

BIBIYAN LAW GROUP, P.C.

David D. Bibiyani (SBN 287811)

david@tomorrowlaw.com

Vedang J. Patel (SBN 328647)

vedang@tomorrowlaw.com

Iona Levin (SBN 294657)

iona@tomorrowlaw.com

8484 Wilshire Boulevard, Suite 500

Beverly Hills, California 90211

Tel: (310) 438-5555; Fax: (310) 300-1705

Attorneys for Plaintiff, ATLAS BAILEY,
on behalf of himself and all others aggrieved

WILSON TURNER KOSMO LLP

Leonid M. Zilberman (SBN 182829)

Naomi C. Pontious (SBN 288580)

Brian G. Lee (SBN 300990)

lzilberman@wilsonturnerkosmo.com

npontious@wilsonturnerkosmo.com

blee@wilsonturnerkosmo.com

402 West Broadway, Suite 1600

San Diego, California 92101

Telephone: (619) 236-9600

Facsimile: (619) 236-9669

Attorney for Defendants, CANNON CONSTRUCTORS, INC.,
CANNON CONSTRUCTORS SOUTH, INC., CANNON
CONSTRUCTORS, LLC and CANNON CONSTRUCTORS NORTH, INC.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES – CENTRAL DISTRICT**

ATLAS BAILEY, an individual and on behalf
of all others similarly situated,

Plaintiff,

v.

CANNON CONSTRUCTORS, INC., a
California corporation; CANNON
CONSTRUCTORS SOUTH, INC., a
California corporation; CANNON
CONSTRUCTORS, LLC, a California
limited liability company; CANNON
CONSTRUCTORS NORTH, INC., a
California corporation; and DOES 1 through
100, inclusive,

Defendants.

CASE NO.: 21STCV38274
(Lead Case No.: 21STCV29935)

[Assigned to the Hon. Carolyn B. Kuhl in
Dept. 12]

PAGA SETTLEMENT AGREEMENT

Action Filed: August 13, 2021
Trial Date: None set

This PAGA Settlement Agreement (“Settlement,” “Agreement” or “Settlement Agreement”) is made by and between plaintiff Atlas Bailey (“Plaintiff”), individually and on behalf of the Aggrieved Employees; and defendants Cannon Constructors, Inc., Cannon Constructors South, Inc., Cannon Constructors, LLC, and Cannon Constructors North, Inc. (collectively “Defendants”). The Agreement refers to Plaintiff and Defendants collectively as “Parties,” or individually as “Party.”

1. DEFINITIONS

1.1. “Actions” means both of Plaintiff’s related cases against Defendants captioned *Atlas Bailey v. Cannon Constructors, Inc. et al.*, Case No. 21STCV29935 (the “Class Action”) and Case No. 21STCV38274 (the “PAGA Action”) – both pending in the Superior Court of the State of California, County of Los Angeles.

1.2. “Administrator” means Phoenix Class Administrators (“Phoenix”), the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with approval of this Settlement.

1.4. “Aggrieved Employee” means a person employed by Defendants in California and classified as a non-exempt, hourly-paid employee who worked for Defendants during the PAGA Period.

1.5. “Aggrieved Employee Data” means Aggrieved Employee identifying information in Defendants’ possession including the Aggrieved Employee’s name, last-known mailing address, Social Security number, and dates of employment (*i.e.* hire dates, termination dates (as applicable) and re-hire dates (as applicable)).

1 **1.6. “Aggrieved Employee Address Search”** means the Administrator’s
2 investigation and search for current Aggrieved Employees’ mailing addresses using all
3 reasonably available sources, methods and means, including, but not limited to, the National
4 Change of Address database, skip traces and direct contact by the Administrator with Aggrieved
5 Employees.

6 **1.7. “Class Action”** means the lawsuit *Atlas Bailey v. Cannon Constructors, Inc. et*
7 *al.*, Case No. 21STCV29935 pending in the Superior Court of the State of California, County of
8 Los Angeles

9 **1.8. “Court”** means the Superior Court of California, County of Los Angeles.

10 **1.9. “Defense Counsel”** means Leonid M. Zilberman, Naomi C. Pontious, and Brian
11 G. Lee of Wilson Turner Kosmo LLP.

12 **1.10. “Effective Date”** means the date by when both of the following have occurred in
13 the PAGA Action: (a) the Court enters a Judgment on its Order Approving the PAGA Settlement
14 and (b) the Judgment is final. The Judgment is final on the day the Court enters Judgment.

