

Jonathan M. Genish (State Bar No. 259031)
jgenish@blackstonepc.com
Miriam L. Schimmel (State Bar No. 185089)
mschimmel@blackstonepc.com
Joana Fang (State Bar No. 309623)
jfang@blackstonepc.com
Alexandra Rose (State Bar No. 329407)
arose@blackstonepc.com
Jared C. Osborne (State Bar No. 335968)
josborne@blackstonepc.com
BLACKSTONE LAW, APC
8383 Wilshire Boulevard, Suite 745
Beverly Hills, California 90211
Tel: (310) 622-4278 / Fax: (855) 786-6356

Attorneys for Plaintiff Alfonso Herrera

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ORANGE**

ALFONSO HERRERA, individually, and on
behalf of other similarly situated employees
and aggrieved employees pursuant to the
California Private Attorneys General Act,

Plaintiff,

vs.

W.L. BUTLER CONSTRUCTION, INC., a
California corporation; ALL AMERICAN
EQUIPMENT RENTAL, LLC, a California
Limited Liability Company; and DOES 1
through 25, inclusive,

Defendants.

Case No. 30-2023-01335445-CU-OE-CXC

Honorable Randall J. Sherman
Department CX105

**DECLARATION OF JONATHAN M. GENISH
IN SUPPORT OF PLAINTIFF'S MOTION
FOR PRELIMINARY APPROVAL OF CLASS
ACTION AND PAGA SETTLEMENT**

Reservation No: 74389516
Date: January 3, 2025
Time: 10:00 a.m.
Dept.: CX105

Complaint Filed: July 5, 2023
FAC Filed: July 11, 2024
Trial Date: Not Set

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

1. I am an attorney duly licensed to practice law in all Courts of the State of California. I am a shareholder and the founder of Blackstone Law, APC (“Class Counsel”), attorneys of record for Plaintiff Alfonso Herrera (“Plaintiff”). I have personal knowledge of the facts contained herein, and, if called to testify, I could and would competently do so.

2. I am fully familiar with the legal and factual issues in this case and have specific experience litigating complex wage and hour actions as class actions, including employment cases as set forth above.

4. On the vast majority of those cases, I was the only or primary attorney managing the case and thus obtained extensive experience. In that capacity, I conducted wage and hour and wrongful termination labor and employment intakes; was the primary contact for all clients; took and defended hundreds (if not thousands) of depositions; propounded and responded to all discovery; prepared and opposed all motions and pleadings, including dispositive and certification motions; strategized on all cases; attended all hearings; attended all mediations; coordinated with class action administrators; prepared and worked with experts; first and second chaired multiple trials and arbitrations; and engaged in all other intricate facets of litigation. During that time, I represented a wide range of clients from sole proprietorships to Fortune 500 companies in state, federal, complex, and appellate courts. Many of the cases I managed were highly publicized, with articles written about them in the Los

1 Angeles Times, Deadline, The Hollywood Reporter, Business Insider, Law360, and others. Super
2 Lawyers has regularly honored me as a Southern California Rising Star since 2012.

3 5. In February 2018, I started the law firm of Blackstone Law, APC, representing
4 plaintiffs in individual and representative employment litigation. The firm has grown exponentially
5 over the past six-plus years, now maintaining twenty highly pedigreed attorneys working on almost
6 exclusively labor and employment class actions, California Labor Code Private Attorney General Act
7 of 2004 (“PAGA”) cases, and individual matters, with roughly 15% of the firm focused on other
8 complex general litigation matters.

9 6. I have considerable experience in handling class and representative action lawsuits
10 throughout my career and have been approved as counsel in a number of cases, including, most
11 recently:

- 12 • *Anthony DiRico v. Seek Capital, LLC*, Los Angeles County Superior Court, Case No.
13 BC698076, a wage and hour class action brought on behalf of a class of hourly-paid
14 employees working in the State of California.
- 15 • *Consumer Protection Group, LLC v. A. D. Sutton & Sons, Inc.*, Los Angeles County
16 Superior Court, Case No. 19STCV29979, a private attorney general action for penalties
17 pursuant to Health and Safety Code section 25249.7.
- 18 • *Consumer Protection Group, LLC v. Shaxon Industries, Inc., et al.*, Los Angeles County
19 Superior Court, Case No. 19STCV30306, a private attorney general action for penalties
20 pursuant to Health and Safety Code section 25249.7.
- 21 • *Consumer Protection Group, LLC v. Home Depot U.S.A., Inc.*, Los Angeles County
22 Superior Court, Case No. 19STCV30445, a private attorney general action for penalties
23 pursuant to Health and Safety Code section 25249.7.
- 24 • *Eric Savoy v. Collector’s Universe, Inc., et al.*, Central District Court of California, Case
25 No.: 8:20-cv-00632-DOC-ADS (recently remanded to Orange County Superior Court,
26 Case No. 30-2020-01130892-CU-RI-CXC), a consumer fraud class action.

27 7. Blackstone Law, APC has been counsel of record on several class action and PAGA
28 actions that have since been resolved, the most recent of which are as follows:

- *Victor De La Cruz v. Northwest Pipe Company*, San Bernardino County Superior Court, Case No. CIVSB2211140, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Theresa Bendorf, et al. v. Sea World LLC, et al.*, San Diego County Superior Court, Case No. 37-2021-00034922-CU-OE-CTL, approved as class counsel, in association with other counsel, in final settlement of wage and hour class and PAGA action.
- *David Williams v. Rancho Nicasio, LLC*, Marin County Superior Court, Case No. CIV2203067, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Bobby Birdi v. Lucid USA, Inc.*, Alameda County Superior Court, Case No. 21CV003541, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Alexis Cardoza v. BHFC Operating LLC*, Los Angeles County Superior Court, Case No. 21STCV34040, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.
- *Maria Ayala, et al. v. SDH Services West, LLC*, Kern County Superior Court, Case No. BCV-21-101933, approved as class counsel in final settlement of wage and hour class action.
- *Alfredo Sanchez v. Greenworld, Inc.*, Riverside County Superior Court, Case No. CVRI2105756, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Michael Bravo v. Michels Pacific Energy, Inc.*, Santa Clara County Superior Court, Case No. 22CV403427, preliminarily approved as class counsel in settlement of wage and hour class and PAGA action.
- *Oscar Bryant v. Midwest Construction Services, Inc. dba Trillium*, San Bernardino County Superior Court, Case No. CIVSB2121529, approved as class counsel in final settlement of wage and hour class action.

///

- *Matthew Savattieri v. AMI Expeditionary Healthcare, LLC, et al.*, Los Angeles County Superior Court, Case No. 21STCV33372, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Lexy Barajas, et al. v. H. W. Hunter, Inc.*, Los Angeles County Superior Court, Case No. 22STCV01892, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.
- *Alejandro Valdez v. C.H.I. Automart, Inc.*, Los Angeles County Superior Court, Case No. 21STCV40168, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Sheizan Bawa v. Meathead Movers, Inc.*, Orange County Superior Court, Case No. 30-2021-01211895-CU-OE-CXC, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.
- *Tanisha Lopez, et al. v. Restorix Health, Inc.*, Los Angeles County Superior Court, Case No. 21STCV33067, approved as class counsel, in association with other counsel, in final settlement of wage and hour class and PAGA action.
- *Perla Soto, et al. v. Nippon Express U.S.A., Inc.*, Los Angeles County Superior Court, Case No. 21STCV24902, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Angel Garcia, et al. v. J&B Investments, Inc., et al.*, San Bernardino County Superior Court, Case No. CIVSB2208601, approved as class counsel, in association with other counsel, in final settlement of wage and hour class and PAGA action.
- *Sindy Aviles, et al. v. Freeway Insurance Services America, LLC*, Los Angeles County Superior Court, Case No. 21STCV34864, approved as counsel, in association with other counsel, in settlement of representative wage and hour action pursuant to PAGA.
- *Alexander Gnaedig, et al. v. Favorite Healthcare Staffing, Inc.*, Los Angeles County Superior Court, Case No. 21STCV20904, approved as class counsel, in association with other counsel, in final settlement of wage and hour class and PAGA action.

///

- *Richard Evans v. My Paint Stop, LLC, et al.*, Contra Costa County Superior Court, Case No. MSC21-01812, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Jose Luis Parada George v. Main Electric Supply Company, LLC, et al.*, Orange County Superior Court, Case No. 30-2021-01220136-CU-OE-CXC, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.
- *Samia Salazar Yunis v. Sharif Jewelers*, Sacramento County Superior Court, Case No. 34-2020-00290080, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Daniel Analco v. Felix Chevrolet, LP, et al.*, Los Angeles County Superior Court, Case No. 21STCV36654, approved as class counsel in final settlement of wage and hour class and PAGA action.
- *Sasha Aiono v. Benefit Cosmetics*, Los Angeles County Superior Court, Case No. 21STCV33719, approved as counsel in settlement of representative wage and hour action pursuant to PAGA.

8. I am currently the managing partner overseeing roughly 500 labor and employment cases, approximately 80% of which include a wage and hour component. The majority of those cases are wage-and-hour putative class actions or representative PAGA actions seeking relief on behalf of thousands of California employees.

Procedural History of the Action

9. On July 5, 2023, Plaintiff filed a Class Action Complaint for Damages in the action entitled *Alfonso Herrera v. W.L. Butler Construction, Inc., et al.*, Orange County Superior Court Case No. 30-2023-01335445-CU-OE-CXC (“Action”), thereby commencing a putative class action against Defendants W.L. Butler Construction, Inc. and All American Equipment Rental, LLC (together, “Defendants”).

10. April 24, 2024, Plaintiff and Defendants (together, the “Parties”) participated in mediation conducted by Monique Ngo-Bonnici, Esq. (“Mediator”), a neutral and respected mediator with extensive experience in complex wage and hour matters. After a full day of mediation, and with

the help of the Mediator, the Parties were able to reach an agreement to resolve this dispute on a class and representative basis.

11. On May 1, 2024, Plaintiff provided written notice to the California Labor and Workforce Development Agency (“LWDA”) by online submission and to Defendants by U.S. Certified Mail, pursuant to California Labor Code Section 2699.3, of the specified provisions of the California Labor Code alleged to have been violated by Defendants (“PAGA Letter”). A true and correct copy of the PAGA Letter is attached hereto as **Exhibit 1**.

12. On July 11, 2024, Plaintiff filed a First Amended Class and Representative Action Complaint (“Operative Complaint”) in the Action, which added a cause of action under PAGA. The Operative Complaint alleges nine (9) causes of action for violations of the California Labor Code for failure to pay overtime wages, failure to pay minimum wages, failure to provide compliant meal periods and premium payments in lieu thereof, failure to provide compliant rest periods and premiums payments in lieu thereof, failure to timely pay wages upon termination, failure to provide accurate wage statements, and failure to reimburse necessary business expenses, for violations of California Business & Professions Code Section 17200, *et seq.* based on the aforementioned California Labor Code violations, and for civil penalties under PAGA based on the aforementioned California Labor Code violations.

13. On August 21, 2024, the Parties executed the Joint Stipulation of Class Action and PAGA Settlement (“Settlement” or “Settlement Agreement”). A true and correct copy of the Settlement Agreement is attached as **Exhibit 2** hereto.

Summary of the Terms of the Settlement Agreement

14. For purposes of settlement only, the Parties have agreed that the Class shall be defined as “all current and former non-exempt employees who worked for Defendants in the State of California at any time during the Class Period, but excluding all employees who signed a general release agreement with Defendants” (“Class Members” or “Class”). The Class Period is defined as the period from July 5, 2019 through April 24, 2024. Based on information provided by Defendants, it is estimated that there are a total of one hundred and forty-nine (149) Class Members.

///

1 15. The Parties have agreed to settle the class and PAGA claims at issue in the Operative
2 Complaint for a non-reversionary Gross Settlement Amount of One Million Four Hundred Seventy-
3 Five Thousand Dollars and Zero Cents (\$1,475,000.00), exclusive of employer-side payroll taxes. The
4 Gross Settlement Amount is a common fund and therefore includes all requested costs, fees, and other
5 allocations. The Gross Settlement Amount includes: (1) Class Counsel’s fees in the amount of thirty-
6 five percent (35%) of the Gross Settlement Amount (i.e., \$516,250.00 if the Gross Settlement Amount
7 is \$1,475,000.00); (2) Class Counsel’s actual litigation costs and expenses, not to exceed Twenty
8 Thousand Dollars and Zero Cents (\$20,000.00); (3) Settlement Administration Costs, not to exceed
9 Eight Thousand Dollars and Zero Cents (\$8,000.00); (4) Enhancement Payment in the amount of
10 Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00); and (5) PAGA Amount in the
11 amount of Fifty Thousand Dollars and Zero Cents (\$50,000.00). After the above-estimated amounts
12 are deducted from the Gross Settlement Amount, the Net Settlement Amount that will be available for
13 Class Members is currently estimated to be Eight Hundred Seventy-Three Thousand Two Hundred
14 Fifty Dollars and Zero Cents (\$873,250.00). Additionally, 25% of the PAGA Amount (“PAGA
15 Employee Amount”), which is \$12,500.00 out of \$50,000.00 will be fully distributed to “all current
16 and former non-exempt employees who worked for Defendants in the State of California at any time
17 during the PAGA Period, but excluding all employees who signed a general release agreement with
18 Defendants” (“PAGA Employees”). The “PAGA Period” is defined as the period from July 5, 2022
19 through April 24, 2024.

20 16. Defendants have represented that the Class Members worked a total of 12,380 weeks
21 for Defendants as non-exempt employees in California during the Class Period (“Workweeks”). If it
22 is determined by the Settlement Administrator that the total number of Workweeks worked by the
23 Class Members during the Class Period actually exceeds 12,380 by more than 10% (i.e., by more than
24 13,618 Workweeks), then the Gross Settlement Amount will be increased on a *pro rata* basis equal to
25 the percentage increase in the number of Workweeks worked by the Class Members above 10%. For
26 example, if the number of Workweeks increases by 11% to 13,742 Workweeks, then the Gross
27 Settlement Amount will increase by 1%.

28 ///

1 17. The Net Settlement Amount will be distributed and paid to all Class Members who do
2 not submit a timely and valid Request for Exclusion (“Settlement Class Members”) on a *pro rata* basis
3 based on their number of Workweeks. The *pro rata* share of the Net Settlement Amount that a Class
4 Member may be eligible to receive under the Class Settlement (“Individual Settlement Share”) will be
5 calculated by the Settlement Administrator, in accordance with the Settlement Agreement. The
6 highest Individual Settlement Share is estimated to be \$17,634.29¹, the average Individual Settlement
7 Share is estimated to be \$5,860.74, and the lowest Individual Settlement Share is estimated to be
8 \$70.54.

9 18. The PAGA Employee Amount will be distributed and paid to all PAGA Employees on
10 a *pro rata* basis based on the number of weeks each PAGA Employee worked for Defendants as a
11 non-exempt employee in California during the PAGA Period (“PAGA Workweeks”). The *pro rata*
12 share of the PAGA Employee Amount that a PAGA Employee may be eligible to receive under the
13 PAGA Settlement (“Individual PAGA Payment”) will be calculated by the Settlement Administrator,
14 in accordance with the Settlement Agreement. The highest Individual PAGA Payment is estimated to
15 be \$241.12, the average Individual PAGA Payment is estimated to be \$134.41, and the lowest
16 Individual PAGA Payment is estimated to be \$2.57.

