SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF RIVERSIDE, RIVERSIDE HISTORIC COURTHOUSE

JONATHAN GUTIERREZ, an individual on behalf of himself and all similarly situated aggrieved employees, Plaintiff, vs. BULWARK CONSTRUCTION, INC., a California Corporation; JAMES LEONARD OBERDANK, an individual; and DOES 1 through 30, inclusive, Defendants.	Case No. CVRI2302508 **PAGA SETTLEMENT AGREEMENT**

PAGA SETTLEMENT AGREEMENT

Subject to Court approval by the Superior Court of the State of California for the County of Riverside ("Court"), Plaintiff Jonathan Gutierrez ("Plaintiff") and Defendants Bulwark Construction, Inc. and James Leonard Oberdank ("Defendants") (collectively with Plaintiff, the "Parties") hereby agree to the following binding settlement ("Settlement" or "Settlement Agreement") of the action entitled *Jonathan Gutierrez v. Bulwark Construction, Inc. et al.*, No. CVRI2302508 (Riverside County Superior Court) (the "Action").

DEFINITIONS

The following definitions are applicable to this Settlement Agreement. Definitions contained elsewhere in this Settlement Agreement will also be effective:

1. "Action" means *Jonathan Gutierrez v. Bulwark Construction, Inc. et al.*, No. CVRI2302508 (Riverside County Superior Court).

2. "Aggrieved Employees" means all persons who were employed by Defendants in California as non-exempt, hourly-paid employees at any time from January 31, 2022 through January 16, 2024.

3. "Court" means the Superior Court for the State of California, County of Riverside.

4. "Gross Settlement Amount" means the settlement amount of Seven Hundred Fifty Thousand Dollars ($750,000) to be paid by Defendants in full satisfaction of all Settled Claims arising from the Action.

5. "LWDA" means the California Labor and Workforce Development Agency.

6. "PAGA Penalties Fund" means the Gross Settlement Amount less the Attorneys' Fees and Costs, Service Award, and Settlement Administrator Costs.

7. "Plaintiff's Counsel" means Robinson Di Lando, A Professional Law Corporation.

8. "Settled Claims" means all claims for PAGA civil penalties under the California Labor Code, Wage Orders, regulations, and/or other provisions of law alleged to have been violated in Plaintiff's January 31, 2023 Notice to the LWDA and Action during the Settlement Period.

9. "Settlement Period" means the period from January 31, 2022 through January 16, 2024.

10. "Plaintiff's Representative Enhancement Payment" means the amount that the Court

authorizes to be paid to Plaintiff Jonathan Gutierrez in his capacity as the PAGA representative to compensate him for prosecuting the case, and performing work in support of the case, in the amount of Five Thousand Dollars ($5,000.00), subject to approval by the Court.

11. "Net Settlement Amount" shall mean the Gross Settlement Amount, less (1) Plaintiff's Counsel's fees, (2) Plaintiff's Counsel's costs, (3) Settlement Administration Costs, and (4) Plaintiff's Representative Payment to Plaintiff.

12. "PAGA Notice" shall mean the Notice of Settlement and Approval, a sample of which is attached hereto as Exhibit A.

TERMS

13. <u>Gross Settlement Amount</u>. In consideration for Plaintiff's promises and representations described in this Settlement Agreement, and subject to all of the conditions of the Settlement being met, Defendants will pay Seven Hundred Fifty Thousand Dollars ($750,000) ("Gross Settlement Amount") to settle the Action. The Gross Settlement Amount includes Plaintiff's attorneys' fees, Plaintiff's Representative Enhancement Payment, litigation costs and expenses, Settlement Administration Costs, and payments to Aggrieved Employees and the LWDA for their share of the PAGA Penalties Fund. No portion of the Gross Settlement Amount will be retained by, or revert to, Defendants. Defendants shall not owe any additional amounts beyond the Gross Settlement Amount as a result of this Settlement Agreement.

