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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

KATIE MILLER, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

CONTERA CONSTRUCTION
CORPORATION, a California
Corporation; and DOES 1 through 20,
inclusive;

Defendants.

Case No.: CVRI2403479
*[Assigned to Hon. Harold W. Hopp, Dept 1, for
all purposes]*

**DECLARATION OF BRIAN J. MANKIN,
ESQ., IN SUPPORT OF MOTION FOR
PRELIMINARY APPROVAL OF CLASS
ACTION SETTLEMENT**

Hearing

Date: January 26, 2026

Time: 8:30 a.m.

Dept.: 1

I, Brian J. Mankin, state and declare:

1. I am an attorney licensed to practice before all of the courts of the State of California. I manage the employment department within my firm where I am also a Partner. I represent Plaintiff in this action and I am thoroughly familiar with and have personal knowledge of all of the facts set forth herein. I submit this declaration in support of Plaintiff's Motion for Preliminary Approval of this Class Action Settlement. If called as a witness, I could and would competently testify thereto.

1 **COUNSEL’S EXPERIENCE**

2 2. I have been a member, in good standing, of the State Bar of California since 2001.
3 I am admitted to practice in the United States District Courts for the Central and Southern
4 District of California and the Ninth Circuit Court of Appeal and have tried cases in various
5 courts in California.

6 3. I have handled well over 500 employee vs. employer litigation matters during my
7 23 years in practice. Over the last 18 years, my practice has almost entirely consisted of
8 representing employees, the majority of which has included class action and representative
9 action wage and hour matters. In total, I have handled well over 300 class action and
10 representative action wage/hour cases, and have been appointed by the court as class counsel and
11 have received final court approval and judgment in close to half of those actions to date, and
12 anticipate receiving final approval in many more of those in the future.

13 4. As part of these settlements and judgments, I have recovered well in excess of
14 \$250 million in damages for my clients and the class members (who often work as nurses,
15 ambulance drivers, technicians, warehouse workers, truck drivers, sales, professional
16 occupations and countless other trades). At one point, my team and I held the record for the
17 largest known PAGA-only case in California’s history - a \$12.5 million-dollar court approved
18 settlement, which followed extensive litigation, summary adjudication and writs to the CA
19 Supreme Court against a Fortune 50 company (*Garcia v. Macy’s*, San Bernardino Superior
20 Court).

21 5. I have tried two class and PAGA cases against Fortune 100 companies. In 2018, I
22 was lead counsel in a PAGA case that my firm tried to the bench in the Orange County Superior
23 Court and received a \$425,000 judgment. In 2019, I was co-counsel in a class action case
24 against Walmart that was tried to the jury in District Court for the Central District, wherein the
25 jury awarded Plaintiffs over \$6 million. Following the successful outcome in trial, both cases
26 were appealed.

27 6. I was named by the LA Times as one “Southern California Leading Lawyers” in
28 the May 2023 issue of Consumer Attorney’s of Southern California (a recognition given to 17

1 employment/labor law attorneys in 2023). Additionally, over the last five consecutive years, I
2 have been selected by my peers as a “Super Lawyer” in Employment Litigation, a distinction that
3 only 5% of lawyers receive.

4 **BRIEF SUMMARY OF THE SETTLEMENT**

5 7. Following mediation, expert review of Defendants’ financial condition, and
6 extensive arms-length negotiations, Plaintiff and Defendants (collectively, the “Parties”)
7 eventually entered into a Class Action and PAGA Settlement Agreement and Release of Claims
8 resolving the wage and hour claims of the putative class (the “Settlement Agreement” or “S.A.”).
9 A fully signed version is attached hereto as **Exhibit A**.

10 8. The Settlement Agreement seeks to release and discharge Defendants from the
11 claims brought against it in exchange for Defendants’ agreement to pay \$212,500 on a non-
12 reversionary, non-claims made basis (each Class Member will receive his/her share of the Net
13 Settlement Amount without having to submit a claim form or take any action, except for those
14 who opt-out).

15 9. Plaintiff seeks to represent a class of all current and former nonexempt employees
16 employed by Defendant Contera Construction Corporation in California at any time during the
17 Class Period of June 14, 2021, through August 7, 2025.

18 10. Under the terms of the Settlement Agreement, Defendants will not oppose
19 Plaintiff’s Counsel’s application for a reasonable award of attorneys’ fees not to exceed one-third
20 of the Settlement Amount, litigation expenses not to exceed \$25,000, Settlement Administrator
21 Costs of \$6,000, PAGA penalties of \$20,000 (with 75% to the LWDA and 25% to the Aggrieved
22 Employees on a pro rata basis), and a Service Payment of \$5,000 to Plaintiff. After subtracting
23 these deductions from the Settlement Amount, approximately \$85,666.67 will be available to pay
24 individual settlement amounts to approximately 178 Class Members who do not opt-out of the
25 settlement, as follows:

26 ///

27 ///

28 ///

<i>Settlement Amount</i>	\$ 212,500.00
Attorneys' Fees (1/3)	\$ 70,833.33
Litigation Costs (not to exceed)	\$ 25,000.00
Administrator Costs	\$ 6,000,000
PAGA Penalties	\$ 20,000.00
Class Representative Service Award	\$ 5,000.00
<i>Net Settlement Amount</i>	\$ 85,666.67

11. Assuming 178 total Class Members, the average payment will be approximately \$481.27 (\$85,666.67/ 178). However, the actual payments will be calculated on a pro-rata basis according to the number of Weeks Worked by each Class Member during the Class Period. And each Class Member will receive the Class Notice, explaining the nature of the case, and the process for participating, objecting and opting-out, and advising of his/her estimated settlement payment and the number of Work Weeks he/she is credited with working during the applicable periods. True and correct copies of the Class Notice, Request for Exclusion Form, Objection Form, and Dispute Form are attached hereto as **Exhibits B, C, D, and E** respectively.

PROCEDURAL BACKGROUND

12. My office has performed considerable work and diligently investigated and prosecuted this case to a successful conclusion. Our work has resulted in the creation of a significant settlement fund for the benefit of the Class. We efficiently communicated and exchanged information informally with Defense counsel which enabled the parties to successfully settle the case. Because of the risks involved in litigating the case and the contested legal and factual issues, my office believes this settlement to be fair, reasonable, and adequate.

13. After being retained by Plaintiff, we submitted a letter to the Labor and Workforce Development Agency ("LWDA") for civil penalties under the Private Attorneys General Act of 2004 ("PAGA") after we previously a letter to Defendant Contera requesting the production of personnel and timekeeping records to further evaluate her wage and hour claims. The LWDA ultimately declined to assert jurisdiction over the PAGA, thereby giving Plaintiff the right to bring PAGA claims. A true and correct copy of Plaintiff's LWDA Notice Letter is attached hereto as **Exhibit F**.

1 14. On June 14, 2024, Plaintiff filed this class action, alleging that Defendant violated
2 various sections of the Labor Code. Then, on September 18, 2024, Plaintiff filed a First
3 Amended Complaint alleging putative class and corresponding representative PAGA claims,
4 including: (a) failure to pay minimum wages, (b) failure to pay overtime wages, (c) failure to
5 provide meal periods, (d) failure to provide rest breaks, (e) failure to reimburse business
6 expenses, (f) failure to timely pay wages upon separation of employment, (g) failure to provide
7 accurate itemized wage statements, (h) unfair and unlawful competition, and (i) related claims
8 under PAGA.

9 15. Defendant Contera retained counsel and immediately began to defend the case.
10 Plaintiff immediately commenced discovery under the Court's CMO by demanding the names
11 and contact information of the putative class members pursuant to a *Belaire-West* Notice. Then,
12 after early discussions among counsel, the Parties agreed to attend private mediation in an effort
13 to avoid a contested class certification process. In preparation for mediation, the Parties
14 informally exchanged documents and information that allowed both sides to calculate the
15 potential damages and evaluate potential risk, including policies and procedures pertaining to the
16 claims, statistics relating to the number of current and former employees, number of shifts,
17 workweeks and pay periods worked and other things, and a sampling of payroll and timekeeping
18 records for Class Members. This information enabled both parties to take a deep dive into the
19 claims. Additionally, during this process, Plaintiff and her counsel analyzed, researched, and
20 investigated the potential issues, including matters related to the calculation of damages, trial,
21 and appellate issues and risks.

22 16. On April 22, 2025, Plaintiff and Defendant participated in mediation before David
23 Phillips, Esq. a well-respected class action wage-and-hour mediator. The matter did not settle at
24 the conclusion of mediation. Contera's owners Crisy Varela, Ron Varela, and Jason Varela were
25 then named as Doe defendants in the Action. The Parties continued to exchange additional
26 documents, including financial documents for Defendants, in order to evaluate financial
27 constraints and hardship. After Plaintiff's expert completed a detailed financial analysis, the
28 Parties continued extensive arms-length negotiations that resulted in a class-wide settlement of

1 \$212,500, and the Parties entered into the Settlement Agreement submitted herewith. The Parties
2 now seek the Court's preliminary approval of the Settlement.

3 **SUMMARY OF THE CLAIMS AND DEFENSES**

4 17. Plaintiff alleged numerous wage and hour violations on behalf of the Class.
5 However, Defendants vigorously contested and denied each of Plaintiff's material allegations on
6 the merits and as to the propriety of a class action or PAGA representative action. Still, Plaintiff
7 believed there were several strong claims.

8 18. For instance, Plaintiff alleged that Defendants paid the Class on an hourly basis
9 plus additional earned compensation (*e.g.*, "Health and Welfare" payments) but failed to include
10 this compensation in the regular rate calculations, leading to a failure to pay all required
11 overtime, sick and vacation pay, and meal premiums. Additionally, Plaintiff alleged that when
12 she and the Class worked on both private and public works projects during the same workweek,
13 Defendant would separately pay overtime at either 1.5 times the prevailing wage rate or 1.5
14 times the base rate, instead of paying overtime at the "weighted average" of the blended rate.
15 However, Defendants opposed these regular rate claims, arguing that the health and welfare
16 payments were properly excluded from the regular rate. Furthermore, Defendants argued that by
17 paid 1.5 times whichever rate was applicable when the Class Member was working on a private
18 or public works job at the time he or she hit overtime, Defendants paid overtime at the correct
19 rate; and therefore these claims would lose on the merits and as to the propriety of class
20 certification

21 19. Plaintiff also alleged that she and the Class Members were often denied compliant
22 meal and rest breaks due to the nature of the work. However, Defendants argued that it provided
23 and made all mandated meal and rest breaks available to the Class, and any employee who did
24 not take a break did so entirely of their own volition. Defendants also argued that they paid the
25 statutory penalty penalties for potential meal and rest break violations on a regular basis. Thus,
26 Defendants argued that these claims were without merit because, for each violation, a fact-finder
27 would have to determine why a break was noncompliant, because if it was by the employee's
28 choice, no liability attaches to Defendants. A fact-finder would also have to determine if

1 Defendants paid the statutory penalty for any potential violation, which would also eliminate
2 Defendants' liability.

3 20. Finally, Plaintiff alleged a variety of other claims (all of which Defendant
4 disputed), such as the failure to reimburse business expenses, failure to timely pay wages each
5 period and upon separation of employment and failure to provide accurate itemized wage
6 statements.

7 21. Despite the disputed nature of the claims, the Parties concluded that further
8 litigation of the Action would be protracted and expensive, and that it is desirable that the Action
9 be fully and finally settled to limit further risk, expense, and protracted litigation.

10 CMO COMPLIANCE

11 22. In accordance with CMO ¶ G, this section will specifically identify and address
12 each CMO requirement. This information was compiled with the assistance of Kristina Bui
13 Carlson, who was responsible for preparing the pre-mediation data and calculations, and
14 primarily assisted in the preparation of the *Kullar* analysis. As such, the following is based
15 largely on information and belief, as it was largely prepared with Ms. Carlson's assistance (but I
16 reviewed all of the information).

17 CMO ¶ G(3)(a)(i)

18 23. Based on information obtained through informal discovery and Plaintiff's expert's
19 analysis *at the time of mediation*, we estimated that there were approximately 178 individuals
20 that fall within the Class definition and 93 of those individuals are also PAGA "Aggrieved
21 Employees."

22 CMO ¶ G(3)(a)(ii), CMO ¶ G(3)(a)(iii), CMO ¶ G(9)(b)

23 24. The following paragraphs provide the maximum and risk-adjusted value for each
24 claim, and this includes all claims on a class and PAGA basis as required by the CMO.

25 25. The calculations below are based upon data points obtained through informal
26 discovery, from which Plaintiff's counsel and expert estimated the following *through mediation*:
27 (1) 178 Class Members, (2) 109 *former* Class Members for Labor Code § 203, (3) 12,509
28 workweeks, (4) 45,525 shifts worked, and (4) approximately 5,530 wage statements during the

1 PAGA Period.

2 *Unpaid Wage Claims*

3 26. Plaintiff's unpaid wage claims were based on the allegation that Defendant paid
4 Plaintiff and the Class Members on an hourly basis along with nondiscretionary bonuses, shift
5 differentials, and other earned compensation (*e.g.*, "Health and Welfare" payments). However,
6 Plaintiff alleged that, on the occasions that a Class Member earned additional compensation and
7 worked overtime during the time period when such compensation was earned, Defendant
8 Contera did not include the compensation in the regular rate (*i.e.*, Defendant Contera only paid
9 overtime at 1.5 times the base rate). Additionally, Plaintiff alleged that when she and the Class
10 worked on both private and public works projects during the same workweek, Defendant would
11 separately pay overtime at either 1.5 times the prevailing wage rate or 1.5 times the base rate,
12 instead of paying overtime at the "weighted average" of the blended rate. Thus, Plaintiff alleged
13 that this led to a failure to pay all wages owed, including overtime, sick pay (which is a PAGA-
14 only claim under Labor Code § 246), and vested vacation under Labor Code § 227.3.