17 19. Each Individual Settlement Share will be allocated as thirty-three and one-third percent
18 (33 1/3%) wages and sixty-six and two-thirds percent (66 2/3%) penalties, interest, and non-wage
19 damages. The portion allocated to wages will be reported on an IRS Form W-2 and the portions
20 allocated to penalties, interest, and non-wage damages will be reported on an IRS Form 1099 (if
21 applicable) by the Settlement Administrator. The Settlement Administrator will withhold the
22 employee’s share of taxes and withholdings with respect to the wages portion of the Individual
23 Settlement Shares, and issue checks to Settlement Class Members for their net payment of their
24 Individual Settlement Share (“Individual Settlement Payment”). The employer taxes will be paid
25 separately and in addition to the Gross Settlement Amount. Each Individual PAGA Payment will be
26

27 ¹ The estimated highest Individual Settlement Share assumes a Class Member worked every Workweek in the Class
28 Period. Accordingly, if it is determined by the Settlement Administrator that the highest number of Workweeks that one
Class Member worked is less than every Workweek in the Class Period, the highest Individual Settlement Share will be
less than \$17,634.29.

1 allocated as one hundred percent (100%) penalties and will be reported on an IRS Form 1099 (if
2 applicable) by the Settlement Administrator.

3 20. The Settlement Agreement is a non-reversionary and non-claims made settlement. The
4 Net Settlement Amount will be fully distributed to Settlement Class Members and the PAGA Amount
5 will be fully distributed to the LWDA and PAGA Employees, in accordance with the Settlement
6 Agreement. No money will revert to Defendants.

7 21. Each Individual Settlement Payment and Individual PAGA Payment check will be
8 valid and negotiable for one hundred and eighty (180) calendar days from the date the checks are
9 issued, and thereafter, shall be canceled. Any funds associated with such canceled checks will be
10 distributed by the Settlement Administrator to the State of California's Unclaimed Property Division
11 in the name of the Settlement Class Member and/or PAGA Employee.

12 **The Settlement is Reasonable**

13 ***Informed Arms-Length Negotiations***

14 22. The Parties' settlement negotiations were at all times made at arm's-length and were
15 adversarial. The Settlement was reached following a full day of mediation with a highly respected
16 mediator with substantial experience mediating wage and hour cases, and Plaintiff engaged in
17 additional negotiations in order to finalize the long-form agreement presently before the Court.

18 23. The Parties engaged in extensive informal discovery prior to reaching a settlement at
19 the mediation. Prior to mediation, Defendants produced a random sampling of putative class
20 members' time and pay records, as well as Defendants' employee handbook, relevant wage and hour
21 policies, and information regarding the total number of putative class members.

22 24. This allowed Plaintiff's counsel to conduct an informed assessment and analysis of the
23 strengths and weaknesses of the claims and the potential class-wide damages.

24 25. Based on the information exchanged, the Parties extensively briefed issues regarding
25 class certification and liability and provided their analyses to the Mediator who helped the Parties
26 debate the strengths and weakness of their respective positions.

27 ///

28 ///

1 *Estimate of Potential Value of Claims*

2 26. My office analyzed all available data and estimated Defendants' maximum potential
3 exposure to be approximately \$3,357,880, assuming the litigation was successful at trial on all claims
4 at issue and every employee had a violation for each claim on every shift worked, and then reduced
5 this exposure analysis based on the challenges facing the likelihood of obtaining class certification,
6 prevailing at trial, and other attendant risks. This estimate is based off an estimated maximum liability
7 for all claims at issue and the total aggregate workweeks during the relevant time period, less interest,
8 and based on the analysis of the data which was extrapolated out for all Class Members across the
9 entire putative class period, which included: \$30,321 for meal period violations; \$1,769,353 for rest
10 period violations; \$603,191 for unpaid off-the-clock work (\$15,682.97 attributed to minimum wages
11 and \$587,508.03 attributed to overtime wages); \$36,046 for unpaid overtime wages at the required
12 regular rate of pay; \$577,599 for waiting time penalties; \$244,950 in wage statement penalties; and
13 \$96,420 for unreimbursed business expenses. Plaintiff further estimated that Defendants faced an
14 additional exposure of \$250,000 in potential, non-stacked (i.e., one penalty, per employee, per pay
15 period during the PAGA statutory period) PAGA penalties. Together with the PAGA penalties,
16 Defendants' maximum potential exposure totaled \$3,607,880 in damages.

17 *Specific Risks Considered*

18 27. Although the investigation and information discovered supports Plaintiff's contentions,
19 Defendants raised potential defenses and other circumstances that impacted the risk of proceeding on
20 a class-wide basis. Consideration of these risks factored into the decision to enter the Settlement.

21 28. My colleagues and I were aware of Defendants' defenses and arguments and have also
22 taken into account the uncertainty and risk of the outcome of further litigation, and the difficulties and
23 delays inherent in such litigation, including those involved in class and/or representative adjudication.
24 Plaintiff further recognizes the burdens of proof necessary to establish liability for the claims asserted
25 in the Action, Defendants' defenses, and the difficulties in establishing entitlement to monetary
26 recovery. Plaintiff has also considered the Parties' settlement discussions, as well as the evaluations
27 of the Mediator, who is experienced and well-regarded in complex labor and employment matters.

28 ///

1 29. Defendants denied and continue to deny any liability and wrongdoing of any kind
2 associated with the claims alleged in the Action, and further deny that class certification is appropriate
3 for any purpose other than the Settlement. Defendants believe that they would ultimately prevail in
4 the Action. Defendants proffered defenses to both certification and to the merits of Plaintiff's claims.
5 Defendants contended that Plaintiff's claims are not suitable for class certification because individual
6 issues would predominate should this case go to trial. As with all class actions, these complex cases
7 raise difficult management and proof issues and, accordingly, there is a significant risk that the Court
8 may deny class certification.

9 30. For example, Plaintiff's meal period claims, which were based on Defendants' alleged
10 failure to provide lawful meal periods, have been increasingly difficult to certify in recent years.
11 Plaintiff's theory of liability for meal period violations was based on allegations that Defendants had
12 failed to implement their policies and that their practices failed to allow Class Members to take meal
13 breaks in the manner required under California law. Here, our analysis revealed that the majority of
14 meal break violations reflected in the timekeeping records was low – approximately 1.7%, but
15 employee time records also revealed that all of the recorded meal breaks –100% of all recorded meal
16 breaks – were *exactly* 30 minutes in length. This raised the strong suspicion that Defendants were
17 either automatically deducting meal breaks or inputting precise 30-minute meal breaks that were not
18 reflective of the actual length of time that employees took their meal breaks. Defendants contended
19 that their policies and practices at all times during the Class Period were lawful. Defendants further
20 argued that the rate of purported meal period violations reflected in the data would require
21 individualized inquiry and that such inquiry would prohibit a class from being certified. We also had
22 to consider the risk that the Court would find validity in the individualized proof defense to
23 certification of Plaintiff's meal period claim.

24 31. Additionally, a large portion of Defendants' overall liability lies in Plaintiff's rest
25 period allegations. As with the meal period allegations, Defendants contended that they had a lawful
26 written rest period policy, provided compliant rest breaks, and relieved Class Members of all duties as
27 required under California law. Additionally, this claim was even more uncertain given the difficulties
28 associated with proving the alleged rest period violations, as Defendants were not required to record

1 these breaks. Given the lack of records demonstrating rest period violations, there were legitimate
2 concerns Plaintiff would not be able to certify these claims or prove substantial damages with requisite
3 certainty, which made the estimated value of this claim subject to much challenge.

4 32. Plaintiff also faced challenges certifying and proving liability for his minimum wage
5 and overtime claims. These claims were largely based on unrecorded, off-the-clock work performed
6 by the putative class members before their shifts and during purported meal and rest periods. However,
7 the individualized nature of why this work was performed and the individualized nature of damages
8 presented substantial concerns regarding the manageability of the case and the risk the Court could
9 find these issues prevented certification, and the estimated damages for this claim were based on an
10 assumption that all putative class members worked off the clock for at least one hour per week.

11 33. Plaintiff also contended that Defendants failed to reimburse Plaintiff and the putative
12 class members for necessary business-related expenses, such as the purchase of uniforms and steel-
13 toed boots for work-related purposes. Defendants contended that they had a policy and practice of
14 reimbursing employees for necessary business-related expenses. Defendants further contended that,
15 with respect to the alleged expenses for which Plaintiff and the other Class Members never requested
16 reimbursement from Defendants, it did not know and had no reason to know that alleged business-
17 related expenses had been incurred. Defendants further contended that the reason for why a putative
18 class member undertook certain expenses, while not others, and failed to receive reimbursement for
19 certain expenses while not others, would raise individual issues that could not be certified.

20 34. There are also substantial risks associated with Plaintiff's waiting time penalties and
21 wage statement claims. First, these claims were derivative of Plaintiff's claims for unpaid meal period
22 premiums, unpaid rest period premiums, unpaid minimum wages, and unpaid overtime wages, and if
23 certification was denied on those underlying claims, these derivative claims for penalties would also
24 likely fail. Further, even if Plaintiff prevailed on his underlying claims, he would still be required to
25 demonstrate that Defendants' violations of California Labor Code section 203 were *willful* violations.
26 Wage statement claims have also seen varying treatment at the appellate level because such claims
27 have an element of discretion attached to them rather than a pure calculation of damages after liability
28 is proven. Accordingly, these derivative claims, which comprised a substantial portion of Defendants'

1 estimated liability, were therefore uncertain.

2 35. My office also recognized that, even if Plaintiff prevailed at class certification, proving
3 the amount of wages due to each Class Member would be an expensive, time-consuming, and
4 extremely uncertain proposition. In order to prove liability and damages, my office would need to
5 request and analyze thousands of pages of documents, obtain the Class Members' contact information,
6 contact them, and obtain declarations at great expense. Obtaining the cooperation of current
7 employees would also be difficult, given the likely reluctance to aid prosecution of a lawsuit against a
8 current employer. On the other hand, Defendants would likely be able to obtain the cooperation of
9 their employees. Moreover, even if Plaintiff prevailed at class certification and trial, possible appeals
10 would substantially delay any recovery by the Class.

11 36. Therefore, taking into account how each of the above risks potentially affected
12 Plaintiff's ability to obtain class certification, then to prove the underlying violations, and the cost and
13 delay in recovering the alleged potential damages, Class Counsel discounted Defendants' estimated
14 liability by 40% to \$2,164,728. The merits-based risk factors further reduced Defendants' estimated
15 liability by an additional 25%. This resulted in an adjusted estimated liability of \$1,623,546. In light
16 thereof, the settlement amount of \$1,475,000 is a significant settlement.

17 37. My office also separately contemplated the risks of proceeding with the PAGA claim
18 and potential liability Defendants could face from this claim as part of the global resolution. Existing
19 case law makes PAGA claims subject to the same defenses and risks as Plaintiff's underlying wage
20 claims. We anticipated that even if successful on the merits at trial, the imposition of cumulative civil
21 penalties based on the alleged wage and hour violations could be considered unjust, arbitrary and
22 oppressive, or confiscatory, and that Defendants would argue that they made a good faith attempt to
23 comply with their legal obligations warranting a reduction in penalties. Class Counsel also anticipated
24 Defendants would argue that the violations per pay period were low, warranting an additional
25 reduction in civil penalties. Finally, we were also mindful of the fact that PAGA is fundamentally not
26 intended to be compensatory in nature but is instead intended to facilitate enforcement of California's
27 labor laws by financing state activities and educating and deterring non-compliance.

28 ///

1 38. Therefore, after considering this multitude of factors, we concluded that it was in the
2 best interest of the State of California and the PAGA Employees to enter into the Settlement, and to
3 allocate Fifty Thousand Dollars and Zero Cents (\$50,000.00) of the Gross Settlement Amount towards
4 the PAGA claim, which represents approximately 3.39% of the Gross Settlement Amount. This
5 percentage of the settlement is well-within the range of wage and hour settlements regularly approved
6 in both state and federal court for cases that include both a class and PAGA action. Typically, such
7 hybrid cases allocate only 1% of the gross settlement value to resolve PAGA claims, and, indeed,
8 settlements allocations as little as 0.22% of the gross settlement amount have been approved as
9 reasonable by courts. Moreover, the overall relief obtained by the Settlement is significant, not only
10 from a monetary perspective, but also because it fulfills the public policy objectives of PAGA—to
11 promote enforcement of California’s labor laws, provide funds to the state, and deter future non-
12 compliance by the employer.

13 39. I therefore submit that the Settlement is fair, reasonable, and adequate. The Settlement
14 is in the best interest of the Class Members, the PAGA Employees, and the State of California and is
15 within the accepted range of recoveries for this type of litigation given the inherent risk of litigation,
16 the risk of obtaining and maintaining class certification, and the costs of further litigation.

17 ***Enhancement Payment***

18 40. As part of the Settlement Agreement, Plaintiff is requesting a reasonable Enhancement
19 Payment of Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to Plaintiff Alfonso
20 Herrera. This Enhancement Payment is eminently reasonable given the time and effort Plaintiff spent
21 on this case, and the benefit to the Class Members as a result of Plaintiff’s actions. Notice of the
22 requested Enhancement Payment is disclosed to the Class Members in the Class Notice.

23 ***Attorneys’ Fees and Costs***

24 41. The attorneys’ fees incurred by Class Counsel are in line with the common fund
25 requested. The Settlement Agreement provides for Class Counsel to apply for attorneys’ fees in an
26 amount of up to thirty-five percent (35%) of the Gross Settlement Amount (i.e., \$516,250 if the Gross
27 Settlement Amount is \$1,475,000.00) and actual litigation costs and expenses in an amount not to
28 exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00), which will be paid out of the Gross

1 Settlement Amount, subject to approval by the Court. Class Counsel has borne all of the risks and
2 costs of litigation and will not receive any compensation until recovery is obtained.

3 42. The effectiveness of Blackstone Law, APC's prosecution of this matter has translated
4 into tangible monetary benefits as follows: (1) Class Members, the State of California, and PAGA
5 Employees will obtain monetary recovery over a relatively short period of time, as opposed to waiting
6 additional years for the same, or potentially worse, result; (2) a guaranteed result that compares
7 favorably with other similar class action settlements of this type, given the strengths and weaknesses
8 of the case; and (3) significant savings in Class Counsel's fees and/or costs that would have only
9 increased significantly had the case progress through certification, trial, and/or upon appeal.

10 43. Class Counsel has litigated this matter for over a year and was actively preparing this
11 matter for class certification and trial. The Motion for Final Approval will elaborate on the nature of
12 the legal services provided, the time incurred in performing those services, and Class Counsel's hourly
13 rates. The Motion for Final Approval will also elaborate on the reimbursement costs sought by Class
14 Counsel. Notice of the requested Attorneys' Fees and Costs is disclosed to the Class Members in the
15 Class Notice.

16 ***Notice to the Class***

17 44. The Parties have agreed to retain Apex Class Action LLC ("Apex" or "Settlement
18 Administrator") to handle the notice and settlement administration process. The Parties respectfully
19 request that the Court appoint Apex to handle these procedures and to serve as the Settlement
20 Administrator. Defendants will provide Apex with the Class List and Apex will calculate each Class
21 Member's estimated Individual Settlement Share and each PAGA Employee's estimated Individual
22 PAGA Payment. Apex will also receive and process Requests for Exclusion, Notices of Objection,
23 and Workweek Disputes; will provide necessary reports and declarations; will calculate, subtract, and
24 transmit necessary taxes and withholdings with respect to the wages portion of the Individual
25 Settlement Shares; will prepare and submit informational and other tax filings and documents; will
26 issue and transmit all payments provided for by the Settlement, including, but not limited to, mailing
27 Individual Settlement Payment checks to the Settlement Class Members and Individual PAGA
28 Payment checks to the PAGA Employees; and perform any other usual and customary duties for

1 administering a class action settlement.

2 45. I am not aware of an alternative method of providing notice to the Class which would
3 result in a higher likelihood of actual notice. The original source of the mailing addresses is from each
4 Class Member, who provided the information to Defendants. As a fail-safe to this highly reliable
5 method, skip tracing will be performed, if necessary.

