to time:

if to Defendant: Daniel Klingenberger, LeBeau Thelen, LLP
5001 E. Commercenter Drive, Suite 300
P.O. Box 12092
Bakersfield, CA 93389
Email: dklingenberger@lebeauthelen.com

if to Plaintiffs and Settlement Class Members:

Paul K. Haines, Haines Law Group, APC
2155 Campus Drive, Suite 180
El Segundo, CA 90245
Email: phaines@haineslawgroup.com

Sam Sani, Sani Law, APC
595 E. Colorado Blvd., Suite 522
Pasadena, California 91101
Email: ssani@sanilawfirm.com

16. Entire Agreement. This Settlement Agreement contains the entire agreement between the Parties with respect to the transactions contemplated hereby, and supersedes all negotiations, presentations, warranties, commitments, offers, contracts, and writings prior to the date hereof relating to the subject matters hereof whether oral or written and whether by a Party or such Party's legal counsel.

17. Construction. The Parties agree that this Settlement Agreement is the result of lengthy,

intensive arms-length negotiations between the parties and that this Settlement Agreement shall not be construed in favor of or against any Party by reason of the extent to which that Party has participated in the drafting of this Settlement Agreement. Plaintiffs and Defendant expressly waive the common-law and statutory rule of construction that ambiguities should be construed against the drafter of an agreement and further agree, covenant, and represent that the language in all parts of this Agreement shall be in all cases construed as a whole, according to its fair meaning.

18. **Enforcement.** If a Party to this Settlement Agreement institutes any legal action, arbitration, or other proceeding against any other Party or Parties to enforce the provisions of this Settlement Agreement or to declare rights or obligations under this Settlement Agreement, then the prevailing Party shall recover from the unsuccessful Party, reasonable attorneys' fees and costs.
19. **Governing Law.** This Settlement Agreement is made and entered into under the laws of the State of California, and shall be interpreted, applied and enforced under those laws, and any litigation concerning this Settlement Agreement shall be in the Superior Court of the County of Kern, State of California.
20. **Covenants and Representations by Plaintiffs and Class Counsel.** Plaintiffs represent and warrant that they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign, or transfer, or encumber to any person or entity, any liability, claim, demand, action, cause of action, rights released or discharged, or any portion thereof, or interest therein, which is or may be subject to this Settlement Agreement. Plaintiffs acknowledge that they have read this Settlement Agreement, that they fully understand their rights, privileges and duties under the Settlement Agreement, and enter into this Settlement Agreement freely and voluntarily. Plaintiffs further acknowledge that they have had the opportunity to consult with attorneys to explain the terms of this Settlement Agreement and the consequences of signing this Settlement Agreement.
21. **Confidentiality.** Except as provided above to the extent necessary to effectuate the settlement or as required by court or legal process, Plaintiffs and Class Counsel will keep the terms of this Settlement Agreement confidential. Neither Plaintiffs nor Class Counsel shall issue a press release, hold a press conference, publish information about the settlement on any website or through any social media or otherwise publicize the settlement or communicate its terms in public or in private, unless ordered by the Court. However, for the limited purpose of establishing adequacy of counsel in future actions, Class Counsel may reference the Action only by name and case number in a declaration establishing adequacy as class or representative counsel.
22. **Authorization to Enter into Settlement Agreement.** Counsel for all Parties warrant and represent that they are expressly authorized by the Parties whom they represent to negotiate this Settlement Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant to this Settlement Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Settlement Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the settlement. If the Parties are unable to reach agreement on the form or

content of any document needed to implement the settlement, or on any supplemental provisions that may become necessary to effectuate the terms of this settlement, the Parties may seek the assistance of the mediator (Ms. Lynn Frank) or the Court to resolve such disagreement.

23. **Signatures of All Class Members Unnecessary to Be Binding.** It is agreed that, because the members of the Settlement Class are numerous, it is impossible or impractical to have each Settlement Class Member execute this Settlement Agreement. The Notice will advise all Settlement Class Members of the binding nature of the releases provided herein and such shall have the same force and effect as if this Settlement Agreement were executed by each Settlement Class Member who has not excluded him/herself from this Settlement.
24. **Execution and Counterparts.** This Settlement Agreement may be executed in counterparts, and when each Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute one fully signed Settlement Agreement, which shall be binding upon and effective as to all Parties. Electronic signatures shall have the same force and effect as an original.
25. **Invalidity of Any Provision.** Before declaring any provision of this Settlement Agreement invalid, the Court will first attempt to construe the provision as valid to the fullest extent possible consistent with applicable precedents, so as to define all provisions of this Settlement Agreement valid and enforceable.
26. **Severability.** If any term or provision of this Settlement Agreement is held to be invalid or unenforceable, the remaining portions of this Settlement Agreement will continue to be valid and will be performed, construed and enforced to the fullest extent permitted by law, and the invalid or unenforceable term will be deemed amended and limited in accordance with the intent of the Parties, as determined from the face of the Agreement, to the extent necessary to permit the maximum enforceability or validation of the term or provision.
27. **Cooperation and Execution of Necessary Documents.** All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.
28. **Enforceability.** Pursuant to California Evidence Code Section 1123(a) and (b), this Agreement is intended by the Parties to be, and shall be, enforceable, binding and admissible in a court of law notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

PLAINTIFF MANUEL MARROQUIN

DATED: 25, 2023


Manuel Marroquin (Apr 25, 2023 16:10 PDT)
Manuel Marroquin

PLAINTIFF HECTOR SANCHEZ

DATED: 4 25, 2023


[Hctor snchez \(Apr 25, 2023 17:42 PDT\)](#)

Hector Sanchez

KERN PACIFIC CONSTRUCTION COMPANY

DATED: _____, 2023

By: _____

Position: _____

APPROVED AS TO FORM

DATED: April 26, 2023

By:  _____

Sam Sani, Esq.

Sani Law, APC

Attorney for Plaintiffs Manuel Marroquin, Hector Sanchez

DATED: _____, 2023

By: _____

Daniel Klingenberger, Esq.

LeBeau Thelen, LLP

Attorney for Defendant Kern Pacific Construction Company

PLAINTIFF HECTOR SANCHEZ

DATED: 4 25, 2023

Manuel Sani
Hector Sanchez (Apr 25, 2023 17:42 PDT)

Hector Sanchez

KERN PACIFIC CONSTRUCTION COMPANY

DATED: April 28, 2023

By: GRANT MEENACH
[Signature]
Position: President

APPROVED AS TO FORM

DATED: April 26, 2023

By: Sam Sani
Sam Sani, Esq.
Sani Law, APC
Attorney for Plaintiffs Manuel Marroquin, Hector Sanchez

DATED: 4/28, 2023

By: [Signature]
Daniel Klingenger. Esq.
LeBeau Thelen, LLP
Attorney for Defendant Kern Pacific Construction Company