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DERRELL ANDERSON

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF LOS ANGELES, CENTRAL DISTRICT

DERRELL ANDERSON, as an individual and
on behalf of all employees similarly situated,

Plaintiff,

v.

CINDYS CLEANING SERVICES LLC dba
CYNDY'S CLEANING SERVICES LLC;
ABM INDUSTRIES INCORPORATED; and
DOES 1 through 50, inclusive,

Defendants.

Case No. 20STCV13371

Assigned For All Purposes To
Honorable David S. Cunningham
Department 11

**JOINT STIPULATION OF CLASS
ACTION SETTLEMENT AND RELEASE
OF CLAIMS**

Action Filed: April 3, 2020
Trial Date: None Set

1 This Joint Stipulation of Class Action Settlement and Release of Claims (“Settlement
2 Agreement” or “Agreement”) is made and entered into by and between Plaintiff Derrell Anderson
3 (“Plaintiff” or “Class Representative”), individually and on behalf of all putative class members and
4 aggrieved employees, on the one hand, and Defendant ABM Industry Groups, LLC (“ABM”), on
5 the other hand. Plaintiff and ABM are collectively referred to herein as the “Parties.”

6 **RECITALS**

7 A. On April 3, 2020, Plaintiff filed a class action and Private Attorneys General Act
8 (“PAGA”) complaint in the Los Angeles County Superior Court entitled *Anderson v. Cindys*
9 *Cleaning Services, LLC dba Cyndy’s Cleaning Services, LLC, ABM Industries, Incorporated, et al.*,
10 Case No. 20STCV13371, alleging (1) failure to pay wages including regular, overtime, and
11 minimum wages; (2) failure to provide meal periods or premium compensation for missed meal
12 periods; (3) failure to provide rest periods or premium compensation for missed rest periods; (4)
13 non-compliant wage statements; (5) waiting time penalties; (6) violation of the Unfair Competition
14 Law; and (7) PAGA penalties (the “Action”).

15 B. On May 21, 2020, ABM Industries Incorporated removed the case to the United
16 States District Court for the Central District of California pursuant to the Class Action Fairness Act.
17 On June 24, 2020, Plaintiff filed a motion for remand, which was granted on August 28, 2020.
18 Thereafter, on December 15, 2020, Plaintiff amended his Complaint to substitute ABM Industry
19 Groups, LLC (“ABM”) for ABM Industries Incorporated as named defendant. On February 2, 2021,
20 Defendant Cindys Cleaning Services, LLC dba Cyndy’s Cleaning Services, LLC (“Cyndy’s”)
21 answered the Complaint.

22 B. On January 29, 2021, ABM answered Plaintiff’s Amended Complaint. ABM denied
23 and continues to deny all of Plaintiff’s material allegations. Specifically, ABM denies that it
24 employed Plaintiff or the putative class members, denies that Plaintiff and putative class members
25 are entitled to wages or any additional overtime pay, denies that Plaintiff or the putative class
26 members worked off-the-clock, and denies that Plaintiff or the putative class members were
27 deprived of meal or rest periods. ABM contends the derivative wage statement and waiting time
28 penalty claims will fail because the underlying claims fail and because there were no knowing and

1 intentional or willful violations. ABM further alleges that Plaintiff's claims are not amenable to
2 class treatment because, among other things, common issues do not predominate, and that the PAGA
3 claim fails because it is unmanageable.

4 C. On information and belief, Defendant Cyndy's is insolvent, unreachable, and has
5 apparently abandoned defense of the Action. Counsel for Defendant Cyndy's has withdrawn. For
6 all these reasons, Defendant Cyndy's did not participate in this Settlement. Nonetheless, the Parties
7 have agreed that Defendant Cyndy's is a third-party beneficiary of the Settlement for purposes of a
8 full and complete resolution.

9 D. The Parties engaged in an informal, voluntary exchange of documents and
10 information in the context of privileged settlement discussions to facilitate an early mediation. ABM
11 produced all of Plaintiff's timekeeping records in its possession, custody, or control. ABM also
12 produced a significant representative sample of timekeeping records for the ABM client locations
13 at which the putative class worked. Additionally, ABM produced a significant representative sample
14 of Cyndy's payroll records for the putative class, provided by Defendant Cyndy's to ABM prior to
15 withdrawal of Cyndy's counsel.