6 ***Notice of Settlement to the LWDA***

7 46. In accordance with California Labor Code section 2699(1)(2), on August 30, 2024, a
8 copy of the proposed Settlement was submitted to the LWDA via online submission through the
9 LWDA's website. A true and correct copy of the email from the LWDA confirming receipt is attached
10 hereto as **Exhibit 3**.

11 ***Pending Actions***

12 47. Neither I nor Plaintiff are aware of any other pending matter or action asserting claims
13 that will be extinguished or adversely affected by the Settlement Agreement.

14 I declare under penalty of perjury under the laws of the State of California that the foregoing
15 is true and correct.

16 Executed on September 23, 2024, at Beverly Hills, California

17 

18 _____
Jonathan M. Genish

EXHIBIT 1

May 1, 2024

PAGA Claim Notice Via Online Electronic Submission

California Labor & Workforce Development Agency

800 Capitol Mall, Suite 5000 (MIC-55)

Sacramento, California 95814

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

RE: *Alfonso Herrera v. W.L. Butler Construction, Inc., et al.*

To Whom It May Concern:

This office represents Alfonso Herrera (“Claimant”) with respect to his claims under the California Labor Code against W.L. Butler Construction, Inc. and All American Equipment Rental, LLC (including all affiliates, subsidiaries, parents, directors, and officers) (collectively referred to herein as “Employers”). This letter is being sent simultaneously to Employers by certified mail.

Employers employed Claimant as a non-exempt, hourly-paid employee. Claimant worked as a Driver/Warehouse Attendant for Employers and was based out of Employers’ facility located at 3 Mason, Irvine, California 92618.

Claimant intends to bring a representative action seeking penalties for violations of the California Labor Code which are recoverable under the California Labor Code Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.* (“PAGA”). Claimant is seeking penalties on behalf of himself and in a representative capacity on behalf of the State of California and all current and former hourly-paid and/or non-exempt employees who worked for Employers in the State of California during the relevant statutory period (“Aggrieved Employees”). This letter is being sent in compliance with California Labor Code section 2699.3 and shall serve as Claimant’s notice of the provisions of the California Labor Code alleged to have been violated, including the facts and theories in support thereof.

As detailed below, Employers violated several of California’s wage and hour laws during Claimant’s employment, including but not limited to California Labor Code sections 201, 202, 203, 226(a), 226.7, 510, 512(a), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the applicable Industrial Welfare Commission Wage Order (“IWC Wage Order”).

The claims made on behalf of Claimant and Aggrieved Employees are based upon the following facts and theories:

1. FAILURE TO PAY FOR ALL TIME WORKED AT CORRECT RATES OF PAY, INCLUDING MINIMUM WAGES, STRAIGHT TIME WAGES, AND OVERTIME COMPENSATION

Employers engaged in numerous unlawful practices which resulted in the failure to pay Claimant and other Aggrieved Employees for all time worked at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation.

California Labor Code sections 1194, 1197, and 1197.1 and the applicable IWC Wage Order require employers to pay at least the legal minimum wage to their employees. California Labor Code sections 510 and 1198 and the applicable IWC Wage Order further require employers to pay no less than one and one-half times an employee's regular rate of pay for hours worked in excess of eight (8) hours in one workday, for hours worked in excess of forty (40) hours in one workweek, and for the first eight (8) hours worked on the seventh day of work in any one workweek, and to pay no less than twice an employee's regular rate of pay of the employee for hours worked in excess of twelve (12) hours in one workday and for any work in excess of eight (8) hours on any seventh day of a workweek.

Throughout the relevant time, Employers regularly required Claimant and other Aggrieved Employees to perform work off-the-clock including, among other things, managing Employers' warehouse, traveling to stores to make equipment purchases, and loading/unloading construction equipment and materials at job sites prior to clocking-in and/or after clocking-out for their shifts. Employers failed to compensate Claimant and other Aggrieved Employees for any of this off-the-clock work, in violation of California law.

This uncompensated work often resulted in the total number of hours worked by Claimant and other Aggrieved Employees exceeding the daily and/or weekly triggers for overtime wages, yet Employers failed to pay Claimant and Aggrieved Employees applicable overtime rate(s) for these hours.

Employers also failed to accurately record the actual time worked by Claimant and Aggrieved Employees. In addition, Employers utilized time rounding practices that resulted in the systematic underpayment of wages (including minimum wages, straight time wages, and overtime wages) to Claimant and Aggrieved Employees.

Employers also failed to pay overtime to Claimant and Aggrieved Employees for all overtime hours worked based on regular rates of pay correctly calculated to include all applicable remuneration, including non-discretionary commissions, non-discretionary bonuses, and non-discretionary performance pay.

As a result of the foregoing practices, Employers failed to pay Claimant and other Aggrieved Employees for all wages earned at the correct rates of pay, including minimum wages, straight time wages, and overtime compensation. Accordingly, Employers violated the applicable IWC Wage Order and California Labor Code sections 510, 1194, 1197, 1197.1, and 1198.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to the applicable IWC Wage Orders; penalties pursuant to California Labor Code sections 558, 1197.1, and 1199; and attorneys' fees and costs.

2. MEAL BREAK VIOLATIONS

California law requires employers to provide employees with an opportunity to take an uninterrupted meal period of no less than thirty (30) minutes before the end of the fifth hour of work when an employee works more than five (5) hours in a day. Cal. Lab. Code §§ 226.7 & 512(a). Employers must provide a second meal period of no less than thirty (30) minutes before the end of the tenth hour of work when an employee works more than ten (10) hours in a day. *Id.* For each day that an employer fails to provide compliant meal period(s), the employer must pay the employee a meal penalty equal to one hour of pay at the employee's regular rate of compensation. *Id.*

During the relevant time period, Employers failed to provide Claimant and other Aggrieved Employees with legally compliant 30-minute meal periods. Claimant and other Aggrieved Employees were required by Employers to work more than five (5) hours per day but were not provided with uninterrupted 30-minute meal periods. Further, Claimant and other Aggrieved Employees were not provided with a second uninterrupted 30-minute meal period when they worked over ten (10) hours per day. Employers regularly required Claimant and other Aggrieved Employees to work through their first and second meal periods, to take their first meal period after their fifth (5th) hour of work, and/or to take their second meal periods after their tenth (10th) hour of work. Meal breaks, when provided, were oftentimes interrupted and/or cut short.

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Claimant and other Aggrieved Employees from taking timely, complete, and duty-free meal periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of meal periods or systematically disregarded their own purported meal period policies; (2) Employers' management at various levels failed and refused to implement and enforce legally compliant meal period policies and practices; (3) Employers failed to adequately inform and train Claimant and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free meal periods; (4) Employers failed to adequately inform and train Claimant and other Aggrieved Employees about their right to premium wages for non-compliant meal periods; (5) Employers failed to ensure that there was adequate staffing to allow Claimant and other Aggrieved Employees to take timely, uninterrupted, and duty-free meal periods; (6) Employers required Claimant and other Aggrieved Employees to respond to work-related requests at all times, including during meal periods; and (7) Employers' policy and culture prevented Claimant and other Aggrieved Employees from taking timely, uninterrupted, and duty-free meal periods because of the priority placed on maximizing profits over employees' right to receive timely, uninterrupted, and duty-free meal periods.

Claimant and other Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for each day a compliant meal period was not provided to them in compliance with California law.

Accordingly, Employers violated the applicable IWC Wage Order and California Labor Code sections 226.7, 512(a), and 1198.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to the applicable IWC Wage Orders; penalties pursuant to California Labor Code sections 558 and 1199; and attorneys' fees and costs.

3. REST BREAK VIOLATIONS

California law requires employers to authorize and permit employees to take an uninterrupted rest period of no less than ten (10) minutes for every four (4) hours, or major fraction thereof, worked. Cal. Lab. Code § 226.7. For each day that an employer fails to authorize and permit a compliant rest period, the employer owes the employee one hour of pay at the employee's regular rate of compensation. Cal. Lab. Code § 226.7(c).

Employers failed to authorize and permit Claimant and other Aggrieved Employees to take compliant 10-minute rest periods. Employers required Claimant and other Aggrieved Employees to work through rest periods. Claimant and Aggrieved Employees were not provided with uninterrupted, duty-free rest periods when they worked more than four (4) hours or a major fraction thereof. Further, Claimant and other Aggrieved Employees were not provided with a second uninterrupted, duty-free rest period when they worked more than six (6) hours in a day, or a third uninterrupted, duty-free rest period after working more than ten (10) hours in day. In the rare event that a rest period was taken, it was frequently interrupted or cut short. Moreover, Claimant and other Aggrieved Employees were not completely relieved of duty as required by *Augustus v. ABM Security Services, Inc.*, 2 Cal.5th 257 (2016).

Employers' policies, practices, and procedures were responsible for the violations alleged above and prevented Claimant and other Aggrieved Employees from taking timely and complete rest periods because, amongst other reasons: (1) Employers did not have legally-compliant policies regarding the provision and timing of rest periods or systematically disregarded its own purported rest period policies; (2) Employers' management at various levels failed and refused to implement and enforce legally compliant rest period policies and practices; (3) Employers failed to adequately inform and train Claimant and other Aggrieved Employees regarding their right to take timely, uninterrupted, and duty-free rest periods; (4) Employers failed to adequately inform and train Claimant and other Aggrieved Employees about their right to premium wages for non-compliant rest periods; (5) Employers failed to ensure that there was adequate staffing to allow Claimant and other Aggrieved Employees to take timely, uninterrupted, and duty-free rest periods; (6) Employers required Claimant and other Aggrieved Employees to respond to work-related requests at all times, including during rest periods; and (7) Employers' policy and culture prevented Claimant and other Aggrieved Employees from taking timely, uninterrupted, and duty-free rest

periods because of the priority placed on completing job requirements over employees' right to receive rest periods.

Claimant and other Aggrieved Employees did not receive an extra hour of wages at their regular rate of pay for each day a rest period was not provided to them in compliance with California law. Accordingly, Employers violated the applicable IWC Wage Order and California Labor Code sections 226.7 and 1198.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to the applicable IWC Wage Orders; penalties pursuant to California Labor Code sections 558 and 1199; and attorneys' fees and costs.

4. FAILURE TO PROVIDE ACCURATE ITEMIZED WAGE STATEMENTS

California Labor Code section 226(a) requires an employer semimonthly or at the time of each payment of wages to furnish wage statements to its employees setting forth, *inter alia*, (1) gross wages earned, (2) total hours worked by the employee, (3) the number of piece-rate units earned and any applicable piece rate if the employee is paid on a piece-rate basis, (4) all deductions, provided that all deductions made on written orders of the employee may be aggregated and shown as one item, (5) net wages earned, (6) the inclusive dates of the period for which the employee is paid, (7) the name of the employee and only the last four digits of his or her social security number or an employee identification number other than a social security number, and (8) the name and address of the legal entity that is the employer.

As a result of the practices described above, the wage statements provided to Claimant and other Aggrieved Employees failed to include the actual hours worked (including time spent working off-the-clock), the actual gross wages earned (including wages owed for time spent working off the clock and meal and rest period premiums), and the correct rates of pay. Accordingly, Employers violated California Labor Code section 226(a).

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to California Labor Code section 226.3; and attorneys' fees and costs.

5. FAILURE TO REIMBURSE NECESSARY EXPENDITURES

California Labor Code sections 2800 and 2802 require an employer to reimburse its employees for all necessary expenditures incurred by the employee in direct consequence of the discharge of his or her job duties or in direct consequence of his or her obedience to the directions of the employer. The applicable IWC Wage Order requires employers to provide employees with the tools or equipment necessary for the performance of their job. During the relevant time period, Claimant and Aggrieved Employees incurred necessary business-related expenses and costs that were not fully reimbursed by Employers. These costs include but are not limited to the purchase of uniforms and steel-toe boots for work-related purposes.

Accordingly, Employers violated the applicable IWC Order and California Labor Code sections 2800 and 2802. Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to the applicable IWC Wage Orders; and attorneys' fees and costs.

6. FAILURE TO TIMELY PAY ALL WAGES UPON TERMINATION

California Labor Code sections 201 and 202 provide that if an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately, and if an employee quits his or her employment, his or her wages shall become due and payable not later than seventy-two (72) hours thereafter, unless the employee has given seventy-two (72) hours' notice of his or her intention to quit, in which case the employee is entitled to his or her wages at the time of quitting.

During the relevant time period, upon the termination of employment (including but not limited to when they were temporarily laid off, laid off, discharged, and/or resigned), Employers failed to pay all wages due to their employees within twenty-four (24) hours of termination or even within seventy-two (72) hours for those who resigned. Specifically, as a result of Employers' practices of requiring Claimant and Aggrieved Employees to work off-the-clock without compensation, failing to pay proper overtime compensation, unlawful rounding practices, failure to properly calculate regular rates, and failure to accurately record all hours actually worked, Employers failed to pay Claimant and Aggrieved Employees for all straight time wage, minimum wages, and overtime compensation owed to them upon termination of their employment. Employers also failed to pay Claimant and Aggrieved Employees for meal period premiums and rest period premiums they were owed, amongst other wages. Accordingly, Employers violated California Labor Code sections 201 and 202.

Claimant and Aggrieved Employees will therefore seek PAGA default penalties pursuant to California Labor Code section 2699; penalties pursuant to California Labor Code sections 203 and 1199; and attorneys' fees and costs.

7. EMPLOYERS' OTHER VIOLATIONS OF THE CALIFORNIA LABOR CODE

Finally, pursuant to *Huff v. Securitas Security Services USA, Inc.* (2018) 23 Cal.App.5th 745 ("*Huff*"), as an Aggrieved Employee, Claimant has standing, and intends to pursue civil penalties on behalf of the Labor and Workforce Development Agency ("LWDA") against Employers for any and all other California Labor Code violations committed by Employers. In *Huff*, the California Court of Appeals held that an employee alleging a single violation of the California Labor Code under PAGA may also bring PAGA claims against Employer for all other alleged California Labor Code violations, even those suffered by other employees of the same employer. According to the *Huff* decision, Claimant, as an "aggrieved" employee affected by at least one California Labor Code violation may, and hereby does, pursue penalties on behalf of the LWDA for all California Labor Code violations by Employers.

Employers are in direct violation of numerous California wage and hour laws including but not limited to the California Labor Code sections referenced above. Claimant hereby provides notice to the LWDA under the California Labor Code Private Attorneys General Act of 2004, California Labor Code sections 2698, *et seq.*, and specifically asks for an investigation, or if the agency does not intend to investigate the alleged violations, a letter confirming the same so that Claimant may allege a cause of action under PAGA against Employers for the violations discussed in this letter.

This letter is sent in compliance with the reporting requirements of California Labor Code section 2699.3. By law, an employee alleging a violation of one of the above referenced sections must notify his or her employer and the LWDA before he or she can invoke the provisions of California Labor Code sections 2699, *et seq.*, by seeking redress in court. Cal. Lab. Code § 2699.3(a)(1). The LWDA must then notify the employer and the employee within 60 calendar days regarding whether it intends to investigate the alleged violation. Cal. Lab. Code § 2699.3(a)(2)(B). If the LWDA advises it will not investigate, or if no notice is provided within 65 calendar days, the employee may file a lawsuit invoking the provisions under California Labor Code section 2699. Cal. Lab. Code § 2699.3(a)(2)(A). It is Claimant's intention to file a civil complaint and to bring the appropriate claims under California Labor Code section 2699 on behalf of himself, the State of California, and all Aggrieved Employees should your office not address Employers' alleged violations within this timeframe.

If you have any questions or require additional information, please do not hesitate to contact my office. Thank you for your attention to this matter.