15 27. However, Defendants raised several defenses to this claim, including that these
16 amounts were properly excluded from the regular rate, as they did not qualify as
17 "nondiscretionary" and, thus, did not need to be included within the regular rate and overtime
18 calculations. Additionally, Defendant argued that, even if the claims had merit (which it did not
19 concede), the valuation was small, as only a small percentage of Class Members received
20 additional compensation and overtime in the same workweek. Furthermore, on the overtime
21 compensation policy, Defendant argued that it correctly paid overtime at the proper rate based on
22 whether the Class Member worked on a private job or a prevailing wage project when he or she
23 incurred overtime.

24 28. CMO ¶ G(3)(a)(ii): Based on the pre-mediation sampling and an analysis of
25 relevant data, we calculated the maximum potential damages for the unpaid wage claims as
26 \$171,691.

27 29. CMO ¶ G(3)(a)(iii): we calculated the risk-adjusted value of these unpaid wage
28 claims as \$61,809. Due to the strength of these claims, and the objective nature of the alleged

violations, we applied a 40% reduction at class certification and a 40% reduction on the merits.

30. CMO ¶ G(9)(b): as for the PAGA penalty claims on these issues, Plaintiff's expert calculated that overtime time (and/or double-time) was paid using the base rate calculations when there was also additional compensation (*i.e.* H&W payments) earned in the same pay period in 11.1% of PAGA pay periods, meaning that that were a total of 616 allegedly violative PAGA periods. As such, we estimated the maximum potential PAGA penalty as \$61,600. We then applied a merits risk, similar to the above, and further recognized that there were certain factors that reduce the possible value at trial. Specifically, when considering the amount of discretionary reduction to apply against the maximum penalties, we believe the Court would consider that: (a) if this claim succeeded, the Class would already be receiving compensation for the same violations [and would thus apply a smaller penalty because otherwise it is a double penalty], and (b) there were several "good faith" defenses. As a result, we calculated a PAGA risk-adjusted value of \$7,392 for these unpaid wage claims.

Meal and Rest Break Claims

31. Plaintiff also alleged meal and rest break claims against Defendant, and this section provides CMO-compliant information as to the value and basis for such claims.

32. CMO ¶ G(3)(a)(ii): we calculated the maximum potential damages as follows. For the meal period claims, we calculated 8,103 violations (based on 17.80% violation rate) and multiplied that by an average hourly rate of \$26.55 (the applicable premium rate under Labor Code § 226.7) to arrive at maximum potential damages of \$202,817. For the rest break claims, utilizing a 100% violation rate and multiplied that by the average hourly rate to arrive at maximum potential damages of \$931,626.

33. CMO ¶ G(3)(a)(iii): we calculated the risk-adjusted value of the meal period claims as \$73,014 and for the rest break claim as \$328,905. These risk-adjusted figures are based on the numerous defenses and risks attached to such claims. For instance, Defendants raised numerous arguments in response to this claim, including that it maintained fully compliant written policies and specifically authorized the Class Members to take meal and rest breaks, meaning that no one had a reason or cause to miss a break or take a short/late break. Therefore,

Defendants asserted that a fact-finder would have to determine for each Class Member whether a break was missed and why, and why a break was noncompliant or nonexistent, because if it was by the employee's choice, no liability attaches to Defendants. Additionally, Defendants argued that some of the meal periods were waivable by Class Members. These defenses are factored into Plaintiff's analysis in two ways. First, these issues raise questions regarding whether the meal and rest break claims could be certified, and Plaintiff placed a 40% risk at the class certification stage for meal periods and a 40% risk for rest breaks. Second, these defenses also go toward the merits given the evidentiary question of proving the number of meal and rest violations. As such, Plaintiff placed a 40% risk on the merits for meal breaks, and an additional 40% risk on the merits for rest breaks. This returns risk-adjusted values for meal periods of \$73,014 [$\$202,817 \times 40\%$ class cert risk $\times 40\%$ merits risk] and for rest breaks of \$328,905 [$\$913,626 \times 40\%$ cert risk $\times 40\%$ merits risk].

34. CMO ¶ G(9)(b): as for the PAGA penalty claims on these issues, Plaintiff calculated the maximum potential PAGA penalty at trial as \$91,700 for meal periods (16.6% violation rate for meal periods) and \$491,900 for rest breaks (88.9% violation rate), based on \$100 for each violation. But these claims faced the same merits and evidentiary risks discussed above, so we applied a 40% risk on the merits for each claim. Then we also assumed that the Court, when considering what discretionary reduction to apply, would give credit to Defendant's attempt to enact and apply a compliant written meal and rest period policy. And, as a result, we estimated that the Court would apply a discretionary reduction of 80%, leading to risk-adjusted PAGA values of \$11,004 for meal periods and \$59,028 for rest breaks.

Business Expense Claims

35. Plaintiff alleged that he and the Class Members often had to use personal cell phones to perform their work for Defendant Contera, without reimbursement.

36. CMO ¶ G(3)(a)(ii): Plaintiff valued this claim at an estimated \$156,361 (based on this violation occurring each pay period for \$12.50 unreimbursed expenses per month).

37. CMO ¶ G(3)(a)(iii): Defendants raised many strong defenses to this claim, primarily focused on the argument that the Class Members were not required to use personal cell

1 phones. Defendant also argued against possible certification of this claim by arguing a lack of
2 manageability since analysis of this claim would require highly individualized testimony from
3 Class Members about whether they had to use personal cell phones and why they did so (because
4 if it was not “required” or “necessary” then it does not lead to liability). Further, even if the claim
5 was certified, Defendant would argue that there was an evidentiary issue in proving the amount
6 of expenses that were not reimbursed. As a result, for this claim, Plaintiff placed a 50% risk at
7 class certification and another 50% on the merits, leading to a risk-adjusted value of \$39,090.

8 38. CMO ¶ G(9)(b): as for the PAGA penalty claims on these issues, Plaintiff’ expert
9 calculated the maximum potential PAGA penalty at trial as \$553,000 based on a 100% violation
10 rate for the 5,530 pay periods multiplied by \$100. However, we applied the same 50% merits
11 risk and, even though there is no requirement for “knowing and intentional” under PAGA, we
12 assumed that the Court would apply a discretionary reduction of 80% based on Defendants’
13 likely argument (if liability was found) that they were already liable for damages to the Class and
14 for PAGA penalties for the overarching violations that triggered the derivative wage statement
15 violations. Thus, the total risk-adjusted PAGA penalties for these violations are \$55,300.

16 *Wage Statement Claims*

17 39. Plaintiff alleged that Defendant subjected the Class to “derivative” violations that
18 arise because of the failure to accurately state all wages owed (and other items) because of the
19 unpaid wages and meal/rest violations above.

20 40. CMO ¶ G(3)(a)(ii): based on the formula under Labor Code § 226(e) (\$50 for
21 initial violation and \$100 for subsequent violations and a cap of \$4,000 per employee), we
22 calculated the maximum class wage statement penalties as \$377,008.

23 41. CMO ¶ G(3)(a)(iii): we calculated the risk-adjusted value of the class wage
24 statement claims as \$135,723. This analysis incorporated Defendants’ arguments and defenses
25 from above, and also accounted for the fact that violations were “derivative” as opposed to
26 “direct” wage statement violations (*i.e.*, because these claims were entirely derivative of the
27 claims above, they only had merit if the claims for unpaid wages or meal/rest breaks were
28 successful). Moreover, Defendant argued that “derivative” violations cannot trigger liability

1 under § 226 and, even if there was a “technical” violation, Plaintiff would be unable to prove the
2 required “knowing and intentional” and “injury” elements. Based on these facts and defenses,
3 we placed a 40% risk at class certification (in line with the claims on which the derivative wage
4 statement claim was based) and estimated another 40% risk on the merits, leading to a risk-
5 adjusted value for the claims of \$135,723 [$\$377,008 \times 40\% \text{ cert risk} \times 40\% \text{ merits risk}$].

6 42. CMO ¶ G(9)(b): as for the PAGA penalty claims on these issues, Plaintiff
7 calculated the maximum potential PAGA penalty at trial as \$5,460,250 for wage statement
8 claims based on a 100% violation rate for the wage statements issued during the period
9 multiplied by \$250 / \$1,000 under LC section 226.3. However, like above, the risk-adjusted
10 value must consider the difference between the direct and derivative claims. Thus, we applied
11 the same 40% merits risk and, even though there is no requirement for “knowing and intentional”
12 under PAGA, we assumed that the Court would apply a discretionary reduction of 80% based on
13 Defendant’s likely argument (if liability was found) that it was already liable for damages to the
14 Class and for PAGA penalties for the overarching violations that triggered the derivative wage
15 statement violations. Thus, the total risk-adjusted PAGA penalties for wage statement violations
16 are \$655,230.

17 *Waiting Time Penalty Claims*

18 43. Plaintiff’s claim for failure to timely pay final wages (and for waiting time
19 penalties under Labor Code § 203) was entirely derivative of the claims above (*e.g.*, because
20 Defendants failed to pay all wages and premiums owed, Defendants did not timely pay all final
21 wages owed because there are still amounts due and payable).

22 44. CMO ¶ G(3)(a)(ii): we calculated the maximum potential value of this claim as
23 \$491,306 based on 109 *former* employees who were paid \$150.24 per day (109 employees x 5.2
24 hours per day x hourly rate x 30-day penalty = \$491,306).

25 45. CMO ¶ G(3)(a)(iii): we calculated the risk-adjusted value of the waiting time
26 penalty claim as \$135,723. The valuation had to account for the fact that this claim was
27 derivative of the unpaid wages and meal/rest break claims and, if those claims failed at
28 certification or on the merits, there would be no waiting time penalties owed, so the same risks

1 for those claims applied to this claim. Furthermore, even if the unpaid wage and/or meal/rest
2 claims succeeded at certification and on the merits, Plaintiff would have to prove that the
3 violations (if any existed) were “willful” under the meaning of Labor Code § 203. And, here,
4 Defendants argued there was no “willful” violation since it had compliant written policies and
5 any deviations therefrom were inadvertent and unintentional. Additionally, Defendants argued
6 that it had a “good faith” defense that prevents imposition of the waiting time penalties. As a
7 result of this analysis, Plaintiff’s counsel applied a 40% risk at class certification and a 40% risk
8 on the merits, setting a risk-adjusted value of \$135,723.

9 46. CMO ¶ G(9)(b): as for the PAGA penalty claims, Plaintiff calculated the
10 maximum potential PAGA penalty at trial as \$5,200 based on an estimated 52 Aggrieved
11 Employees that were terminated within the PAGA Period. But we had to incorporate the same
12 risks as above (40% on the merits) and also assumed that, given Defendants’ good faith attempts
13 at compliance with California law, that the Court would also apply a 80% discretionary reduction
14 in PAGA penalties, setting the risk-adjusted PAGA penalty value at \$624.

15 ***Failure to Timely Pay Wages Each Period***

16 47. This claim is pursued on a PAGA basis (the remedy for a violation is enforceable
17 either through PAGA or the Labor Commissioner); thus, the analysis here focuses on PAGA.

18 48. CMO ¶ G(9)(b): Plaintiff calculated the maximum potential PAGA penalty at trial
19 as \$553,000 for Labor Code § 204 claims based on a 100% violation rate for the 5,530 wage
20 statements issued during the period multiplied by \$100. This claim is based on the allegation that
21 Defendant did not pay all wages and wage premiums (for meal/rest violations) timely each
22 period, which violated Labor Code § 204. However, because these claims were entirely
23 derivative of the claims above, they only had merit if the claims for unpaid wages or meal/rest
24 breaks were successful. And, as such, we had applied a 40% risk on the merits to align with the
25 merits risk of the claims above. Additionally, we assumed that the Court would apply a
26 discretionary reduction of 80% based on Defendant’s likely argument (if liability was found) that
27 PAGA penalties for § 204 violations should be greatly reduced because these are “derivative”
28 and were already liable for damages to the Class and for PAGA penalties for the overarching

violations. Thus, the risk-adjusted PAGA penalties under § 204 are \$66,360.

Collective Maximum and Risk-Adjusted Class Damages/Penalties and PAGA Penalties

CMO ¶¶ G(3)(a)(ii)(C), CMO G(3)(a)(iii)(C), and CMO ¶ G(9)(b)(iii and iv)

49. The table below provides the total sums (for all claims) of the maximum and risk-adjusted class damages and penalties and the total maximum and risk-adjusted PAGA penalties.

Claim	Class Values		PAGA Values	
	Maximum	Risk-Adjusted	Maximum	Risk-Adjusted
Unpaid Wages	\$171,691	\$61,809	\$61,600	\$7,392
Meal Periods	\$202,817	\$73,014	\$91,700	\$11,004
Rest Breaks	\$913,626	\$328,905	\$491,900	\$59,028
Business Expenses	\$156,361	\$39,090	\$553,000	\$55,300
Wage Statement	\$377,008	\$135,723	\$5,746,250	\$655,230
Waiting Time Penalties	\$491,306	\$176,870	\$5,200	\$624
Labor Code § 204	n/a	n/a	\$553,000	\$66,360
Totals	\$2,312,809	\$815,412	\$7,216,650	\$854,938

CMO ¶ G(3)(a)(iv)

50. Based on an assumed Net Settlement Amount of \$85,666.67, and an estimated 178 Class Members, the average payment will be \$481.27. However, the actual amounts payable to the Class will be based on a guaranteed minimum payment plus an allocation based on each individual's weeks worked compared to the total Class weeks worked. While we cannot generate an exact "range of recoveries" right now since the Class Data will not be provided to the Settlement Administrator until after Preliminary Approval, I can provide reasonable estimates of the high and low payments as follows.

51. Based on our analysis, we estimate that there 178 Class Members participating in the Settlement, who will reach receive a share of the settlement based on weeks worked. Based on an estimate 12,509 workweeks during this period, we can assume an average per-workweek value of \$6.85 (\$85,666.67 / 12,509). Thus, on the low end, a Class Member that worked only 2 weeks during the Class Period will receive \$13.70 (\$6.85 x 2). And, at the high end, a Class Member that worked for the entire Class Period (217 calendar weeks) will receive an estimated

1 high payment of \$1,486.45 (\$6.85 x 217).