15 **1.11. “Gross Settlement Amount”** means One Hundred Eighty-Nine Thousand
16 Dollars and Zero Cents (\$189,000.00), which is the total amount Defendants agree to pay under
17 the settlement except as provided in Paragraph 8.1 below. The Gross Settlement Amount will be
18 used to pay Individual PAGA Payments, the LWDA PAGA Payment, PAGA Service Payment,
19 PAGA Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment and the
20 Administrator’s Expenses Payment.

21 **1.12. “Individual PAGA Payment”** means the Aggrieved Employee’s pro rata share
22 of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved
23 Employee worked during the PAGA Period.

24 **1.13. “Judgment”** means the judgment entered by the Court based upon the Final
25 Approval.

1 **1.14. “LWDA”** means the California Labor and Workforce Development Agency, the
2 agency entitled, under Labor Code section 2699, subd. (i).

3 **1.15. “LWDA PAGA Payment”** means the 75% of the PAGA Penalties paid to the
4 LWDA under Labor Code section 2699, subd. (i).

5 **1.16. “Net Settlement Amount”** means the Gross Settlement Amount, less the
6 following payments in the amounts approved by the Court: the LWDA PAGA Payment, PAGA
7 Counsel Fees Payment, PAGA Counsel Litigation Expenses Payment, PAGA Service Payment,
8 and the Administration Expenses Payment.

9 **1.17. “PAGA Action”** means the lawsuit entitled *Atlas Bailey v. Cannon Constructors,*
10 *Inc.* et al., Case No. 21STCV38274 pending in the Superior Court of the State of California,
11 County of Los Angeles.

12 **1.18. “PAGA Counsel”** means, David D. Bibiyan, Jeffrey D. Klein, and Vedang J.
13 Patel of Bibiyan Law Group, P.C. The term “PAGA Counsel” shall be used synonymously with
14 the term “Plaintiff’s Counsel.”

15 **1.19. “PAGA Counsel Fees Payment” and “PAGA Counsel Litigation Expenses**
16 **Payment”** mean the amounts allocated to PAGA Counsel for reimbursement of reasonable
17 attorneys’ fees and expenses, respectively, incurred to prosecute the PAGA Action.

18 **1.20. “PAGA Pay Period” or “Pay Period”** means any Pay Period during which an
19 Aggrieved Employee worked for Defendants during the PAGA Period, based on hire dates,
20 termination dates (if applicable) and re-hire dates (if applicable).

21 **1.21. “PAGA Period”** means the period from August 12, 2020 through July 15, 2023.

22 **1.22. “PAGA”** means the Private Attorneys General Act (Labor Code §§ 2698. *et seq.*).

23 **1.23. “PAGA Notice”** means Plaintiff’s letter to Defendants and the LWDA providing
24 notice pursuant to Labor Code section 2699.3, subd. (a).

1 **1.24. “PAGA Penalties”** means the total amount of PAGA civil penalties to be paid
2 from the Net Settlement Amount, allocated 25% to the Aggrieved Employees and the 75% to
3 LWDA in settlement of PAGA claims.

4 **1.25. “PAGA Representative”** means the named Plaintiff in the operative complaint in
5 the PAGA Action seeking Court approval to serve as a PAGA Representative.

6 **1.26. “PAGA Representative Service Payment”** means the payment to the PAGA
7 Representative for initiating the PAGA Action and providing services in support of the PAGA
8 Action.

9 **1.27. “Plaintiff”** means Atlas Bailey, the named plaintiff in the Actions.

10 **1.28. “Approval Order”** means the proposed Court Order Granting Approval of
11 PAGA Settlement.

12 **1.29. “Released PAGA Claims”** means the claims being released by the Plaintiff and
13 PAGA Counsel and as described in Paragraph (5) below.

14 **1.30. “Released Parties”** means the Defendants, and each of their former and present
15 directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors,
16 assigns, subsidiaries and affiliates.

17 **1.31. “Settlement”** means the disposition of the Actions effected by this Agreement
18 and the Judgment.

19 **1.32. “Defendants”** means the named Defendants, Cannon Constructors South, Inc.
20 and Cannon Constructors North, Inc., collectively.

21 **2. RECITALS**

22 **2.1.1.** On August 12, 2021, Plaintiff filed with the LWDA and served on Defendant a
23 notice under Labor Code section 2699.3 stating Plaintiff intended to serve as a proxy of the
24 LWDA to recover civil penalties on behalf of Aggrieved Employees for alleged Labor Code
25 violations (“PAGA Notice”).