16 E. On February 23, 2022, the Parties participated in a mediation before mediator Ann
17 Kotlarski, Esq. During the mediation, the Parties had a full day of productive negotiations and
18 reached agreement on a class-wide settlement. During the mediation, each party, represented by its
19 respective counsel, recognized the risk of an adverse result in the Action and agreed to settle the
20 Action and all other matters covered by this Agreement pursuant to the terms and conditions of this
21 Agreement.

22 F. Based on their own thorough, independent investigation and evaluation of this case,
23 Class Counsel (as defined in paragraph 8 below) are of the opinion that the settlement with ABM
24 for the consideration and on the terms set forth in this Agreement is fair, reasonable, adequate, and
25 in the best interest of the Settlement Class (as defined in paragraph 5 below) in light of all known
26 facts and circumstances, including the risk of significant costs and delay, the risk of non-certification
27 of the Class, the defenses asserted by Defendants, the risks of adverse determinations on the merits,
28 and numerous potential appellate issues. Although ABM contends it has no liability in this case,

ABM's counsel shares Class Counsel's belief that the Agreement represents a fair and adequate settlement given the respective risks associated with the Action.

G. This Agreement represents a compromise and settlement of highly disputed claims. Nothing in this Agreement is intended or will be construed as an admission by ABM that Plaintiff's claims in the Action have merit or that it has any liability to Plaintiff or the Class on those claims or the State, or as an admission by Plaintiff that ABM's defenses raised in the Action have merit. This Agreement is intended to fully, finally, and forever compromise, release, resolve, discharge, and settle the released claims subject to the terms and conditions set forth in this Agreement.

AGREEMENT

Subject to the approval of the Court, the Parties agree as follows:

1. **"Action"** shall mean the civil action commenced on April 3, 2020, by Plaintiff against Defendants in the Superior Court of California, County of Los Angeles, Case No. 20STCV13371, entitled Anderson v. Cindys Cleaning Services, LLC dba Cyndy's Cleaning Services, LLC, ABM Industries Incorporated, et al.

2. **"Court"** shall mean the Superior Court for the County of Los Angeles.

3. **"Settlement"** shall mean the disposition of the Action and all related claims effectuated by this Agreement.

4. **"Class Period"** shall mean the period of time from April 3, 2016, until April 22, 2020.

5. **"Class," "Class Members," or "Settlement Class"** shall mean all individuals who performed work in California for Defendant Cyndy's Cleaning Services, LLC, under contract with Defendant ABM Industry Groups, LLC, in a non-exempt janitorial position, during the Class Period.

6. **"PAGA Settlement Group Members"** shall mean all California allegedly aggrieved employees in the Action during the PAGA Period. "Allegedly aggrieved employees" shall be defined as all members of the Settlement Class who performed work in California for Defendant Cyndy's Cleaning Services, LLC, under contract with Defendant ABM Industry Groups, LLC, in a non-exempt janitorial position, during the PAGA Period.

7. **"PAGA Period"** shall mean the time period from January 22, 2019, through April

22, 2020.

8. “Class Counsel” shall mean the attorneys representing Plaintiff in the Action: Katherine J. Odenbreit and Kate Nicole G. Blanco with the law firm, Mahoney Law Group, APC.

9. “ABM Counsel” shall mean the attorneys representing Defendant ABM Industry Groups, LLC, in the Action: Laura Fleming and Philip K. Lem with the firm of Payne & Fears, LLP.

10. “Settlement Administrator” shall mean Phoenix Class Action Administration Solutions, or whichever settlement administrator is appointed by the Court to administer the Settlement.

11. “Preliminary Approval of the Settlement” shall mean the Court’s preliminary approval of the Settlement without material change.

12. “Final Approval Hearing” shall mean the hearing to be conducted by the Court to determine whether to approve finally, and implement the terms of, this Agreement.