2 52. Given that these are only preliminary estimates, the Settlement Administrator will
3 fill in the average, high, and low payments in the Class Notice (if necessary) after Preliminary
4 Approval and after calculating those figures from the Class Data.

5 CMO ¶ G(3)(a)(v)

6 53. From the data and analysis conducted prior to mediation, derived through
7 informal discovery, we estimated the following recoveries by the Aggrieved Employees. First,
8 given that we estimate 93 Aggrieved Employees, those individuals will receive an estimated
9 average share of \$53.76 (\$5,000 / 93). Then, based on an estimated 5,530 Work Weeks during
10 the PAGA Period and 5,530 PAGA Pay Periods, we estimate the value of each PAGA Work
11 Week as \$.90 (\$5,000 / 5,530; if an Aggrieved Employee worked only 2 weeks in the PAGA
12 Period, the low payment would be \$1.81 and, if an Aggrieved Employee worked the maximum
13 weeks during the PAGA Period (113), then the maximum PAGA payment will be \$101.70.

14 CMO ¶ G(3)(a)(vi)

15 54. My office conducted substantial informal discovery to investigate the size of the
16 class and strength of the claims. Specifically, in preparation for mediation, we demanded and
17 received informal discovery, including documents and information that allowed us calculate the
18 potential damages and evaluate potential risk, including policies and procedures pertaining to the
19 claims, statistics relating to the number of current and former employees, number of shifts, pay
20 periods worked and other things, and a sampling of payroll and time records for Class Members.

21 CMO ¶ G(3)(a)(vii)

22 55. I am not aware of any other class, representative, or collective action in this or
23 any other court that asserts claims similar to those asserted in this action or behalf of a class or
24 group of individuals, some or all of whom would also be members of this Class. I have also
25 made reasonable inquiry of other members of my firm and none of the other attorneys are aware
26 of any such similar actions.

27 ///

28 ///

CMO ¶ G(3)(c)(i)

56. The Court, at CMO ¶ G(C)(i), states that it “believes that redistribution of the value of uncashed settlement check(s) to those class members who have cashed their checks will better serve the public interest and the interest of the class than distribution in the manner otherwise prescribed by [CCP § 384(b)]” (*i.e.*, payments to a *cy pres*).

57. Here, the Parties are not sending the value of uncashed checks to a *cy pres*. Instead, any uncashed checks will be sent to the California State Controller in the name of the Class Member (or Aggrieved Employee). Thus, those funds are – and always will be – paid to and available for collection by the Class Member (or Aggrieved Employee) at any point in the future. This does not fall under the umbrella of CCP § 384(b), as that section only relates to payment of residue to “nonprofit organizations or foundations to support projects that will benefit the class or similarly situated persons, or that promote the law consistent with the objectives and purposes of the underlying cause of action, to child advocacy programs, or to nonprofit organizations providing civil legal services to the indigent.”

58. I do not believe there is a need for the Parties to “explain[] the factual basis for the disagreement” with the Court’s proposed method of redistributing funds, because the Court’s proposal is, by its plain language, only applicable in lieu of a *cy pres* (not where the uncashed funds are still paid to the Class Member, essentially held in trust by the State Controller).

59. However, in an abundance of caution and to prevent a delay, I want to explain why we do not want to redistribute uncashed checks to class members that did cash checks.

60. First, the process to carry out the Court’s proposed redistribution is not as simple as it sounds. Under the CMO’s proposed method, after 180 days have passed, the uncashed funds would be redistributed to Class Members that cashed their checks. That step, on a standalone basis, is not concerning. However, that is nowhere near the end of the process. Indeed, after the second checks are issued, there will be another batch of checks that go uncashed, as there always are in these class actions. What, then, happens to the funds from the uncashed second checks? Are those amounts redistributed again? And to whom? Should the third round of checks only go to those who cashed the first and second checks? Regardless of

1 the answer to these questions, the problem will continue because some of the third checks will
2 likely go uncashed as well, meaning that this process can repeat over and over – each time with a
3 180-day check cashing period.

4 61. Second, the Court’s proposal to redistribute uncashed checks to class members is
5 also problematic because it will greatly increase the cost of settlement administration. After all,
6 the administrator will have to keep banking and taxing accounts open for a much longer period,
7 possibly for multiple years, and will have to issue multiple tax forms with each new payment.
8 But how much extra will the Administrator charge to be exact? And how many additional
9 checks will be mailed a second and third time? How will this be priced? And once the court has
10 approved a specific amount of money for the Settlement Administrator, who will pay for the
11 increased costs, and who will be responsible for ensuring that the increased costs are fair,
12 reasonable and adequate - because after all, this entire process is occurring after the Court has
13 entered judgment.

14 CMO ¶ G(3)(d)

15 62. In accordance with CMO ¶ G(3)(d), we requested bids from four different
16 settlement administrators, which resulted in the following bids: CPT Group (\$8,500), Xpand
17 (\$6,000), Phoenix (\$7,000) and ILYM (\$6,850). Xpand was the lowest bid, so the Parties agreed
18 to retain Xpand based on its all-in (fixed) fee to administer the settlement for \$6,000. The
19 concurrently filed Declaration of Jonathan Paul of Xpand Legal covers the other information
20 required in CMO ¶ G(3)(d)(ii).

21 CMO ¶ G(9)(b)

22 63. The paragraphs above provide the information requested in CMO ¶ G(9)(b)(i-iv);
23 this section addresses the remaining requests under CMO ¶ G(9)(b)(v-viii).

24 64. CMO ¶ G(9)(b)(v): I’d first like to point out that a finding of “knowing and
25 intentional” is not necessary under claims for PAGA penalties; that is a required element of wage
26 statement violations (on a class, not PAGA, basis) under Labor Code § 226(e). However, with
27 that said, we believe there is an argument that Defendants’ unpaid wage claims would not be
28 found “knowing and intentional” (for purposes of Labor Code § 203, for instance). Additionally,

1 we believed that Defendants had a good argument that the derivative wage statement violations
2 were not “knowing and intentional.”

3 65. CMO ¶ G(9)(b)(vi): If this action proceeded to trial, Defendants would have
4 argued for a discretionary reduction in PAGA penalties because the assessment of significant
5 PAGA penalties would be “unjust, arbitrary and oppressive, or confiscatory” in light of “the facts
6 and circumstances of [this] case.” *See* Labor Code § 2699(h). Defendants’ reliance on several
7 Labor Code exemptions presents a “mistake of law” fact pattern, and similar cases have applied
8 large reductions in PAGA penalties in such situations. *See, e.g., Cotter v. Lyft, Inc.* (N.D. Cal.
9 2016) 193 F.Supp.3d 1030, 1037 (97.5% reduction in PAGA penalties “appropriate” based on
10 the “unjust, arbitrary and oppressive, or confiscatory” factors because (i) the employer did not
11 “deliberately evad[e] a clear obligation to provide legally required pay and benefits to
12 employees,” (ii) the employer did not “negligently fail to learn about its obligations under the
13 wage and hour laws,” and (iii) the employer’s obligations were “genuinely unclear” because
14 “there is no straight answer to the question”).

15 66. CMO ¶ G(9)(b)(vii): The parties only reached settlement and the agreed-upon
16 PAGA penalties after extensive informal discovery, completion of mediation with an experience
17 mediator, additional financial document exchange and expert analysis, and lengthy arms-length
18 negotiations. Notably, Defendants raised many defenses which, if accepted by the Court, could
19 result in a significant reduction of penalties, or the elimination of penalties altogether through
20 dispositive motions. As such, an assessment of penalties greater than those agreed-upon would
21 be unjust at this stage because this settlement reflects an informed, fundamentally fair, and
22 reasonable settlement of the PAGA claims herein based on the unique facts, defenses, and risks
23 in this case.

24 67. CMO ¶ G(9)(b)(viii): the sections above show that the amount of the agreed-upon
25 penalties is fair.

26 **THE SETTLEMENT IS FAIR, JUST, AND REASONABLE**

27 68. The settlement was the product of extensive arm’s length negotiations, facilitated
28 by an experienced mediator and the eventual resolution was reached through the mediator’s

1 proposal. Though cordial and professional, the settlement negotiations were adversarial and non-
2 collusive in nature. The settlement reached is the product of substantial effort by the parties and
3 their counsel. Although we believed that there was a possibility of certifying the claims, we
4 recognized the potential risk, expense, and complexity posed by litigation, such as unfavorable
5 decisions on class certification, summary judgment, at trial and/or on the damages awarded,
6 and/or on an appeal that can take several more years to litigate.

7 69. The settlement will result in a fair payment to each class member based on the
8 number of weeks worked. Plaintiff and my firm have diligently investigated the claims and
9 defenses on behalf of the Class Members and worked to achieve a resolution of the claims to
10 maximize the recovery by avoiding further expenditure of attorneys' fees and costs. After
11 evaluating the significant risks attendant with further litigation described above and weighing
12 them against the benefits of a known compromise and settlement as set forth in the Settlement
13 Agreement, settlement on the terms agreed to is believed to be in the best interest of Plaintiff and
14 the Class, and is a fair and reasonable resolution of the claims alleged.

15 70. My firm brought to bear a great deal of experience in negotiating the settlement of
16 this case. We engaged in the necessary discovery and investigation, making it possible to
17 exercise informed judgment throughout the settlement process, including significant document
18 review (*e.g.*, documents pertaining to Defendants' policies and procedures, personnel documents,
19 among others), and conducted an extensive analysis of the detailed class-wide data provided by
20 Defendants.

21 71. Based on my experience in other cases, including wage and hour matters, I
22 believe I am qualified to evaluate the class claims and viability of defenses in this class action.
23 In this case, the recovery for each class member is reasonable, fair, and adequate, and this
24 settlement is in the best interests of the class. The settlement provides each class member with
25 compensation for the alleged violations when viewed in relation to the costs and risks inherent in
26 obtaining class certification and proceeding to trial.

27 72. My firm, as well as defense counsel, fully endorse the terms and conditions of the
28 settlement as set forth in the abovementioned Settlement Agreement.

1 73. Of course, the settlement amount represents a compromise figure, taking into
2 account the various risks surrounding class certification and the merits of Defendants' asserted
3 defense. Nevertheless, the settlement provides for fair and adequate payments to the class
4 members, with no reversion to Defendants.

5 **PLAINTIFF'S REQUESTED ENHANCEMENT PAYMENT**

6 74. Plaintiff seeks an enhancement payment of \$5,000 for her service to the Class.
7 Plaintiff came forward and brought this case in an effort to effectuate a policy and practice
8 change that benefitted all other Class Members (and to recover unpaid wages and other
9 damages). She ultimately succeeded despite significant risk.

10 75. Plaintiff provided invaluable assistance to my office and the Class in this case,
11 including providing factual background; reviewing the litigation documents; providing
12 information and documents about Defendant's policies and practices; participating in phone calls
13 to discuss litigation and settlement strategy; making herself available throughout the litigation to
14 assist with analyzing the claims and defenses; helping Class Counsel prepare for the mediation;
15 making herself available for a full-day mediation, and reviewing the settlement documents.
16 Plaintiff agreed to participate in this case with no guarantee of personal benefit.

17 76. The Class Representative also assumed significant risk in bringing this
18 litigation—namely, had she lost, he would have been ordered to pay Defendants' costs.

19 **ADEQUACY OF COUNSEL AND THE PROVISIONAL REASONABLENESS OF THE**
20 **REQUESTED FEES AND COSTS**

21 77. As set forth above, I have handled over 300 class and representative actions, have
22 been appointed as class counsel and have successfully resolved over half of those cases, and
23 many others remain pending and will successfully resolve in the future.

24 78. When this case was taken on a contingency fee basis, with my firm agreeing to
25 assume responsibility for all litigation costs, the ultimate result was far from certain. In the
26 course of this litigation, my firm paid all costs including filing fees, court costs, research fees,
27 and mediation costs. There was never a guarantee that we would recoup those expenditures.

1 79. It is my experience that attorney fee awards of one-third of a common fund
2 settlement is the standard in California. In this case, my firm agreed to seek one-third of the
3 Settlement Amount for attorneys' fees. Defendants do not oppose this fee request. The fee is
4 further warranted because it is within the range of reasonableness typically awarded in class
5 actions. The litigation costs are reasonably capped at \$25,000 and will be based on the actual
6 amount of costs incurred at the time of final approval.

7 **SETTLEMENT ADMINISTRATOR**

8 80. The Parties request that the Court appoint Xpand Legal as the Settlement
9 Administrator. In accordance with CMO ¶ G(3)(d), we requested bids from four different
10 settlement administrators, which resulted in the following bids: CPT Group (\$8,500), Xpand
11 (\$6,000), Phoenix (\$7,000) and ILYM (\$6,850). Xpand was the lowest bid, so the Parties agreed
12 to retain Xpand based on its all-in (fixed) fee to administer the settlement for \$6,000. The
13 concurrently filed Declaration of Jonathan Paul of Xpand Legal covers the other information
14 required in CMO ¶ G(3)(d)(ii).

15 **SUBMISSION TO THE LWDA**

16 81. Plaintiff has concurrently submitted the settlement and all moving papers to the
17 LWDA in accordance with Labor Code § 2699(1)(2). The proof of submission is attached hereto
18 as **Exhibit G**.

19 **EXHIBITS AND CONCLUSION**

20 82. A true and correct copy of the Settlement Agreement is attached as **Exhibit A**.

21 83. The proposed Class Notice is attached as **Exhibit B**.

22 84. The proposed Request for Exclusion Form is attached as **Exhibit C**.

23 85. The proposed Objection Form is attached as **Exhibit D**.

24 86. The proposed Dispute Form is attached as **Exhibit E**.

25 87. A true and correct copy of the notice letter we submitted on behalf of Plaintiff to
26 the LWDA is attached as **Exhibit F**.