BLACKSTONE LAW

Miriam L. Schimmel

Miriam L. Schimmel, Esq.

cc: By U.S. Certified Mail, Return Receipt Requested

Michael J. Studenka
J. Brian Morrow
Madison J. Rolapp
NEWMAYER & DILLION LLP
895 Dove Street, Second Floor
Newport Beach, California 92600

Attorneys for W.L. Butler Construction, Inc. and All American Equipment Rental, LLC

EXHIBIT 2

1 **JOINT STIPULATION OF CLASS ACTION AND PAGA SETTLEMENT**

2 This Joint Stipulation of Class Action and PAGA Settlement (“Settlement,” “Agreement,” or
3 “Settlement Agreement”) is made and entered into by and between Plaintiff Alfonso Herrera
4 (“Plaintiff” or “Class Representative”), individually, and on behalf of all others similarly situated and
5 on behalf of the State of California with respect to aggrieved employees, and Defendants W.L. Butler
6 Construction, Inc. and All American Equipment Rental, LLC (together, “Defendants”) (collectively,
7 Plaintiff and Defendants are referred to as “Parties” and individually as “Party”).

8 This Settlement Agreement shall be binding on Plaintiff, Settlement Class Members (as
9 defined herein), the State of California as to the employment of PAGA Employees (as defined herein),
10 and Defendants, subject to the terms and conditions hereof and the approval of the Court.

11 **RECITALS**

12 1. On July 5, 2023, Plaintiff filed a Class Action Complaint for Damages in the action
13 entitled *Alfonso Herrera v. W.L. Butler Construction, Inc., et al.*, Orange County Superior Court Case
14 No. 30-2023-01335445-CU-OE-CXC (“Action”), thereby commencing a putative class action against
15 Defendants. On May 1, 2024, Plaintiff provided written notice to the Labor and Workforce
16 Development Agency (“LWDA”) by online submission and to Defendants by U.S. Certified Mail,
17 pursuant to California Labor Code Section 2699.3, of the specific provisions of the California Labor
18 Code alleged to have been violated by Defendants (“PAGA Letter”).

19 2. The Parties agree that Plaintiff will file a First Amended Class and Representative
20 Action Complaint (“Operative Complaint”) in the Action, which will add a cause of action under the
21 Private Attorneys General Act of 2004 pursuant to California Labor Code Section 2698 *et seq.*
22 (“PAGA”). The Operative Complaint alleges nine (9) causes of action for violations of the California
23 Labor Code for failure to pay overtime wages, failure to pay minimum wages, failure to provide
24 compliant meal periods and premium payments in lieu thereof, failure to provide compliant rest
25 periods and premiums payments in lieu thereof, failure to timely pay wages upon termination, failure
26 to provide accurate wage statements, and failure to reimburse necessary business expenses, for
27 violations of California Business & Professions Code Section 17200, *et seq.* based on the
28 aforementioned California Labor Code violations, and for civil penalties under PAGA based on the

1 aforementioned California Labor Code violations.

2 3. Defendants deny all materials allegations set forth in the Action and have asserted
3 numerous affirmative defenses. Notwithstanding, in the interest of avoiding further litigation,
4 Defendants desire to fully and finally settle the Action, Released Class Claims (as defined herein), and
5 Released PAGA Claims (as defined herein).

6 4. Class Counsel diligently investigated the class and PAGA claims against Defendants,
7 including any and all applicable defenses and the applicable law. The investigation included, *inter*
8 *alia*, the exchange of information, data, and documents, and review of corporate policies and practices.
9 The Parties have engaged in sufficient informal discovery and investigation to assess the relative
10 merits of the claims and contentions of the Parties.

11 5. On April 24, 2024, the Parties participated in mediation with Monique Ngo-Bonnici,
12 Esq. (the “Mediator”), a respected mediator of complex wage and hour actions, and with the assistance
13 of the Mediator’s evaluations, the Parties reached the settlement that is memorialized herein. The
14 Parties’ settlement discussions were conducted at arms’ length, and the Settlement is the result of an
15 informed and detailed analysis of Defendants’ potential liability and exposure in relation to the costs
16 and risks associated with continued litigation. Based on Class Counsel’s investigation and evaluation,
17 Class Counsel believes that the settlement with Defendants for the consideration and on the terms set
18 forth in this Settlement Agreement is fair, reasonable, and adequate and is in the best interest of the
19 Class Members, State of California, and PAGA Employees in light of all known facts and
20 circumstances, including the risk of significant delay and uncertainty associated with litigation and
21 various defenses asserted by Defendants.

22 6. The Parties expressly acknowledge that this Settlement Agreement is entered into
23 solely for the purpose of compromising significantly disputed claims and that nothing herein is an
24 admission of liability or wrongdoing by Defendants. If for any reason this Settlement Agreement is
25 not approved, it will be of no force or effect, and the Parties shall be returned to their original respective
26 positions.

27 ///

28 ///

DEFINITIONS

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

a. “Attorneys’ Fees and Costs” means attorneys’ fees approved by the Court for Class Counsel’s litigation and resolution of the Action and all actual costs and expenses incurred and to be incurred by Class Counsel in connection with the Action, as set forth in Paragraph 10.

b. “Class” or “Class Member(s)” means all current and former non-exempt employees who worked for Defendants in the State of California at any time during the Class Period, but excluding all employees who signed a general release agreement with Defendants.

c. “Class Counsel” means Jonathan M. Genish, Miriam L. Schimmel, Joana Fang, Alexandra Rose, and Jared C. Osborne of Blackstone Law, APC, who will seek to be appointed counsel for the Class.

d. “Class List” means a complete list of all Class Members that Defendants will diligently and in good faith compile from its records and provide to the Settlement Administrator. The Class List will be formatted in a readable Microsoft Office Excel spreadsheet containing the following information for each Class Member: (1) full name; (2) last known mailing address; (3) Social Security number; (4) dates worked for Defendants during the Class Period; and (8) such other information as is necessary for the Settlement Administrator to calculate Workweeks and PAGA Workweeks (if applicable).

e. “Class Notice” means the Notice of Class Action Settlement, substantially in the form attached hereto as “Exhibit A.”

f. “Class Period” means the period from July 5, 2019 through April 24, 2024.

g. “Class Settlement” means the settlement and resolution of all Released Class Claims.

h. “Court” means the Superior Court of the State of California for the County of Orange.

i. “Defendants’ Counsel” means Michael J. Studenka, and Madison J. Rolapp of Newmeyer & Dillion LLP.

j. “Effective Date” means the following: (i) if no Settlement Class Member objects to the Class Settlement, then the Effective Date will be the date of Final Approval; or (ii) if any Settlement Class Member objects to the Class Settlement, the Effective Date will be the sixty-first (61st) calendar day after the date of Final Approval, provided no appeal is initiated by an objector; or (iii) if a timely appeal is initiated by an objector, then the Effective Date will be the day after final resolution of that appeal (including any requests for rehearing and/or petitions for certiorari), resulting in final judicial approval of the Settlement.

k. “Employer Taxes” means the employers’ share of taxes and contributions in connection with the wages portion of Individual Settlement Shares, which shall be paid by Defendants in addition to the Gross Settlement Amount.

l. “Enhancement Payment” means the amount to be paid to Plaintiff, in recognition of his effort and work in prosecuting the Action on behalf of Class Members and PAGA Employees, and general release of claims, as set forth in Paragraph 11.

m. “Exclusion Form” means the Request for Exclusion Form, substantially in the form attached hereto as “**Exhibit B.**”

n. “Final Approval” means the determination by the Court that the Settlement is fair, reasonable, and adequate, and entry of the Final Approval Order and Judgment based thereon.

o. “Final Approval Hearing” means the hearing at which the Court will consider and determine whether the Settlement should be granted Final Approval.

p. “Final Approval Order and Judgment” means the order granting final approval of the Settlement and entering judgment thereon, in a form and content mutually agreed to by the Parties, and subject to approval by the Court.

q. “Gross Settlement Amount” means the amount of One Million Four Hundred Seventy-Five Thousand Dollars and Zero Cents (\$1,475,000.00) to be paid by Defendants in full satisfaction of the Action, Released Class Claims, and Released PAGA Claims, which includes all Attorneys’ Fees and Costs, Enhancement Payment, PAGA Amount, Settlement Administration Costs, and Net Settlement Amount to be paid to the Settlement Class Members. Defendants shall pay the Employer Taxes separately and in addition to the Gross Settlement Amount. The Gross Settlement

Amount is non-reversionary; no portion of the Gross Settlement Payment will return to Defendants. The Gross Settlement Amount is subject to increase, as provided in Paragraph 14.

r. “Individual PAGA Payment” means the *pro rata* share of the PAGA Employee Amount that a PAGA Employee may be eligible to receive under the PAGA Settlement, to be calculated in accordance with Paragraph 16.

s. “Individual Settlement Payment” means the net payment of each Settlement Class Member’s Individual Settlement Share, after reduction for the employee’s share of taxes and withholdings with respect to the wages portion of the Individual Settlement Share, as provided in Paragraph 17.

t. “Individual Settlement Share” means the *pro rata* share of the Net Settlement Amount that a Class Member may be eligible to receive under the Class Settlement, to be calculated in accordance with Paragraph 15.

u. “LWDA Payment” means the amount of Thirty-Seven Thousand Five Hundred Dollars and Zero Cents (\$37,500.00), i.e., 75% of the PAGA Amount, that the Parties have agreed to pay to the LWDA under the PAGA Settlement, as set forth in Paragraph 12.

v. “Net Settlement Amount” means the portion of the Gross Settlement Amount that is available for distribution to Settlement Class Members, which is the Gross Settlement Amount less the Court-approved Attorneys’ Fees and Costs, Enhancement Payment, PAGA Amount, and Settlement Administration Costs.

w. “Notice of Objection” means a Settlement Class Member’s written objection to the Class Settlement, which must: (a) contain the case name and number of the Action; (b) contain the objector’s full name, signature, address, telephone number, and the last four (4) digits of the objector’s Social Security number; (c) contain a written statement of all grounds for the objection accompanied by any legal support for such objection; (d) contain copies of any papers, briefs, or other documents upon which the objection is based; and (e) be returned by mail to the Settlement Administrator at the specified address, postmarked on or before the Response Deadline.

x. “Notice Packet” means the Class Notice and Exclusion Form, substantially in the forms attached hereto as “**Exhibit A**” and “**Exhibit B**.”

y. “PAGA Amount” means the allocation of Fifty Thousand Dollars and Zero Cents (\$50,000.00) from the Gross Settlement Amount for the PAGA Settlement. Seventy-five percent (75%) of the PAGA Amount, or \$37,500.00, will be paid to the LWDA (i.e., the LWDA Payment) and the remaining twenty-five percent (25%), or \$12,500.00, will be distributed to the PAGA Employees (i.e., the PAGA Employee Amount).

z. “PAGA Employee(s)” means all current and former non-exempt employees who worked for Defendants in the State of California at any time during the PAGA Period, but excluding all employees who signed a general release agreement with Defendants.

aa. “PAGA Employee Amount” means the amount of Twelve Thousand Five Hundred Dollars and Zero Cents (\$12,500.00), i.e., 25% of the PAGA Amount, to be distributed to PAGA Employees on a *pro rata* basis based on their PAGA Workweeks.

bb. “PAGA Period” means the period from July 5, 2022 through April 24, 2024.

cc. “PAGA Settlement” means the settlement and resolution of all Released PAGA Claims.

dd. “PAGA Workweeks” means the number of weeks each PAGA Employee worked for Defendants as a non-exempt employee in California during the PAGA Period. The PAGA Workweeks will be calculated by the Settlement Administrator based on each PAGA Employee’s start date or the beginning of the PAGA Period, whichever is later, and separation date or the last day of the PAGA Period, whichever is earlier, based on the Class List provided by Defendant. In order to be counted as a PAGA Workweek, the PAGA Employee must have worked at least one day in that week.

ee. “Preliminary Approval” means the date on which the Court enters the Preliminary Approval Order.

ff. “Preliminary Approval Order” means the order granting preliminary approval of the Settlement, in a form and content mutually agreed to by the Parties, and subject to approval by the Court.

gg. “Released Class Claims” means any and all claims which were alleged or which could have been alleged based on the factual allegations in the Operative Complaint, arising during the Class Period, including but not limited to claims for Defendants’ alleged failure to pay overtime

1 and minimum wages, provide compliant meal and rest periods and associated premium payments,
2 timely pay wages upon termination, provide accurate wage statements, and reimburse necessary
3 business-related expenses in violation of California Labor Code Sections 201, 202, 203, 226(a), 226.7,
4 510, 512(a), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the applicable Industrial Welfare
5 Commission Wage Order(s), and California Business and Professions Code sections 17200, *et seq.*

6 hh. “Released PAGA Claims” means any and all claims which were alleged or
7 which could have been alleged based on the factual allegations in the Operative Complaint and PAGA
8 Letter, arising during the PAGA Period, for civil penalties under the Private Attorneys General Act of
9 2004, California Labor Code Sections 2698 *et seq.*, for Defendants’ alleged failure to pay overtime
10 and minimum wages, provide compliant meal and rest periods and associated premium payments,
11 timely pay wages upon termination, provide accurate wage statements, and reimburse necessary
12 business-related expenses in violation of California Labor Code Sections 201, 202, 203, 226(a), 226.7,
13 510, 512(a), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the applicable Industrial Welfare
14 Commission Wage Order(s).

15 ii. “Released Parties” means Defendants, W.L. Butler, Inc., and any related
16 entities, and their directors, officers, members, and investors.

17 jj. “Request for Exclusion” means an Exclusion Form or letter submitted by a
18 Class Member indicating a request to be excluded from the Class Settlement, which must: (a) contain
19 the case name and number of the Action; (b) contain the Class Member’s full name, signature, address,
20 telephone number, and last four (4) digits of the Class Member’s Social Security number; (c) clearly
21 state that the Class Member does not wish to be included in the Class Settlement; and (d) be returned
22 by mail to the Settlement Administrator at the specified address, postmarked on or before the Response
23 Deadline.

24 kk. “Response Deadline” means the deadline by which Class Members must submit
25 a Request for Exclusion, Notice of Objection, and/or Workweeks Dispute, which shall be the date that
26 is forty-five (45) calendar days from the initial mailing of the Notice Packet by the Settlement
27 Administrator to Class Members, unless the 45th day falls on a Sunday or Federal holiday, in which
28 case the Response Deadline will be extended to the next day on which the United States Postal service

1 is open. The Response Deadline may also be extended by express agreement between Class Counsel
2 and Defendants' Counsel. Under no circumstances, however, will the Settlement Administrator have
3 the authority to extend the Response Deadline. In the event that a Notice Packet is re-mailed to a Class
4 Member, the Response Deadline for that Class Member shall be extended fifteen (15) calendar days
5 from the original Response Deadline.

6 ll. "Settlement Administrator" means Apex Class Action LLC, or any other third-
7 party class action settlement administrator agreed to by the Parties and approved by the Court for
8 purposes of administering the Settlement. The Parties and their counsel each represent that they do
9 not have any financial interest in the Settlement Administrator or otherwise have a relationship with
10 the Settlement Administrator that could create a conflict of interest.

11 mm. "Settlement Administration Costs" means the costs payable from the Gross
12 Settlement Amount to the Settlement Administrator for administering the Settlement, as set forth in
13 Paragraph 13.

14 nn. "Settlement Class" or "Settlement Class Member(s)" means all Class Members
15 who do not submit a timely and valid Request for Exclusion.

16 oo. "Workweeks" means the number of weeks each Class Member worked for
17 Defendants as a non-exempt employee in California during the Class Period. The Workweeks will be
18 calculated by the Settlement Administrator based on each Class Member's start date or the beginning
19 of the Class Period, whichever is later, and separation date or the last day of the Class Period,
20 whichever is earlier, based on the Class List provided by Defendant. In order to be counted as a
21 Workweek, the Class Member must have worked at least one day in that week.

