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10 Attorneys for Plaintiff
 11 Carrell Bilyeu

12 SUPERIOR COURT OF CALIFORNIA

13 COUNTY OF AMADOR

14 CARRELL BILL BILYEU, an individual,

15 Plaintiff,

16 v.

17 U.S. MINE CORP, a Nevada Corporation; and
 18 DOES 1 to 50, inclusive,

19 Defendants.

) NO. 20-CV-11946

)
) **DECLARATION OF MANNY STARR IN**
) **SUPPORT OF APPLICATION FOR**
) **APPROVAL OF PAGA SETTLEMENT**

) Assigned to Hon. J.S. Hermanson

) Action Filed: December 23, 2020

20 I, Manny Starr declare as follows:

21 1. I am the Plaintiff in this action.

22 2. I am an attorney at law duly admitted to practice before all courts in the State of
 23 California and am the managing partner and one of the co-owners of Frontier Law Center, APC.
 24 Further, I am one of the attorneys of record for Plaintiff Carrell Bilyeu ("Plaintiff") in the above-
 25 entitled action. I have personal knowledge of the matters set forth herein, and if called upon as a
 26 witness to testify thereto, I could and would competently do so.

27 3. From the inception of this case, Counsel has zealously represented the interests of
 28 the Aggrieved Employees. The settlement was obtained for the benefit of the Aggrieved Employees
 and the State of California. Further, Counsel has litigated numerous other PAGA actions, and is
 competent to represent the Aggrieved Employees.

1 4. My firm, Frontier Law Center, has a great deal of experience litigating wage and
2 hour cases generally, and PAGA cases specifically.

3 5. I am one of the primary attorneys on this matter. I have practiced law since January
4 9, 2018, and ever since becoming licensed, my primary focus has been employment law.

5 6. I have handled numerous wage and hour matters including class actions, multiple-
6 plaintiff actions, and PAGA actions.

7 7. I have been named as Class Counsel in several class actions, and have been counsel
8 in several PAGA actions that have been granted final approval by the Superior Courts of California,
9 including the following:

- 10 a. *Joshua Albright, et al. v. Loma Linda Shared Services*, Case No. CIVDS1818361:
11 Class action and PAGA case involving failure to pay wages, meal and rest break
12 violations, and failure to indemnify work related expenses, \$600,000.00 settlement,
13 final approval granted;
- 14 b. *Emma Hart v. Marriott International, Inc. et al*, Case No. 8:17-cv-02021-JVS-
15 KES: class action involving meal and rest breaks and improper tip splitting,
16 \$185,000.00 settlement, final approval granted;
- 17 c. *Tri Nguyen v First Alarm Security & Patrol, Inc.*, Case No. 18CV332369: class
18 action and PAGA case on behalf of security guards involving various wage and
19 hour issues, \$7,250,000.00 settlement, final approval granted;
- 20 d. *Ronnie McNeal v. Platinum Security, Inc.*, Case No. 19STCV05709: PAGA action
21 on behalf of security guards involving meal and rest break violations and failure to
22 pay wages in a timely manner, \$300,000 settlement, PAGA settlement approved;
- 23 e. *Adolph Cruz, et al v. Holder Construction Group, LLC*, Case No. 19CV341862:
24 PAGA action on behalf of construction workers involving off the clock work and
25 meal and rest break violations, \$500,000 settlement, PAGA settlement approved;
- 26 f. *Mervyn Cole v. Saucey, Inc.* Case No. BC707895: class action and PAGA case
27 involving misclassification of employees and other wage and hour issues,
28 \$590,000.00 settlement, final approval granted;

- 1 g. *Kevin Hernandez v. Contemporary Services Corporation*, Case No. BC684206:
2 PAGA action on behalf of security guards involving various wage and hour issues,
3 \$795,000.00 settlement, PAGA settlement approved;
- 4 h. *Keosia Green v. American Guard Services, Inc.* Case No. BC688437: PAGA action
5 on behalf of security guards involving wage and hour issues, \$315,000.00
6 settlement, PAGA settlement approved; and
- 7 i. *James Rushing v. Security Intelligence Specialist Corporation*, Case No. 18-civ-
8 1808, class action and PAGA case on behalf of security guards for breaks and wage
9 statement violations, \$480,000.00 settlement, final approval granted.

10 8. Based on my review of all the information and based on my experience in PAGA
11 representative actions, I believe this settlement to be fair, adequate, and reasonable.

12 9. This action was originally filed in the Amador County Superior Court on December
13 23, 2020.

14 10. Plaintiff alleges that the Defendant committed the following Labor Code violations
15 against the Aggrieved Employees: (1) minimum wage violations; (2) rest break violations; (3) work
16 expense violations; (4) wage statement violations; and (5) waiting time penalties. Plaintiff sent a
17 PAGA letter to Defendant alleging these Labor Code violations on August 16, 2020.

18 11. The parties attended mediation on November 10, 2021, with experienced
19 employment law mediator, and retired judge, Honorable David I. Brown (Ret.). Through a
20 combination of discovery, depositions, extensive negotiations, and mediation, the parties were able
21 to reach an agreement.

22 12. Attached as **Exhibit 1** is a true and correct copy of the Settlement Agreement
23 (“Agreement”).

24 13. The PAGA case settled for a total of \$30,180.00.

25 14. In addition to the PAGA cause of action (cause of action twelve), the Complaint also
26 alleges numerous individual claims against Defendant for violation of the Fair Employment and
27 Housing Act (“FEHA”) and wage and hour violations as to Plaintiff personally (causes of action
28 one through eleven).

1 15. At the November 10, 2021 mediation, an individual, confidential, settlement was
2 reached in consideration for Plaintiff's individual wage and hour and FEHA claims.

3 16. The Aggrieved Employees who are covered by this settlement are all non-exempt
4 employees of Defendant who were employed in California during the PAGA Period.

5 17. The PAGA Period covers August 16, 2019, through the date of the Court's approval
6 of this settlement, or February 11, 2022, whichever is earlier.

7 18. This settlement covers approximately 205 Aggrieved Employees who collectively
8 worked an estimated 4,024 pay periods.

9 19. This settlement releases claims for PAGA penalties *only*. A notice will be mailed to
10 all Aggrieved Employees along with their share of the settlement which clearly sets forth the claims
11 being released.

12 20. Attached as **Exhibit 2** is a true and correct copy of the PAGA Notice Letter, which
13 was sent to the LWDA on August 20, 2020.

14 21. Attached as **Exhibit 3** is a true and correct copy of the Notice to Aggrieved
15 Employees.

16 22. Through formal and informal discovery, the parties exchanged extensive
17 information relating to the causes of action at issue in this case. Plaintiff and Defendant both
18 propounded and responded to written discovery.

19 23. Defendant took Plaintiff's deposition on October 12, 2021.

20 24. Informal discovery was also exchanged prior to mediation, including time and
21 payroll data and witness statements.

22 25. As required by Labor Code section 2699(l)(2), Plaintiff will submit a copy of the
23 proposed settlement to the LWDA via online filing at the same time that it is submitted to the Court.

24 26. Plaintiff will serve the LWDA with a copy of this application.

25 27. Plaintiff's counsel has spent a significant amount of time litigating this case,
26 including time spent communicating with the client, evaluating and analyzing the relevant legal
27 theories, drafting and filing various PAGA letters, drafting and filing the complaint, engaging in
28 discovery, preparing for and attending mediation, and drafting the instant application.

13 I declare under penalty of perjury under the laws of the State of California that the foregoing
14 is true and correct. Executed on 01/05/22 | 12:25 PST in California.

DocuSigned by:

~~82E9DC9ABF854A6~~

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EXHIBIT 1

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 Christopher S. Milligan, State Bar #211532
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Attorneys for Defendant,
 U S MINE CORP, a Nevada
 corporation (erroneously sued as
 U.S. MINE CORP, a Nevada
 corporation)

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Attorneys for Plaintiff
CARRELL (BILL) BILYEU

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF AMADOR

17	CARRELL (BILL) BILYEU, an individual,	)	CASE NO. 20-CV-11946
18	Plaintiff,	)	Assigned for all purposes to the Hon. J.S.
19	vs.	)	Hermanson/Dept. 03
20	U.S. MINE CORP, a Nevada corporation; and	)	JOINT STIPULATION OF PAGA
21	DOES 1-50, inclusive,	)	SETTLEMENT
22	Defendants.	)	Complaint Filed: December 23, 2020
23		)	
24		)	
25		)	
26		)	

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1 This Joint Stipulation of PAGA Settlement and Release of Claims (“Settlement,”
2 “Agreement,” or “Settlement Agreement”) is made and entered into by and between Plaintiff
3 CARELL (BILL) BILYEU (“Plaintiff”) as a Private Attorney General on behalf of the State of
4 California and Defendant U S MINE CORP (“Defendant”). Plaintiff and Defendant are
5 collectively referred to herein as “the Parties.”