27 88. The LWDA's confirmation of receipt of this Motion and Declarations is attached
28 hereto as **Exhibit G**.

1 89. Counsel has reviewed both the terms and the terminology of the order and the
2 accompanying forms (notice, objection form, exclusion form and dispute form) to confirm that
3 the various documents are internally consistent, consistent with each other, and consistent with
4 the settlement agreement.

5 90. For the foregoing reasons, it is respectfully requested that the Court grant
6 preliminary approval of the settlement as being fair, reasonable, and in the best interests of the
7 class, as well as preliminarily approve the requested attorneys' fees, costs, and enhancement
8 payment to the Class Representative.

9 I declare under penalty of perjury under the laws of the State of California that the
10 foregoing is true and correct. Executed on December 31, 2025, at Riverside, California.

11
12 By: 
13 Brian J. Mankin, Esq.
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EXHIBIT “A”

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF RIVERSIDE

KATIE MILLER, individually, on a
representative basis, and on behalf of all
others similarly situated;

Plaintiff,

vs.

CONTERA CONSTRUCTION
CORPORATION, a California Corporation;
and DOES 1 through 20, inclusive;

Defendants.

Case No.: CVRI2403479
*[Assigned to Hon. Harold W. Hopp, Dept 1,
for all purposes]*

**CLASS ACTION AND PAGA
SETTLEMENT AGREEMENT AND
RELEASE OF CLAIMS**

1 This Class Action Settlement Agreement and Release of Claims is entered into by and
2 between Plaintiff Katie Miller, individually and on behalf of all others similarly situated, and on
3 behalf of the State of California, and Defendant Contera Construction Corporation (“Contera
4 Construction”) and its owners Defendants Crisy Varela, Ron Varela, and Jason Varela
5 (collectively, referred to as the “Defendants”), and is approved by their respective counsel of
6 record, subject to the terms and conditions hereof and the Court’s approval.

7 **A. Definitions**

8 1. “Action” or “Lawsuit” means and refers to the case entitled *Miller v. Contera*
9 *Construction, et al.*, Riverside County Superior Court, Case No. CVRI2403479.

10 2. “Aggrieved Employee(s)” means all current and former non-exempt (hourly paid)
11 employees employed by Defendant Contera Construction Corporation in California at any time
12 during the PAGA Period.

13 3. “Agreement” or “Settlement Agreement” or “Settlement” shall mean this Class
14 Action and PAGA Settlement Agreement and Release of Claims.

15 4. “Class” is defined all current and former non-exempt (hourly paid) employees
16 employed by Defendant Contera Construction Corporation in California at any time during the
17 Class Period.

18 5. “Class Counsel” refers to Brian Mankin and Kristina Bui Carlson of Lauby,
19 Mankin & Lauby LLP and Kirk Hanson of the Law Offices of Kirk Hanson.

20 6. “Class Data” means a complete list that Defendants will diligently and in good
21 faith compile from their records and provide to the Settlement Administrator on one spreadsheet
22 which shall include, for each Class Member, the individual’s full name; last known address;
23 Social Security Number; total Weeks Worked during the PAGA Period and the Class Period.

24 7. “Class Member(s)” refers to individual members of the Class.

25 8. “Class Period” is deemed to be any time during the period of June 14, 2021,
26 through August 7, 2025.

27 9. “Class Representative” (or “Plaintiff”) means and refers to Katie Miller.
28

1 10. “Complaint” refers to the class action complaint filed in the Riverside Superior
2 Court on June 14, 2024, as well as the operative first amended complaint to incorporate related
3 PAGA representative causes of action that was filed on September 18, 2024.

4 11. “Court” (or “Judge”) means the California Superior Court, County of Riverside.

5 12. “Defendants” means and refers to Contera Construction Corporation (“Contera”)
6 and its owners Defendants Crisy Varela, Ron Varela, and Jason Varela.

7 13. “Defendants’ Counsel” or “Defense Counsel” means and refers to Tyler Law
8 LLP.

9 14. “Effective Date” means the latest of the following dates: (i) if no Class Member
10 timely and properly intervenes, or files a motion to vacate the judgment approving the Settlement
11 Agreement under Code of Civil Procedure § 663, then the date of the Court’s Notice of Entry of
12 Order regarding Final Approval of the Settlement; (ii) if a Class Member intervenes, or files a
13 motion to vacate the judgment approving the Settlement Agreement, then sixty-one (61) calendar
14 days following the date the Court enters an order granting Final Approval, assuming no appeal is
15 filed; or (iii) if a timely appeal is filed, the date of final resolution of that appeal (including any
16 requests for rehearing and/or petitions for *certiorari*), resulting in final judicial approval of the
17 Settlement.

18 15. “Escalator Clause:” Defendants represent that there are approximately 178 Class
19 Members, who collectively worked a total of approximately 9,300 Workweeks during the Class
20 Period. If the total count of 9,300 Workweeks (as contained in the Class Data) increases by
21 more than 10% of this number (*i.e.*, above 10,230 Workweeks), then the Settlement Amount
22 shall increase by \$20.77 for each Workweek above 10,230.

23 16. “Final Approval” refers to the order of the Court granting final approval of this
24 Settlement Agreement and entering a judgment approving this Agreement on substantially the
25 terms provided herein or as may be modified by subsequent agreement of the Parties.

26 17. “Individual Class Payment” refers to each Participating Class Members share of
27 the Net Settlement Amount, as further discussed in Paragraph 49(c) below.
28

1 18. “Individual PAGA Payment” refers to each Aggrieved Employees share of the
2 PAGA Penalties, as further discussed in Paragraph 49(c) below.

3 19. “Net Settlement Amount” shall have the meaning ascribed to it in Paragraph 49(b)
4 below.

5 20. “Notice” means the notice of proposed class settlement that will be sent to the
6 Class Members and which will advise each Class Member of the settlement and his or her
7 estimated “Individual Settlement Amount” and will further advise of the setting of a Final
8 Approval Hearing.

9 21. “Notice Packet” means the Notice, Request for Exclusion Form, the Objection
10 Form and the Dispute Form to be sent to all Class Members.

11 22. “Objecting Class Member” means a Class Member, other than Plaintiff, who
12 submits a valid and timely objection to the terms of this Agreement, pursuant to Paragraph 67(c)
13 below.

14 23. “PAGA Penalties” means the amount that the Parties have agreed to pay to the
15 Labor and Workforce Development Agency (“LWDA”) in connection with the California Labor
16 Code Private Attorneys General Act of 2004 (Cal. Lab. Code §§ 2698, *et seq.*, “PAGA”), as well
17 as the individual PAGA payment allocated to each Aggrieved Employee.

18 24. “PAGA Period” is deemed to be any time during the period of June 14, 2023, to
19 August 7, 2025.

20 25. “PAGA Released Claims” means any and all PAGA claims that Plaintiff alleged
21 against the Released Parties, on behalf of herself and the State of California, based on the facts
22 stated in the operative Complaint in the Action and in the LWDA notice letter(s), including all
23 PAGA claims seeking civil penalties that premised upon (a) failure to pay minimum wages, (b)
24 failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to provide rest
25 breaks, (e) failure to reimburse business expenses, (f) failure to reimburse business expenses, (g)
26 failure to failure to timely pay wages each pay period and upon separation of employment, and
27 (h) failure to provide accurate itemized wage statements. The time period governing the PAGA
28 Released Claims shall be any time during the PAGA Period.

1 26. “Parties” or “Settling Parties” mean Plaintiff and Defendants, collectively.

2 27. “Participating Class Member” means any and all Class Members who are deemed
3 to participate and receive an Individual Settlement Payment and do not opt-out by submitting
4 timely valid Requests for Exclusion.

5 28. “Preliminary Approval Date” means the date the Court approves the Settlement
6 Agreement and enters the Preliminary Approval Order.

7 29. “Preliminary Approval Order” means the judicial Order to be entered by the
8 Court, upon the application or motion of the Plaintiff, preliminarily approving this Settlement
9 and providing for the issuance of the Notice Packet to the Class, an opportunity to opt out of the
10 Settlement, an opportunity to submit timely objections to the Settlement, and setting a final
11 approval hearing on the fairness of the terms of Settlement, including approval of attorneys’ fees
12 and costs. Provided that the motion is consistent with the terms herein, Defendants will not
13 object to Plaintiff’s motion for preliminary approval but will be provided with an opportunity to
14 review and comment upon the motion before it is filed.

15 30. “QSF” means the Qualified Settlement Fund set up by the Settlement
16 Administrator for the benefit of the Participating Class Members and Aggrieved Employees, and
17 from which the settlement payments shall be made.

18 31. “Release” shall mean the release and discharge of the Released Class Claims
19 (defined below) by Plaintiff and all Participating Class Members and their assignees.

20 32. “Released Class Claims” or “Class Claims” by the Participating Class Members
21 upon Final Approval of the Settlement will include all claims stated in the operative Complaint
22 and those based solely upon the facts in the Complaint, including: (a) failure to pay minimum
23 wages, (b) failure to pay overtime wages, (c) failure to provide meal periods, (d) failure to
24 provide rest breaks, (e) failure to reimburse business expenses, (f) failure to failure to timely pay
25 wages each pay period and upon separation of employment, (g) failure to provide accurate
26 itemized wage statements, (h) unfair and unlawful competition, and (i) all other claims for
27 statutory penalties based on the facts or claims alleged in the operative complaint.
28

1 33. “Released Parties” means Defendants, and its present officers, directors, and
2 employees, and agents.

3 34. “Release Period” shall be the time period governing the Released Class Claims,
4 which shall be the same as the Class Period.

5 35. “Response Deadline” is 45 calendar days from the date the Notice is mailed to the
6 Class Members.

7 36. “Request for Exclusion” shall have the meaning ascribed to it in Paragraph 70(a)
8 below.

9 37. “Settlement Amount” is \$212,500.00, subject to the Escalator Clause and
10 exclusive of Defendants’ obligation to fund its share of payroll taxes, as further discussed in
11 Paragraph 49(c) below.

12 38. “Service Payment” or “Service Award” means the amount approved by the Court
13 to be paid to Class Representative Katie Miller in addition to her Individual Settlement Payment
14 as a Participating Class Member and individual PAGA payment as an Aggrieved Employee.

15 39. “Settlement Administrator” means and refers to Xpand Legal, the third-party class
16 action settlement administrator agreed to by the Parties, that will provide the Notice to the Class
17 Members and distribute the settlement amounts as described in this Agreement.

18 40. “Settlement Administration Costs” means the costs payable from the Settlement
19 Amount to the Settlement Administrator for administering this Settlement, including, but not
20 limited to, printing, distributing, and tracking documents for this Settlement, tax reporting, and
21 deposit of the employee and employer share of payroll taxes, unclaimed property due diligence,
22 reporting and remittance obligations, distributing the Settlement Amount, and providing
23 necessary reports and declarations, as requested by the Parties. The Settlement Administration
24 Costs shall be paid from the Settlement Amount, including, if necessary, any such costs in excess
25 of the amount represented by the Settlement Administrator as being the maximum costs
26 necessary to administer the Settlement.

27 41. “Work Weeks” or “Weeks Worked” in the context of a Class Members means any
28 and all work weeks during the Class Period during which the Class Member worked at least one

1 day for Defendant Contera Construction. Likewise, in the context of Aggrieved Employees, it
2 means any and all weeks worked during the PAGA Period during which the Aggrieved
3 Employee worked at least one day for Defendant Contera Construction.

4 **B. General Terms**

5 42. On June 14, 2024, Plaintiff filed a class action complaint in the Riverside
6 Superior Court. On or about September 18, 2024, Plaintiff filed the operative First Amended
7 Complaint that added related PAGA causes of action to the Action.

8 43. Defendants deny Plaintiff's claims and allegations and contend that the Action is
9 not suitable for class certification.

10 44. The Class Representative believes she can proceed with the representative and
11 class claims, that the Action is meritorious, and that class certification is appropriate.

12 45. The Parties have conducted a thorough investigation into the facts of the Action.
13 This includes conducting an extensive exchange of informal discovery, including a sampling of
14 payroll and timekeeping records for Class Members. Class Counsel is both knowledgeable about
15 and has done extensive research with respect to the applicable law and potential defenses to the
16 claims of the Class. Class Counsel has diligently pursued an investigation of the Class
17 Members' claims against Defendants. Based on the foregoing data and on their own independent
18 investigation and evaluation, Class Counsel is of the opinion that the settlement with Defendants
19 for the consideration and on the terms set forth in this Settlement Agreement is fair, reasonable,
20 and adequate and is in the best interest of the Class Members in light of all known facts and
21 circumstances, including the risk of significant delay and uncertainty associated with litigation,
22 various defenses asserted by Defendants, and numerous potential appellate issues.

23 46. On April 22, 2025, Plaintiff and Defendant Contera Construction participated in a
24 full-day mediation with David Phillips, Esq., a well-respected wage-and-hour mediator. The
25 matter did not settle at the conclusion of mediation. Instead, the Parties exchanged multiple
26 rounds of financial documents that were examined by Plaintiff's financial expert before the
27 Parties continued extensive arms-length negotiations. In the meantime, Plaintiff also filed Doe
28 amendments to name Contera's owners/officers Cristy Verela, Ron Verela, and Jason Verela as

1 defendants in this Action. Eventually, with the assistance of the mediator, the Parties reached a
2 global settlement and entered into this Agreement.

3 47. The Parties agree that neither the Parties' Settlement, this Agreement, nor the acts
4 to be performed or judgment to be entered pursuant to the terms of the Settlement and
5 Agreement, shall be construed as an admission by Defendants of any wrongdoing or violation of
6 any statute or law or liability on the claims or allegations in the Action.