22 pp. "Workweeks Dispute" means a letter submitted by a Class Member disputing
23 the number of Workweeks and/or PAGA Workweeks to which they have been credited, which must:
24 (a) contain the case name and number of the Action; (b) contain the Class Member's full name,
25 signature, address, telephone number, and the last four (4) digits of the Class Member's Social Security
26 number; (c) clearly state that the Class Member disputes the number of Workweeks and/or PAGA
27 Workweeks credited to the Class Member and what the Class Member contends is the correct number;
28 and (d) be returned by mail to the Settlement Administrator at the specified address, postmarked on or

1 before the Response Deadline.

2 **CLASS CERTIFICATION**

3 8. For the purposes of this Settlement only, the Parties stipulate to the certification of the
4 Class.

5 9. The Parties agree that certification for the purpose of settlement is not an admission
6 that certification is proper under Section 382 of the California Code of Civil Procedure. Should, for
7 whatever reason, the Court not grant Final Approval, the Parties' stipulation to class certification as
8 part of the Settlement shall become null and void ab initio and shall have no bearing on, and shall not
9 be admissible in connection with, the issue of whether or not certification would be inappropriate in a
10 non-settlement context.

11 **TERMS OF THE AGREEMENT**

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

14 10. Attorneys' Fees and Costs. Defendants agree not to oppose or impede any application
15 or motion by Class Counsel for attorneys' fees in the amount up to thirty-five percent (35%) of the
16 Gross Settlement Amount (i.e., \$516,250.00 if the Gross Settlement Amount is \$1,475,000.00) and
17 reimbursement of actual costs and expenses associated with Class Counsel's litigation and settlement
18 of the Action, in an amount not to exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00),
19 both of which will be paid from the Gross Settlement Amount. These amounts will cover any and all
20 work performed and any and all costs incurred by Class Counsel in connection with the litigation of
21 the Action, including without limitation all work performed and costs incurred to date, and all work
22 to be performed and all costs to be incurred in connection with obtaining the Court's approval of this
23 Settlement Agreement, including any objections raised and any appeals necessitated by those
24 objections. Class Counsel shall be solely and legally responsible for correctly characterizing this
25 compensation for tax purposes and for paying any taxes on the amounts received. The Settlement
26 Administrator shall issue an IRS Form 1099 to Class Counsel for the Attorneys' Fees and Costs. Any
27 portion of the requested Attorneys' Fees and Costs that is not awarded by the Court to Class Counsel
28 shall be reallocated to the Net Settlement Amount for the benefit of the Settlement Class Members.

11. Enhancement Payment. Defendants agree not to oppose or impede any application or motion by Plaintiff for an Enhancement Payment in the amount up to Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00). The Enhancement Payment, which will be paid from the Gross Settlement Amount, subject to Court approval, will be in addition to any other payment Plaintiff may be eligible to receive under the Settlement, e.g., his Individual Settlement Payment and/or Individual PAGA Payment. Plaintiff shall be solely and legally responsible for correctly characterizing this compensation for tax purposes and for paying any taxes on the amounts received. The Settlement Administrator shall issue an IRS Form 1099 to Plaintiff for the Enhancement Payment. Any portion of the requested Enhancement Payment that is not awarded by the Court to Plaintiff shall be reallocated to the Net Settlement Amount for the benefit of the Settlement Class Members.

12. PAGA Amount. Subject to approval by the Court, the Parties agree that the amount of Fifty Thousand Dollars and Zero Cents (\$50,000.00) shall be allocated from the Gross Settlement Amount toward penalties under the Private Attorneys General Act, California Labor Code Section 2698, *et seq.* (i.e., the PAGA Amount), of which seventy-five percent (75%), or \$37,500.00, will be paid to the LWDA (i.e., the LWDA Payment) and twenty-five percent (25%), or \$12,500.00, will be distributed to PAGA Employees (i.e., the PAGA Employee Amount) on a *pro rata* basis, based on the total number of PAGA Workweeks worked by each PAGA Employee during the PAGA Period (i.e., the Individual PAGA Payments).

13. Settlement Administration Costs. The Settlement Administrator will be paid for the reasonable costs of administration of the Settlement and distribution of payments under the Settlement, which are currently not to exceed Eight Thousand Dollars and Zero Cents (\$8,000.00). These costs, which will be paid from the Gross Settlement Amount, subject to Court approval, will include, *inter alia*, translating the Notice Packet to Spanish, printing, distributing, and tracking Notice Packets and other documents for the Settlement, calculating and distributing payments due under the Settlement, issuing of 1099 and W-2 IRS Forms and all required tax reporting, filings, withholdings, and remittances, providing necessary reports and declarations, and other duties and responsibilities set forth herein to process the Settlement, and as requested by the Parties. To the extent the actual Settlement Administrator's costs are greater than the estimated amount stated herein, such excess

1 amount will be deducted from the Gross Settlement Amount, subject to approval by the Court. Any
2 portion of the estimated, designated, and/or awarded Settlement Administration Costs which are not
3 in fact required to fulfill payment to the Settlement Administrator to undertake the required settlement
4 administration duties shall be reallocated to the Net Settlement Amount for the benefit of the
5 Settlement Class Members.

6 14. Escalator Clause. Defendants have represented that the Class Members worked a total
7 of 12,380 Workweeks during the Class Period. If it is determined by the Settlement Administrator
8 that the total number of Workweeks worked by the Class Members during the Class Period actually
9 exceeds 12,380 by more than 10% (i.e., by more than 13,618 Workweeks), then the Gross Settlement
10 Amount will be increased on a *pro rata* basis equal to the percentage increase in the number of
11 Workweeks worked by the Class Members above 10%. For example, if the number of Workweeks
12 increases by 11% to 13,742 Workweeks, then the Gross Settlement Amount will increase by 1%.
13 Alternatively, Defendants may, at their option, and may only do so prior to the filing of Plaintiff's
14 motion for preliminary approval, end the Class Period and PAGA Period on the date that the
15 Workweeks do not exceed 13,618 Workweeks.

16 15. Individual Settlement Share Calculations. Individual Settlement Shares will be
17 calculated and apportioned from the Net Settlement Amount based on the Class Members' number of
18 Workweeks, as follows:

19 a. After Preliminary Approval, the Settlement Administrator will divide the Net
20 Settlement Amount by the Workweeks of all Class Members to yield the "Estimated Workweek
21 Value," and multiply each Class Member's individual Workweeks by the Estimated Workweek Value
22 to yield each Class Member's estimated Individual Settlement Share that each Class Member may be
23 entitled to receive under the Class Settlement.

24 b. After Final Approval, the Settlement Administrator will divide the final Net
25 Settlement Amount by the Workweeks of all Settlement Class Members to yield the "Final Workweek
26 Value," and multiply each Settlement Class Member's individual Workweeks by the Final Workweek
27 Value to each Settlement Class Member's final Individual Settlement Share.

28 ///

1 16. Individual PAGA Payment Calculations. Individual PAGA Payments will be
2 calculated and apportioned from the PAGA Employee Amount based on the PAGA Employees’
3 number of PAGA Workweeks, as follows: The Settlement Administrator will divide the PAGA
4 Employee Amount, i.e., 25% of the PAGA Amount, by the PAGA Workweeks of all PAGA
5 Employees to yield the “PAGA Workweek Value,” and multiply each PAGA Employee’s individual
6 PAGA Workweeks by the PAGA Workweek Value to yield each PAGA Employee’s Individual
7 PAGA Payment.

8 17. Tax Treatment of Individual Settlement Shares and Individual PAGA Payments. Each
9 Individual Settlement Share will be allocated as follows: thirty-three and one-third percent (33 1/3%)
10 wages and sixty-six and two-thirds percent (66 2/3%) penalties, interest, and non-wage damages. The
11 portion allocated to wages will be reported on an IRS Form W-2 and the portions allocated to penalties,
12 interest, and non-wage damages will be reported on an IRS Form 1099 (if applicable) by the Settlement
13 Administrator. The Settlement Administrator will withhold the employee’s share of taxes and
14 withholdings with respect to the wages portion of the Individual Settlement Shares, and issue checks
15 to Settlement Class Members for their Individual Settlement Payments (i.e., payment of their
16 Individual Settlement Share net of these taxes and withholdings). The Employer Taxes will be paid
17 separately and in addition to the Gross Settlement Amount. Each Individual PAGA Payment will be
18 allocated as one hundred percent (100%) penalties and will be reported on an IRS Form 1099 (if
19 applicable) by the Settlement Administrator.

20 18. Administration of Taxes by the Settlement Administrator. The Settlement
21 Administrator will be responsible for issuing to Plaintiff, Settlement Class Members, PAGA
22 Employees, and Class Counsel any tax forms (i.e., IRS Forms W-2, IRS Forms 1099, etc.) as may be
23 required by law for all amounts paid pursuant to this Settlement Agreement. The Settlement
24 Administrator will also be responsible for calculating the Employer Taxes and forwarding all payroll
25 taxes and other legally required withholdings to the appropriate government authorities.

26 19. Tax Liability. Plaintiff, Class Counsel, Defendants, and Defendants’ Counsel do not
27 intend anything contained in this Settlement Agreement to constitute advice regarding taxes or
28 taxability, nor shall anything in this Settlement Agreement be relied on as such. Plaintiff, Settlement

1 Class Members, and PAGA Employees are not relying on any statement, representation, or calculation
2 by Defendants, the Settlement Administrator, or Class Counsel in this regard. Plaintiff, Settlement
3 Class Members, and PAGA Employees understand and agree that Plaintiff, Settlement Class
4 Members, and PAGA Employees will be solely responsible for the payment of any taxes and penalties
5 assessed on the payments described in this Settlement Agreement. Plaintiff, Settlement Class
6 Members, and PAGA Employees should consult with their tax advisors concerning the tax
7 consequences of any payment they receive under the Settlement.

8 20. Circular 230 Disclaimer. EACH PARTY TO THIS SETTLEMENT AGREEMENT
9 (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY” AND EACH PARTY
10 TO THIS SETTLEMENT AGREEMENT OTHER THAN THE ACKNOWLEDGING PARTY, AN
11 “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO PROVISION OF THIS
12 SETTLEMENT AGREEMENT, AND NO WRITTEN COMMUNICATION OR DISCLOSURE
13 BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND OTHER ADVISERS, IS
14 OR WAS INTENDED TO BE, NOR WILL ANY SUCH COMMUNICATION OR DISCLOSURE
15 CONSTITUTE OR BE CONSTRUED OR BE RELIED UPON AS, TAX ADVICE WITHIN THE
16 MEANING OF UNITED STATES TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART
17 10, AS AMENDED); (2) THE ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY
18 UPON HIS, HER, OR ITS OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE
19 (INCLUDING TAX ADVICE) IN CONNECTION WITH THIS SETTLEMENT AGREEMENT, (B)
20 HAS NOT ENTERED INTO THIS SETTLEMENT AGREEMENT BASED UPON THE
21 RECOMMENDATION OF ANY OTHER PARTY OR ANY ATTORNEY OR ADVISOR TO ANY
22 OTHER PARTY, AND (C) IS NOT ENTITLED TO RELY UPON ANY COMMUNICATION OR
23 DISCLOSURE BY ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY
24 TAX PENALTY THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
25 ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION THAT
26 PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY’S OR ADVISOR’S TAX
27 STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS LEGALLY BINDING)
28 UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF THE TAX TREATMENT OR

1 TAX STRUCTURE OF ANY TRANSACTION, INCLUDING ANY TRANSACTION
2 CONTEMPLATED BY THIS SETTLEMENT AGREEMENT.

3 21. Settlement Awards Do Not Trigger Additional Benefits. All payments made under the
4 Settlement shall be deemed to be paid to the payee solely in the year in which such payments actually
5 are issued to the payee. It is expressly understood and agreed that payments made under this
6 Settlement shall not in any way entitle Plaintiff, Settlement Class Members, or any PAGA Employee
7 to additional compensation or benefits under any new or additional compensation or benefits, or any
8 bonus, contest, or other compensation or benefit plan or agreement in place during the Class Period,
9 nor will it entitle Plaintiff, Settlement Class Members, or any PAGA Employee to any increased
10 retirement, 401K benefits or matching benefits, or deferred compensation benefits (notwithstanding
11 any contrary language or agreement in any benefit or compensation plan document that might have
12 been in effect during the Class Period).

13 22. Duties of the Parties with Respect to Obtaining Preliminary Approval of the Settlement.
14 Upon execution of this Settlement Agreement, Plaintiff will obtain a hearing date from the Court for
15 Plaintiff's motion for preliminary approval of the Settlement, which Plaintiff and Class Counsel will
16 be responsible for drafting, and submit this Settlement Agreement to the Court in support of said
17 motion. Class Counsel will provide Defendants' Counsel a draft of the preliminary approval motion
18 before filing it with the Court. Defendants agree not to oppose the motion for preliminary approval
19 of the Settlement consistent with this Settlement Agreement. By way of said motion, Plaintiff will
20 apply for the entry of the Preliminary Approval Order seeking the following:

- 21 a. Conditionally certifying the Class for settlement purposes only;
- 22 b. Granting Preliminary Approval of the Settlement;
- 23 c. Preliminarily appointing Plaintiff as the representative of the Class;
- 24 d. Preliminarily appointing Class Counsel as counsel for the Class;
- 25 e. Approving as to form and content, the mutually-agreed upon and proposed
26 Notice Packet and directing its mailing by First Class U.S. Mail;
- 27 f. Approving the manner and method for Class Members to request exclusion
28 from or object to the Class Settlement as contained herein and within the Class Notice;

g. Scheduling a Final Approval Hearing at which the Court will determine whether Final Approval of the Settlement should be granted.

23. Notice of Settlement to the LWDA. Pursuant to California Labor Code § 2699(1)(2), Class Counsel shall notify the LWDA of the Settlement upon filing the motion for preliminary approval of the Settlement.

24. Delivery of Class List. Within fourteen (14) calendar days of Preliminary Approval, Defendants will provide the Class List to the Settlement Administrator.

25. Notice by First-Class U.S. Mail.

a. Within seven (7) calendar days after receiving the Class List from Defendants, the Settlement Administrator will perform a search based on the National Change of Address Database or any other similar services available, such as provided by Experian, for information to update and correct for any known or identifiable address changes, and will mail a Class Notice and Exclusion Form (i.e., Notice Packet) in English and Spanish (in the forms attached as **Exhibit A** and **Exhibit B** to this Settlement Agreement) to all Class Members via First-Class U.S. Mail, using the most current, known mailing addresses identified by the Settlement Administrator.

b. Any Notice Packet returned to the Settlement Administrator as undeliverable on or before the Response Deadline will be sent promptly via First-Class U.S. Mail to the forwarding address affixed thereto and the Settlement Administrator will indicate the date of such re-mailing on the Class Notice. 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, and/or Social Security number of the Class Member, and perform a single re-mailing within five (5) calendar days.

c. Compliance with the procedures described herein above shall constitute due and sufficient notice to Class Members of the Settlement and shall satisfy the requirements of due process. Nothing else shall be required of or done by the Parties, Class Counsel, or Defendants' Counsel to provide notice of the Settlement.