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1 **2.1.2.** On August 13, 2021, Plaintiff filed the Class Action alleging: (1) failure to pay
2 overtime wages, (2) failure to pay minimum wages, (3) failure to provide meal periods, (4) failure
3 to provide rest periods, (5) waiting time penalties, (6) wage statement violations, (7) failure to
4 indemnify, and (8) unfair competition.

5 **2.2.** On October 18, 2021, after no responsive from the LWDA, Plaintiff commenced
6 the PAGA Action, seeking PAGA civil penalties pursuant to Labor Code sections 210, 226.3,
7 558, 1197.1 and 2699.

8 **2.3.** On December 8, 2021, the Court issued an order of related cases finding the Class
9 Action and the PAGA Action related.

10 **2.4.** On or around August 5, 2022, November 18, 2022, and December 15, 2022, the
11 Court granted Defendants' various Motions to Deny Class Certification, and the Class Action
12 proceeded thereafter as an individual action.

13 **2.5.** Thereafter, on June 19, 2023, the parties participated in an all-day mediation on a
14 PAGA-only basis presided over by Paul Haines, Esquire, which was successful following a
15 mediator's proposal and led to the present settlement of this case resolving all PAGA claims
16 alleged and all of Plaintiff's individual claims.

17 **2.6.** Prior to mediation, after the Court granted Plaintiff's Motions to Compel Further
18 Responses against Defendants, Defendants formally produced the complete list and contact
19 information for all putative Aggrieved Employees during the PAGA Period. Defendants also
20 agreed to informally produce the following: (1) a complete list with dates of employment for all
21 of the estimated 114 Aggrieved Employees; (2) contact information for all Aggrieved Employees
22 pursuant to the *Belaire West* Process; (3) 33% of time and payroll record for Aggrieved
23 Employees who worked during the PAGA Period through mediation; and (4) al documents
24 pertaining to Plaintiff available to Defendants.

1 **2.7.** The operative complaint is the complaint filed in the PAGA Action on or around
2 October 18, 2021 (the “Operative Complaint.”). Defendants deny the allegations in the Operative
3 Complaint, deny any failure to comply with the laws identified in the Operative Complaint, and
4 deny any and all liability for the causes of action alleged.

5 **2.8.** As a part of this Settlement, Plaintiff has agreed to resolve all asserted PAGA
6 claims and his individual claims. To effectuate the Settlement, upon fourteen (14) days of the
7 Effective Date, Plaintiff shall file a dismissal of the Class Action, with prejudice. In the event the
8 Court requires any further information or briefing in order to dismiss the Class Action, Plaintiff
9 shall take such action and file such papers as are necessary to obtain dismissal of the Class Action.

10 **2.9.** The Parties, PAGA Counsel and Defense Counsel represent that they are not
11 aware of any other pending matter or action asserting claims that will be extinguished or affected
12 by the Settlement.

13 **3. MONETARY TERMS**

14 **3.1. Gross Settlement Amount.** Except as otherwise provided by Paragraph 8.1
15 below, Defendants promise to pay \$189,000.00 and no more as the Gross Settlement Amount.
16 Defendants have no obligation to pay the Gross Settlement Amount prior to the deadline stated
17 in Paragraph 4.3 of this Agreement. The Administrator will disburse the entire Gross Settlement
18 Amount without asking or requiring Aggrieved Employees to submit any claim as a condition of
19 payment. None of the Gross Settlement Amount will revert to Defendants.

20 **3.2. Payments from the Gross Settlement Amount.** The Administrator will make
21 and deduct the following payments from the Gross Settlement Amount, in the amounts specified
22 by the Court in the Final Approval:

23 **3.2.1 To PAGA Counsel:** A PAGA Counsel Fees Payment of not more than
24 35% of the Gross Settlement Amount, which is currently estimated to be
25 \$66,150.00 and PAGA Counsel Litigation Expenses Payment of not more

1 than \$30,000.00. Defendants will not oppose requests for Court approval
2 of these payments provided that they do not exceed these amounts unless,
3 in the event of a material breach of this Agreement by Defendants, Plaintiff
4 is required to move the Court for enforcement of this Agreement. Plaintiff
5 and/or PAGA Counsel will file an application or motion for PAGA
6 Counsel Fees Payment and PAGA Litigation Expenses Payment. If the
7 Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel
8 Litigation Expenses Payment less than the amounts requested, the
9 Administrator will allocate the remainder to the Net Settlement Amount.
10 Released Parties shall have no liability to PAGA Counsel or any other
11 Plaintiff's Counsel arising from any claim to any portion any PAGA
12 Counsel Fees Payment and/or PAGA Counsel Litigation Expenses
13 Payment. The Administrator will pay the PAGA Counsel Fees Payment
14 and PAGA Counsel Litigation Expenses Payment using one or more IRS
15 1099 Forms. PAGA Counsel assumes full responsibility and liability for
16 taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel
17 Litigation Expenses Payment and holds Defendants harmless, and
18 indemnifies Defendants, from any dispute or controversy regarding any
19 division or sharing of any of these Payments.