7 48. Stipulation for Class Certification. For settlement purposes only, Defendants will
8 stipulate that the Class Members described herein who do not Request Exclusion from the Class
9 may be conditionally certified as a Class. This stipulation to certification is in no way an
10 admission that class action certification is proper and shall not be admissible in this or in any
11 other action except for the sole purposes of enforcing this Agreement. Should, for whatever
12 reason, the Court fail to issue Final Approval, the Parties' stipulation to class certification as part
13 of the Settlement shall become null and void ab initio and shall have no bearing on, and shall not
14 be admissible in connection with, the issue of whether certification would be appropriate in a
15 non-settlement context. Defendants expressly reserve their rights and declare that it would
16 continue to oppose class certification and the substantive merits of the case should the Court fail
17 to issue Final Approval. Plaintiff expressly reserves her rights and declares that she will
18 continue to pursue class certification and a trial should the Court fail to issue Final Approval.

19 **C. Terms of Settlement**

20 49. The financial terms of the Settlement are as follows:

21 (a) Settlement Amount: The Parties agree to settle this Action for the
22 Settlement Amount, subject to the Escalator Clause and Defendants' obligation to separately pay
23 its share of payroll taxes on the wage portion of the Individual Class Payments, which is the
24 maximum amount that will be paid by Defendants and includes Individual Class Payments, Class
25 Counsel's Attorneys' Fees and Costs Award, the Service Payment to the Class Representative,
26 Settlement Administration Costs, and PAGA Penalties.

27 (b) Net Settlement Amount: The "Net Settlement Amount" is defined as the
28 Settlement Amount less the Attorneys' Fees and Costs Award, the Service Payment to the Class

Representative as awarded by the Court, the Settlement Administration Costs, and PAGA Penalties. If the Court reduces the Attorneys' Fees and Costs Award, Service Award, or Settlement Administrator Costs, or either increases or decreases the amount allocated to the PAGA Penalties, the difference shall be placed in the Net Settlement Amount and allocated to the Class.

(c) The Individual Class Payment for each Class Member will be calculated by the Settlement Administrator using the Class Data provided by Defendants as follows. Compensable workweeks will be all Weeks Worked by the Class Members during the Class Period. The dollars per compensable work week will be calculated by dividing the total Weeks Worked by Class Members into the Net Settlement Amount to determine a per work week value ("Workweek Value"). The Workweek Value will be multiplied by the number of Weeks Worked by a Participating Class Member during the Class Period to determine the distribution for a Participating Class Member. If there are any timely submitted Requests for Exclusion, the Settlement Administrator shall proportionately increase the Individual Class Payments for each Participating Class Member so that the amount actually distributed to Participating Class Members equals 100% of the Net Settlement Amount.

(d) Allocation of Individual Class Payments: The Individual Class Payments to Participating Class Members will be allocated as follows: 15% will be allocated as wages subject to withholding of all applicable local, state and federal taxes; and 85% will be allocated for interest and statutory penalties (pursuant to, e.g., California Labor Code sections 203, 210, 226) from which no taxes will be withheld. The Settlement Administrator will issue to each Participating Class Member an Internal Revenue Service Form W-2 and comparable state forms with respect to the wage allocation and a Form 1099 with respect to the penalties and interest allocations.

(e) Service Payment to Class Representative: The amount, if any, awarded to the Class Representative as a Service Payment will be set by the Court in its discretion, not to exceed \$5,000, in exchange for the service that Plaintiff performed on behalf of the Class. Defendants agree not to oppose this request. The Service Payment to Plaintiff will be paid out of

1 the Settlement Amount. The Class Representative will be issued an IRS Form 1099 in
2 connection with this payment. Plaintiff shall be solely and legally responsible to pay any and all
3 applicable taxes on this payment. The Parties agree that any amount awarded as the Service
4 Payment to Plaintiff less than the requested amount shall not be a basis for Class Counsel to void
5 this Settlement Agreement. Should the Court approve a lesser amount for the Service Payment,
6 the difference shall be added to the Net Settlement Amount to be distributed to the Participating
7 Class Members.

8 (f) Attorneys' Fees and Costs Award: Defendants agree to not oppose a
9 request by Class Counsel to the Court for an award of attorneys' fees of one-third of the
10 Settlement Amount (\$70,833.33), plus reasonable litigation costs not to exceed \$25,000
11 ("Attorney's Fees and Cost Award"). Defendants agree not to oppose any contention by Class
12 Counsel that attorneys' fees should be based on the common fund theory. The Attorney's Fee
13 and Cost Award shall be paid from the Settlement Amount, and, except for this award,
14 Defendants shall have no further obligation to pay any attorneys' fees, costs or expenses to Class
15 Counsel. Should the Court approve a lesser amount than what is sought by Class Counsel, the
16 difference shall be added to the Net Settlement Amount to be distributed to the Participating
17 Class Members. Any Court order awarding less than the amount sought by Class Counsel shall
18 not be grounds to rescind the Settlement Agreement or otherwise void the Settlement. The
19 Settlement Administrator shall issue to Class Counsel an IRS Form 1099 reflecting the amount
20 of attorneys' fees and costs awarded by the Court.

21 (g) Settlement Administration Costs: The fees and other charges of the
22 Settlement Administrator will be paid from the Settlement Amount, not to exceed \$6,000, unless
23 (1) the Escalator Clause is triggered (whereby any reasonable increase in Settlement
24 Administration Costs shall be paid from the increased Settlement Amount, subject to Court
25 approval), or (2) as otherwise approved by all Parties and the Court.

26 (h) PAGA Penalties: The Parties agree that \$20,000 is allocated to PAGA
27 Penalties, and is to be paid from the Settlement Amount, subject to Court approval. Of this
28 amount, \$15,000 (75%) shall be paid to the LWDA in satisfaction of civil penalties under the

1 Private Attorney General Act of 2004 (“PAGA”) and \$5,000 (25%) will form the Individual
2 PAGA Payments to the Aggrieved Employees, which shall be calculated and allocated pro-rata
3 on a Work Week basis, which will be treated entirely as civil penalties and shall be reported as
4 required on an IRS Form 1099. Class Counsel shall give proper notice to the LWDA of the
5 Settlement.

6 (i) Tax Liability: Class Counsel and Defendants make no representations as
7 to the tax treatment or legal effect of settlement amounts called for hereunder, and Plaintiff and
8 the Class Members are not relying on any statement or representation by Class Counsel or
9 Defendants in this regard. Plaintiff, Participating Class Members, and Aggrieved Employees
10 understand and agree that they will be solely responsible for the payment of any taxes and
11 penalties assessed on their respective Individual Class Payments and Individual PAGA
12 Payments, described herein. Forms 1099 will be distributed in the manner required by the
13 Internal Revenue Code of 1986 (the “Code”) and consistent with this Agreement. If the Code,
14 the regulations promulgated thereunder, or other applicable tax law, is changed after the date of
15 this Agreement, the processes set forth in this Section may be modified in a manner to bring
16 Defendants into compliance with any such changes. Plaintiff, Participating Class Members, and
17 Aggrieved Employees understand and agree that they will be solely responsible for the payment
18 of any taxes and penalties assessed on their respective payments described herein.

19 (j) CIRCULAR 230 DISCLAIMER. EACH PARTY TO THIS
20 AGREEMENT (FOR PURPOSES OF THIS SECTION, THE “ACKNOWLEDGING PARTY”
21 AND EACH PARTY TO THIS AGREEMENT OTHER THAN THE ACKNOWLEDGING
22 PARTY, AN “OTHER PARTY”) ACKNOWLEDGES AND AGREES THAT (1) NO
23 PROVISION OF THIS AGREEMENT, AND NO WRITTEN COMMUNICATION OR
24 DISCLOSURE BETWEEN OR AMONG THE PARTIES OR THEIR ATTORNEYS AND
25 OTHER ADVISERS, IS OR WAS INTENDED TO BE, NOR SHALL ANY SUCH
26 COMMUNICATION OR DISCLOSURE CONSTITUTE OR BE CONSTRUED OR BE
27 RELIED UPON AS, TAX ADVICE WITHIN THE MEANING OF UNITED STATES
28 TREASURY DEPARTMENT CIRCULAR 230 (31 CFR PART 10, AS AMENDED); (2) THE

1 ACKNOWLEDGING PARTY (A) HAS RELIED EXCLUSIVELY UPON HIS, HER OR ITS
2 OWN, INDEPENDENT LEGAL AND TAX COUNSEL FOR ADVICE (INCLUDING TAX
3 ADVICE) IN CONNECTION WITH THIS AGREEMENT, (B) HAS NOT ENTERED INTO
4 THIS AGREEMENT BASED UPON THE RECOMMENDATION OF ANY OTHER PARTY
5 OR ANY ATTORNEY OR ADVISOR TO ANY OTHER PARTY, AND (C) IS NOT
6 ENTITLED TO RELY UPON ANY COMMUNICATION OR DISCLOSURE BY ANY
7 ATTORNEY OR ADVISOR TO ANY OTHER PARTY TO AVOID ANY TAX PENALTY
8 THAT MAY BE IMPOSED ON THE ACKNOWLEDGING PARTY; AND (3) NO
9 ATTORNEY OR ADVISOR TO ANY OTHER PARTY HAS IMPOSED ANY LIMITATION
10 THAT PROTECTS THE CONFIDENTIALITY OF ANY SUCH ATTORNEY'S OR
11 ADVISOR'S TAX STRATEGIES (REGARDLESS OF WHETHER SUCH LIMITATION IS
12 LEGALLY BINDING) UPON DISCLOSURE BY THE ACKNOWLEDGING PARTY OF
13 THE TAX TREATMENT OR TAX STRUCTURE OF ANY TRANSACTION, INCLUDING
14 ANY TRANSACTION CONTEMPLATED BY THIS AGREEMENT.

15 (k) "Non-Reversionary" Settlement. This is a "non-reversionary" settlement.
16 Under no circumstances will any portion of the Settlement Amount revert to Defendants.
17 Participating Class Members and Aggrieved Employees will not have to make a claim in order to
18 receive an Individual Class Payment or Individual PAGA Payment. Distributions, in the form of
19 Individual Class Payment or Individual PAGA Payments will be made directly to each
20 Participating Class Member and Aggrieved Employee. The Settlement Administrator shall be
21 responsible for accurately and timely reporting and remittance obligations with respect to
22 unclaimed funds as a result of a Participating Class Member and/or Aggrieved Employee not
23 cashing any checks delivered pursuant to the Settlement by the check cashing deadline, as set
24 forth herein.

25 (l) Class Counsel and Plaintiff believe that the Settlement is fair and
26 reasonable and will so represent same to the Court.

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1 **D. Release by the Participating Class Members**

2 50. Upon entry of the Final Approval Order and Defendants' funding of the
3 Settlement Amount, and except as to such rights or claims as may be created by this Agreement,
4 Plaintiff and the Participating Class Members will forever completely release and discharge the
5 Released Parties from the Released Class Claims for the Release Period.

6 51. Each Participating Class Member will be deemed to have made the foregoing
7 Release as if by manually signing it.

8 52. Class Representative, on behalf of herself and the Class, acknowledges and agrees
9 that the claims for unpaid wages and untimely payment of wages in the Action are disputed, and
10 that the payments set forth herein constitute payment of all sums allegedly due to them. Class
11 Representative, on behalf of herself and the Class, acknowledge and agree that California Labor
12 Code Section 206.5 is not applicable to the Parties or Settlement. Labor Code § 206.5 provides
13 in pertinent part as follows: "An employer shall not require the execution of any release of any
14 claim or right on account of wages due, or to become due, or made as an advance on wages to be
15 earned, unless payment of those wages has been made."

16 **E. Release of PAGA Claims**

17 53. Upon entry of the Final Approval Order and Defendants' funding of the
18 Settlement Amount, Plaintiff – in her individual capacity and on behalf of the State of California
19 and LWDA – shall completely release and discharge the Released Parties from the PAGA
20 Released Claims for the PAGA Period.

21 54. Regardless of submitting a valid Request for Exclusion, neither Plaintiff nor any
22 Aggrieved Employee shall have the right to opt-out or otherwise exclude themselves from
23 releasing the PAGA Released Claims.

24 55. It is the intent of the Parties that the Final Approval Order shall have full
25 equitable and collateral estoppel and res judicata effect to the fullest extent permitted by law.

26 **F. Interim Stay of Proceedings**

27 56. Pending completion of all of the prerequisites necessary to effectuate this
28 Settlement, the Parties agree, subject to Court approval, to a stay of all proceedings in the Action

except such as are necessary to effectuate the Settlement.

G. Notice Process

57. Appointment of Settlement Administrator. The Parties have agreed to the appointment of the Settlement Administrator to perform the duties of a settlement administrator, including mailing the Notice Packet, using standard devices to obtain forwarding addresses, independently reviewing and verifying documentation associated with any claims or opt-out requests, resolving any disputes regarding the calculation or application of the formula for determining the Individual Settlement Amounts, drafting and mailing the settlement checks to Participating Class Members and Aggrieved Employees, issuing all necessary tax forms, and performing such other tasks as set forth herein or as the Parties mutually agree or that the Court orders.

58. Disputes Regarding Settlement Administration. Any and all disputes relating to administration of the Settlement by the Settlement Administrator (except for disputes regarding Class Data) shall be referred to the Court, if necessary, which will have continuing jurisdiction over the terms and conditions of this Agreement, until Plaintiff and Defendants notify the Court that all payments and obligations contemplated by this Agreement have been fully carried out. Prior to presenting any issue to the Court, counsel for the Parties will confer in good faith to resolve the dispute without the necessity of Court intervention. The Settlement Administrator shall also be responsible for issuing to Plaintiff, Participating Class Members, and Aggrieved Employees, and Class Counsel any Tax Forms as may be required by law for all amounts paid pursuant to this Agreement.

59. Class Data. Within fourteen (14) days after entry of the Preliminary Approval Order, Defendants shall provide the Class Data to the Settlement Administrator. The Settlement Administrator will run a check of the Class Members' addresses against those on file with the U.S. Postal Service's National Change of Address List. The Class Data provided to the Settlement Administrator will remain confidential and will not be used or disclosed to anyone, except as required by applicable tax authorities, pursuant to Defendants' express written consent, or by order of the Court. Although Class Counsel will not be provided with the list of Class Data,

nothing herein shall prevent Class Counsel from communicating with Class Members regarding the Action and Settlement.