6 **DEFINITIONS**

7 The following definitions are applicable to this Settlement, in addition to other terms
8 defined elsewhere in this Settlement:

9 1. The “Action” shall mean the civil action entitled “*Carrell (Bill) Bilyeu v. U S Mine*
10 *Corp.*,” pending before the Superior Court of California, County of Amador, Case No. 20-CV-
11 11946.

12 2. “Aggrieved Employee List” means a complete list of all PAGA Members that
13 Defendant will diligently and in good faith compile from its records and confidentially provide to
14 the Settlement Administrator no later than thirty (30) calendar days after the date on which the
15 Court enters an order granting approval of this Settlement Agreement. The Aggrieved Employee
16 List will be formatted in a readable Microsoft Office Excel spreadsheet containing the following
17 information for each PAGA Member, to the extent such information is readily available: (1) full
18 name; (2) last known home address; (3) last known telephone number; (4) social security number;
19 (5) start and end dates of active employment as a non-exempt employee of Defendant in the State
20 of California; (6) total pay periods during the PAGA Period; and (8) any other information required
21 by the Settlement Administrator in order to effectuate the terms of the Settlement.

22 3. “Defense Counsel” shall mean the attorneys representing Defendant in the Action,
23 Richard D. Marca, Esq. and Christopher S. Milligan, Esq. of Varner & Brandt LLP.

24 4. “Effective Date” shall mean the later of the following: (a) if no timely objections
25 are filed or if all objections are withdrawn, the date upon which the Court enters an order approving
26 the Settlement; (b) if there are objections to the settlement, and if an appeal, review or writ is not
27 sought from the order granting final approval of the settlement, the 61st day after service of notice
28 of entry of the order; or (c) if an appeal, review or writ is sought from the order, the day after the

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1 order is affirmed or the appeal, review or writ is dismissed or denied, and the order is no longer
2 subject to further judicial review. Prior to the Effective Date of the settlement, Defendant will not
3 be required to fund this settlement, in whole or in part, through the Claims Administrator or any
4 third party.

5 5. "Gross PAGA Settlement Amount" shall mean Thirty Thousand One Hundred
6 Eighty Dollars and No Cents (\$30,180.00), payable by Defendant as provided by this Settlement
7 Agreement.

8 6. "Individual Pay Periods" shall mean the number of Pay Periods for an individual
9 PAGA Member.

10 7. "Judgment" shall mean the order granting approval of the Settlement, granting
11 approval of the PAGA Notice, and entering judgment by the Superior Court that the Parties
12 anticipate will be entered following a hearing for approval of the Settlement in this Action.

13 8. "LWDA Payment" shall mean the payment to the California Labor and Workforce
14 Development Agency ("LWDA") constituting seventy-five percent (75%) of the Net Settlement
15 Amount.

16 9. "Net Settlement Amount" shall mean the Gross PAGA Settlement Amount, less (i)
17 the Plaintiff's Representative Payment approved by the Superior Court; (ii) the Plaintiff's Counsel
18 Fees Payment approved by the Superior Court; (iii) the Plaintiff's Counsel Litigation Costs
19 Payment approved by the Superior Court; (iv) the Settlement Administrator Payment approved by
20 the Superior Court; and (v) any other fees or expenses (other than Plaintiff's Counsel Fees Payment
21 and Plaintiff's Counsel Litigation Costs Payment) incurred in implementing the terms and
22 conditions of this Settlement Agreement as approved by the Superior Court.

23 10. "PAGA Payment" shall mean the remaining twenty-five percent (25%) of the Net
24 Settlement Amount to be distributed on a *pro-rata* basis based upon the number of Pay Periods
25 worked by each PAGA Member.

26 11. "PAGA Payment Share" shall mean the value of each PAGA Member's share of
27 the PAGA Payment as provided by this Settlement Agreement.

28 12. "PAGA Notice" shall mean the Notice of Settlement and Approval, a sample of

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1 which is attached hereto as **Exhibit A**. The PAGA Notice shall further contain (i) a PAGA
2 Member's first and last name, (ii) last known address, (iii) the PAGA Member's Individual Pay
3 Periods; and (vi) the PAGA Member's individual share of the PAGA Payment.

4 13. "PAGA Period" shall mean the period of time commencing on August 16, 2019,
5 and ending on the date of the Court's approval of the settlement referenced herein or February 11,
6 2022, whichever is earlier.

7 14. "PAGA Members" shall mean all current and former non-exempt employees of
8 Defendant employed by Defendant in the State of California at any time during the PAGA Period.

9 15. "Pay Period" shall mean any pay period in which a PAGA Member worked at least
10 one (1) day.

11 16. "Plaintiff's Counsel" shall mean the attorneys representing Plaintiff in the Action,
12 Manny Starr, Sarah Sterling and Dan Ginzburg of Frontier Law Center.

13 17. "Plaintiff's Counsel Fees Payment" shall mean Ten Thousand Sixty Dollars and No
14 Cents (\$10,060.00) subject to approval by the Superior Court as Plaintiff's Counsel's attorneys'
15 fees incurred in connection with the Action, including fees incurred in pre-filing investigation,
16 filing of the Action, and all related litigation activities, this Settlement, and all post-settlement
17 compliance procedures. Defendant has agreed not to oppose Plaintiff's Counsel's request for fees
18 in the amount set forth above.

19 18. "Plaintiff's Counsel Litigation Costs Payment" shall mean the actual litigation
20 expenses and/or costs expended by Plaintiff's Counsel subject to approval by the Superior Court
21 incurred in connection with the Action, including pre-filing investigation, filing of the Action, and
22 all related litigation activities, this Settlement, and all post-settlement compliance procedures.
23 Plaintiff's Counsel's costs are not to exceed Seven Thousand Dollars and No Cents (\$7,000.00).
24 Defendant has agreed not to oppose Plaintiff's Counsel's request for costs and expenses in the
25 amount set forth above.

26 19. "Plaintiff's Representative Payment" shall mean the payment made to Plaintiff in
27 his capacity as the PAGA representative to compensate him for prosecuting the Action, and
28 performing work in support of the Action, in the amount of One Thousand Dollars and No Cents

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1 (\$1,000.00), subject to approval by the Superior Court.

2 20. "Released Parties" shall mean Defendant together with its past, present, and/or
3 future, direct and/or indirect parents, affiliated and related parties subsidiaries, co-employers, and
4 their respective present and former owners, boards, directors, officers, trustees, shareholders,
5 members, partners, employees, agents, attorneys, representatives, successors, and assigns.

6 21. "Settlement Administrator" shall mean Phoenix Settlement Administrators.

7 22. "Settlement Administrator Payment" shall mean the payment to the Settlement
8 Administrator for its fees and expenses in administering this Settlement, in an amount not to exceed
9 Three Thousand Two Hundred Fifty Dollars and No Cents (\$3,250.00).

10 23. "Superior Court" shall mean the Superior Court of the State of California for the
11 County of Amador.

12 **RECITALS**

13 24. On August 16, 2020, Plaintiff's Counsel, on behalf of Plaintiff and PAGA
14 Members, gave written notice to the LWDA of the *Labor Code* violations Defendant is alleged to
15 have violated ("PAGA Letter").

16 25. On December 23, 2020, Plaintiff commenced the Action against Defendant by
17 filing a Complaint in the Superior Court. In the Complaint, Plaintiff, on behalf of himself and all
18 others similarly situated, alleged a cause of action for Civil Penalties pursuant to the Private
19 Attorneys' General Act ("PAGA").

20 26. In connection with the Action, and in order to work toward a mediated resolution
21 without the time and expense of formal discovery, the Parties produced voluminous documents
22 and data (including, by Defendant, human resources documents and policies and time and payroll
23 data during the PAGA Period) which were reviewed, investigated, and analyzed by Plaintiff's
24 Counsel.

25 27. On November 10, 2021, the Parties in the Action participated in a full day of
26 mediation before an experienced employment and class action mediator, Hon. David Brown (Ret.),
27 which resulted in a settlement of the Action, including both Plaintiff's own individual claims and
28 the PAGA Claims (the "Mediation").

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1 28. The Settlement described in this Settlement Agreement represents a compromise
2 and settlement of highly disputed claims. Nothing in this Settlement is intended or will be
3 construed as an admission by Defendant that Plaintiff's claims in the Action have any merit or that
4 it has any liability to Plaintiff, PAGA Members, or the State on those claims, or as an admission
5 by Plaintiff that Defendant's defenses in Action have any merit. This Settlement is intended to
6 fully, finally, and forever compromise, release, resolve, discharge, and settle the released claims
7 subject to the terms and conditions set forth in this Settlement.