20 **3.2.2 To the Administrator:** An Administrator Expenses Payment not to
21 exceed \$2,950 except for a showing of good cause and as approved by the
22 Court. To the extent the Administration Expenses are less or the Court
23 approves payment less than \$2,950, the Administrator will retain the
24 remainder in the Net Settlement Amount.

1 **3.2.3** To Plaintiff: PAGA Representative Service Payment to the PAGA
2 Representative of not more than \$7,500.00 (in addition to any Individual
3 PAGA Payment the PAGA Representative is entitled to receive as a
4 Participating PAGA Member). Defendants will not oppose Plaintiff's
5 request for a PAGA Representative Service Payment that does not exceed
6 this amount. As part of the motion for PAGA Counsel Fees Payment and
7 PAGA Litigation Expenses Payment, Plaintiff will seek Court approval for
8 any PAGA Representative Service Payments. If the Court approves a
9 PAGA Representative Service Payment less than the amount requested,
10 the Administrator will retain the remainder in the Net Settlement Amount.
11 The Administrator will pay the PAGA Representative Service Payment
12 using IRS Form 1099. Plaintiff assumes full responsibility and liability
13 for employee taxes owed on the PAGA Representative Service Payment.

14 **3.2.4 To the LWDA and Aggrieved Employees:** PAGA Penalties, as currently
15 estimated and subject to change, in the amount of \$82,400.00 to be paid
16 from the Gross Settlement Amount, with 75% (\$61,800.00) allocated to
17 the LWDA PAGA Payment and 25% (\$20,600) allocated to the Individual
18 PAGA Payments.

19 **3.2.4.1** The Administrator will calculate each Individual PAGA Payment
20 by (a) dividing the amount of the Aggrieved Employees' 25% share
21 of PAGA Penalties (\$20,600.00) by the total number of PAGA
22 Period Pay Periods worked by all Aggrieved Employees during the
23 PAGA Period and (b) multiplying the result by each Aggrieved
24 Employee's PAGA Period Pay Periods. Aggrieved Employees
25

1 assume full responsibility and liability for any taxes owed on their
2 Individual PAGA Payment.

3 **3.2.4.2** If the Court approves PAGA Penalties of less than the amount
4 requested, the Administrator will allocate the remainder to the Net
5 Settlement Amount. The Administrator will report the Individual
6 PAGA Payments on IRS 1099 Forms.

7 **4. SETTLEMENT FUNDING PAYMENTS**

8 **4.1. Aggrieved Employee Pay Periods.** Based on a review of its records to date,
9 Defendants estimate there are 114 Aggrieved Employees who worked a total of 6,200 PAGA Pay
10 Periods.

11 **4.2. Aggrieved Employee Data.** Within 14 days of the Effective Date, Defendants
12 will simultaneously deliver the Aggrieved Employee Data to the Administrator in the form of a
13 Microsoft Excel spreadsheet. To protect Aggrieved Employees' privacy rights, the Administrator
14 must maintain the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data
15 only for purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved
16 Employee Data to Administrator employees who need access to the Aggrieved Employee Data
17 to effect and perform under this Agreement. Defendants have a continuing duty to immediately
18 notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee
19 identifying information and to provide corrected or updated Aggrieved Employee Data as soon
20 as reasonably feasible. Without any extension of the deadline by which Defendants must send
21 the Aggrieved Employee Data to the Administrator, the Parties and their counsel will
22 expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues related
23 to missing or omitted Aggrieved Employee Data.

1 **4.3. Funding of Gross Settlement Amount.** Defendants shall fully fund the Gross
2 Settlement Amount by transmitting the funds to the Administrator no later than 14 days after the
3 Effective Date.

4 **4.4. Payments from the Gross Settlement Amount.** Within 7 days after Defendants
5 funds the Gross Settlement Amount, the Administrator will simultaneously mail checks for all
6 Individual PAGA Payments, the LWDA PAGA Payment, the Administration Expenses Payment,
7 the PAGA Counsel Litigation Expenses Payment and PAGA Counsel Attorneys' Fees.
8 Disbursement of the PAGA Counsel Litigation Expenses Payment and PAGA Counsel
9 Attorneys' Fees shall not precede disbursement of Individual PAGA Payments.