60. Total Workweeks. At least 5 days prior to mailing the Notice Packet, the Settlement Administrator shall provide a spreadsheet to Class Counsel and Defense Counsel containing a preliminary calculation of all payments to be paid from the Settlement Amount, including the estimated Individual Class Payments to each Class Member and Individual PAGA Payments to each Aggrieved Employee (a person's name shall be redacted and a control number used in place of the name). In the event that the total Workweeks worked by all Class Members triggers the Escalator Clause, the Settlement Administrator shall notify the Parties of the increased Settlement Amount, and related increased payments from the Settlement Amount, including increased Attorneys Fees and Costs and any increased Settlement Administration Costs, all of which shall be subject to Court approval.

61. Notice Packet. The Notice Packet, as approved by the Court, shall be sent by the Settlement Administrator to the Class Members, by first class mail, in English, within ten (10) calendar days following the Settlement Administrator's receipt of the Class Data. For all Class Members, the Notice Packet will include the Notice, a Request for Exclusion Form, an Objection Form and a Dispute Form. The Settlement Administrator shall use standard devices, including a skip trace, to obtain forwarding addresses of Class Members if any envelopes are returned.

62. Returned Notice Packets. The Settlement Administrator will take steps to ensure that the Notice Packet is received by all Class Members, including utilization of the National Change of Address Database maintained by the United States Postal Service to review the accuracy of and, if possible, update a mailing address. Notices will be re-mailed to any Class Member for whom an updated address is located within ten (10) calendar days following both the Settlement Administrator learning of the failed mailing and its receipt of the updated address. The Notice Packet shall be identical to the original Notice Packet, except that it shall notify the Class Member that the exclusion (opt-out) request or objection must be returned by the later of the Response Deadline or fifteen (15) days after the remailing of the Notice Packet.

63. Presumption Regarding Receipt of Notice Packet. It will be conclusively presumed that if an envelope has not been returned to Settlement Administrator by the Response Deadline that the Class Member received the Notice Packet.

64. Disputes Regarding Class Data. Class Members are deemed to participate in the Settlement unless they opt-out, and Aggrieved Employees may not opt out of the PAGA Released Claims. The Notice will inform Class Members of his/her estimated Individual Class Payment and Individual PAGA Payment, as well as the number of weeks he/she worked during the Class Period and the PAGA Period. Class Members may dispute their Weeks Worked if they disagree they worked more weeks in the Class Period and/or PAGA Period in California than Defendants' records show by timely submitting evidence to the Settlement Administrator. Defendants' records will be presumed determinative absent reliable evidence to rebut Defendants' records, but the Settlement Administrator will evaluate the evidence submitted by the Class Member and provide the evidence submitted to Class Counsel and Defense Counsel who agree to meet and confer in good faith about the evidence to determine the Class Member's actual number of Work Weeks and estimated Individual Settlement Amount. If Class Counsel and Defense Counsel are unable to agree, they agree to submit the dispute to the Court to render a final decision. Class Members and Aggrieved Employees will have until the Response Deadline to dispute Weeks Worked, object or opt out, unless extended by the Court.

65. Declaration of Due Diligence. The Settlement Administrator shall provide counsel for the Parties, at least twenty-five (25) days prior to the final approval hearing, a declaration of due diligence and proof of mailing with regard to the mailing of the Notice Packet.

66. Class Members' Rights. Each Class Member will be fully advised of the Settlement, the ability to object to the settlement, and the ability to opt-out or request exclusion from the Class Claims portion of the Settlement. The Notice Packet will inform the Class Members of the Court-established deadlines for filing objections or requesting exclusion from the Settlement in accordance with the following guidelines:

(a) Requests for Exclusion from Class. Any Class Member, other than Plaintiff, may request to be excluded from the Class by completing the Request for Exclusion

1 Form provided within the Notice Packet. The Request for Exclusion Form must be mailed to the
2 Settlement Administrator and postmarked on or before the Response Deadline in order to be
3 timely, unless the Parties otherwise agree in writing. Any such Request must be made in
4 accordance with the terms set forth in the Notice Packet. The Settlement Administrator shall
5 attach each Request for Exclusion to its declaration of due diligence and file with the Court prior
6 to the Final Approval Hearing. Any Class Member who timely requests exclusion in compliance
7 with these requirements: (i) will not have any rights under this Agreement, including the right to
8 object, appeal or comment on the Settlement; (ii) will not be entitled to receive any payments
9 under this Agreement; and (iii) will not be bound by this Agreement, or the Judgment. Any
10 Class Member who is an Aggrieved Employee who requests timely exclusion will still be subject
11 to the PAGA Released Claims to the fullest extent permitted by law and receive an Individual
12 PAGA Payment. All Parties and their counsel, including Defendants' respective members,
13 member managers, owners, officers, and directors, shall not encourage or solicit opt-outs or
14 objections, directly or indirectly, through any means.

15 (b) Binding Effect on Participating Class Members. All Participating Class
16 Members will: (i) be bound by the terms and conditions of this Agreement, the Judgment, and
17 the releases set forth herein; and (ii) except as otherwise provided herein, will be deemed to have
18 waived all objections and oppositions to the fairness, reasonableness, and adequacy of the
19 Settlement.

20 (c) Objections to Settlement. Any Class Member, other than Plaintiff, who
21 does not submit a valid and timely Request for Exclusion may object to the terms of this
22 Agreement by completing the Objection Form provided within the Notice Packet. Any Class
23 Member that intends to object must mail the Objection Form to the Settlement Administrator.
24 The Objection Form must be postmarked on or before the Response Deadline in order to be
25 timely, unless the Parties otherwise agree in writing. Additionally, any objection must be made
26 in accordance with the terms set forth in the Notice Packet. The Settlement Administrator shall
27 provide any objections to Class Counsel and Defense Counsel within three (3) days of receipt,
28 and the Settlement Administrator shall attach the same to its declaration of due diligence and file

1 with the Court prior to the Final Approval Hearing. Any Participating Class Member who files
2 an objection remains eligible to receive monetary compensation from the Settlement. Plaintiff
3 and Defendants shall not be responsible for any fees, costs, or expenses incurred by any Class
4 Member and/or his or her counsel related to any objections to the Settlement. Submitting an
5 objection does not preserve the right to appeal a final judgment. Rather, the right to appeal is
6 preserved by becoming a party of record by timely and properly intervening or filing a motion to
7 vacate the judgment under Code of Civil Procedure § 663.

8 (d) Failure to Object. Any Class Member who does not timely and properly
9 become a party of record by intervening or filing a motion to vacate the judgment waives any
10 and all rights to appeal from the Judgment, including all rights to any post-judgment proceeding
11 and appellate proceeding, such as a motion to vacate judgment, motion for new trial, a motion
12 under California Code of Civil Procedure section 473, and extraordinary writs.

13 (e) Responses to Objections. Counsel for the Parties may file a response to
14 any objections submitted by Objecting Class Members at least five (5) court days before the date
15 of the Final Approval Hearing.

16 (f) Class Members will have until the Response Deadline to object or submit
17 a Request for Exclusion to the Settlement Administrator by U.S. Mail. The Settlement
18 Administrator shall disclose jointly to Class Counsel and Defense Counsel what objections or
19 Requests for Exclusion were timely submitted on a weekly basis, and upon the request of Class
20 Counsel or Defense Counsel.

21 67. Funding of the Settlement Amount. Defendants shall deposit the Settlement
22 Amount with the Settlement Administrator by the later of December 1, 2026, or thirty (30) days
23 after the Effective Date.

24 68. Distribution of Funds. No later than ten (10) calendar days after the deposit of the
25 Settlement Amount by Defendants, the Settlement Administrator shall mail the Individual Class
26 Payments to the Participating Class Members, the Individual PAGA Payments to the Aggrieved
27 Employees, the payment to Class Counsel for the Attorneys' Fees and Costs Award, any Service
28 Payment to the Class Representative, the payment to the LWDA for PAGA Penalties, mail to the

1 Aggrieved Employees their portion of the PAGA Penalties, and will pay itself the Settlement
2 Administration Costs.

3 69. Deadline for Cashing Settlement Checks. Participating Class Members and
4 Aggrieved Employees shall have 180 calendar days after mailing by the Settlement
5 Administrator to cash their settlement checks. The release will be binding upon all Participating
6 Class Members who do not cash their checks within the 180-day period. In the event that any
7 settlement check is returned to the Settlement Administrator within 180 days of mailing, the
8 Settlement Administrator will, within five (5) business days of receipt of the returned settlement
9 check, perform a skip trace to locate the individual, and notify Defense Counsel and Class
10 Counsel of the results. If a new address is located by these means, the Administrator will have
11 ten (10) business days to re-issue the check. Neither Defendants, Defense Counsel, Class
12 Counsel, Plaintiff, nor the Settlement Administrator will have any liability for lost or stolen
13 settlement checks, forged signatures on settlement checks, or unauthorized negotiation of
14 settlement checks. Without limiting the foregoing, in the event a Participating Class Member
15 and/or Aggrieved Employee notifies the Settlement Administrator that he or she believes that a
16 settlement check has been lost or stolen, the Settlement Administrator shall immediately stop
17 payment on such check. If the check in question has not been negotiated prior to the stop
18 payment order, the Settlement Administrator will issue a replacement check.

19 a. If any Participating Class Member's check is not cashed within the time
20 periods noted above, the check will be void and a stop-payment will be issued,
21 and the Settlement Administrator shall issue the unclaimed funds to the California
22 State Controller's Office in the name of the Class Member.

23 b. If any Aggrieved Employee's check is not cashed within the time periods
24 noted above, the check will be void and a stop-payment will be issued, and the
25 Settlement Administrator shall issue the unclaimed funds to the California State
26 Controller's Office in the name of the Aggrieved Employee.

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1 **H. Duties of the Parties Prior to the Court's Approval**

2 70. Promptly after execution of this Agreement, Plaintiff will move the Court for
3 Preliminary Approval of this Settlement and entry of the Preliminary Approval Order
4 accomplishing the following:

5 (a) Scheduling the Final Approval Hearing on the issue of whether this
6 Settlement should be finally approved as fair, reasonable and adequate as to the Class Members
7 and a hearing on fees, costs and the Service Payments;

8 (b) Approving as to form and content the proposed Notice Packet;

9 (c) Directing the mailing of the Notice Packet by first class mail to the Class
10 Members;

11 (d) Preliminarily approving this Settlement;

12 (e) Preliminarily certifying the class for purposes of this Settlement; and

13 (f) Advising the LWDA of the proposed Settlement.

14 **I. Duties of the Parties Following Court's Final Approval**

15 71. In connection with the Final Approval Hearing provided for in this Agreement,
16 Class Counsel shall submit a proposed Final Approval Order:

17 (a) Approving the Settlement, adjudging the terms thereof to be fair,
18 reasonable and adequate, and directing consummation of its terms and provisions;

19 (b) Approving Class Counsel's application for an award of attorneys' fees and
20 reimbursement of litigation costs and expenses, the Service Payment to the Class Representative,
21 and the payment to the Settlement Administrator for costs of administering the settlement; and

22 (c) Entering judgment approving settlement.

23 **J. Voiding the Agreement**

24 72. If the Court fails or refuses to issue the Final Approval Order or fails to approve
25 any material condition of this Agreement which effects a fundamental change of the Settlement,
26 the entire Agreement shall be rendered voidable and unenforceable as to all Parties herein at the
27 option of either Party.
28

73. If the Settlement is voided or fails for any reason, Plaintiff and Defendants will have no further obligations under the Settlement, including any obligation by Defendants to pay the Settlement Amount, or any amounts that otherwise would have been owed under this Settlement.

74. If the Settlement is voided or fails for any reason, any costs incurred by the Settlement Administrator shall be borne equally by Defendants and Plaintiff, unless otherwise specified in this Agreement.

K. Other Terms

75. Waiver. The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any other prior or subsequent breach of this Agreement.

76. Parties' Authority. The signatories hereto represent that they are fully authorized to enter into this Agreement and bind the Parties hereto to the terms and conditions hereof.

77. Mutual Full Cooperation. The Parties agree to fully cooperate with each other to accomplish the terms of this Agreement, including but not limited to, execution of such documents and to take such other action as may reasonably be necessary to implement the terms of this Agreement. The Parties to this Agreement shall use their best efforts, including all efforts contemplated by this Agreement and any other efforts that may become necessary by order of the Court, or otherwise, to effectuate this Agreement and the terms set forth herein. As soon as practicable after execution of this Agreement, Class Counsel shall, with the assistance and cooperation of Defendants and Defense Counsel, take all necessary steps to secure the Court's preliminary and final approval of the settlement, and the final entry of judgment.

78. No Prior Assignments. The Parties hereto represent, covenant, and warrant that they have not, directly or indirectly, assigned, transferred, encumbered, or purported to assign, transfer, or encumber to any person or entity any portion of any liability, claim, demand, action, cause of action or rights released and discharged by this Agreement.

79. No Admission. Defendants deny any and all liability to Plaintiff and/or any Class Member and/or Aggrieved Employee in this Action, as to any and all causes of action that were asserted or that might have been asserted in this Action. Nonetheless, Defendants wish to settle

1 and compromise the matters at issue in the Complaint to avoid further substantial expense and
2 the inconvenience and distraction of protracted and burdensome litigation. Defendants have
3 taken into account the uncertainty and risks inherent in litigation, and without conceding any
4 infirmity in the defenses that it has asserted or could assert against Plaintiff, have determined that
5 it is desirable and beneficial that Plaintiff's claims be settled in the manner and upon the terms
6 and conditions set forth in this Agreement.