8 29. Based on its own thorough, independent investigation and evaluation of this case,
9 Plaintiff's Counsel is of the opinion that the Settlement of the Action with Defendant for the
10 consideration and on the terms set forth in this Settlement is fair, reasonable, adequate, and in the
11 best interest of PAGA Members in light of all known facts and circumstances, including the risk
12 of significant costs and delay, the defenses asserted by Defendant including the risks of adverse
13 determinations on the merits, and numerous potential appellate issues. Although Defendant
14 contends that they have no liability in the Action, Defense Counsel shares Plaintiff's Counsel's
15 belief that the Settlement represents a fair and adequate settlement given the respective risks
16 associated with the case.

17 30. Based on the foregoing Recitals, the Parties agree as follows:

18 **PROCEDURE FOR APPROVING SETTLEMENT**

19 31. **Application for Approval of Settlement by the Superior Court.** Upon execution
20 of this Settlement Agreement by all parties, Plaintiff will promptly file an application with the
21 Superior Court for an order granting approval of the Settlement and approving the PAGA Notice
22 (attached as Exhibit A to this Stipulation) (the "Application for Approval"). Defendant agrees not
23 to oppose Plaintiff's Application for Approval.

24 32. **Motion for Approval of Settlement by the Superior Court.** If Plaintiff's
25 Application for Approval is denied, Plaintiff will move the Superior Court for an order granting
26 approval of the Settlement and approving the PAGA Notice (attached as **Exhibit A** to this
27 Stipulation) (the "Motion for Approval").

28 33. If a hearing is set on Plaintiff's Application for Approval, or at the hearing on the

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1 Motion for Approval if one is filed, the Parties anticipate that they will jointly appear, support the
2 granting of the Application or Motion for Approval, and obtain an order granting approval of the
3 Settlement, and granting approval of the PAGA Notice.

4 34. Should the Superior Court require any amendments to this Settlement Agreement
5 or the Application or Motion for Approval, the Parties agree to work jointly to resolve any issues
6 in order to secure the Superior Court's approval. If the Court does not approve the PAGA
7 settlement at the Gross PAGA Settlement Amount, but instead increases the amount of the PAGA
8 settlement, any increase or difference shall first be funded through reduction of the Individual
9 Settlement Amount.

10 35. In the event that the Court does not finally approve the Settlement as provided
11 herein this Settlement Agreement, and any documents generated to bring it into effect, will be null
12 and void, and the Parties will be returned to their respective original positions. If the Court fails to
13 approve the Settlement and the Parties are unable to work out any differences informally, the
14 Parties agree to attend a second mediation in an effort to reach a settlement that may be approved
15 by the Court, which cost shall be split equally between the Parties.

16 36. Upon approval of the Settlement by the Superior Court, the Parties will present for
17 the Superior Court's approval and entry a Proposed Final Order and Judgment.

18 37. **PAGA Notice.** After the Superior Court enters its order granting approval, every
19 PAGA Member will be provided with the PAGA Notice (in English and Spanish), which will
20 include the PAGA Notice completed to reflect the order granting approval of the Settlement and
21 the PAGA Member's information as follows:

22 (a) No later than thirty (30) calendar days after the date on which the Court
23 enters an order granting approval of this Settlement, Defendant will provide to the Settlement
24 Administrator the "Aggrieved Employee List" containing the following information for each
25 PAGA Member: (1) full name; (2) last known home address; (3) last known telephone number;
26 (4) social security number; (5) start and end dates of active employment as a non-exempt employee
27 of Defendant in the State of California; (6) total pay periods during the PAGA Period; and (8) any
28 other information required by the Settlement Administrator in order to effectuate the terms of the

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1 Settlement.

2 (b) If a PAGA Notice is returned by the U.S. Postal Service because of an
3 incorrect address, the Settlement Administrator will promptly, and not later than five (5) calendar
4 days from receipt of the returned packet, search for a more current address for the PAGA Member
5 and re-mail the PAGA Notice to the PAGA Member. The Settlement Administrator will use the
6 Aggrieved Employee List and otherwise work with Defense Counsel or utilize its own resources
7 such as skip traces to find a more current address. The Settlement Administrator will be responsible
8 for taking reasonable steps, consistent with its agreed-upon job parameters, court orders, and fee,
9 to trace the mailing address of any PAGA Member for whom a PAGA Notice is returned by the
10 U.S. Postal Service. These reasonable steps shall include the tracking of all undelivered mail,
11 performing address searches for all mail returned without a forwarding address, and promptly re-
12 mailing to PAGA Members for whom new addresses are found.

13 38. **Funding of the Gross PAGA Settlement Amount.** Within thirty (30) days of the
14 Effective Date, Defendant will deposit the Gross PAGA Settlement Amount into a Qualified
15 Settlement Fund ("QSF") to be established by the Settlement Administrator. At no time, for any
16 reason whatsoever, shall Defendant be required to contribute additional funds to the amount
17 currently designated as the Gross PAGA Settlement Amount, except as provided for in Paragraph
18 42 of this Settlement Agreement. This is a non-reversionary settlement.

19 39. **Payment of PAGA Payment Shares.** The Settlement Administrator shall pay to
20 each PAGA Member his or her PAGA Payment Share by sending a check in the appropriate
21 amount to the PAGA Member at the address indicated in the Aggrieved Employee List. Such
22 payment, with the PAGA Notice, shall be sent by the Settlement Administrator via U.S. Mail
23 within fourteen (14) calendar days of its receipt of the Gross PAGA Settlement Amount from
24 Defendant.

25 40. **Uncashed PAGA Payment Share Checks.** Any checks paid to PAGA Members
26 shall be negotiable for one hundred eighty (180) calendar days from the date of their issuance. A
27 PAGA Member must cash his or her PAGA Payment Share check within one hundred eighty (180)
28 calendar days after it is mailed to him or her. If a check remains uncashed after one hundred eighty

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(180) calendar days from the initial mailing, or if a check is returned to the Settlement Administrator as undeliverable during the one hundred eighty-day period, the Settlement Administrator shall take all reasonable efforts to identify the PAGA Member's correct address, including the performance of a "skip-trace." If an updated address can be identified, the Settlement Administrator shall issue another check to the PAGA Member and mail it to the PAGA Member at his or her updated address. If an updated address for the PAGA Member cannot be identified, if a reissued check is once again returned to the Settlement Administrator as undeliverable, or if the reissued check remains uncashed after one hundred eighty (180) calendar days, the Settlement Administrator will keep an accounting of such funds and shall give notice to the Parties of the total balance of uncashed PAGA Payment Shares.

41. The funds represented by PAGA Payment Share checks remaining uncashed for more than one hundred eighty (180) calendar days after issuance shall be voided and then shall be transmitted to the Controller of the State of California to be held pursuant to the Unclaimed Property Law, California *Code of Civil Procedure* § 1500, *et seq.* in the names of those PAGA Members who did not cash their checks until such time they claim their property. After the expiration of the 180-calendar day check cashing period, as outlined above, the Settlement Administrator shall begin the process of transferring the funds in accordance with California *Code of Civil Procedure* §§ 1500-1582 and the timing requirements set forth by the Office of the State Controller. The Parties agree that this disposition results in no "unpaid residue" under California *Code of Civil Procedure* § 384, as the entire Net Settlement Amount will be paid out to the LWDA and PAGA Members, whether or not all PAGA Members cash their settlement checks. Therefore, Defendant will not be required to pay any interest on such amounts.

SETTLEMENT TERMS AND CONDITIONS

42. **Gross PAGA Settlement Amount.** The total value of the PAGA Settlement is Thirty Thousand One Hundred Eighty Dollars and No Cents (\$30,180.00). The Gross PAGA Settlement Amount is non-reversionary and includes all (1) Plaintiff's Counsel's Fee Payment, (2) Plaintiff's Counsel Litigation Costs Payment, (3) Settlement Administration Costs, (4) Plaintiff's Representative Payment; and (5) Payment of PAGA penalties to be paid to the LWDA and PAGA

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Members. The Gross PAGA Settlement Amount is based on Defendant's representation that the PAGA Members worked approximately 4,258 Pay Periods during the PAGA Period through the dates analyzed prior to the Mediation. Should the qualifying Pay Periods worked by the PAGA Members during the PAGA Members ultimately increase by more than 10% (*i.e.*, by more than 427 Pay Periods), Defendant shall increase the Gross PAGA Settlement Amount on a *pro-rata* basis equal to the percentage increase in the number of Pay Periods worked by the PAGA Members above 10%. For example, if the number of Pay Periods increases by 11 % the Gross PAGA Settlement Amount will increase by 1%.

43. **Total Payment Amount.** Except as set forth herein as the result of an increase in the number of pay periods within the PAGA Period, in no other event will Defendant be required to pay more than the Gross PAGA Settlement Amount for distribution to the Plaintiff, Plaintiff's Counsel, PAGA Members, LWDA, Settlement Administrator, or for any other costs or expenses not otherwise enumerated.