26. Disputes Regarding Workweeks and/or PAGA Workweeks. Class Members will have an opportunity to dispute the number of Workweeks and/or PAGA Workweeks to which they have

1 been credited, as reflected in their respective Class Notices, by submitting a timely and valid
2 Workweeks Dispute to the Settlement Administrator, by mail, postmarked on or before the Response
3 Deadline. The date of the postmark on the return mailing envelope will be the exclusive means to
4 determine whether a Workweeks Dispute has been timely submitted. Absent evidence rebutting the
5 accuracy of Defendants' records and data as they pertain to the number of Workweeks and/or PAGA
6 Workweeks to be credited to a disputing Class Member, Defendants' records will be presumed to be
7 correct and determinative of the dispute. However, if a Class Member produces information and/or
8 documents to the contrary, the Settlement Administrator will evaluate the materials submitted by the
9 Class Member and the Settlement Administrator will jointly work with Class Counsel and Defendants'
10 Counsel to resolve and determine the number of eligible Workweeks and/or PAGA Workweeks that
11 the disputing Class Member should be credited with under the Settlement. If the dispute cannot be
12 resolved, the Court will ultimately decide any unresolved dispute.

13 27. Requesting Exclusion from the Class Settlement. Any Class Member wishing to be
14 excluded from the Class Settlement must submit a timely and valid Request for Exclusion to the
15 Settlement Administrator, by mail, postmarked on or before the Response Deadline. The date of the
16 postmark on the return mailing envelope will be the exclusive means to determine whether a Request
17 for Exclusion has been timely submitted. The Settlement Administrator will certify jointly to Class
18 Counsel and Defendants' Counsel the number of timely and valid Requests for Exclusion that are
19 submitted, and also identify the individuals who have submitted a timely and valid Request for
20 Exclusion in a declaration that is to be filed with the Court in advance of the Final Approval Hearing.
21 At no time will any of the Parties or their counsel seek to solicit or otherwise encourage Class Members
22 to request exclusion from the Class Settlement. Any Class Member who submits a Request for
23 Exclusion is prohibited from making any objection to the Class Settlement. Any Class Member who
24 submits a timely and valid Request for Exclusion will not be bound by the Class Settlement and will
25 not be issued an Individual Settlement Payment. Any Class Member who does not affirmatively
26 request exclusion from the Class Settlement by submitting a timely and valid Request for Exclusion
27 will be bound by all of the terms of the Class Settlement, including and not limited to those pertaining
28 to the Released Class Claims, as well as any judgment that may be entered by the Court if it grants

1 Final Approval to the Settlement. Notwithstanding the above, all PAGA Employees will be bound to
2 the PAGA Settlement and will be issued their Individual PAGA Payment, irrespective of whether they
3 submit a Request for Exclusion.

4 28. Objecting to the Class Settlement. To object to the Class Settlement, Settlement Class
5 Members must submit a timely and complete Notice of Objection to the Settlement Administrator, by
6 mail, postmarked on or before the Response Deadline. The date of the postmark on the return mailing
7 envelope will be the exclusive means to determine whether a Notice of Objection has been timely
8 submitted. The Settlement Administrator will certify jointly to Class Counsel and Defendants'
9 Counsel the number of Notices of Objection that are submitted (specifying which ones were timely
10 and complete and which were not), and also attach them to a declaration that is to be filed with the
11 Court in advance of the Final Approval Hearing. At no time will any of the Parties or their counsel
12 seek to solicit or otherwise encourage Settlement Class Members to object to the Class Settlement or
13 appeal from the Final Approval Order and Judgment. Settlement Class Members, individually or
14 through counsel, may also present their objection orally at the Final Approval Hearing, regardless of
15 whether they have submitted a Notice of Objection.

16 29. Reports by the Settlement Administrator. The Settlement Administrator shall provide
17 weekly reports to counsel for the Parties providing: (a) the number of undeliverable and re-mailed
18 Notice Packets; (ii) the number of Class Members who have submitted Workweeks Disputes; (iii) the
19 number of Class Members who have submitted Requests for Exclusion; and (iv) the number of
20 Settlement Class Members who have submitted Notices of Objection. Additionally, the Settlement
21 Administrator will provide to counsel for the Parties any updated reports regarding the administration
22 of the Settlement Agreement as needed or requested, and immediately notify the Parties when it
23 receives a request from an individual or any other entity regarding inclusion in the Class and/or
24 Settlement or regarding a Workweeks Dispute.

25 30. Defendants' Right to Rescind. If more than ten percent (10%) of the Class Members
26 submit timely and valid Requests for Exclusion, Defendants may elect to rescind the Settlement
27 Agreement. Defendants must exercise this right of rescission in writing that is provided to Class
28 Counsel within fourteen (14) calendar days of the Settlement Administrator notifying the Parties of

the number of Class Members who have submitted timely and valid Requests for Exclusion following the Response Deadline. If Defendants exercises this option, Defendants shall pay any costs of settlement administration owed to the Settlement Administrator incurred up to that date.

31. Certification of Completion. Upon completion of administration of the Settlement, the Settlement Administrator will provide a written declaration under oath to certify such completion to the Court and counsel for all Parties.

32. Duties of the Parties with Respect to Obtaining Final Approval of the Settlement. After the Response Deadline, a Final Approval Hearing will be conducted to determine whether Final Approval of the Settlement should be granted, along with the amounts properly payable for: (a) Individual Settlement Shares; (b) Individual PAGA Payments; (c) LWDA Payment; (d) Attorneys' Fees and Costs; (e) Enhancement Payment; and (f) Settlement Administration Costs. The Final Approval Hearing will not be held earlier than thirty (30) calendar days after the Response Deadline. Plaintiff and Class Counsel will be responsible for drafting the motion seeking Final Approval of the Settlement. Class Counsel will provide Defendants' Counsel a draft of the final approval motion before filing it with the Court. By way of said motion, Plaintiff will apply for the entry of the Final Approval Order and Judgment, which will provide for, in substantial part, the following:

a. Approval of the Settlement as fair, reasonable, and adequate, and directing consummation of its terms and provisions;

b. Certification of the Settlement Class;

c. Approval of the application for Attorneys' Fees and Costs to Class Counsel;

d. Approval of the application for Enhancement Payment to Plaintiff;

e. Directing Defendants to fund all amounts due under the Settlement Agreement and ordered by the Court; and

f. Entering judgment in the Action, while maintaining continuing jurisdiction, in conformity with California Rules of Court 3.769 and the Settlement Agreement.

33. Funding of the Gross Settlement Amount. No later than thirty (30) calendar days after the Effective Date, Defendants will deposit the Gross Settlement Amount into a Qualified Settlement Fund ("QSF") within the meaning of Treasury Regulation Section 1.468B-1, *et seq.*, to be established

1 by the Settlement Administrator. Defendants shall provide all information necessary for the
2 Settlement Administrator to calculate necessary payroll taxes including its official name, 8-digit state
3 unemployment insurance tax ID number, and other information requested by the Settlement
4 Administrator, no later than thirty (30) calendar days after the Effective Date.

5 34. Distribution of the Gross Settlement Amount. Within five (5) business days of the
6 funding of the Gross Settlement Amount, the Settlement Administrator will issue the Individual
7 Settlement Payments to Settlement Class Members, Individual PAGA Payments to PAGA Employees,
8 LWDA Payment to the LWDA, Enhancement Payment to Plaintiff, Attorneys' Fees and Costs to Class
9 Counsel, and Settlement Administration Costs to itself. The Settlement Administrator shall also set
10 aside the Employer Taxes and all employee-side payroll taxes, contributions, and withholding, and
11 timely forward these to the appropriate government authorities.

12 35. Settlement Checks. The Settlement Administrator will be responsible for undertaking
13 appropriate deductions, required tax reporting, and issuing the Individual Settlement Payments by way
14 of check to the Settlement Class Members and the Individual PAGA Payments by way of check to the
15 PAGA Employees in accordance with this Settlement Agreement. When issuing payments, the
16 Settlement Administrator may combine the Individual Settlement Payment and Individual PAGA
17 Payment into one check if the intended recipient for both payments is one individual. Settlement Class
18 Members and PAGA Employees are not required to submit a claim to be issued an Individual
19 Settlement Payment and/or Individual PAGA Payment. Each Individual Settlement Payment and
20 Individual PAGA Payment check will be valid and negotiable for one hundred and eighty (180)
21 calendar days from the date the checks are issued, and thereafter, shall be canceled. Any funds
22 associated with such canceled checks shall be distributed by the Settlement Administrator to the State
23 of California's Unclaimed Property Division in the name of the Settlement Class Member and/or
24 PAGA Employee. The Parties agree that this disposition results in no "unpaid residue" under
25 California Civil Procedure Code § 384, as the entire Net Settlement Amount will be paid out to
26 Settlement Class Members, whether or not they cash their settlement checks. Therefore, Defendants
27 will not be required to pay any interest on such amounts. The Settlement Administrator shall undertake
28 amended and/or supplemental tax filings and reporting required under applicable local, state, and
federal tax laws that are necessitated due to the cancelation of any Individual Settlement Payment

1 and/or Individual PAGA Payment checks. Settlement Class Members whose Individual Settlement
2 Payment checks are canceled shall, nevertheless, be bound by the Class Settlement, and PAGA
3 Employees whose Individual PAGA Payment checks are cancelled shall, nevertheless, be bound by
4 the PAGA Settlement.

5 36. Class Settlement Release. Upon the full funding of the Gross Settlement Amount,
6 Plaintiff and all Settlement Class Members will be deemed to have fully, finally, and forever released,
7 settled, compromised, relinquished, and discharged the Released Parties of all Released Class Claims.

8 37. PAGA Settlement Release. Upon the full funding of the Gross Settlement Amount,
9 Plaintiff, the State of California with respect to all PAGA Employees, and all PAGA Employees will
10 be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and
11 discharged the Released Parties of all Released PAGA Claims.

12 38. Plaintiff's General Release. Upon the full funding of the Gross Settlement Amount,
13 Plaintiff, individually and on his own behalf, will be deemed to have fully, finally, and forever
14 released, settled, compromised, relinquished, and discharged the Released Parties from any and all
15 claims, debts, liabilities, demands, obligations, guarantees, costs, expenses, attorneys' fees, damages,
16 or causes of action of any kind or nature whatsoever, known or unknown, suspected or unsuspected,
17 asserted or unasserted, which Plaintiff, at any time of execution of this Settlement Agreement, had or
18 claimed to have or may have, including but not limited to any and all claims arising out of, relating to,
19 or resulting from his employment and/or separation of employment with the Released Parties,
20 including any claims arising under any federal, state, or local law, statute, ordinance, rule, or regulation
21 or Executive Order relating to employment, including, but in no way limited to, any claim under Title
22 VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 1981; the Americans with Disabilities
23 Act; the Family and Medical Leave Act; the Employee Retirement Income Security Act; the California
24 Family Rights Act; the California Fair Employment and Housing Act; all claims for wages or penalties
25 under the Fair Labor Standards Act; all claims for wages or penalties under the California Labor Code;
26 Business and Professions Code sections 17200 *et seq.*; all laws relating to violation of public policy,
27 retaliation, or interference with legal rights; any and all other employment or discrimination laws;
28 whistleblower claims; any tort, fraud, or constitutional claims; and any breach of contract claims or

claims of promissory estoppel. It is agreed that this is a general release and is to be broadly construed as a release of all claims, provided that, notwithstanding the foregoing, this Paragraph expressly does not include a release of any claims that cannot be released hereunder by law. Plaintiff understands and expressly agrees that this Settlement Agreement extends to claims that he has against Defendants, of whatever nature and kind, known or unknown, suspected or unsuspected, vested or contingent, past, present, or future, arising from or attributable to an incident or event, occurring in whole or in part, on or before the execution of this Settlement Agreement. Any and all rights granted under any state or federal law or regulation limiting the effect of this Settlement Agreement, including the provisions of Section 1542 of the California Civil Code, ARE HEREBY EXPRESSLY WAIVED. Section 1542 of the California Civil Code reads as follows:

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.

39. Final Approval Order and Judgment. The Parties shall provide the Settlement Administrator with a copy of the Final Approval Order and Judgment once it is entered by the Court, and the Settlement Administrator shall post the Final Approval Order and Judgment on its website for sixty (60) calendar days. No individualized notice of the Final Approval Order and Judgment to the Class will be required.

40. Continued Jurisdiction. After entry of the judgment pursuant to the Settlement, the Court will have continuing jurisdiction pursuant to Rule 3.769 of the California Rules of Court and Section 664.6 of the California Code of Civil Procedure, for purposes of addressing: (a) the interpretation and enforcement of the terms of the Settlement, (b) settlement administration matters, and (c) such post-judgment matters as may be appropriate under court rules or as set forth in this Settlement Agreement.

41. Effects of Termination or Rescission of Settlement. Termination or rescission of the Settlement Agreement shall have the following effects:

1 a. The Settlement Agreement shall be void and shall have no force or effect, and
2 no Party shall be bound by any of its terms;

3 b. In the event the Settlement Agreement is terminated, Defendants shall have no
4 obligation to make any payments to any Party, Class Member, or attorney, except that the terminating
5 Party shall pay the Settlement Administrator for services rendered up to the date the Settlement
6 Administrator is notified that the Settlement has been terminated;

7 c. The Preliminary Approval Order, Final Approval Order and Judgment,
8 including any order certifying the Class, shall be vacated;

9 d. The Settlement Agreement and all negotiations, statements, and proceedings
10 relating thereto shall be without prejudice to the rights of any of the Parties, all of whom shall be
11 restored to their respective positions in the Action prior to the execution of the Settlement Agreement;

12 e. Neither this Settlement Agreement, nor any ancillary documents, actions,
13 statements, or filings in furtherance of the Settlement (including all matters associated with the
14 mediation) shall be admissible or offered into evidence in the Action or any other action for any
15 purpose whatsoever; and

16 f. Any documents generated to bring the Settlement into effect, will be null and
17 void, and any order or judgment entered by the Court in furtherance of this Settlement Agreement will
18 likewise be treated as void from the beginning.

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

23 43. Exhibits Incorporated by Reference. The terms of this Settlement include the terms set
24 forth in any attached exhibits, which are incorporated by this reference as though fully set forth herein.
25 Any exhibits to this Settlement Agreement are an integral part of the Settlement.

26 44. Entire Agreement. This Settlement Agreement and any attached exhibits constitute the
27 entirety of the Parties' agreement relating to the settlement and transaction completed thereby, and all
28 prior or contemporaneous agreements, understandings, representations, and statements, whether oral
or written and whether by a Party or such Party's legal counsel, are merged herein. No other prior or

1 contemporaneous written or oral agreements may be deemed binding on the Parties. The Parties
2 expressly recognize California Civil Code § 1625 and California Code of Civil Procedure § 1856(a),
3 which provide that a written agreement is to be construed according to its terms and may not be varied
4 or contradicted by extrinsic evidence, and the Parties agree that no such extrinsic oral or written
5 representations or terms will modify, vary, or contradict the terms of this Settlement Agreement.

6 45. Interim Stay of Proceedings. The Parties agree to hold in abeyance all proceedings in
7 the Action (including with respect to California Code of Civil Procedure § 583.310), except such
8 proceedings necessary to implement and complete this Settlement Agreement, pending the Final
9 Approval Hearing to be conducted by the Court.

10 46. Amendment or Modification. Prior to the filing of the motion for preliminary approval
11 of the Settlement, the Parties may not amend or modify any provision of this Settlement Agreement
12 except by written agreement signed by counsel for all Parties. After the filing of the motion for
13 preliminary approval of the Settlement, the Parties may not amend or modify any provision of this
14 Settlement Agreement except by written agreement signed by counsel for all the Parties and subject
15 to Court approval. A waiver or amendment of any provision of this Settlement Agreement will not
16 constitute a waiver of any other provision.