7 80. Inadmissibility of Agreement. Whether or not the Court issues the Final Approval
8 Order, nothing contained herein, nor the consummation of this Agreement, is to be construed or
9 deemed an admission of liability, culpability, negligence, or wrongdoing on the part of
10 Defendants or any of the other Released Parties. Each of the Parties hereto has entered into this
11 Agreement with the intention of avoiding further disputes and litigation with the attendant
12 inconvenience and expenses. This Agreement is a settlement document, and it, along with all
13 related documents such as the notices, and motions for preliminary and final approval, shall,
14 pursuant to California Evidence Code section 1152 and/or Federal Rule of Evidence 408, be
15 inadmissible in evidence in any proceeding, except an action or proceeding to approve the
16 settlement, and/or interpret or enforce this Agreement. The stipulation for class certification as
17 part of this Agreement is for settlement purposes only and if, for any reason the settlement is not
18 approved, the stipulation will be of no force or effect.

19 81. No Publicity. The Parties will not publicize the Settlement or disclose it to third
20 parties prior to the Court granting Preliminary Approval, except as required or necessary to
21 effectuate its terms and comply with law. After the Final Approval Date, Class Counsel and
22 Class Representative agrees that she will not discuss the Settlement with the media, any
23 settlement and verdict reporting service, any social media postings or other Internet postings.
24 Nothing herein shall be construed to prevent Class Counsel from the public filing of motions or
25 other case materials in the Action related to seeking and obtaining Court approval of this
26 Settlement and the related awards of attorneys' fees and costs, or to communications with Class
27 Members or their representatives about this Settlement, including through the posting of Court-
28 filed documents on Class Counsel's websites for access solely by the Class Members, or to

1 prevent the Parties or their representatives from communicating with financial or legal advisors
2 regarding the Settlement. In response to any media inquiry, Class Counsel may state only that
3 the Action has been settled on terms mutually agreeable to the Parties.

4 82. Notices. Unless otherwise specifically provided herein, all notices, demands or
5 other communications given hereunder shall be in writing and shall be deemed to have been duly
6 given as of the third business day after mailing by United States registered or certified mail,
7 return receipt requested, addressed:

8 *To the Class:*

9 Brian J. Mankin
10 *brian@lmlfirm.com*
11 Lauby, Mankin & Lauby LLP
12 5198 Arlington Ave, PMB 513
13 Riverside, CA 92504
14 Tel: (951) 320-1444 | Fax: (951) 320-1445

15 *To Defendants:*

16 Nathan R. Klein, Esq.
17 *nklein@tylerlawllp.com*
18 Tyler Law, LLP
19 25026 Las Brisas Rd.
20 Murrieta, CA 92562
21 Tel: (951) 600-2733 | Fax: (951) 600-4996

22 83. Construction. The Parties hereto agree that the terms and conditions of this
23 Agreement are the result of lengthy, intensive arms' length negotiations between the Parties and
24 that this Agreement shall not be construed in favor of or against any Party by reason of the extent
25 to which any Party or his or its counsel participated in the drafting of this Agreement. Plaintiff
26 and Defendants expressly waive the common-law and statutory rule of construction that
27 ambiguities should be construed against the drafter of an agreement and further agree, covenant,
28 and represent that the language in all parts of this Agreement shall be in all cases construed as a
whole, according to its fair meaning.

84. Captions and Interpretations. Paragraph titles or captions contained herein are
inserted as a matter of convenience and for reference, and in no way define, limit, extend, or

1 describe the scope of this Agreement or any provision hereof. Each term of this Agreement is
2 contractual and not merely a recital.

3 85. Modification. This Agreement may not be changed, altered, or modified, except
4 in writing and signed by the Parties hereto, and approved by the Court. This Settlement
5 Agreement may not be discharged except by performance in accordance with its terms or by a
6 writing signed by all of the Parties hereto.

7 86. Dispute Resolution. Prior to instituting legal action to enforce the provisions of
8 this Agreement or to declare rights and/or obligations under this Agreement, a Party shall
9 provide written notice to the other Party and allow an opportunity to cure the alleged
10 deficiencies, and Plaintiff and Defendants may agree to seek the help of the Mediator to resolve
11 any dispute they are unable to resolve informally. During this period, the Parties shall bear their
12 own attorneys' fees and costs. This provision shall not apply to any legal action or other
13 proceeding instituted by any person or entity other than Plaintiff or Defendants.

14 87. Choice of Law. This Settlement Agreement shall be governed by and construed,
15 enforced and administered in accordance with the laws of the State of California, without regard
16 to its conflicts-of-law rules.

17 88. Integration Clause. This Settlement Agreement contains the entire agreement
18 between the Parties relating to the settlement and transaction contemplated hereby, and all prior
19 or contemporaneous agreements, understandings, representations, and statements, whether oral
20 or written and whether by a Party or such Party's legal counsel, are merged herein. No rights
21 hereunder may be waived except in writing.

22 89. Binding On Assigns. This Agreement shall be binding upon and inure to the
23 benefit of the Parties hereto and their respective heirs, trustees, executors, administrators,
24 successors and assigns.

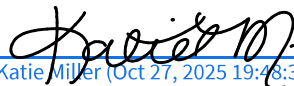
25 90. Signatures of All Class Members Unnecessary to be Binding. It is agreed that,
26 because the members of the Class are numerous, it is impossible or impractical to have each
27 Class Member execute this Agreement. The Notice Packet will advise all Class Members of the
28 binding nature of the release provided herein and such shall have the same force and effect as if

1 this Agreement were executed by each Class Member.

2 91. Counterparts. This Agreement may be executed in counterparts, and when each
3 Party has signed and delivered at least one such counterpart, each counterpart shall be deemed an
4 original, and, when taken together with other signed counterparts, shall constitute one fully
5 signed Agreement, which shall be binding upon and effective as to all Parties. Electronic
6 signatures shall have the same force and effect as an original.

7
8 Dated: Oct 27, 2025

PLAINTIFF AND CLASS REPRESENTATIVE,
individually and on behalf of other aggrieved employees:

9
10 
Katie Miller (Oct 27, 2025 19:48:31 PDT)

11 _____
Katie Miller

12
13 Dated: _____

**DEFENDANT CONTERA CONSTRUCTION
CORPORATION**

14
15
16 By: _____
Title: _____

17
18 Dated: _____

DEFENDANT CRISTY VARELA

19
20 _____
Cristy Varela

21
22 Dated: _____

DEFENDANT RON VARELA

23
24 _____
Ron Varela

25
26 Dated: _____

DEFENDANT JASON VARELA

27
28 _____
Jason Varela

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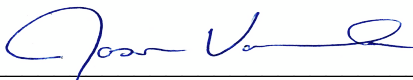
7
8 Dated: _____

PLAINTIFF AND CLASS REPRESENTATIVE,
individually and on behalf of other aggrieved employees:

9
10
11 _____
Katie Miller

12
13 Dated: 10/22/25

**DEFENDANT CONTRA CONSTRUCTION
CORPORATION**

14
15 
16 By: Jason Varela
17 Title: CFO

18 Dated: 10/22/25

DEFENDANT CRISTY VARELA

19 
20 _____
21 Cristy Varela

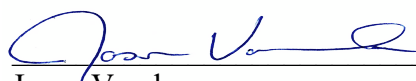
22 Dated: 10/22/25

DEFENDANT RON VARELA

23 
24 _____
25 Ron Varela

26 Dated: 10/22/25

DEFENDANT JASON VARELA

27 
28 _____
Jason Varela

1
2 **APPROVED AS TO FORM:**

3 Dated: 10/28/2025

CLASS COUNSEL
LAUBY, MANKIN & LAUBY LLP

4 

5
6 Brian J. Mankin
Attorneys for Plaintiff

7
8 Dated: 10/22/2025

DEFENSE COUNSEL:
TYLER LAW, LLP

9 

10
11 Nathan R. Klein, Esq.
Attorneys for Defendants

12
13
14 **[END OF DOCUMENT]**

EXHIBIT “B”

EXHIBIT “C”

EXHIBIT “D”

EXHIBIT “E”

EXHIBIT “F”



June 13, 2024

Sent Via Online Filing to the LWDA

California LWDA
Attn: PAGA Administrator
455 Golden Gate Ave., 9th Fl.
San Francisco, CA 94102

Sent Via U.S. Mail and Certified Mail

Contera Construction Corporation
28545 Old Town Front Street, Suite 201
Temecula, CA 92590

Jason Varela
28545 Old Town Front Street, Suite 201
Temecula, CA 92590

Cristy Varela
28545 Old Town Front Street, Suite 201
Temecula, CA 92590

Re: PAGA Civil Penalty Claim
Katie Miller v. Contera Construction Corporation, et al.

To the Labor and Workforce Development Agency, Contera Construction Corporation, Mr. Jason Varela, Ms. Cristy Varela, and all affiliated entities:

Pursuant to the Private Attorneys General Act of 2004 (“PAGA”), Labor Code §§ 2699, *et seq.*, this letter shall serve as notification of the PAGA civil penalty claim of aggrieved employee Katie Miller (“Claimant”), on behalf of the State of California and all Aggrieved Employees, against her employer(s), Contera Construction Corporation (“Contera”) and/or any affiliated entities, as well as its owners / members, Jason Varela, Cristy Varela, and others (the “Owners”) (collectively, the “Company”), for violations of Labor Code §§ 201, 202, 203, 204, 208, 210, 218.6, 226, 226.2, 226.3, 226.7, 256, 512, 558, 1174(d), 1194, 1194.2, 1197, 1197.1, 1198, 1199, 2802, among other sections inadvertently omitted, and/or sections of the applicable Industrial Welfare Commission Wage Order(s).

FACTUAL BACKGROUND

Claimant was employed by the Company and alleges that, at all relevant times, she and all other non-exempt employees employed by the Company in California (the “Aggrieved Employees”) were subjected to the same policies, working conditions, and corresponding wage and hour violations that Claimant was subjected during her employment.

For instance, at all relevant times, Claimant and the Aggrieved Employees were not provided proper minimum and overtime wages due to the Company’s failure to accurately record and compensate for all hours worked. Because this was time spent under the Company’s control without compensation, this violates California law and led to minimum and overtime wage violations. See *Troester v. Starbucks Corporation*

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(2018) 5 Cal.5th 829 (California law “do[es] not allow employers to require employees to routinely work for minutes off the clock without compensation”); See also *Frlekin v. Apple Inc.* (2020) 8 Cal.5th 1038 (tasks are compensable when employee is under company’s control and where the tasks served the employer’s interests).

Also, at all relevant times, the Company failed to pay proper overtime wages to pay Claimant and the Aggrieved Employees. For example, Claimant and the Aggrieved Employees were compensated on an hourly basis plus additional earned compensation (such as health and welfare payments, paid per hour worked). However, on the occasions when Claimant worked overtime hours and received additional earned compensation during the same workweek, the Company failed to properly include these amounts in the calculations for Claimant’s regular rate of pay – in violation of California law. Additionally, Claimant and the Aggrieved Employees would often work at two or more base rates of pay in the same workweek. Yet, when the Aggrieved Employees worked overtime and worked at two or more base rates of pay in the same workweek, the Company illegally paid overtime at the “rate-in-effect” method rather than using the correct “weighted average” method. See DLSE Manual § 49.2.6.2 (when an employee performs prevailing and non prevailing jobs during the same workweek, the company is required to pay overtime at the “weighted average” of the blended rate, averaging the normal base hourly rate and prevailing wage rate).

Claimant was also not provided 30-minute off-duty meal periods, as mandated by California law, during employment with the Company. As a result of the Company’s policies and practices, as well as the hectic and demanding workload, Claimant was subjected to meal period violations when: (1) unable to take a meal period due to workload, (2) forced to take an on-duty meal period while under the control of the Company, (3) forced to take a shortened meal period, (4) forced to take a meal period after the 5th hour of work, and (5) not provided a mandated second meal period for shifts in excess of 10 hours.

The Company also failed to provide Claimant with 10 minutes of net rest break time for every 4 hours worked, or major fraction thereof, as mandated by California law. The Company did not schedule Claimant’s rest breaks, Claimant was unable to leave the premises for breaks, and Claimant was often not authorized and/or permitted to take mandated rest breaks due to the lack of adequate staffing and coverage and being overwhelmed by the hectic workload. Furthermore, on occasions when Claimant worked 10 hours or more in a shift, the Company failed to authorize and/or permit the mandated additional rest breaks.

Also, the Company required Claimant and the Aggrieved Employees to incur necessary business-related expenses and costs without reimbursement, including, but not limited to, acquiring and maintaining a smart phone and related monthly data plan to communicate with the Company via phone and text message and also to log into Apps to clock in and out and track loads. The Company also failed to comply with the mandates of Labor Code §§ 204 and 210 regarding the timing of the payment of wages to its employees each period, including minimum and overtime wages, as well as meal and rest period premiums. Also, the Company failed to comply with the mandates of Labor Code §§ 201–203 regarding timing of payment of final wages and failed to pay all wages due and owing upon separation of employment including minimum wages, overtime, and meal and rest break premiums. Moreover, the Company failed to pay all wages due and owing because it failed to pay the Aggrieved Employees for mandated sick time at a rate “calculated in the same manner as the regular rate of pay.” Finally, during employment with the Company, Claimant received inaccurate and incomplete wage statements that failed to accurately state all necessary items required under Labor Code § 226(a).

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Claimant alleges that he worked under the joint direction and control of the entities listed herein and their Owners and is informed and believes that each of them acted in all respects pertinent to this action as the agent of the others, carried out a joint scheme, business plan or policy in all respect pertinent hereto, and the acts of each are legally attributable to the others. On information and belief, a unity of interest and ownership between each exists such that the entities listed herein and the Owners acted as a single employer of Claimant and the Aggrieved Employees. Furthermore, on information and belief, the entities listed herein and their Owners are an integrated enterprise and should be treated as a single employer because the entities and their Owners share an interrelation of operations, with common human resources and personnel policies and shared common offices and facilities. Upon information and belief, the entities listed herein and their Owners share common management, a centralized control of labor operations, and common ownership or financial control.