14. <u>PAGA Penalties Fund</u>. The PAGA Penalties Fund will be paid to Aggrieved Employees and the LWDA in full satisfaction of all claims for PAGA civil penalties under the California Labor Code, Wage Orders, regulations, and/or other provisions of law alleged to have been violated in the Action with respect to Aggrieved Employees. The PAGA Penalties Fund will be the Net Settlement Amount (Gross Settlement Amount, less (1) Plaintiff's Counsel's fees, (2) Plaintiff's Counsel's costs, (3) Settlement Administration Costs, and (4) Plaintiff's Representative Enhancement Payment). Pursuant to PAGA, Seventy-Five Percent (75%) of the PAGA Penalties Fund will be paid to the LWDA, and the remaining Twenty-Five Percent (25%) will be paid to all Aggrieved Employees according to the following formula:

14(a) The Settlement Administrator will calculate: (i) the total number of pay periods worked by each Aggrieved Employee during the Settlement Period, and (ii) the total number of pay periods worked by all Aggrieved Employees during the Settlement Period.

14(b) To determine each Aggrieved Employee's payment from the PAGA Penalties Fund, the Settlement Administrator will use the following formula: Settlement Payment = 25% of PAGA Penalties Fund × [Pay Periods Worked by Individual Aggrieved Employee During the Settlement Period ÷ Total Pay Periods Worked by All Aggrieved Employees during the Settlement Period].

14(c) Defendants estimate that Aggrieved Employees worked a combined total of approximately 46,265 pay periods during the Settlement Period. Should the qualifying pay periods during the Settlement Period increase by more than 10% (i.e., by more than 4,626 pay periods), Defendants shall increase the Gross 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% (5,089 additional pay periods), the Gross Settlement Amount shall be increased by 1% (an additional $7,500 in this example).

15. Attorneys' Fees and Costs. Defendants agree not to oppose or impede any application or motion by Plaintiff's Counsel for Attorneys' Fees and Costs of not more than 1/3 of the Gross Settlement Amount, estimated to be Two Hundred Fifty Thousand Dollars ($250,000), plus the reimbursement of all out-of-pocket costs and expenses associated with Plaintiff's Counsel's litigation and settlement of the Action (including expert/consultant fees, investigations costs, etc.), not to exceed $15,000 both of which will be paid from the Gross Settlement Amount. Any portion of the Attorneys' Fees and Costs not awarded to Plaintiff's Counsel will be added to the PAGA Penalties Fund.

16. Settlement Administration Costs. The Parties will retain Phoenix Class Action Administration Solutions as the third-party settlement administrator ("Settlement Administrator"). The Settlement Administrator will be responsible for establishing a qualified settlement fund ("QSF") and issuing payments and appropriate tax forms to Aggrieved Employees, the LWDA, and Plaintiff's Counsel. The Settlement Administration Costs will be paid from the Gross Settlement Amount. Based on the

estimate that there are approximately 1,015 Aggrieved Employees, Settlement Administration Costs are estimated at $10,500.00.

17. Court Approval of the Settlement and Distribution of Settlement Payments. The Parties will present this Settlement Agreement to the Court and the LWDA. The Parties will request that the Court issue an order and judgment approving and incorporating by reference the terms and conditions of the Settlement Agreement (the "Order and Judgment").

18. List of Aggrieved Employees. Within fourteen (14) calendar days after entry of the Order and Judgment, Defendants will provide the Settlement Administrator a complete list of all Aggrieved Employees ("Aggrieved Employee List"). The Aggrieved Employee List will be formatted in Microsoft Office Excel and will include each Aggrieved Employees full name; most recent mailing address; Social Security number; and the respective number of pay periods during which each Aggrieved Employee worked during the Settlement Period.

19. Funding of the Settlement. Within fourteen (14) calendar days after entry of the Order and Judgment, Defendant will deposit the Gross Settlement Amount into the QSF to be established by the Settlement Administrator. Within fourteen (14) calendar days of the funding of the Settlement, the Settlement Administrator will issue payments to: (a) Aggrieved Employees; (b) the Labor and Workforce Development Agency; (c) Plaintiff's Counsel; (d) Plaintiff; and (e) itself. The Settlement Administrator, and not Defendants, will issue the appropriate tax forms for all payments issued under this Settlement.