17 47. Authorization to Enter into Settlement Agreement. Counsel for all Parties warrant and
18 represent they are expressly authorized by the Parties whom they represent to negotiate this Settlement
19 Agreement and to take all appropriate action required or permitted to be taken by such Parties pursuant
20 to this Settlement Agreement to effectuate its terms and to execute any other documents required to
21 effectuate the terms of this Settlement Agreement. The Parties warrant that they understand and have
22 full authority to enter into this Settlement Agreement, and further intend that this Settlement
23 Agreement will be fully enforceable and binding on all Parties, and agree that it will be admissible
24 and subject to disclosure in any proceeding to enforce its terms, notwithstanding any mediation
25 confidentiality provisions that otherwise might apply under state or federal law.

26 48. Signatories. It is agreed that because the members of the Class are so numerous, it is
27 impossible or impractical to have each Settlement Class Member or PAGA Employee execute this
28 Settlement Agreement. The Class Notice will advise all Class Members of the binding nature of the
Class Settlement as to the Settlement Class Members and the binding nature of the PAGA Settlement
as to the PAGA Employees, and the releases provided for by this Settlement Agreement shall have

1 the same force and effect as if this Settlement Agreement were executed by each Settlement Class
2 Member and PAGA Employee.

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

5 50. California Law Governs. All terms of this Settlement Agreement and attached exhibits
6 hereto will be governed by and interpreted according to the laws of the State of California.

7 51. Execution and Counterparts. This Settlement Agreement is subject only to the
8 execution of all Parties. However, this Settlement Agreement may be executed in one or more
9 counterparts. All executed counterparts and each of them, including facsimile, electronic, and scanned
10 copies of the signature page, will be deemed to be one and the same instrument.

11 52. Acknowledgement that the Settlement is Fair and Reasonable. The Parties believe this
12 Settlement Agreement is a fair, adequate, and reasonable settlement of the Action and have arrived at
13 this Settlement after arm's length negotiations and in the context of adversarial litigation, taking into
14 account all relevant factors, present and potential. The Parties further acknowledge that they are each
15 represented by competent counsel and that they have had an opportunity to consult with their counsel
16 regarding the fairness and reasonableness of this Settlement Agreement. In addition, if necessary to
17 obtain approval of the Settlement, the Mediator may execute a declaration supporting the Settlement
18 and the reasonableness of the Settlement and the Court may, in its discretion, contact the Mediator to
19 discuss the Settlement and whether or not the Settlement is objectively fair and reasonable.

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

24 54. Plaintiff's Cooperation. Plaintiff agrees to sign this Settlement Agreement and, by
25 signing this Settlement Agreement, is hereby bound by the terms herein and agrees to fully cooperate
26 to implement the Settlement.

27 55. Non-Admission of Liability. The Parties enter into this Settlement Agreement to
28 resolve the dispute that has arisen between them and to avoid the burden, expense, and risk of

1 continued litigation. In entering into this Settlement Agreement, Defendants do not admit, and
2 specifically deny, they have violated any federal, state, or local law; violated any regulations or
3 guidelines promulgated pursuant to any statute or any other applicable laws, regulations, or legal
4 requirements; breached any contract; violated or breached any duty; engaged in any misrepresentation
5 or deception; or engaged in any other unlawful conduct with respect to its employees. Neither this
6 Settlement Agreement, nor any of its terms or provisions, nor any of the negotiations connected with
7 it, shall be construed as an admission or concession by Defendants of any such violations or failures
8 to comply with any applicable law. Except as necessary in a proceeding to enforce the terms of this
9 Settlement Agreement, this Settlement Agreement and its terms and provisions shall not be offered or
10 received as evidence in any action or proceeding to establish any liability or admission on the part of
11 Defendants or to establish the existence of any condition constituting a violation of, or a non-
12 compliance with, federal, state, local or other applicable law.

13 56. Captions. The captions and paragraph numbers in this Settlement Agreement are
14 inserted for the reader's convenience, and in no way define, limit, construe, or describe the scope or
15 intent of the provisions of this Settlement Agreement.

16 57. Mutual Preparation. The Parties have had a full opportunity to negotiate the terms and
17 conditions of this Settlement Agreement. Accordingly, this Settlement Agreement will not be
18 construed more strictly against one Party than another merely by virtue of the fact that it may have
19 been prepared by counsel for one of the Parties, it being recognized that, because of the arms-length
20 negotiations between the Parties, all Parties have contributed equally to the preparation of this
21 Settlement Agreement.

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

26 59. All Terms Subject to Final Court Approval. All amounts and procedures described in
27 this Settlement Agreement herein will be subject to final Court approval.

28 ///

1 60. Notices. All notices, demands, and other communications to be provided concerning
2 the Settlement Agreement shall be in writing and deemed to have been duly given as of the third
3 business day after mailing by First Class U.S. Mail, or the day sent by email or messenger, addressed
4 as follows:

5 To Plaintiff and Class Counsel:

6 Jonathan M. Genish

7 jgenish@blackstonepc.com

8 Miriam L. Schimmel

9 mschimmel@blackstonepc.com

10 Joana Fang

11 jfang@blackstonepc.com

12 Alexandra Rose

13 arose@blackstonepc.com

14 Jared C. Osborne

15 josborne@blackstonepc.com

16 **BLACKSTONE LAW, APC**

17 8383 Wilshire Boulevard, Suite 745

18 Beverly Hills, California 90211

19 Tel: (310) 622-4278 / Fax: (855) 786-6356

20 To Defendants:

21 Michael J. Studenka

22 michael.studenka@ndlf.com

23 Madison J. Rolapp

24 madison.rolapp@ndlf.com

25 **NEUMEYER & DILLION LLP**

26 895 Dove Street, Second Floor

27 Newport Beach, California 92660

28 Tel: (949) 854-7000 / Fax: (949) 854-7099

29 61. Cooperation and Execution of Necessary Documents. All Parties and their counsel will
30 cooperate with each other in good faith and use their best efforts to implement the Settlement,
31 including and not limited to, executing all documents to the extent reasonably necessary to effectuate
32 the terms of this Settlement Agreement. If the Parties are unable to reach agreement on the form or
33 content of any document needed to implement the Settlement Agreement, or on any supplemental
34 provisions that may become necessary to effectuate the terms of this Settlement Agreement, the Parties
35 may seek the assistance of the Mediator and then the Court to resolve such disagreement.

36 **IN WITNESS WHEREOF**, the Parties hereto knowingly and voluntarily executed this Joint
37 Stipulation of Class Action and PAGA Settlement between Plaintiff and Defendants:
38

1 **IT IS SO AGREED.**

2 **PLAINTIFF ALFONSO HERRERA**

3 Dated: 07/08/2024

4 Alfonso H
Plaintiff Alfonso Herrera

5 **DEFENDANT W.L. BUTLER**
6 **CONSTRUCTION, INC.**

7 Dated: _____

8 Full Name: _____

9 Title: _____
10 On behalf of Defendant W.L. Butler
11 Construction, Inc.

12 **DEFENDANT ALL AMERICAN**
13 **EQUIPMENT RENTAL, LLC**

14 Dated: _____

15 Full Name: _____

16 Title: _____
17 On behalf of Defendant All American
18 Equipment Rental, LLC

19 **APPROVED AS TO FORM ONLY:**

20 **BLACKSTONE LAW, APC**

21 Dated: July 9, 2024

22 Jonathan M. Genish
Jonathan M. Genish
23 *Attorneys for* Plaintiff Alfonso Herrera
and Proposed Class Counsel

24 **NEWMAYER & DILLION LLP**

25 Dated: _____

26 Michael J. Studenka
27 Michael J. Rolapp
28 *Attorneys for* Defendants W.L. Butler
Construction, Inc. and All American
Equipment Rental, LLC

1 IT IS SO AGREED.

2 PLAINTIFF ALFONSO HERRERA

3 Dated: _____

4 Plaintiff Alfonso Herrera

5 DEFENDANT W.L. BUTLER
6 CONSTRUCTION, INC.

7 Dated: 8/12/24

8 Alina Henson
9 Full Name: Alina Henson

10 Title: CFO
11 On behalf of Defendant W.L. Butler
12 Construction, Inc.

13 DEFENDANT ALL AMERICAN
14 EQUIPMENT RENTAL, LLC

15 Dated: 8/12/24

16 FRANK YORK
17 Full Name: FRANK YORK
18 Title: PRESIDENT
19 On behalf of Defendant All American
20 Equipment Rental, LLC

21 APPROVED AS TO FORM ONLY:

22 BLACKSTONE LAW, APC

23 Dated: _____

24 Jonathan M. Genish
25 Attorneys for Plaintiff Alfonso Herrera
26 and Proposed Class Counsel

27 NEWMEYER & DILLION LLP

28 Dated: 08/21/2024

Michael J. Chienka
Madison J. Rolapp
Attorneys for Defendants W.L. Butler
Construction, Inc. and All American
Equipment Rental, LLC

EXHIBIT A

NOTICE OF CLASS ACTION SETTLEMENT

Alfonso Herrera v. W.L. Butler Construction, Inc., et al.

Superior Court of California for the County of Orange, Case No. 30-2023-01335445-CU-OE-CXC

PLEASE READ THIS CLASS NOTICE CAREFULLY.

You have received this Class Notice because Defendants' records indicate that you may be eligible to take part in the class action settlement reached in the above-referenced case.

You do not need to take any action to receive a settlement payment.

This Class Notice is designed to advise you of your rights and options with respect to the settlement, and how you can request to be excluded from the Class Settlement, object to the Class Settlement, and/or dispute the number of Workweeks and/or PAGA Workweeks that you are credited with, if you so choose.

YOU ARE NOTIFIED THAT: A class and representative action settlement has been reached between Plaintiff Alfonso Herrera ("Plaintiff") and Defendants W.L. Butler Construction, Inc. and All American Equipment Rental, LLC (together, "Defendants") (Plaintiff and Defendants are collectively referred to as the "Parties") in the case entitled *Alfonso Herrera v. W.L. Butler Construction, Inc., et al.*, Orange County Superior Court, Case No. 30-2023-01335445-CU-OE-CXC ("Action"), which may affect your legal rights. On [date of Preliminary Approval], the Court granted preliminary approval of the settlement and scheduled a hearing on [hearing date] at [hearing time] ("Final Approval Hearing") to determine whether or not the Court should grant final approval of the settlement.

I. IMPORTANT DEFINITIONS

"Class" or "Class Member(s)" means all current and former non-exempt employees who worked for Defendants in the State of California at any time during the Class Period, but excluding all employees who signed a general release agreement with Defendants.

"Class Period" means the period from July 5, 2019 through April 24, 2024.

"Class Settlement" means the settlement and resolution of all Released Class Claims.

"PAGA Employee(s)" means all current and former non-exempt employees who worked for Defendants in the State of California at any time during the PAGA Period, but excluding all employees who signed a general release agreement with Defendants.

"PAGA Period" means the period from July 5, 2022 through April 24, 2024.

"PAGA Settlement" means the settlement and resolution of all Released PAGA Claims.

II. BACKGROUND OF THE ACTION

On July 5, 2023, Plaintiff commenced a putative class action lawsuit by filing a Class Action Complaint for Damages in the Action. On May 1, 2024, Plaintiff provided written notice to the California Labor and Workforce Development Agency ("LWDA") and Defendants of the specific provisions of the California Labor Code that Plaintiff contends were violated ("PAGA Letter"). On [redacted], Plaintiff filed a First Amended Class and Representative Action Complaint ("Operative Complaint"), adding a cause of action under the Private Attorneys General Act of 2004 pursuant to California Labor Code Section 2698, *et seq.* ("PAGA").

Plaintiff contends that Defendants failed to properly pay minimum and overtime wages, provide compliant meal and rest breaks and associated premiums, timely pay wages upon termination of employment, provide accurate wage statements, and reimburse necessary business expenses, and thereby engaged in unfair business practices in violation of the California Business and Professions Code section 17200, *et seq.*, and conduct that gives rise to penalties under PAGA. Plaintiff seeks, among other things, recovery of unpaid wages and meal and rest period premiums, unreimbursed business expenses, restitution, penalties, interest, and attorneys' fees and costs.

Defendants deny all of the allegations in the Action or that they violated any law.

The Parties participated in mediation with a respected class action mediator, and as a result, the Parties reached a settlement. The Parties have since entered into a Joint Stipulation of Class Action and PAGA Settlement (“Settlement” or “Settlement Agreement”).

On [Date of Preliminary Approval], the Court entered an order preliminarily approving the Settlement. The Court has appointed Apex Class Action LLC as the administrator of the Settlement (“Settlement Administrator”), Plaintiff Alfonso Herrera as representative of the Class (“Class Representative”), and the following Plaintiff’s attorneys as counsel for the Class (“Class Counsel”):

Jonathan M. Genish
Miriam L. Schimmel
Joana Fang
Alexandra Rose
Jared C. Osborne
Blackstone Law, APC
8383 Wilshire Boulevard, Suite 745
Beverly Hills, California 90211
Tel: (310) 622-4278 / Fax: (855) 786-6356

If you are a Class Member, you need not take any action to receive an Individual Settlement Payment, but you have the opportunity to request exclusion from the Class Settlement (in which case you will not receive an Individual Settlement Payment), object to the Class Settlement, and/or dispute the Workweeks and/or PAGA Workweeks credited to you, if you so choose, as explained more fully in Sections III and IV below. If you are a PAGA Employee, you do not need to take any action to receive an Individual PAGA Payment; you will not have the opportunity to object or seek exclusion from the PAGA Settlement and all PAGA Employees will be bound to the PAGA Settlement if the Court grants final approval of the Settlement.

The Settlement represents a compromise and settlement of highly disputed claims. Nothing in the Settlement is intended or will be construed as an admission by Defendants that the claims in the Action have merit or that Defendants have any liability to Plaintiff, Class Members, or PAGA Employees. Plaintiff and Defendants, and their respective counsel, have concluded and agree that, in light of the risks and uncertainties to each side of continued litigation, the Settlement is fair, reasonable, and adequate, and is in the best interests of the Class Members, the State of California, and PAGA Employees.

III. SUMMARY OF THE PROPOSED SETTLEMENT

A. Settlement Formula

The total gross settlement amount is One Million Four Hundred Seventy-Five Thousand Dollars and Zero Cents (\$1,475,000.00) (the “Gross Settlement Amount”). The portion of the Gross Settlement Amount that is available for payment to Class Members is referred to as the “Net Settlement Amount.” The Net Settlement Amount will be the Gross Settlement Amount less the following payments which are subject to approval by the Court: (1) attorneys’ fees, in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount (i.e., \$516,250.00 if the Gross Settlement Amount is \$1,475,000.00), and reimbursement of litigation costs and expenses, in an amount not to exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00) to Class Counsel; (2) Enhancement Payment in an amount not to exceed Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) to Plaintiff for his services in the Action; (3) the amount of Fifty Thousand Dollars and Zero Cents (\$50,000.00) allocated toward civil penalties under the Private Attorneys General Act (“PAGA Amount”), of which the LWDA will be paid 75% (\$37,500.00) (“LWDA Payment”) and the remaining 25% (\$12,500.00) will be distributed to PAGA Employees (“PAGA Employee Amount”); and (4) Settlement Administration Costs in an amount not to exceed Eight Thousand Dollars and Zero Cents (\$8,000.00) to the Settlement Administrator.

Class Members are eligible to receive payment under the Class Settlement of their *pro rata* share of the Net Settlement Amount (“Individual Settlement Share”) based on the number of weeks each Class Member worked for Defendants as a non-exempt employee in California during the Class Period (“Workweeks”). The Settlement Administrator has divided the Net Settlement Amount by the Workweeks of all Class Members to yield the “Estimated Workweek Value,” and multiplied

each Class Member's individual Workweeks by the Estimated Workweek Value to yield an estimated Individual Settlement Share that each Class Member may be entitled to receive under the Class Settlement (which is listed in Section III.C below). Class Members who do not submit a timely and valid Request for Exclusion ("Settlement Class Members") will be issued their final Individual Settlement Payment.