10 **4.4.1.** The Administrator will issue checks for the Individual PAGA Payments
11 and send them to the Aggrieved Employees via First Class U.S. Mail,
12 postage prepaid. The face of each check shall prominently state the date
13 (not less than 180 days after the date of mailing) when the check will be
14 voided. The Administrator will cancel all checks not cashed by the void
15 date. Before mailing any checks, the Settlement Administrator must update
16 the recipients' mailing addresses using the National Change of Address
17 Database.

18 **4.4.2.** The Administrator must conduct an Aggrieved Employee Address Search
19 for all Aggrieved Employees whose checks are returned undelivered
20 without USPS forwarding address. Within 3 days of receiving a returned
21 check, the Administrator must re-mail checks to the USPS forwarding
22 address provided or to an address ascertained through the Aggrieved
23 Employee Address Search. The Administrator need not take further steps
24 to deliver checks to Aggrieved Employees whose re-mailed checks are
25 returned as undelivered. The Administrator shall promptly send a

1 replacement check to any Aggrieved Employee whose original check was
2 lost or misplaced, requested by the Aggrieved Employee prior to the void
3 date.

4 **4.4.3.** For any Aggrieved Employee whose Individual PAGA Payment check is
5 uncashed and cancelled after the void date, the Administrator shall
6 transmit the funds represented by such checks to the California Controller's
7 Unclaimed Property Fund in the name of the Aggrieved Employee.

8 **4.4.4.** The payment of Individual PAGA Payments shall not obligate Defendants
9 to confer any additional benefits or make any additional payments to the
10 Aggrieved Employees (such as 401(k) contributions or bonuses) beyond
11 those specified in this Agreement.

12 **5. RELEASES OF CLAIMS**

13 Effective on the date when Defendants fully fund the entire Gross Settlement Amount,
14 Plaintiff and PAGA Counsel will release claims against all Released Parties as follows:

15 **5.1.** Plaintiff's Release. Plaintiff and his or her respective former and present spouses,
16 representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors
17 and assigns generally release and discharge Released Parties from all claims, transactions or
18 occurrences, including, but not limited to, all claims that were alleged in the Actions, or
19 reasonably could have been alleged based on the facts contained in the operative complaints filed
20 in the Actions and the PAGA Notice ("Plaintiff's Release"). Plaintiff's Release does not extend
21 to any claims or actions to enforce this Agreement or to any claims for vested benefits,
22 unemployment benefits, disability benefits, social security benefits, or workers' compensation
23 benefits. Plaintiff acknowledges that Plaintiff may discover facts or law different from, or in
24 addition to, the facts or law that Plaintiff now knows or believes to be true but agrees, nonetheless,

that Plaintiff's Release shall be and remain effective in all respects, notwithstanding such different or additional facts or Plaintiff's discovery of them.

5.1.1. Plaintiff's Waiver of Rights Under California Civil Code Section 1542.

For purposes of Plaintiff's Release, Plaintiff expressly waives and relinquishes the provisions, rights and benefits, if any, of section 1542 of the California Civil Code, which reads:

A general release does not extend to claims that 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.

5.2. Release by Aggrieved Employees. For the duration of the PAGA Period, all Aggrieved Employees are deemed to release, on behalf of themselves and their respective former and present representatives, agents, attorneys, heirs, administrators, successors and assigns, the Released Parties from all claims for PAGA penalties that were alleged or reasonably could have been alleged, based on the facts stated in the Operative Complaint and the PAGA Notice. **Notwithstanding the above, no Aggrieved Employees except for Plaintiff are releasing claims for wages by this Settlement.**

5.3. Release by PAGA Counsel: PAGA Counsel release on behalf of their present and former attorneys, employees, agents, successors and assigns the Released Parties from all claims for PAGA Fees incurred in connection with the Operative Complaint and the PAGA Period facts stated in the Operative Complaint and the PAGA Notice.

6. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT

The Parties agree to jointly prepare and file an application or motion for approval of this Settlement.