44. **Payments to Plaintiff, Plaintiff's Counsel, and Others.** Subject to the terms and conditions of this Settlement, the Settlement Administrator will make the following payments out of the Gross PAGA Settlement Amount as follows:

(a) **To Plaintiff:** In addition to his PAGA Payment Share, Plaintiff will apply to the Superior Court for a Plaintiff's Representative Payment in an amount not to exceed One Thousand Dollars and No Cents (\$1,000.00). Defendant will not oppose Plaintiff's Representative Payment. The Settlement Administrator will pay the Plaintiff's Representative Payment approved by the Superior Court out of the Gross PAGA Settlement Amount. Payroll tax withholding and deductions will not be taken from the Plaintiff's Representative Payment, and an IRS Form 1099 will be issued to Plaintiff for this payment. Any amount of the Plaintiff's Representative Payment not approved by the Court shall become part of the Net Settlement Amount.

(b) **To Plaintiff's Counsel:** Plaintiff's Counsel will apply to the Superior Court for the Plaintiff's Counsel Fees Payment in an amount not to Ten Thousand Sixty Dollars and No Cents (\$10,060.00) of the Gross PAGA Settlement Amount. Plaintiff's Counsel will also submit to the Superior Court a memorandum of costs for the Plaintiff's Counsel Litigation Costs

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1 Payment in an amount not to exceed Seven Thousand Dollars and No Cents (\$7,000.00) as
2 requested reasonable costs incurred in the Action to be paid from the Gross PAGA Settlement
3 Amount. Defendant will not oppose these requests. The costs and fees provided under the
4 Settlement Agreement and approved by the Court shall be the total costs and attorneys' fees
5 recoverable in the Action. Plaintiff's Counsel shall not seek additional costs or fees arising from
6 the litigation of the PAGA Claims. The Settlement Administrator will pay the amounts approved
7 by the Superior Court out of the Gross PAGA Settlement Amount. Withholding and deductions
8 will not be taken from the Plaintiff's Counsel Fees Payment or Plaintiff's Counsel Litigation Costs
9 Payment, and one or more IRS Forms 1099 will be issued to Plaintiff's Counsel with respect to
10 those payments. Any amount from the Plaintiff's Counsel's Fee Payment or Plaintiff's Counsel
11 Litigation Costs Payment not approved by the Court shall become part of the Net Settlement
12 Amount.

13 (c) **To the Settlement Administrator:** The Settlement Administrator will be
14 paid from the Gross PAGA Settlement Amount its reasonable fees and expenses as approved by
15 the Superior Court, which are estimated to be Three Thousand Two Hundred Fifty Dollars and No
16 Cents (\$3,250.00).

17 (d) **Distribution of the Net Settlement Amount:** As part of their Application
18 or Motion for Approval, the Parties will jointly apply to the Superior Court to approve the
19 distribution of the Net Settlement Amount to the LWDA and PAGA Members. Seventy-five
20 percent (75%) of the Net Settlement Amount shall be distributed to the LWDA ("LWDA
21 Payment"). The remaining 25% of the Net Settlement Amount shall be distributed to the PAGA
22 Members on a *pro-rata* basis based upon the number of pay periods worked by each PAGA
23 Member ("PAGA Payment").

24 45. **PAGA Payment Shares.** Subject to the terms and conditions of this Settlement,
25 the Settlement Administrator will calculate the PAGA Payment Shares for each PAGA Member
26 within ten (10) calendar days after Defendant provides the Settlement Administrator with the
27 Aggrieved Employee List. The PAGA Payment Share for each PAGA Member will be calculated
28 as follows, understanding that the formulas below do not constitute an admission by either Party,

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1 and are intended only to provide a practical means to simplify and administer the claims process:

2 (a) **Number of PAGA Members and Pay Periods.** Defendant shall determine
3 the total number of PAGA Members and the aggregate number of Pay Periods for those PAGA
4 Members during the PAGA Period. This information shall be provided to the Settlement
5 Administrator along with the Aggrieved Employee List as described above.

6 (b) **Calculation of the Pay Period Value.** The Settlement Administrator shall
7 determine the value of a Pay Period ("Pay Period Value") by taking the PAGA Payment amount
8 (*i.e.*, 25% of the Net Settlement Amount) and dividing it by the sum of all PAGA Members' Pay
9 Periods.

10 (c) **Calculation of PAGA Payment Shares.** The Settlement Administrator
11 shall assign to each PAGA Member a PAGA Payment Share which shall be equal to the Pay Period
12 Value multiplied by each PAGA Member's Individual Pay Periods. Upon calculation of the PAGA
13 Members' PAGA Payment Shares, the Settlement Administrator shall furnish to Plaintiff's
14 Counsel and Defense Counsel a worksheet containing a list of employee identification numbers
15 for the PAGA Members with their corresponding Individual Pay Periods and PAGA Payment
16 Shares. Personal contact information of Defendant's employees, including but not limited to,
17 employee names, phone numbers, addresses, social security number, and/or other personal
18 identifying information shall not be shared with Plaintiff's Counsel without prior written
19 authorization from Defendant, or its counsel.

20 46. **Taxes and Withholdings.** One hundred percent (100%) of each PAGA Payment
21 Share shall represent civil penalties. The PAGA Payment Share shall be paid to the PAGA Member
22 in full without deductions or withholdings, and the Settlement Administrator shall issue an IRS
23 Form 1099 to each PAGA Member for that amount. Each PAGA Member shall be individually
24 responsible for their own share of applicable income tax withholdings and deductions for his or
25 her PAGA Payment Share.

26 47. **Appointment of Settlement Administrator.** The Parties will ask the Superior
27 Court to appoint Phoenix Settlement Administrators, a qualified and experienced administrator
28 based in California where the Action is venued, to serve as the Settlement Administrator, which,

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1 as a condition of appointment, will agree to be bound by this Settlement Agreement with respect
2 to the performance of its duties and its compensation. The Settlement Administrator's duties will
3 include (i) calculating PAGA Payment Shares; (ii) preparing, translating, printing, and mailing the
4 PAGA Notice to all PAGA Members; (iii) using reasonable measures to contact all PAGA
5 Members, including conducting one National Change of Address search on all PAGA Members
6 before mailing the PAGA Notice to each PAGA Member's address; (iv) re-mailing the PAGA
7 Notice to the PAGA Member's new address for those PAGA Members whose address had
8 changed; (v) setting up a toll-free telephone number to receive calls from PAGA Members; (vi)
9 issuing the checks to effectuate the payments due under the Settlement; (vii) using reasonable
10 measures to deliver issued checks to PAGA Members, including use of a "skip-trace" for
11 undeliverable checks; and (viii) otherwise administering the Settlement pursuant to this Settlement
12 Agreement. The Settlement Administrator will have the final authority to resolve all disputes
13 concerning the calculation of a PAGA Member's PAGA Payment Share, subject to the terms set
14 forth in this Settlement Agreement. The Settlement Administrator's reasonable fees and expenses
15 are estimated to be Three Thousand Two Hundred Fifty Dollars and No Cents (\$3,250.00) and will
16 be paid out of the Gross PAGA Settlement Amount, as set forth herein, subject to Court approval.

17 **RELEASE OF CLAIMS**

18 48. **Released Claims.** Upon remittance of the Gross PAGA Settlement Amount by
19 Defendant to the Settlement Administrator, Plaintiff and the State of California will fully and
20 finally release and discharge Defendant and the Released Parties from any and all claims for the
21 recovery for civil penalties, attorneys' fees and costs permissible under PAGA which Plaintiff
22 and/or the Aggrieved Employees had, or may claim to have, against the Released Parties, arising
23 out of the violations alleged both in the Complaint and the PAGA Notice or reasonably could have
24 been alleged based on the facts and legal theories contained in the both Complaint or the PAGA
25 Notice, including but not limited to, unpaid straight and overtime wages (including any work off-
26 the-clock and non-productive time for any piece rate work), failure to pay employees all minimum
27 wages and overtime wages owed including by failing to pay all overtime and double time at the
28 correct regular rate of pay, failure to provide compliant meal and rest breaks, failure to pay them

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1 all premium wages owed for short, late or missed meal and rest periods, failure to pay all wages
2 owed at discharge or resignation; failure to timely pay wages within the times permissible under
3 *Labor Code* § 204; failure to provide complete and accurate wage statements; failure to keep
4 complete and accurate payroll records; failure to reimburse necessary business-related expenses;
5 and violations of *Labor Code* §§ 201, 202, 203, 204, 226(a), 226.2, 226.3, 226.7, 510, 512(a), 551,
6 552, 1174(d), 1194, 1197, 1197.1, 1198, 2698, et seq., 2800, and 2802, (collectively, the “Released
7 Claims”). This release shall apply to claims arising during the PAGA Period. Pursuant to
8 applicable law, the Parties understand and agree that all individuals on the Aggrieved Employee
9 List are bound by this release regardless of whether they cash and/or otherwise negotiate their
10 individual PAGA Payment.