13. “Judgment” shall mean the Order of Final Judgment entered by the Court that the Parties anticipate will be entered following a Final Approval Hearing on the Settlement in this Action.

14. “Effective Date” shall mean the date by which this Agreement is approved by the Court by entry of the Judgment and the Judgment becomes Final. The Judgment becomes “Final” when the later of the following events occurs: (a) the period for filing any appeal, writ, or other appellate proceeding opposing the Settlement has elapsed without any appeal, writ, or other appellate proceeding having been filed; (b) any appeal, writ, or other appellate proceeding opposing the Settlement has been dismissed finally and conclusively with no right by any appellant or objector to pursue further remedies or relief; or (c) any appeal, writ, or other appellate proceeding has upheld the Judgment with no right by any appellant or objector to pursue further remedies or relief. In this regard, it is the intention of the Parties that the Settlement shall not become effective until the Court’s Judgment granting final approval of the Settlement is completely final, and no further recourse exists by an appellant or objector who seeks to contest the Settlement. The occurrence of the Effective Date is a prerequisite to any obligation of ABM to pay any funds into the Settlement Account, as set forth in paragraph 44.

1 **15. “Maximum Settlement Number”:** In consideration for the Settlement and the
2 release of claims set forth below, ABM agrees to pay a maximum of Five Hundred Thousand Dollars
3 and No Cents (\$500,000.00) (“the Maximum Settlement Number” or “MSN”). The MSN is the
4 maximum total amount that ABM may be required to pay for all claims of Class Members and
5 PAGA Settlement Group Members that are alleged, or arising out of the facts asserted in Plaintiff’s
6 First Amended Complaint, and also including reimbursement and enhancement to the Class
7 Representative, all amounts payable to the Labor Workforce Development Agency (“LWDA”), all
8 Court-approved attorneys’ fees of Class Counsel, all costs and expenses incurred or advanced by
9 Class Counsel related to the Lawsuit, and the fees and costs of the Settlement Administrator. The
10 MSN is non-reversionary, and any uncashed checks shall be distributed in accordance with the
11 provisions set forth in paragraph 46 below.

12 **a. No Escalator Clause; Plaintiff’s Right to Void.** The Parties agree that in no
13 event will ABM be required to pay more than the MSN as provided in paragraph 15 above. If the
14 aggregate total of all Class Members’ Individual Pay Periods as calculated by the Settlement
15 Administrator under paragraph 17(b) below increases by more than ten percent (10%) after the
16 Settlement Administrator decides any disputes timely submitted as provided under paragraph 33
17 below, Plaintiff shall have the unilateral right to void this Settlement. Plaintiff may do so by giving
18 notice to Defense Counsel and the Court of its election to void the Settlement not later than seven
19 (7) days before the Final Approval Hearing. No sums shall be payable by ABM if this Agreement
20 is voided as provided for herein. Plaintiff agrees to pay any fees owing to the Settlement
21 Administrator for services rendered in the event Plaintiff exercises his right to void the Settlement
22 under this paragraph 15(a).

23 **16. “Net Settlement Number”:** The Net Settlement Number (“NSN”) shall mean the
24 MSN payable by ABM pursuant to this Settlement, less the following sums set forth in subsections
25 (a) through (e) of this paragraph 16:

26 **a. Class Counsel Fees and Litigations Costs Payment.** Class Counsel will
27 apply to the Court for, and ABM will not oppose, an award of not more than One Hundred Sixty
28 Six Thousand, Six Hundred Sixty Six Dollars and Sixty Seven Cents (\$166,666.67) (which is 1/3rd

1 or 33.33% of the MSN) as their Class Counsel Fees Payment, plus up to Nine Thousand Dollars and
2 No Cents (\$9,000.00) in verified costs and expenses related to the Action as supported by
3 declaration. The Settlement Administrator will pay the amount approved by the Court from the MSN
4 (but not more than \$166,666.67, in Class Counsel Fees Payment and \$9,000.00 in costs.)
5 Withholding and deductions will not be taken from the Class Counsel Fees and Litigation Costs
6 Payment and one or more Forms 1099 will be issued to Class Counsel with respect to that payment.
7 Any fees not awarded shall remain part of the MSN for inclusion in the NSN.