Each Individual Settlement Share will be allocated as thirty-three and one-third percent (33 1/3%) as wages, which will be reported on an IRS Form W-2, and sixty-six and two-thirds percent (66 2/3%) as penalties, interest, and non-wage damages, which will be reported on an IRS Form 1099 (if applicable). Each Individual Settlement Share will be subject to reduction for the employee's share of payroll taxes and withholdings with respect to the wages portion of the Individual Settlement Shares resulting in a net payment to the Settlement Class Member ("Individual Settlement Payment"). The employers' share of taxes and contributions in connection with the wages portion of Individual Settlement Shares ("Employer Taxes") will be paid by Defendants separately and in addition to the Gross Settlement Amount.

PAGA Employees are eligible to receive payment under the PAGA Settlement of their *pro rata* share of the PAGA Employee Amount ("Individual PAGA Payment") based on the number of weeks each PAGA Employee worked for Defendants as a non-exempt employee in California during the PAGA Period ("PAGA Workweeks"). The Settlement Administrator had divided the PAGA Employee Amount, i.e., 25% of the PAGA Amount, by the PAGA Workweeks of all PAGA Employees to yield the "PAGA Workweek Value," and multiplied each PAGA Employee's individual PAGA Workweeks by the PAGA Workweek Value to yield each PAGA Employee's Individual PAGA Payment.

Each Individual PAGA Payment will be allocated as one hundred percent (100%) penalties, will not be subject to taxes or withholdings, and will be reported on IRS Form 1099 (if applicable).

If the Court grants final approval of the Settlement, Individual Settlement Payments will be mailed to Settlement Class Members and Individual PAGA Payments will be mailed to PAGA Employees at the address that is on file with the Settlement Administrator. **If the address to which this Class Notice was mailed is not correct, or if you move after you receive this Class Notice, you must provide your correct mailing address to the Settlement Administrator as soon as possible to ensure you receive any payment that you may be entitled to under the Settlement.**

B. Your Workweeks and PAGA Workweeks (if applicable) Based on Defendants' Records

According to Defendants' records:

- **From July 5, 2019 through April 24, 2024 (i.e., the Class Period), you are credited as having worked [REDACTED] Workweeks.**
- **From July 5, 2022 through April 24, 2024 (i.e., the PAGA Period), you are credited as having worked [REDACTED] PAGA Workweeks.**

If you wish to dispute the Workweeks and/or PAGA Workweeks credited to you, you must submit your dispute in writing to the Settlement Administrator ("Workweeks Dispute"). The Workweeks Dispute must: (a) contain the case name and number of the Action (*Herrera v. W.L. Butler Construction, Inc., et al.*, Case No. 30-2023-01335445-CU-OE-CXC); (b) contain your full name, signature, address, telephone number, and the last four (4) digits of your Social Security number; (c) clearly state that you dispute the number of Workweeks and/or PAGA Workweeks credited to you and what you contend is the correct number; and (d) be returned by mail to the Settlement Administrator at the specified address listed in Section IV.B below, postmarked **on or before [Response Deadline]**.

The Settlement Administrator and the Parties will attempt to resolve any Workweeks Dispute, however, the Court will ultimately decide any unresolved Workweeks Dispute.

C. Your Estimated Individual Settlement Share and Individual PAGA Payment (if applicable)

As explained above, your estimated Individual Settlement Share and Individual PAGA Payment (if applicable) is based on the number of Workweeks and PAGA Workweeks (if applicable) credited to you.

**Under the terms of the Settlement, your Individual Settlement Share is estimated to be \$ [REDACTED].
The Individual Settlement Share is subject to reduction for the employee's share of taxes and**

withholdings with respect to the wages portion of the Individual Settlement Share and will only be distributed if the Court approves the Settlement and after the Settlement goes into effect.

Under the terms of the Settlement, your Individual PAGA Payment is estimated to be \$ [REDACTED] and will only be distributed if the Court approves the Settlement and after the Settlement goes into effect.

The settlement approval process may take multiple months. Your Individual Settlement Share and Individual PAGA Payment (if applicable) reflected in this Class Notice is only an estimate. Your actual Individual Settlement Payment and Individual PAGA Payment (if applicable) may be higher or lower.

D. Release of Claims

Upon the full funding of the Gross Settlement Amount, Plaintiff and all Settlement Class Members will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released Class Claims.

Upon the full funding of the Gross Settlement Amount, Plaintiff, the State of California with respect to all PAGA Employees, and all PAGA Employees will be deemed to have fully, finally, and forever released, settled, compromised, relinquished, and discharged the Released Parties of all Released PAGA Claims.

“Released Class Claims” means any and all claims which were alleged or which could have been alleged based on the factual allegations in the Operative Complaint, arising during the Class Period, including but not limited to claims for Defendants’ alleged failure to pay overtime and minimum wages, provide compliant meal and rest periods and associated premium payments, timely pay wages upon termination, provide accurate wage statements, and reimburse necessary business-related expenses in violation of California Labor Code Sections 201, 202, 203, 226(a), 226.7, 510, 512(a), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the applicable Industrial Welfare Commission Wage Order(s), and California Business and Professions Code sections 17200, *et seq.*

“Released PAGA Claims” means any and all claims which were alleged or which could have been alleged based on the factual allegations in the Operative Complaint and PAGA Letter, arising during the PAGA Period, for civil penalties under the Private Attorneys General Act of 2004, California Labor Code Sections 2698 *et seq.*, for Defendants’ alleged failure to pay overtime and minimum wages, provide compliant meal and rest periods and associated premium payments, timely pay wages upon termination, provide accurate wage statements, and reimburse necessary business-related expenses in violation of California Labor Code Sections 201, 202, 203, 226(a), 226.7, 510, 512(a), 1194, 1197, 1197.1, 1198, 2800, and 2802, and the applicable Industrial Welfare Commission Wage Order(s).

“Released Parties” means Defendants, W.L. Butler, Inc., and any related entities, and their directors, officers, members, and investors.

E. Attorneys’ Fees and Costs to Class Counsel

Class Counsel will seek attorneys’ fees in an amount not to exceed thirty-five percent (35%) of the Gross Settlement Amount (i.e., \$516,250.00 if the Gross Settlement Amount is \$1,475,000.00) and reimbursement of litigation costs and expenses in an amount not to exceed Twenty Thousand Dollars and Zero Cents (\$20,000.00) (collectively, “Attorneys’ Fees and Costs”), subject to approval by the Court. The Attorneys’ Fees and Costs granted by the Court will be paid from the Gross Settlement Amount. Class Counsel has been prosecuting the Action on behalf of Plaintiff, Class Members, and PAGA Employees on a contingency fee basis (that is, without being paid any money to date) and has been paying all litigation costs and expenses.

F. Enhancement Payment to Plaintiff

Plaintiff will seek the amount of Seven Thousand Five Hundred Dollars and Zero Cents (\$7,500.00) (“Enhancement Payment”), in recognition of his services in connection with the Action. The Enhancement Payment will be paid from the Gross Settlement Amount, subject to approval by the Court, and if awarded, it will be paid to Plaintiff in addition to his Individual Settlement Payment and/or Individual PAGA Payment that he may be eligible to receive under the Settlement.

G. Settlement Administration Costs to Settlement Administrator

Payment to the Settlement Administrator is estimated not to exceed Eight Thousand Dollars and Zero Cents (\$8,000.00) (“Settlement Administration Costs”) for the costs of the notice and settlement administration process, including and not limited to, the expense of notifying the Class Members of the Settlement, processing Requests for Exclusion, Notices of Objection, and Workweeks Disputes, calculating Individual Settlement Shares, Individual Settlement Payments, and Individual PAGA Payments, and distributing payments and tax forms under the Settlement, and shall be paid from the Gross Settlement Amount, subject to approval by the Court.

IV. WHAT ARE YOUR RIGHTS AND OPTIONS AS A CLASS MEMBER?

A. Participate in the Settlement

If you want to participate in the Class Settlement and receive money from the Class Settlement, you do not have to do anything. You will automatically be included in the Class Settlement and issued your Individual Settlement Payment unless you decide to exclude yourself from the Class Settlement.

Unless you elect to exclude yourself from the Class Settlement and if the Court grants final approval of the Settlement, you will be bound by the terms of the Class Settlement and any judgment that may be entered by the Court based thereon, and you will release the Released Class Claims against the Released Parties as described in Section III.D above.

If you are a PAGA Employee and the Court grants final approval of the Settlement, you will automatically be included in the PAGA Settlement and issued your Individual PAGA Payment. This means you will be bound by the terms of the PAGA Settlement and any judgment that may be entered by the Court based thereon, and you will release the Released PAGA Claims against the Released Parties as described in Section III.D above.

As a Class Member and PAGA Employee (if applicable), you will not be separately responsible for the payment of attorney’s fees or litigation costs and expenses, unless you retain your own counsel, in which event you will be responsible for your own attorney’s fees and expenses.

B. Request Exclusion from the Class Settlement

Class Members may request to be excluded from the Class Settlement by submitting a letter indicating a request to be excluded from the Class Settlement, as described below, or by completing and submitting the accompanied Request for Exclusion Form (both of which are referred to as a “Request for Exclusion”) to the Settlement Administrator, at the following address:

[Settlement Administrator]
[Mailing Address]

A Request for Exclusion must: (a) contain the case name and number of the Action (*Herrera v. W.L. Butler Construction, Inc., et al.*, Case No. 30-2023-01335445-CU-OE-CXC); (b) contain your full name, signature, address, telephone number, and last four (4) digits of your Social Security number; (c) clearly state that you do not wish to be included in the Class Settlement; and (d) be returned by mail to the Settlement Administrator at the specified address above, postmarked **on or before** [Response Deadline].

If the Court grants final approval of the Settlement, any Class Member who submits a timely and valid Request for Exclusion will not be issued an Individual Settlement Payment, will not be bound by the Class Settlement (and the release of Released Class Claims described in Section III.D above), and will not have any right to object to, appeal, or comment on the Class Settlement. Class Members who do not submit a timely and valid Request for Exclusion will be deemed Settlement Class Members and will be bound by all terms of the Class Settlement, including those pertaining to the release of claims described in Section III.D above, as well as any judgment that may be entered by the Court based thereon.

PAGA Employees cannot request exclusion from the PAGA Settlement (and the release of Released PAGA Claims described in Section III.D above) and will still be issued an Individual PAGA Payment, irrespective of whether they submit a Request for Exclusion.

C. Object to the Class Settlement

You can object to the Class Settlement as long as you have not submitted a Request for Exclusion by submitting a written objection (“Notice of Objection”) to the Settlement Administrator.

The Notice of Objection must: (a) contain the case name and number of the Action (*Herrera v. W.L. Butler Construction, Inc., et al.*, Case No. 30-2023-01335445-CU-OE-CXC); (b) contain your full name, signature, address, telephone number, and the last four (4) digits of your Social Security number; (c) contain a written statement of all grounds for the objection accompanied by any legal support for such objection; (d) contain copies of any papers, briefs, or other documents upon which the objection is based; and (e) be returned by mail to the Settlement Administrator at the specified address listed in Section IV.B above, postmarked **on or before [Response Deadline]**.

The Court will hear from any Settlement Class Member who attends the Final Approval Hearing and asks to speak regarding their objection, regardless of whether they have submitted a written Notice of Objection.

V. FINAL APPROVAL HEARING

The Court will hold a Final Approval Hearing in Department CX05 of the Orange County Superior Court, located at Civil Complex Center, 751 W. Santa Ana Blvd., Santa Ana, CA 92701, on **[date]**, at **[time]**, to determine whether the Settlement should be finally approved as fair, reasonable, and adequate. The Court also will be asked to approve and grant the Attorneys’ Fees and Costs to Class Counsel, Enhancement Payment to Plaintiff, and Settlement Administration Costs to the Settlement Administrator.

The Final Approval Hearing may be continued without further notice to the Class Members and PAGA Employees. It is not necessary for you to appear at the Final Approval Hearing, although you may appear if you wish to.

You can find more information regarding appearing remotely through Zoom online at: <https://www.occourts.org/general-information/covid-19-response/civil-covid-19-response/civil-remote-hearings>.

VI. ADDITIONAL INFORMATION

The above is a summary of the basic terms of the Settlement. For the precise terms and conditions of the Settlement Agreement, you should review the detailed Settlement Agreement and other papers, which are on file with the Court.

You may view the Settlement Agreement and other documents filed in the Action for a fee by using the computer terminals at the Central Justice Center, 700 Civic Center Drive West, Santa Ana, CA 92701. The documents filed in the Action can also be accessed online at the Orange County Superior Court’s website, known as “Public Case Access System,” at the following web address:

<https://civilwebshopping.occourts.org/Login.do>

After navigating to the Orange County Superior Court’s Public Case Assess System website and clicking on ‘Accept Terms,’ enter Case No. ‘01335445’ in the box provided, then enter the year ‘2023’ in the box provided, click on the ‘I’m not a robot’ box, and then click ‘SEARCH.’ Thereafter, you should be able to view documents filed in the case which have been imaged by the Court and information that has been made available by the Court, for free or at a minimal charge.

You may also visit the Settlement Administrator’s website at **[redacted]** for more information and documents relating to the Settlement.

PLEASE DO NOT TELEPHONE THE COURT OR THE OFFICE OF THE CLERK FOR INFORMATION REGARDING THIS SETTLEMENT.

IF YOU HAVE ANY QUESTIONS, YOU MAY CALL THE SETTLEMENT ADMINISTRATOR AT THE FOLLOWING TOLL-FREE NUMBER: **[INSERT], OR YOU MAY ALSO CONTACT CLASS COUNSEL.**

EXHIBIT B

REQUEST FOR EXCLUSION FORM

Alfonso Herrera v. W.L. Butler Construction, Inc., et al.

Superior Court of California for the County of Orange, Case No. 30-2023-01335445-CU-OE-CXC

USE THIS FORM ONLY IF YOU WISH TO EXCLUDE YOURSELF FROM THE CLASS SETTLEMENT.

If you wish to exclude yourself from the Class Settlement, you must read and sign the following statement and return this form to the Settlement Administrator, by mail, postmarked on or before **[Response Deadline]**, at the following mailing address:

[Settlement Administrator]

[Mailing Address]

I request to be excluded from the class action settlement in the matter of *Alfonso Herrera v. W.L. Butler Construction, Inc., et al.* By excluding myself from the class action settlement, I understand that I will not be bound by the settlement and release of the Released Class Claims, and I will not receive an Individual Settlement Payment. I understand that, nevertheless, if I am a PAGA Employee, I will still be bound by the settlement and release of the Released PAGA Claims and will be issued an Individual PAGA Payment.

Date: _____

Full Name: _____

Address: _____

Phone Number: _____

Signature: _____

To ensure that this form is properly processed on your behalf and to avoid confusion in the event that multiple individuals having the same or similar names submit this form, please provide the last 4 digits of your Social Security Number to the administrator so that your identity may be confirmed:

If you do not wish to exclude yourself from the Class Settlement (and you wish to receive payment from the Class Settlement), you should not return this form – you do not need to take any action.

EXHIBIT 3

From: [DIR PAGA Unit](#)
To: [Stephany Sinaguinan](#)
Subject: Thank you for your Proposed Settlement Submission
Date: Friday, August 30, 2024 3:13:49 PM

[External Email].

08/30/2024 03:13:30 PM

Thank you for your submission to the Labor and Workforce Development Agency.

Item submitted: Proposed Settlement

If you have questions or concerns regarding this submission or your case, please send an email to pagainfo@dir.ca.gov.

DIR PAGA Unit on behalf of
Labor and Workforce Development Agency

Website: http://labor.ca.gov/Private_Attorneys_General_Act.htm