11 49. The Released Claims expressly exclude all claims made by PAGA Members for
12 individual wage claims, vested benefits, wrongful termination, unemployment insurance,
13 disability, social security, workers’ compensation, claims while classified as exempt, and claims
14 outside of the PAGA Period.

15 50. **Plaintiff’s General Release of Claims.** Upon the funding of the Gross PAGA
16 Settlement Amount, in exchange for the consideration set forth in this Settlement Agreement,
17 Plaintiff—on behalf of himself only—will agree to the additional following General Release: In
18 consideration of Defendant’s promises and agreements as set forth herein, Plaintiff hereby releases
19 all claims related to his employment or alleged employment with the Defendant including all
20 claims alleged in the Action, and all claims known and unknown, without exception, except as
21 may be prohibited by law. Plaintiff agrees to execute a separate, formal general release of claims
22 in exchange for the consideration set forth in this Settlement Agreement.

23 51. **Plaintiff’s Waiver of California Civil Code § 1542.** Upon the funding of the
24 Gross PAGA Settlement Amount, in exchange for the consideration set forth in this Settlement
25 Agreement, Plaintiff also agrees to expressly waive the provisions of California *Civil Code* § 1542,
26 which provides as follows:

27
28 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS

1 WHICH THE CREDITOR OR RELEASING PARTY DOES NOT
2 KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
3 THE TIME OF EXECUTING THE RELEASE AND THAT, IF
4 KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
5 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
6 OR RELEASED PARTY.

7 Plaintiff's general release and waiver of California *Civil Code* § 1542 shall cover the time
8 period from the start of his employment with Defendant up to the Effective Date. This general
9 release and waiver of California *Civil Code* § 1542 by Plaintiff is not intended to release any claims
10 that cannot be waived or released as a matter of law, including specifically, without limitation, any
11 claim under the California workers' compensation statute.

12 **MISCELLANEOUS PROVISIONS**

13 52. **Effect on Other Benefit Plans.** The payment of PAGA Payment Shares made to
14 PAGA Members under this Settlement will not be used to calculate any additional benefits under
15 any benefit plans to which any PAGA Member may be eligible, including, but not limited to profit-
16 sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans,
17 PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement
18 Agreement will not affect any rights, contributions, or amounts to which any PAGA Member may
19 be entitled under any benefit plans.

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

24 54. **Continued Jurisdiction.** After entry of the Judgment, the Superior Court will have
25 continuing jurisdiction over the Action and the Settlement solely for purposes of addressing: (i)
26 the interpretation and enforcement of the terms of the Settlement, (ii) settlement administration
27 matters, and (iii) such post-dismissal matters as may be appropriate under court rules or as set forth
28 in this Settlement.

55. **Stay of Litigation.** The Parties agree that upon the signing of this Agreement, the

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1 continuing litigation of this action shall be stayed absent any filings necessary to obtain approval
2 of the settlement, and the time to bring this action to trial shall be extended pending the outcome
3 of the settlement process.

4 **56. Integrated Agreement.** After this Settlement is signed and delivered by all Parties
5 and their counsel, this Settlement and its exhibits will constitute the entire agreement between the
6 Parties relating to the Settlement, and it will then be deemed that no oral representations,
7 warranties, covenants, or inducements have been made to any Party concerning this Settlement or
8 its exhibits other than the representations, warranties, covenants, and inducements expressly stated
9 in this Settlement and its exhibits.

10 **57. Amendment or Modification of Agreement.** This Settlement Agreement may be
11 amended or modified only by a written instrument signed by counsel for all Parties or their
12 successors-in-interest.

13 **58. Waiver of Certain Appeals.** The Parties agree to waive appeals; except, that either
14 Party may appeal any court order that materially modifies the Settlement Agreement's terms.

15 **59. Authorization to Enter into Settlement Agreement.** Counsel for all Parties
16 warrant and represent they are expressly authorized by the Parties whom they represent to negotiate
17 this Settlement Agreement and to take all appropriate action required or permitted to be taken by
18 such Parties pursuant to this Settlement Agreement to effectuate its terms and to execute any other
19 documents required to effectuate the terms of this Settlement Agreement. The Parties and their
20 counsel will cooperate with each other and use their best efforts to affect the implementation of
21 the Settlement. If the Parties are unable to reach agreement on the form or content of any document
22 needed to implement the Settlement, or on any supplemental provisions that may become
23 necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of the Court
24 to resolve such disagreement.

25 **60. Settlement Binding on Successors and Assigns.** This Settlement Agreement will
26 be binding upon, and inure to the benefit of, the successors or assigns of the Parties hereto, as
27 previously defined.

28 **61. California Law Governs.** All terms and conditions of this Settlement and its

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exhibits will be governed by and interpreted according to the laws of the State of California.

62. **Execution and Counterparts.** This Settlement Agreement is subject only to the execution of all Parties. However, the Settlement Agreement may be executed in one or more counterparts. All executed counterparts and each of them, including facsimile and scanned copies of the signature page, will be deemed to be one and the same instrument provided that counsel for the Parties will exchange among themselves original signed counterparts.

63. **Acknowledgment that the Settlement is Fair and Reasonable.** The Parties and their respective counsel believe and warrant that this Settlement is a fair, reasonable, and adequate settlement of the Action and have arrived at this Settlement after arms-length negotiations by experienced counsel, considering all relevant factors, current and potential.

64. **Invalidity of Any Provision.** Before declaring any provision of this 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 Agreement valid and enforceable.

65. **Captions.** The captions of any section or paragraph of this Agreement are inserted for the reader's convenience and in no way define, limit, construe or describe the scope or intent of the provisions of this Agreement.

66. **Waiver.** No waiver of any condition or covenant contained in this Settlement Agreement or failure to exercise a right or remedy by any of the Parties hereto will be considered to imply or constitute a further waiver by such party of the same or any other condition, covenant, right or remedy.

67. **Enforcement Action.** In the event that one or more of the Parties institutes any legal action or other proceeding against any other Party or Parties arising out of that other Party's or Parties' breach of this Agreement, the successful Party or Parties will be entitled to recover from the unsuccessful Party or Parties reasonable attorneys' fees and costs, including expert witness fees incurred in connection with any enforcement actions.

68. **Mutual Preparation.** The Parties have had a full opportunity to negotiate the terms and conditions of this Agreement. Accordingly, this Agreement will not be construed more strictly

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1 against one Party than another merely by virtue of the fact that it may have been prepared by
2 counsel for one of the Parties, it being recognized that, because of the arms-length negotiations
3 between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

4 69. **Representation By Counsel.** The Parties acknowledge that they have been
5 represented by counsel throughout all negotiations that preceded the execution of this Agreement,
6 and that this Agreement has been executed with the consent and advice of counsel and reviewed
7 in full. The Parties further acknowledge that they have had an opportunity to consult with their
8 counsel regarding the fairness and reasonableness of this Settlement.

9 70. **Cooperation and Execution of Necessary Documents.** The Parties will cooperate
10 in good faith and execute all documents to the extent reasonably necessary to effectuate the terms
11 of this Settlement Agreement. If the Parties are unable to reach agreement on the form or content
12 of any document needed to implement the Settlement, or on any supplemental provisions that may
13 become necessary to effectuate the terms of this Settlement, the Parties may seek the assistance of
14 the Court to resolve such disagreement.

15 71. **Voluntary Agreement.** The Parties acknowledge that they have entered into this
16 Settlement Agreement voluntarily, on the basis of their own judgment and without coercion,
17 duress, or undue influence of any Party, and not in reliance on any promises, representations, or
18 statements made by the other Parties other than those contained in this Settlement Agreement.
19 Each of the Parties hereto expressly waives any right she/they might ever have to claim that this
20 Settlement Agreement was in any way induced by fraud.

21 72. **Binding Agreement.** The Parties warrant that they understand and have full
22 authority to enter into this Settlement, and further intend that this Settlement Agreement will be
23 fully enforceable and binding on all Parties and agree that it will be admissible and subject to
24 disclosure in any proceeding to enforce its terms.

25 73. **Non-Admission of Liability.** The Parties enter into this Agreement to resolve the
26 dispute that has arisen between them and to avoid the burden, expense, and risk of continued
27 litigation. In entering into this Agreement, Defendant does not admit, and specifically denies, that
28 it violated any federal, state, or local law; violated any regulations or guidelines promulgated

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pursuant to any statute or any other applicable laws, regulations, or legal requirements; breached any contract; violated or breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to its employees. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed as an admission or concession by Defendant of any such violations or failures to comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this Agreement, this Agreement and its terms and provisions shall not be offered or received as evidence in any action or proceeding to establish any liability or admission on the part of Defendant or to establish the existence of any condition constituting a violation of, or a non-compliance with, federal, state, local or other applicable law.