Furthermore, Claimant alleges that the Owners are now and at all relevant times were the owners of the entities listed herein and were Claimant's and the Aggrieved Employees' actual employer or, in the alternative, were individuals employed by the Company as managerial and/or supervisory employees and/or agents. In addition, Claimant alleges that at all relevant times the Owners had the authority, in the interest of the entities listed herein to exercise independent judgment to hire, transfer, promote, discharge, assign, discipline, or take other similar actions against Claimant and the Aggrieved Employees, and were in Claimant's chain of command at the time of and direct participants in the wrongful conduct which constitutes the basis of Claimant's complaint herein. Claimant also alleges that the entities listed herein and the Owners are the agents, servants, employees, partners, affiliates, and/or representatives of each other, and were, at all times herein mentioned, acting within the course, scope, and purpose of such relationship(s) and with the knowledge, consent and/or ratification of each other. Furthermore, in conducting themselves in the manner described herein, the entities listed herein and the Owners were acting in active concert with on another such that the acts of each were fully attributable to the other in all material respects.

Claimant also alleges the entities listed herein and the Owners were merely the alter-ego of the others in that there existed a unity of interest and ownership such that any separateness between them ceased to exist and each exercised undue dominance, control, influence, and management over the others. Claimant further alleges that, at all relevant times, the entities listed herein have been inadequately capitalized to conduct business, have failed to follow appropriate corporate formalities, and have simply been a shell and instrumentality through which the Owners have conducted their personal affairs. Adherence to the fiction of the separate existence of the entities listed herein would permit abuse of the corporate privilege, thereby sanctioning fraud and promoting injustice. Accordingly, the corporate veil should be pierced, and any liability attached to the entities listed herein should be imposed jointly and severally against the Owners.

Finally, in an additional separate, but not necessarily mutually exclusive, alternative theory of liability, the Owners are liable for PAGA civil penalties under Labor Code § 558 as "other person(s)" who caused the violations regarding minimum wage among other claims. See *Atempa v. Pedrazzani* (2018) 27 Cal.App.5th 809, 820 ("if there is evidence and a finding that a party other than the employer 'violates, or causes to be violated' the overtime laws (§ 558(a)) or 'pays or causes to be paid to any employee' less than minimum wage (§ 1197.1(a)), then that party is liable for certain civil penalties regardless of the identity or business structure of the employer"); *Moua v. IBM* (N.D. Cal. 2019) 2019 U.S.Dist.LEXIS 40851 (same).

As a result of these violations, and others described below, Claimant alleges that he and other Aggrieved Employees were denied specific rights to which they are/were entitled under California law and the rules promulgated by the IWC Wage Orders, including the following:

**PAGA ASSESSMENT FOR FAILURE TO
PAY ALL MINIMUM, REGULAR, AND OVERTIME WAGES**

(Labor Code §§ 204, 210, 221-223, 510, 558, 1194, 1194.2, 1197, 1197.1, 1198; IWC Wage Order §§ 3, 4(B))

As discussed above, the Company failed to pay all required minimum, regular, and overtime wages to Claimant and the Aggrieved Employees due to the Company's failure to accurately record and compensate for all hours worked and the failure to pay overtime and/or properly calculate the regular rate of pay for Claimant and other Aggrieved Employees. This resulted in earned, but unpaid, wages due and owing to Claimant and the Aggrieved Employees. Therefore, Claimants and the Aggrieved Employees performed work for the Company without receiving proper payment of the requisite minimum, overtime, and/or doubletime wages.

Accordingly, Labor Code §§ 210, 558, 1194.2, 1197.1, and 2699, among possibly others, impose various penalties upon the Company for each employee and each pay period in which it failed to pay all wages including, but not limited to, minimum, regular, and overtime wages in violation of the Labor Code and/or the IWC Wage Orders.

**PAGA ASSESSMENT FOR DENIAL OF MEAL PERIODS,
REST BREAKS, AND WAGE PREMIUMS**

(Labor Code §§ 226.7(b) & (c), 512, 558; Cal. Admin. Code, Title 8, § 11090)

Labor Code § 226.7(b) states that “[a]n employer shall not require an employee to work during a meal or rest or recovery period mandated pursuant to an applicable statute, or applicable regulation, standard, or order of the Industrial Welfare Commission ...” Labor Code § 512(a) states in pertinent part: “[A]n employer may not employ an employee for a work period of more than 5 hours per day without providing the employee with an uninterrupted meal period of not less than 30 minutes [...] [a]n employer may not employ an employee for a work period of more than 10 hours per day without providing the employee with a second meal period of not less than 30 minutes.”

Section 12 of applicable IWC Wage Order states in pertinent part: “Every employer shall authorize and permit all employees to take rest periods, which insofar as practicable shall be in the middle of each work period. The authorized rest period time shall be based on the total hours worked daily at the rate of ten (10) minutes net rest time per four (4) hours or major fraction thereof.”

Here, Claimant and other Aggrieved Employees were regularly not provided compliant mandatory meal periods and paid rest breaks due to the Company's policies described above. Although the Company was required to pay Claimant and all Aggrieved Employees premium wages equal to an additional hour of pay at the employee's regular rate of pay for each violation under Labor Code § 226.7(c), the Company did not pay the mandatory one-hour wage premiums and did not do so at the proper rate. Labor Code § 558 imposes a penalty for each violation, plus an amount sufficient to recover the underpaid wages. Additionally, the civil assessment set forth in Labor Code § 2699 applies to these violations.

FAILURE TO PAY SICK TIME AT PROPER RATE OF PAY
(Labor Code § 246)

Labor Code § 246(l)(1) provides that paid sick time for non-exempt employees must be “calculated in the same manner as the regular rate of pay for the workweek in which the employee uses paid sick time,

whether or not the employee actually works overtime in that workweek.” Additionally, Labor Code § 246(l)(2) states that the paid sick time must be “calculated by dividing the employee’s total wages, not including overtime premium pay, by the employee’s total hours worked in the full pay periods of the prior 90 days of employment.”

Here, Claimant and the Aggrieved Employees were compensated on an hourly basis plus additional earned compensation. However, on the occasions that the Aggrieved Employees took sick time and received paid sick leave, the Company only paid sick time at the base rate of pay, not factoring in the additional compensation as required by Labor Code §§ 246(l)(1-2). As such, penalties may be assessed pursuant to Labor Code § 2699.

PAGA ASSESSMENT FOR FAILURE TO REIMBURSE BUSINESS EXPENSES

(Labor Code § 2802; IWC Wage Order § 9(b))

Labor Code § 2802(a) states “An employer shall indemnify his or her employee for all necessary expenditures or losses incurred by the employee in direct consequence of the discharge of his or her duties.” IWC Wage Order § 9(b) states “[w]hen tools or equipment are required by the employer or are necessary to the performance of a job, such tools and equipment shall be provided and maintained by the employer.”

Here, the Company required Claimant and the Aggrieved Employees to incur expenses in direct consequence of the discharge of their duties. Accordingly, Labor Code § 2699 imposes a penalty upon the Company for each such violation of Labor Code § 2802. Furthermore, Labor Code § 2802(b) states that “[a]ll awards made by a Court for reimbursement of necessary expenditures” shall carry interest, at the same rate as judgments in civil actions, and said interest will accrue from the date on which the employee incurred the necessary expenditure or loss including, but not limited to, reasonable costs and attorney’s fees incurred by the employee enforcing her rights granted pursuant to Labor Code § 2802.

**PAGA ASSESSMENT FOR FAILURE TO PAY ALL WAGES DUE AND OWING
EACH PAYROLL PERIOD WITHIN THE TIME REQUIRED BY LAW**

(Labor Code §§ 204, 204.1, 208, 210, 256 and 2699)

Labor Code § 204(a) states that all wages earned by a person are due and payable twice during each calendar month, and further states that wages earned during the first through fifteenth days of the month must be paid no later than the twenty-sixth day of the month, and that wages earned between the sixteenth and last day of the month must be paid by the tenth day of the following month. Labor Code § 204(d) states “[t]he requirements of this section shall be deemed satisfied by the payment of wages for weekly, biweekly, or semimonthly payroll if the wages are paid not more than seven calendar days following the close of the payroll period.”

As a result of the Company’s failure to pay Claimant and the Aggrieved Employees all compensation to which they were entitled, the Company had a pattern and practice of failing to pay all wages due and owing to Claimant and the Aggrieved Employees within the time mandated by Labor Code § 204. As a result of these violations, penalties may be assessed pursuant to Labor Code §§ 203, 210, 256, and/or 2699.

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PAGA ASSESSMENT FOR FAILURE TO TIMELY PAY FINAL WAGES
(Labor Code §§ 201, 202, 203, 256 and 2699)

Labor Code § 201(a) provides in pertinent part: “If an employer discharges an employee, the wages earned and unpaid at the time of discharge are due and payable immediately.” Labor Code § 202(a) states in pertinent part “If an employee not having a written contract for a definite period quits his or her employment, his or her wages shall become due and payable not later than 72 hours thereafter, unless the employee has given 72 hours’ previous 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.” Labor Code § 203(a) states “If an employer willfully fails to pay, without abatement or reduction, in accordance with Sections 201, 201.3, 201.5, 201.9, 202, and 205.5, any wages of an employee who is discharged or who quits, the wages of the employee shall continue as a penalty from the due date thereof at the same rate until paid or until an action therefor is commenced; but the wages shall not continue for more than 30 days.”

The Company did not pay the Aggrieved Employees all wages that were due and owing within the required time following the end of their employment in accordance with Labor Code §§ 201-202. As a result, all such Aggrieved Employees are entitled to 30 days of wages as a “waiting time penalty.” (Labor Code § 203.) Labor Code § 2699 also imposes a penalty.

**PAGA ASSESSMENT FOR FAILURE TO PROVIDE ACCURATE,
ITEMIZED WAGE STATEMENTS**
(Labor Code §§ 226, 226.3, and 1174)

Labor Code § 226(a) requires an employer to provide its employees with itemized wage statements accurately stating gross wages earned, total hours worked, all deductions, net wages earned, the inclusive dates of the pay period, the employee’s name and the last four digits of his or her Social Security number (or employee identification number), the name and address of the legal entity that is the employer, and all applicable hourly rates in effect during the pay period and the corresponding number of hours worked at each hourly rate by the employee.

At all times pertinent hereto, the Company failed to provide accurate itemized wage statements to Claimants and all Aggrieved Employees due to violations including: failure to accurately state total hours worked (the wage statements failed to accurately reflect total compensable hours); failure to accurately state gross wages earned; failure to accurately state all deductions; failure to accurately state net wages earned; failure to state the applicable hourly rates (including the accurate overtime rate of pay); and failure to accurately state the corresponding number of hours worked at each hourly rate. Additionally, the Company’s wage statements directly violated Labor Code § 226(a) each period due to the failure to pay and report premium wages for denied meal periods and rest breaks under § 226.7. Accordingly, Labor Code §§ 226.3 and 2699 impose civil penalties for these violations.

PAGA ASSESSMENT FOR FAILURE TO MAINTAIN EMPLOYMENT RECORDS
(Labor Code §§ 1174, 1174.5, 1198, and § 7 of the IWC Wage Orders)

Labor Code § 1174(d), and § 7 of the IWC Wage Orders require employers to maintain accurate employment records, including accurate payroll records showing the total number of regular and overtime hours worked each day by employees, including meal periods, and the gross wages earned by the employee,

including all applicable pay rates and the corresponding number of hours worked at each pay rate, among other requirements.

Here, the Company failed to maintain accurate employment records as mandated by California law. Therefore, in addition to recovering the amount of attorneys' fees and cost incurred herein, Claimant is entitled to the assessment of civil penalties in accordance with Labor Code §§ 1174(d), 1174.5, and 2699.

PAGA ASSESSMENT FOR VIOLATIONS OF LABOR CODE § 1199
(Labor Code § 1199)

An employer violates Labor Code § 1199 if said employer: (a) requires or causes an employee to work for longer hours than those fixed, or under conditions of labor prohibited by an order of the commission; (b) pays or causes to be paid to any employee a wage less than the minimum fixed by an order of the commission; or, (c) violates or refuses or neglects to comply with any provision of this chapter or any order or ruling of the commission. Labor Code § 2699.5 specifically enumerates Labor Code § 1199 as a section to which the civil penalties under the PAGA apply. Therefore, as a result of the Company's violations described herein, the Company is subject to civil penalties in accordance with Labor Code § 2699.

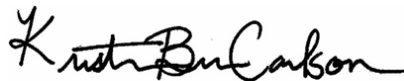
ATTORNEYS' FEES, INTEREST, AND PENALTIES
(Labor Code §§ 2699(f)(2), 2699(g)(1), 2699.5)

Labor Code § 2699(g)(1), give employees the right to recover in a civil action the unpaid balance of the full amount of wages, including interest thereon, penalties and other damages, as applicable, reasonable attorneys' fees, and costs of suit. Additionally, Claimants seek the assessment of penalties, including civil penalties, under Labor Code §§ 203, 210, 225.5, 226.3, 1174.5, 1197.1, 2699, and/or § 20 of the IWC Wage Orders, among possibly other provisions inadvertently omitted herein. Furthermore, Claimants is entitled to bring a wage/hour claim on behalf of all current and former similarly situated employees of the Company. Thus, the Company is exposed to these same penalties for violations involving all Aggrieved Employees. Additionally, Claimant seeks attorney's fees pursuant to C.C.P. § 1021.5. Please construe this correspondence as Claimant's notification of alleged wrongdoing and attempted resolution in accordance with C.C.P. § 1021.5 and *Graham v. DaimlerChrysler Corp.* (2004) 34 Cal.4th 553.

CONCLUSION

Based on the foregoing, the Company may be liable for civil penalties related to the foregoing claims and remedies. If Claimant becomes aware of any additional claims for Labor Code violations related to her employment and/or other employees of the Company, she reserves the right to add new claims by supplementing this notice letter. Should you have any questions, please feel free to give me a call. In the meantime, I look forward to your response.

Very Truly Yours,



By: Kristina Bui Carlson, Esq.
E-mail: kristina@lmlfirm.com

EXHIBIT “G”