1 **6.1. Plaintiff's Responsibilities.** Plaintiff will prepare and deliver to Defense Counsel
2 all documents necessary for obtaining approval of this Settlement under Labor Code Section
3 2699, subd. (f)(2) including (i) a draft proposed Order Granting Approval of PAGA Settlement;
4 (ii) a signed declaration from the Administrator attaching its "not to exceed" bid for administering
5 the Settlement and attesting to its willingness to serve; competency; operative procedures for
6 protecting the security of Aggrieved Employee Data; amounts of insurance coverage for any data
7 breach, defalcation of funds or other misfeasance; all facts relevant to any actual or potential
8 conflicts of interest with Aggrieved Employees or the LWDA; and the nature and extent of any
9 financial relationship with Plaintiff, PAGA Counsel or Defense Counsel; (iii) a signed
10 declaration from PAGA Counsel firm attesting to its timely transmission to the LWDA of all
11 necessary PAGA documents (initial notice of violations (Labor Code section 2699.3, subd. (a)),
12 Operative Complaint (Labor Code section 2699, subd. (l)(1)), this Agreement (Labor Code
13 section 2699, subd. (l)(2)); and (v) all facts relevant to any actual or potential conflict of interest
14 with Aggrieved Employees and/or the Administrator. In their Declarations, Plaintiff and PAGA
15 Counsel shall aver that they are not aware of any other pending matter or action asserting claims
16 that will be extinguished or adversely affected by the Settlement.

17 **6.2. Responsibilities of PAGA Counsel.** PAGA Counsel and Defense Counsel are
18 jointly responsible for expeditiously finalizing and filing the application or motion for approval
19 of this Settlement after the full execution of this Agreement and, if necessary, obtaining a prompt
20 hearing date for the motion and appearing in Court to advocate in favor of the motion. PAGA
21 Counsel is responsible for delivering the Court's Preliminary Approval to the Administrator.

22 **6.3. Duty to Cooperate.** If the Parties disagree on any aspect of the proposed
23 application or motion for approval of this Settlement and/or the supporting declarations and
24 documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of
25 the Parties by meeting and conferring, and in good faith, to resolve the disagreement. If the Court
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1 does not grant the motion for approval of this Settlement or conditions its approval on any
2 material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously work
3 together on behalf of the Parties by meeting and conferring, and in good faith, to modify the
4 Agreement and otherwise satisfy the Court's concerns.

5 **7. SETTLEMENT ADMINISTRATION**

6 **7.1. Selection of Administrator.** The Parties have jointly selected Phoenix Class
7 Administrators ("Phoenix") to serve as the Administrator and verified that, as a condition of
8 appointment, Phoenix agrees to be bound by this Agreement and to perform, as a fiduciary, all
9 duties specified in this Agreement in exchange for payment of Administration Expenses. The
10 Parties and their Counsel represent that they have no interest or relationship, financial or
11 otherwise, with the Administrator other than a professional relationship arising out of prior
12 experiences administering settlements.

13 **7.2. Employer Identification Number.** The Administrator shall have and use its own
14 Employer Identification Number for purposes of calculating payroll tax withholdings and
15 providing reports state and federal tax authorities.

16 **7.3. Qualified Settlement Fund.** The Administrator shall establish a settlement fund
17 that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury
18 Regulation section 468B-1.

19 **7.4. Administrator Duties.** The Administrator has a duty to perform or observe all
20 tasks to be performed or observed by the Administrator contained in this Agreement or otherwise.

21 **8. AGGRIEVED EMPLOYEE SIZE ESTIMATES and ESCALATOR**
22 **CLAUSE**

23 Based on its records, Defendants estimate that, as of the date of execution of this
24 Settlement Agreement there are 114 Aggrieved Employees who worked 6,200 Pay Periods
25 during the PAGA Period.

1 **8.1 Increase in the Gross Settlement Amount.** Defendants represent that there are
2 no more than 6,200 Pay Periods at issue during the PAGA Period. In the event the number of
3 Pay Periods worked by Aggrieved Employees during the PAGA Period increases by more than
4 10% or more than 620 Pay Periods, then the Gross Settlement Amount shall be increased
5 proportionally by the Pay Periods in excess of 6,200 Pay Periods multiplied by the Pay Period
6 Value. The Pay Period Value shall be calculated by dividing the Gross Settlement Amount by
7 the estimate of Pay Periods at issue, meaning that the parties agree that the Pay Period Value
8 shall be \$30.48 (\$189,000.00 / 6,200 Workweeks). Thus, for example, if the Pay Periods worked
9 by Aggrieved Employees during the PAGA Period amounts to 7,000 Pay Periods, the Gross
10 Settlement Amount to be paid will be increased by \$24,384.00 ((7,000 – 6,200 Workweeks) x
11 \$30.48)).

12 **9. CONTINUING JURISDICTION OF THE COURT**

13 The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over the
14 Parties, PAGA Action, and the Settlement solely for purposes of (i) enforcing this Agreement
15 and/or Judgment pursuant to Code of Civil Procedure section 664.6, (ii) addressing settlement
16 administration matters, and (iii) addressing such post-Judgment matters as are permitted by law.