74. **Neutral Employment Reference.** Defendant agrees that it will adopt a neutral reporting policy regarding any future employment references related to Plaintiff. In the event that any potential or future employers of Plaintiff request a reference regarding Defendant's employment of Plaintiff, Defendant shall only provide Plaintiff's dates of employment, job titles during employment, and final rate of pay. Defendant shall not refer to the Action or this Settlement.

75. **Confidentiality.** Prior to the filing of the PAGA approval motion, Plaintiff and his Counsel agree not to discuss the terms or the fact of the Settlement with third parties other than (1) their immediate family members, (2) their respective accountants or lawyers as necessary for tax purposes; or (3) other PAGA Members. Plaintiff and PAGA Counsel agree not to publish any of the terms or conditions of this settlement other than as necessary for approval of this agreement.

APPROVED AS TO FORM AND CONTENT:

Dated: November __, 2021 By:

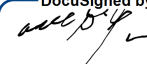
Name: _____

Its: _____

for Defendant U S MINE CORP, a Nevada corporation

1 Dated: November 23, 2021

2 By:

DocuSigned by:

484FF80287B9434

CARRELL (BILL) BILYEU, individually, and as an
aggrieved employee and private attorney general

3
4
5 APPROVED AS TO FORM ONLY:

6 Dated: November __, 2021

VARNER & BRANDT LLP

7
8 By:

9 Richard D. Marca
10 Christopher S. Milligan
11 Attorneys for Defendant
U S MINE CORP, a Nevada corporation
(erroneously sued as U.S. MINE CORP, a
Nevada corporation)

12 Dated: November 23, 2021

FRONTIER LAW CENTER

13
14 DocuSigned by:

By: 82E9DC97ABF854A6...

15 Manny Starr
16 Sarah Sterling
17 Attorneys for Plaintiff
CARRELL (BILL) BILYEU

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pursuant to any statute or any other applicable laws, regulations, or legal requirements; breached any contract; violated or breached any duty; engaged in any misrepresentation or deception; or engaged in any other unlawful conduct with respect to its employees. Neither this Agreement, nor any of its terms or provisions, nor any of the negotiations connected with it, shall be construed as an admission or concession by Defendant of any such violations or failures to comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this Agreement, this Agreement and its terms and provisions shall not be offered or received as evidence in any action or proceeding to establish any liability or admission on the part of Defendant or to establish the existence of any condition constituting a violation of, or a non-compliance with, federal, state, local or other applicable law.

74. **Neutral Employment Reference.** Defendant agrees that it will adopt a neutral reporting policy regarding any future employment references related to Plaintiff. In the event that any potential or future employers of Plaintiff request a reference regarding Defendant's employment of Plaintiff, Defendant shall only provide Plaintiff's dates of employment, job titles during employment, and final rate of pay. Defendant shall not refer to the Action or this Settlement.

75. **Confidentiality.** Prior to the filing of the PAGA approval motion, Plaintiff and his Counsel agree not to discuss the terms or the fact of the Settlement with third parties other than (1) their immediate family members, (2) their respective accountants or lawyers as necessary for tax purposes; or (3) other PAGA Members. Plaintiff and PAGA Counsel agree not to publish any of the terms or conditions of this settlement other than as necessary for approval of this agreement.

APPROVED AS TO FORM AND CONTENT:

Dated: November __, 2021

By:

Name: Arthur S. Dockter

Its: _____

for Defendant U S MINE CORP, a Nevada corporation

1 Dated: November __, 2021

2 By:

3 CARRELL (BILL) BILYEU, individually, and as an
4 aggrieved employee and private attorney general

5 APPROVED AS TO FORM ONLY:

6 Dated: November __, 2021

7 VARNER & BRANDT LLP

8 By: 

9 Richard D. Marca
10 Christopher S. Milligan
11 Attorneys for Defendant
12 U S MINE CORP, a Nevada corporation
13 (erroneously sued as U.S. MINE CORP, a
14 Nevada corporation)

15 Dated: November __, 2021

16 FRONTIER LAW CENTER

17 By:

18 Manny Starr
19 Sarah Sterling
20 Attorneys for Plaintiff
21 CARRELL (BILL) BILYEU

EXHIBIT A

Carrell Bill Bilyeu v. U S Mine Corp
Superior Court of California County of Amador, Case No. 20-CV-11946

[Claims Administrator Name]

[Address]

[Phone Number]

«Barcode»

«BarcodeString»

SIMID «SIMID»

«FirstName» «LastName»

XXX – XX - ____ ____ ____

«Address1» «Address2»

Social Security Number

«City» «State» «Zip»

Plaintiff Carrell Bill Bilyeu (“Plaintiff”), in his capacity as a private attorney general, sued U S Mine Corp (“Defendant”) for civil penalties pursuant to the California Private Attorney General Act of 2004 (“PAGA”). Plaintiff claims Defendant violated the California Labor Code with respect to Defendant’s non-exempt employees in California between August 16, 2019 and the date of the Court’s approval of this settlement, or February 11, 2022, whichever is earlier (“Settlement Period”) by, among other things, failure to pay all straight and overtime wages, failure to provide compliant meal and rest breaks, failure to pay premium pay for non-compliant breaks, failure to pay all wages owed at the end of employment, failure to provide accurate wage statements, and failure to reimburse work related expenses. Defendant denies all liability, and asserts that it has fully complied with all applicable wage-and-hour laws, and the Court has made no finding of liability or violation. Nevertheless, the Parties have entered into a settlement with Plaintiff solely for purposes of resolving this dispute on his behalf and on behalf of non-exempt employees of Defendant who worked in California at any time during the Settlement Period (the “Aggrieved Employees”). The settlement has been approved by the Superior Court of California County of Amador in the above case (the “Settlement”).

The Parties have agreed that a portion of the settlement will be distributed on a pro rata basis to Aggrieved Employees (“Employee PAGA Portion”). Defendant’s records show that you worked at Defendant’s or a related entity, as a non-exempt employee in California for some period of time during the Settlement Period. As an Aggrieved Employee, you will receive a pro rata share of the Employee PAGA Portion based on Defendant’s records of the number of pay periods you worked during the Settlement Period, which in your case is [insert number of pay periods]. Based on Defendant’s records, you are receiving approximately \$ ____.

The Settlement settles and permanently resolves any and all claims for civil penalties that were or could have been assessed upon or collected from the Released Parties under California Labor Code § 2698, *et seq.*, for the claims arising out of the violations alleged both in Plaintiff’s Complaint and PAGA Notice or reasonably could have been alleged based on the facts and legal theories contained in the Complaint or the PAGA Notice, which are: alleged violations of California Labor Code §§ 201, 202, 203, 204, 226(a), 226.2, 226.3, 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2698, *et seq.*, 2800, and 2802, and the applicable Industrial Wage Order(s). The Released Claims relate to civil penalties only, and do not include any underlying claims or causes of action that Aggrieved Employees may have, and relief that they may seek, against Released Parties with respect to wages which may be owed. The “Released Parties” are Defendant and each of its past, present, and future parents, affiliates, subsidiaries, divisions, predecessors, successors, partners, joint venturers, affiliated organizations, shareholders, insurers, reinsurers and assigns, and each of their past, present and future officers, directors, managers, members, trustees, agents, employees, attorneys, contractors, representatives, benefits plans sponsored or administered by the Released Parties, divisions, units, and branches, and any other persons or entities acting on behalf of or in concert with any of the foregoing.

Please Note: You have one hundred eighty (180) calendar days to cash the enclosed check or it will be null and void and the settled claims from the Settlement will remain binding and enforceable as to you. Individual settlement payments are subject to taxation and will be reported to the IRS and state tax authorities. You will receive appropriate tax forms pertaining to your individual settlement payment.

Do not call or write the Court or Office of the Clerk to ask questions about the settlement or to ask questions about the claims process. Contact the settlement administrator at [insert] with any questions.