20. Settlement Payments to Aggrieved Employees. The Settlement Administrator will issue each Aggrieved Employee one check for his or her share of the PAGA Penalties Fund along with an explanatory letter, attached as Exhibit A. Prior to mailing, the Settlement Administrator will perform a search based on the National Change of Address Database for information to update and correct for any known or identifiable address changes. Any checks returned as non-deliverable on or before the check cashing deadline will be sent promptly via regular First-Class U.S. Mail to the forwarding address affixed thereto. If no forwarding address is provided, the Settlement Administrator will promptly attempt to determine the correct address using a skip-trace, or other search using the name, address or Social Security number of the Aggrieved Employee involved, and will then perform a single re-mailing. Checks will remain negotiable for 180 days. Those funds represented by un-cashed checks which remain outstanding

180 days after the mailing of the Settlement checks by the Settlement Administrator will be tendered to the California Controller's Unclaimed Property Fund in the name of the aggrieved employee thereby leaving no "unpaid residue" subject to the requirements of California Code of Civil Procedure Section 384, sub (b). All settlement payments to Aggrieved Employees will be attributed to penalties and treated as miscellaneous income for which a 1099 will be issued.

21. Each PAGA Payment Share is intended to settle the Aggrieved Employees' claims for civil penalties arising under PAGA. Accordingly, one hundred percent (100%) of each PAGA Payment Share shall represent civil penalties. The PAGA Payment Share shall be paid to the Aggrieved Employees in full without deductions or withholdings, and the Settlement Administrator shall issue an IRS Form 1099 to each Aggrieved Employee for that amount. Each Aggrieved Employee shall be individually responsible for their own share of applicable income tax withholdings and deductions for his or her PAGA Payment Share.

22. Settled Claims. Upon entry of the Order and Judgment, Plaintiff, the LWDA, and all Aggrieved Employees will be forever barred from pursuing against Defendants any and all Settled Claims during the Settlement Period. Aggrieved Employees, other than Plaintiff, will not be deemed to have released any individual wage and hour claims by virtue of this Settlement. "Settled Claims" means any and all claims for the recovery of civil penalties, attorneys' fees and costs permissible under PAGA which Plaintiff and/or the Aggrieved Employees had, or may claim to have against the Released Parties arising out of the violation alleged in the Action, including unpaid straight and overtime wages (including any work off the clock), failure to pay employees all minimum wages and overtime wages owed including by failing to pay all overtime and double time at the correct regular rate of pay, failure to provide compliant meal and rest breaks, failure to pay them all premium wages owed for short, late, or missed meal and rest periods, failure to pay all wages owed at discharge or resignation; failure to timely pay wages within the times permissible under Labor Code section 204; failure to provide complete and accurate wage statements; failure to keep complete and accurate payroll records; failure to reimburse necessary business related expenses; violations of Labor Code sections 201, 202, 203, 204, 226(a), 226.7, 510, 512(a), 1174(d), 1194, 1197, 1197.1, 1198, 2800, and 2802. This release shall apply to claims arising during the PAGA period.

23. No Right to Exclusion or Objections by Representative Action Members. Because this settlement resolves claims and actions brought pursuant to PAGA by Plaintiff acting as a proxy and as a Private Attorney General of, and for, the State of California and the LWDA, the Parties agree that no Aggrieved Employee has the right to exclude himself or herself from the Settlement. Aggrieved Employees will be bound by the terms of the Settlement Agreement, upon its approval by the Court, regardless of whether he or she cashes any payment received as a result of this Settlement. The Parties also agree that no Aggrieved Employee has the right to object to the terms of the Settlement Agreement.

24. No Credit Toward Benefit Plans. Payments to Aggrieved Employees as referenced herein will not be utilized to calculate any additional benefits under any benefit plans to which any Aggrieved Employee may be eligible, including, but not limited to profit-sharing plans, bonus plans, 401(k) plans, stock purchase plans, vacation plans, sick leave plans, PTO plans, and any other benefit plan. Rather, it is the Parties' intention that this Settlement Agreement will not affect any rights, contributions, or amounts to which any Aggrieved Employee may be entitled under any benefit plans.

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

26. Nullification of Settlement Agreement. In the event that: (i) the Court does not approve the Settlement as provided herein; or (ii) the Settlement does not become final for any other reason, then this Settlement Agreement, and any documents generated to bring it into effect, will be null and void, and the Parties will be returned to their original respective positions.