17 **9.1. Waiver of Right to Appeal.** Provided the Judgment is consistent with the terms
18 and conditions of this Agreement, specifically including the PAGA Counsel Fees Payment and
19 PAGA Counsel Litigation Expenses Payment, the Parties, their respective counsel waive all
20 rights to appeal from the Judgment, including all rights to post-judgment and appellate
21 proceedings, the right to file motions to vacate judgment, motions for new trial, extraordinary
22 writs, and appeals. The waiver of appeal does not include any waiver of the right to oppose such
23 motions, writs or appeals. If another party appeals the Judgment, the Parties' obligations to
24 perform under this Agreement will be suspended until such time as the appeal is finally resolved
25

1 and the Judgment becomes final, except as to matters that do not affect the amount of the Net
2 Settlement Amount.

3 **10. ADDITIONAL PROVISIONS**

4 **10.1. No Admission of Liability or Representative Manageability for Other**
5 **Purposes.** This Agreement represents a compromise and settlement of highly disputed claims.
6 Nothing in this Agreement is intended or should be construed as an admission by Defendants
7 that any of the allegations in the Operative Complaint have merit or that Defendants have any
8 liability for any claims asserted; nor should it be intended or construed as an admission by
9 Plaintiff that Defendants' defenses in the Actions have merit. The Parties agree that
10 representative treatment is for purposes of this Settlement only. If, for any reason the Court does
11 not approve this Settlement, Defendants reserve all available defenses to the claims in the
12 Actions, and Plaintiff reserves the right to contest Defendants' defenses. The Settlement, this
13 Agreement and Parties' willingness to settle the Actions will have no bearing on, and will not be
14 admissible in connection with, any litigation (except for proceedings to enforce or effectuate the
15 Settlement and this Agreement).

16 **10.2. Integrated Agreement.** Upon execution by all Parties and their counsel, this
17 Agreement together with its attached exhibits shall constitute the entire agreement between the
18 Parties relating to the Settlement, superseding any and all oral representations, warranties,
19 covenants, or inducements made to or by any Party.

20 **10.3. Attorney Authorization.** PAGA Counsel and Defense Counsel separately
21 warrant and represent that they are authorized by Plaintiff and Defendants, respectively, to take
22 all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement
23 to effectuate its terms, and to execute any other documents reasonably required to effectuate the
24 terms of this Agreement including any amendments to this Agreement.

25 **10.4. Cooperation.** The Parties and their counsel will cooperate with each other and
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1 use their best efforts, in good faith, to implement the Settlement by, among other things,
2 modifying the Settlement Agreement, submitting supplemental evidence and supplementing
3 points and authorities as requested by the Court. In the event the Parties are unable to agree upon
4 the form or content of any document necessary to implement the Settlement, or on any
5 modification of the Agreement that may become necessary to implement the Settlement, the
6 Parties will seek the assistance of a mediator and/or the Court for resolution.

7 **10.5. No Prior Assignments.** The Parties separately represent and warrant that they
8 have not directly or indirectly assigned, transferred, encumbered, or purported to assign, transfer,
9 or encumber to any person or entity and portion of any liability, claim, demand, action, cause of
10 action, or right released and discharged by the Party in this Settlement.

11 **10.6. No Tax Advice.** Neither Plaintiff, PAGA Counsel, Defendants nor Defense
12 Counsel are providing any advice regarding taxes or taxability, nor shall anything in this
13 Settlement be relied upon as such within the meaning of United States Treasury Department
14 Circular 230 (31 CFR Part 10, as amended) or otherwise.

15 **10.7. Modification of Agreement.** This Agreement, and all parts of it, may be
16 amended, modified, changed, or waived only by an express written instrument signed by all
17 Parties or their representatives, and approved by the Court.

18 **10.8. Agreement Binding on Successors.** This Agreement will be binding upon, and
19 inure to the benefit of, the successors of each of the Parties.

20 **10.9. Applicable Law.** All terms and conditions of this Agreement and its exhibits will
21 be governed by and interpreted according to the internal laws of the state of California, without
22 regard to conflict of law principles.

23 **10.10. Cooperation in Drafting.** The Parties have cooperated in the drafting and
24 preparation of this Agreement. This Agreement will not be construed against any Party on the
25 basis that the Party was the drafter or participated in the drafting.