«Barcode»

«BarcodeString»

Notice Form

Page 1 of 1

SIMID «SIMID»

EXHIBIT 2



August 20, 2020

Via Online Filing

<http://www.dir.ca.gov/Private-Attorneys-General-Act/Private-Attorneys-General-Act.html>

PAGA Administrator
 CA Labor and Workforce Development Agency
 1515 Clay Street, Suite 801
 Oakland, CA 94612

Via Certified Mail ✓

U.S. Mine Corp.
 8625 State Highway #124
 Ione, CA 95640

Re: New Claim Notice – *Carrell Bill Bilyeu v. US Mine Corporation*

To Whom It May Concern:

Please be advised that this law firm represents Carrell Bill Bilyeu (“Plaintiff”), a former employee of U.S. Mine Corp. (“Defendant”) in claims he has arising from his employment. Plaintiff is an “aggrieved employee” as defined by Labor Code section 2699, *et seq.*, due to Defendant’s violations of the Labor Code as set forth below. The purpose of this letter is to comply with Labor Code § 2699.3, which requires aggrieved employees to notify their employer and the Labor and Workforce Development Agency (“LWDA”) of the specific provisions of the Labor Code allegedly violated. Plaintiff is informed and believes and based thereon alleges that the violations set forth herein are ongoing, systematic, and uniform.

A. Relevant Background Facts

Plaintiff, an hourly, non-exempt employee of Defendant from October 2019 through December 2019, worked as a heavy haul truck operator at its open pit mine for clay products in Ione, California. Plaintiff regularly worked 5-6 days per week, with shifts starting at 7:00 a.m. and ending at 3:00 p.m. Plaintiff’s schedule was determined and communicated to him by his supervisor, Mark Ramero, and his hours were maintained on a handwritten timesheet kept onsite. However, although Plaintiff’s shift officially started at 7:00 a.m. each morning, and despite the fact that Plaintiff and the aggrieved employees were not permitted to “clock-in” at any time before 7:00 a.m., Plaintiff and the aggrieved employees were required to be onsite by 6:45 a.m. each morning to attend a safety meeting held by the safety superintendent, Dave Nunez, before the start of their shifts. This time spent at the mandatory safety meeting each morning was uncompensated and was not permitted to be recorded on the timesheets.

Throughout their employment with Defendant, Plaintiff and the aggrieved employees regularly worked shifts of at least 8 hours, but were not authorized or permitted to take their rest periods as mandated by the Labor Code and Industrial Welfare Commission Wage Orders. Specifically, Plaintiff and the aggrieved employees were required to take their rest breaks on-site

and carry a communication device with them at all times in case they were needed while on their breaks.

Furthermore, throughout their employment with Defendant, Plaintiff and the aggrieved employees were subjected to Defendant's unlawful rounding policy, which required them to round their time to the nearest quarter hour, which resulted in diminished wages. Rounding is only permissible if the employer's rounding policy does not result in a pattern that undercompensates for all time worked. (*See's Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889; 29 CFR § 785.48.) Here, however, Defendant's rounding resulted in diminished wages to Plaintiff and the aggrieved employees, thereby violating Labor Code §§ 200, 226, 510, 1194, 1194.2, 1197, and 1198.

Finally, while working for Defendant, Plaintiff and the aggrieved employees were required to purchase but were not reimbursed for items necessary to complete their job duties, including, but not limited to, things like special safety boots (\$100), rain boots (\$35), and gloves (\$40).

As a result Defendant's failure to pay all hours worked, unlawful rounding practice, and unpaid rest break premium wages, Defendant maintained inaccurate payroll records, and issued inaccurate wage statements to Plaintiff and the aggrieved employees in violation of Labor Code § 226.

B. Labor Code Violations

As a result of these issues, Defendant committed the following violations of the Labor Code, and Wage Order 16:

(1) Not All Hours Paid

In violation of Industrial Welfare Commission Order No. 16 and Labor Code §§ 200, 226, 226.7, 500, 510, 1197, 1194, and 1198, Defendant failed to compensate Plaintiff and the aggrieved employees for all hours worked, including but not limited to the mandatory off-the-clock daily safety meetings, and for other reasons to be discovered. Thus, the PAGA penalties in Labor Code sections 558 and 1197.1 apply.

(2) Unlawful Rounding Policies

Labor Code sections 510 and 1194 provide that workers must be paid for all hours worked. While California courts generally allow employers to adopt policies that round their employees' hours worked, a rounding policy cannot consistently result in a failure to pay employees for their time worked. (*Alonzo v. Maximus, Inc.* (C.D.Cal. 2011) 832 F.Supp.2d 1122, 1126 ["While few Courts have interpreted this regulation, those that have recognize that the regulation permits employers to use a rounding policy for recording and compensating employee time as long as the employer's rounding policy does not 'consistently result in a failure to pay employees for time worked.'"].) Thus, employers are allowed to adopt fair rounding policies, and they cannot design their rounding policies to underpay their workers. (*See's Candy Shops, Inc. v. Superior Court* (2012) 210 Cal.App.4th 889, 907 [The rounding policy must be fair and neutral on its face; and it must be applied in a way that, on average, does not favor underpayment].)

Here, Plaintiff and the aggrieved employees were not paid for all hours worked since Defendant required employees to round their time in a way that resulted in diminished pay. Thus, the PAGA penalties in Labor Code sections 558 and 1197.1 apply.

(3) Rest Period Violations

Defendant required Plaintiff and similarly aggrieved employees to stay onsite and to carry communication devices during their rest breaks in violation of *Augustus v. ABM Security Services, Inc.* (2016) 59 Cal.5th 662. As a result, Plaintiff and the aggrieved employees are entitled to recover additional compensation for all rest periods that were missed but not paid for, per Labor Code §§ 226.7, 512, 558 and 1198 [See Labor Code § 226.7 (“If an employer fails to provide an employee a meal period or rest period in accordance with an applicable order of the Industrial Welfare Commission, the employer shall pay the employee one additional hour of pay at the employee’s regular rate of compensation for each workday that the meal or rest period is not provided.”)], and PAGA penalties in Labor Code sections 558 and 2699 apply.

(4) Required Business Expenses Violations

Defendant failed to reimburse Plaintiff and the aggrieved employees and other similarly aggrieved employees various items required to complete their job duties including but not limited to special safety boots (\$100), rain boots (\$35), and gloves (\$40). Defendant’s policy of requiring Plaintiff and the aggrieved employees to pay these expenses without reimbursement was in violation of Wage Order 16 § 8 and Labor Code §§ 2802 and 2804 (“An employer shall indemnify his or her employees for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties, or of his or her obedience to the directions of the employer.”). Plaintiff and the aggrieved employees are therefore entitled to reimbursement of such unpaid work expenses, with interest.

(5) Wage Statement Violations

Defendant was obligated to furnish Plaintiff and the aggrieved employees with complete and accurate itemized wage statements that show, among other things, total gross wages earned, overtime wages, and any meal and rest period premium wages earned. (See Labor Code § 226(a) and § 1174(d); Wage Order 16 § 6.) As a result of Defendant’s failure to pay all hours worked and rest period premium wages, Defendant maintained inaccurate payroll records for Plaintiff and the aggrieved employees in violation of Labor Code § 226. Defendant’s failure to comply with their wage statement obligations was knowing and intentional, and Plaintiff and the aggrieved employees have suffered “actual injuries” as a result.

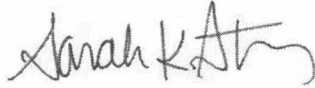
(6) Waiting Time Penalties

Labor Code sections 201 and 202 require that when an employee’s employment ends, they must timely receive all of their final wages at the time of termination. Defendant failed to timely pay Plaintiff and the aggrieved employees all of their final wages at the time of termination which include, among other things, unpaid hours worked and unpaid rest period premium wages owing, up to thirty (30) days from the time the wages were due. Defendant continues to fail to pay Plaintiff and the aggrieved employees all earned wages at the end of employment pursuant to the requirements of Labor Code sections 201-203. Defendant’s failure to pay all wages due to Plaintiff and the aggrieved employees was willful and, consequently, Plaintiff and the aggrieved employees are entitled to waiting time penalties under Labor Code § 203.

Sarah Sterling
Frontier Law Center
23901 Calabasas Rd., Ste. 2074
Calabasas, CA 91302

Having laid out the statutory authority for, and factual basis of the PAGA claim, and having sent a copy of this notice to Employer, our client now awaits LWDA's response to this claim.

Sincerely,

A handwritten signature in black ink, appearing to read "Sarah K. Sterling", with a stylized flourish at the end.

Sarah Sterling, Esq.