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

28. Entire Agreement. This Settlement Agreement constitutes the entirety of the Parties' settlement terms. No other prior or contemporaneous written or oral agreements may be deemed binding on the Parties.

29. Amendment or Modification. This Settlement Agreement may be amended or modified only by a written instrument, signed by either the Parties or their successors-in-interest or counsel for all Parties, and approved by the Court.

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

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

32. California Law Governs. All terms of this Settlement Agreement will be governed by and interpreted according to the laws of the State of California.

33. 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 electronic signatures (e.g., Docusign), facsimiles, and scanned copies of the signature pages, will be deemed to be one and the same instrument.

34. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at this Settlement after arm's-length negotiations by experienced counsel. The Parties further acknowledge that they are each represented by competent counsel and that they have had an opportunity to consult with their counsel regarding the fairness and reasonableness of this Settlement.

35. Waiver of Certain Appeals. The Parties agree to waive appeals; except, however, that the Parties may appeal any court order that materially alters the Settlement's terms. The Court's decision to award less than the amounts requested in Plaintiff's Attorneys' Fees and Costs, Plaintiff's Representative

Enhancement Payment, andSettlement Administration Costs shall not constitute a material alteration of the Settlement's terms.

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

37. Captions. The captions and section numbers in this Settlement 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 Settlement Agreement.

38. 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.

39. 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 to enforce the provisions of this Settlement or to declare rights and/or obligations under this Settlement, 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.

40. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be construed more strictly against one party merely by virtue of the fact that it may have been prepared by counsel for one of the Parties, it being recognized that, because of the arm's-length negotiations between the Parties, all Parties have contributed to the preparation of this Settlement Agreement.

41. Representation By Counsel. The Parties acknowledge that they have been represented by counsel throughout all negotiations that preceded the execution of this Settlement Agreement, and that this Settlement Agreement has been executed with the consent and advice of counsel, and reviewed in full.

42. Cooperation and Execution of Necessary Documents. All Parties will cooperate in good faith and execute all documents to the extent reasonably necessary to effectuate the terms of this Settlement Agreement.

43. Binding Agreement. The Parties warrant that they understand and have full authority to enter into this Settlement, and further intend that this Settlement Agreement will be fully enforceable and binding on all parties, and agree that it will be admissible and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation confidentiality provisions that otherwise might apply under federal or state law.

44. Denial of Liability. The Parties expressly recognize that the making of this agreement does not in any way constitute an admission or concession of wrongdoing on the part of Defendants. Nothing in this Settlement, nor any action taken in implementation thereof, nor any statements, discussions or communications, nor any materials prepared, exchanged, issued or used during the pendency of the Action, is intended by the Parties to, nor will any of the foregoing constitute, be introduced, be used or be admissible in any way in any other judicial, arbitral, administrative, investigative or other forum or proceeding, as evidence of any violation of any federal, state, or local law, statute, ordinance, regulation, rule or executive order, or any obligation or duty at law or in equity. Notwithstanding the foregoing, this agreement may be used in any proceeding in the Court that has as its purpose the interpretation, implementation, or enforcement of the Settlement or any orders or judgments of the Court entered into in connection therewith.

45. Motion or Application for Approval of Settlement. Plaintiff's Counsel will be responsible for expeditiously finalizing and filing the application or motion for approval of this Settlement no later than 30 days after the full execution of this agreement, and, if necessary, obtaining a prompt hearing date for the motion and appearing in Court to advocate in favor of the motion. Plaintiff's Counsel is responsible for delivering the Court's approval of this Settlement to the Settlement Administrator.

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READ CAREFULLY BEFORE SIGNING

PLAINTIFF

Signed by:
[redacted]
DC61B17E3B6B417...

Dated: 5/14/2025

Jonathan Gutierrez

DEFENDANT

Dated: 5/20/25

Name:
Bulwark Construction, Inc.

DEFENDANT

Dated: 5/20/25

James Leonard Oberdank

APPROVED AS TO FORM

ROBINSON DI LANDO

Dated: May 21, 2025

Michael C. Robinson, Jr.
Orion S. Robinson
Attorneys for Plaintiff

CUMMINS & WHITE, LLP

Dated: May 21, 2025

/s/ Erick J. Becker

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