1 **10.11. Confidentiality.** To the extent permitted by law, all agreements made, and orders
2 entered during the Actions and in this Agreement relating to the confidentiality of information
3 shall survive the execution of this Agreement.

4 **10.12. Use and Return of Aggrieved Employee Data.** Information provided to PAGA
5 Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data
6 provided to PAGA Counsel by Defendants in connection with the mediation, other settlement
7 negotiations, or in connection with the Settlement, may be used only with respect to this
8 Settlement, and no other purpose, and may not be used in any way that violates any existing
9 contractual agreement, statute, or rule of court.

10 **10.13. Headings.** The descriptive heading of any section or paragraph of this Agreement
11 is inserted for convenience of reference only and does not constitute a part of this Agreement.

12 **10.14. Calendar Days.** Unless otherwise noted, all reference to “days” in this Agreement
13 shall be to calendar days. In the event any date or deadline set forth in this Agreement falls on a
14 weekend or federal legal holiday, such date or deadline shall be on the first business day
15 thereafter.

16 **10.15. Notice.** All notices, demands or other communications between the Parties in
17 connection with this Agreement will be in writing and deemed to have been duly given as of the
18 third business day after mailing by United States mail, or the day sent by email or messenger,
19 addressed as follows:

20 To Plaintiff:

21 Bibiyan Law Group, P.C.

22 8484 Wilshire Boulevard, Suite 500

23 Beverly Hills, CA 90211

24 To Defendant:

1 WILSON TURNER KOSMO LLP

2 402 West Broadway, Suite 1600

3 San Diego, California 92101

4 **10.16. Execution in Counterparts.** This Agreement may be executed in one or more
5 counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this
6 Agreement shall be accepted as an original. All executed counterparts and each of them will be
7 deemed to be one and the same instrument if counsel for the Parties will exchange between
8 themselves signed counterparts. Any executed counterpart will be admissible in evidence to
9 prove the existence and contents of this Agreement.

10 **10.17. Stay of Litigation.** The Parties agree that upon the execution of this Agreement
11 the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties further
12 agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to extend the
13 date to bring a case to trial under CCP section 583.310 for the entire period of this settlement
14 process.

15 **10.18. Severability.** In the event that one or more of the provisions contained in this
16 Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such
17 invalidity, illegality, or unenforceability shall in no way effect any other provision if Defendants'
18 Counsel and PAGA Counsel, on behalf of the Parties and the Aggrieved Employees, mutually
19 elect in writing to proceed as if such invalid, illegal, or unenforceable provision had never been
20 included in this Agreement.

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1 **IT IS SO AGREED:**

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Atlas Bailey (Aug 25, 2023 10:59 PDT)

5 For Plaintiff, Atlas Bailey

For Defendants, CANNON CONSTRUCTORS,
INC.,

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7 David D. Bibiyan
Vedang J. Patel
8 Counsel for Plaintiff

For Defendants, CANNON CONSTRUCTORS
SOUTH, INC.

9
10 For Defendants, CANNON CONSTRUCTORS,
LLC

11
12 For Defendants, CANNON CONSTRUCTORS
13 NORTH, INC

14
15 Leonid M. Zilberman
16 Naomi C. Pontious
Brian G. Lee
17 Counsel for Defendants

1 **IT IS SO AGREED:**

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5 For Plaintiff, Atlas Bailey

6 *Vedang J. Patel*

7 David D. Bibiyan
8 Vedang J. Patel
9 Counsel for Plaintiff

For Defendants, CANNON CONSTRUCTORS,
INC.,

For Defendants, CANNON CONSTRUCTORS
SOUTH, INC.

For Defendants, CANNON CONSTRUCTORS,
LLC

For Defendants, CANNON CONSTRUCTORS
NORTH, INC

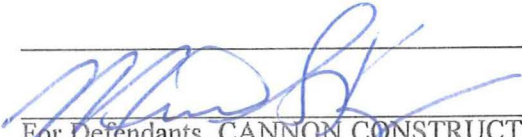
Leonid M. Zilberman
Naomi C. Pontious
Brian G. Lee
Counsel for Defendants

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IT IS SO AGREED:

For Plaintiff, Atlas Bailey

David D. Bibiyan
Vedang J. Patel
Counsel for Plaintiff



For Defendants, CANNON CONSTRUCTORS,
INC.,



For Defendants, CANNON CONSTRUCTORS
SOUTH, INC.



For Defendants, CANNON CONSTRUCTORS,
LLC



For Defendants, CANNON CONSTRUCTORS
NORTH, INC



Leonid M. Zilberman
Naomi C. Pontious
Brian G. Lee
Counsel for Defendants