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☐ Adult Signature Required \$

☐ Adult Signature Restricted Delivery \$

Postage \$ 50

Total Postage and Fees \$ 690

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COMPLETE THIS SECTION ON DELIVERY

A. Signature ☐ Agent
☒ Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? ☐ Yes
 If YES, enter delivery address below: ☐ No

3. Service Type

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☐ Adult Signature Restricted Delivery

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EXHIBIT 3

Carrell Bill Bilyeu v. U S Mine Corp
Superior Court of California County of Amador, Case No. 20-CV-11946

[Claims Administrator Name]

[Address]

[Phone Number]

«Barcode»

«BarcodeString»

SIMID «SIMID»

«FirstName» «LastName»

XXX – XX - ____ ____ ____

«Address1» «Address2»

Social Security Number

«City» «State» «Zip»

Plaintiff Carrell Bill Bilyeu (“Plaintiff”), in his capacity as a private attorney general, sued U S Mine Corp (“Defendant”) for civil penalties pursuant to the California Private Attorney General Act of 2004 (“PAGA”). Plaintiff claims Defendant violated the California Labor Code with respect to Defendant’s non-exempt employees in California between August 16, 2019 and the date of the Court’s approval of this settlement, or February 11, 2022, whichever is earlier (“Settlement Period”) by, among other things, failure to pay all straight and overtime wages, failure to provide compliant meal and rest breaks, failure to pay premium pay for non-compliant breaks, failure to pay all wages owed at the end of employment, failure to provide accurate wage statements, and failure to reimburse work related expenses. Defendant denies all liability, and asserts that it has fully complied with all applicable wage-and-hour laws, and the Court has made no finding of liability or violation. Nevertheless, the Parties have entered into a settlement with Plaintiff solely for purposes of resolving this dispute on his behalf and on behalf of non-exempt employees of Defendant who worked in California at any time during the Settlement Period (the “Aggrieved Employees”). The settlement has been approved by the Superior Court of California County of Amador in the above case (the “Settlement”).

The Parties have agreed that a portion of the settlement will be distributed on a pro rata basis to Aggrieved Employees (“Employee PAGA Portion”). Defendant’s records show that you worked at Defendant’s or a related entity, as a non-exempt employee in California for some period of time during the Settlement Period. As an Aggrieved Employee, you will receive a pro rata share of the Employee PAGA Portion based on Defendant’s records of the number of pay periods you worked during the Settlement Period, which in your case is [insert number of pay periods]. Based on Defendant’s records, you are receiving approximately \$ ____.

The Settlement settles and permanently resolves any and all claims for civil penalties that were or could have been assessed upon or collected from the Released Parties under California Labor Code § 2698, *et seq.*, for the claims arising out of the violations alleged both in Plaintiff’s Complaint and PAGA Notice or reasonably could have been alleged based on the facts and legal theories contained in the Complaint or the PAGA Notice, which are: alleged violations of California Labor Code §§ 201, 202, 203, 204, 226(a), 226.2, 226.3, 226.7, 510, 512(a), 551, 552, 1174(d), 1194, 1197, 1197.1, 1198, 2698, *et seq.*, 2800, and 2802, and the applicable Industrial Wage Order(s). The Released Claims relate to civil penalties only, and do not include any underlying claims or causes of action that Aggrieved Employees may have, and relief that they may seek, against Released Parties with respect to wages which may be owed. The “Released Parties” are Defendant and each of its past, present, and future parents, affiliates, subsidiaries, divisions, predecessors, successors, partners, joint venturers, affiliated organizations, shareholders, insurers, reinsurers and assigns, and each of their past, present and future officers, directors, managers, members, trustees, agents, employees, attorneys, contractors, representatives, benefits plans sponsored or administered by the Released Parties, divisions, units, and branches, and any other persons or entities acting on behalf of or in concert with any of the foregoing.

Please Note: You have one hundred eighty (180) calendar days to cash the enclosed check or it will be null and void and the settled claims from the Settlement will remain binding and enforceable as to you. Individual settlement payments are subject to taxation and will be reported to the IRS and state tax authorities. You will receive appropriate tax forms pertaining to your individual settlement payment.

Do not call or write the Court or Office of the Clerk to ask questions about the settlement or to ask questions about the claims process. Contact the settlement administrator at [insert] with any questions.

«Barcode»

«BarcodeString»

Notice Form

Page 1 of 1

SIMID «SIMID»

EXHIBIT 4

Bilyeu v. U S Mine Corp Billing Details

139.9 total hours

As of 2022-01-04 14:38:47 Pacific Standard Time/PST

\$55,705 Total Billables

Work Completed By: ↑	Bill Rate	Hours Billed	Date	Billing For:
Dan Ginzburg	Associate Attorney - \$375	30	4/9/2021	Responding to Discovery
	Associate Attorney - \$375	8	4/26/2021	Propounding Discovery
	Associate Attorney - \$375	8	4/27/2021	propounding discovery
	Associate Attorney - \$375	3	5/13/2021	scheduling mediation and supporting docs
	Associate Attorney - \$375	3	7/7/2021	special interrogatories
	Associate Attorney - \$375	0.5	8/16/2020	finalizing paga letter
	Associate Attorney - \$375	0.5	8/16/2020	Filing PAGA letter LWDA Case No. LWDA-CM-802767-20
	Associate Attorney - \$375	1	8/16/2020	draft complaint
	Associate Attorney - \$375			
Subtotal	Sum	54 hours		
	Count	8		
Heather Bourne	Paralegal / Law Clerk - \$200	0.75	11/12/2020	Draft pleading for filing; prep mail
	Paralegal / Law Clerk - \$200	0.75	11/13/2020	Prep 3 Fax File Cover sheets for fax filing; MS authorized HB to E-sign
	Paralegal / Law Clerk - \$200	0.5	11/18/2020	resubmit fax to Clerk for filing
	Paralegal / Law Clerk - \$200	0.5	11/19/2020	resubmitted fax to clerk via r/c of complaint
	Paralegal / Law Clerk - \$200	0.5	1/5/2021	R&R messages with SKS; drafted email re acceptance of service via NAR to OC
Subtotal	Sum	3 hours		
	Count	5		
Lizzie Mars	Case Manager - \$100	0.5	4/5/2021	Drafting templates for discovery responses - set 1
	Case Manager - \$100	0.5	4/26/2021	Creating Discovery templates for DG to propound
Subtotal	Sum	1 hours		
	Count	2		
Manny Starr	Partner - \$550	0.6	4/27/2021	Review outgoing discovery
	Partner - \$550	1	6/23/2021	Review first set of disc. responses by DEF
	Partner - \$550	3	10/8/2021	Review file, prep PLT
	Partner - \$550	7	11/4/2021	Review file, finalize mediation brief.
	Partner - \$550	1.5	11/8/2021	Prep for and call with mediator
	Partner - \$550	1	11/22/2021	Review and revise settlement agreements
	Partner - \$550	1	11/23/2021	Draft PAGA Settlement Notice
	Partner - \$550	2	6/12/2020	Review case, review employee file
	Partner - \$550	6	1/4/2022	Draft and finalize application for PAGA approval
	Partner - \$550			
Subtotal	Sum	23.1 hours		
	Count	9		
Sarah Sterling	Associate Attorney - \$375	5	10/28/2021	review depo transcript
	Associate Attorney - \$375	1	10/29/2021	telco w client
	Associate Attorney - \$375	1	8/3/2020	telco w client
	Associate Attorney - \$375	5	10/29/2021	Work on mediation brief
	Associate Attorney - \$375	5	11/2/2021	Work on mediation brief
	Associate Attorney - \$375	2	11/3/2021	Work on mediation brief

	Associate Attorney - \$375	0.4	11/3/2021	emails to/from mediator with information requested
	Associate Attorney - \$375	2.5	11/4/2021	damages calculations and jury verdict research
	Associate Attorney - \$375	0.2	4/15/2021	telco w OC re discovery
	Associate Attorney - \$375	0.7	5/6/2021	telco w client
	Associate Attorney - \$375	8	5/10/2021	discovery responses
	Associate Attorney - \$375	3	7/8/2020	review case file
	Associate Attorney - \$375	3	8/10/2020	Finalize PAGA letter
	Associate Attorney - \$375	4	8/5/2020	draft PAGA
	Associate Attorney - \$375	4	11/12/2020	Finalize complaint
	Associate Attorney - \$375	2.5	8/4/2020	draft PAGA
	Associate Attorney - \$375	8	11/4/2020	draft complaint
	Associate Attorney - \$375	3	11/8/2020	draft complaint
	Associate Attorney - \$375	0.5	11/30/2020	telco w client
Subtotal	Sum	58.8 hours		

EXHIBIT 5

Carrell Bill Bilyeu v. U S Mine Corp

As of 2022-01-04 14:45:19 Pacific Standard Time/PST

Cost: Created Date	Costs for:	Cost Amount
3/18/2020	Records request	\$6.90
8/21/2020	Mailing DEF New Claim Notice	\$6.90
8/24/2020	LWDA-CM-802767-20	\$75.00
8/24/2020	Mailing Demand Letter	\$7.05
11/23/2020	Fax Filing (Amador)	\$15.53
12/23/2020	INVOICE #: bc06ef57-d965-492d-bde4-f29fe1900c69	\$450.23
4/21/2021	E-Filing NAR - Filed 4.19.21	\$5.18
7/1/2021	JAMS - Ref. No. 1130009502	\$3,304.40
7/12/2021	Bilyeu-Medical Records- Sent back	\$7.25
10		\$3,878.44