8 **b. Class Representative Payment.** Plaintiff will apply to the Court for an
9 award of not more than Five Thousand Dollars and No Cents (\$5,000.00) as his Class Representative
10 Payment, made in his capacity as Class Representative to compensate him for initiating the Action,
11 the risks inherent to initiating an Action that is made available to the public, performing work in
12 support of the Action which include assisting his attorneys in compiling documents in response to
13 discovery requests, providing his testimony during a full day of deposition, participating in
14 mediation, and actively communicating with Class Counsel to assist in the prosecution of this
15 Action, and undertaking the risk of liability for attorneys' fees and expenses in the event he was
16 unsuccessful in the prosecution of the Action. ABM will not oppose a Class Representative Payment
17 of not more than \$5,000.00. The Settlement Administrator will pay the Class Representative
18 Payment approved by the Court from the MSN. A Form 1099 will be issued to Plaintiff with respect
19 to that payment. Plaintiff agrees to assume all responsibility and liability for the payment of taxes
20 due on the Class Representative Payment. Any portion of the Class Representative Payment not
21 awarded shall remain part of the MSN for inclusion in the NSN.

22 **c. Payment to Settlement Administrator.** The Settlement Administrator will
23 be paid from the MSN its reasonable fees and expenses as approved by the Court in an amount
24 currently estimated to not exceed Thirteen Thousand Dollars and No Cents (\$13,000.00).

25 **d. Payment to the LWDA.** The Parties will jointly apply to the Court for
26 approval of a settlement of Plaintiff's PAGA claims for Ten Thousand Dollars and No Cents
27 (\$10,000.00), of which, payment from the MSN to the Labor Workforce Development Agency
28 ("LWDA") made in the amount of Seven Thousand, Five Hundred Dollars and No Cents

1 (\$7,500.00), which is 75% of the PAGA settlement. Twelve Thousand, Five Hundred Dollars and
2 No Cents (\$2,500.00), 25% of the PAGA settlement, will be allocated for distribution to the PAGA
3 Settlement Group Members (the “PAGA Allocation”).

4 **17. Allocation of NSN and Calculation of Settlement Shares.** Subject to the terms and
5 conditions of this Agreement, the Settlement Administrator will calculate a settlement share from
6 the NSN for each Class Member (“Class Settlement Share”) and a settlement share from the PAGA
7 Allocation for each PAGA Settlement Group Member (“PAGA Settlement Share”). These
8 settlement shares will be calculated as follows, understanding that the formula below does not
9 constitute an admission by ABM, and is intended only to provide a practical means to simplify and
10 administer the claims process:

11 **a. Allocation.** Each Class Settlement Share and PAGA Settlement Share is
12 allocated one hundred percent to penalties (for which 1099s will be issued). Because Cyndy’s has
13 not participated in this settlement (and is apparently unable to do so), and because the Class
14 Members were never on the payroll of Defendant ABM, the parties are unable to allocate any portion
15 of the Class Settlement Shares to wages.

16 **b. Class Settlement Share Ratio Calculation.** The Settlement Administrator
17 shall assign to each Class Member a “Class Settlement Ratio,” which shall be a fractional number
18 comprised of (i) that Class Member’s Individual Pay Periods as the numerator, and (ii) the aggregate
19 total of all Class Members’ Individual Pay Periods as the denominator. The Settlement
20 Administrator shall assign to each Class Member the “Class Settlement Share” which shall be
21 calculated by multiplying that Class Member’s Class Settlement Ratio by the amount allocated to
22 Class Members from the NSN.

23 **c. PAGA Settlement Share Ratio Calculation.** The Settlement Administrator
24 shall assign to each PAGA Settlement Group Member a “PAGA Settlement Ratio,” which shall be
25 a fractional number comprised of (i) that PAGA Settlement Group Member’s Individual Pay Periods
26 during the PAGA Period as the numerator, and (ii) the aggregate total of all PAGA Settlement Group
27 Member’s Individual Pay Periods during the PAGA Period as the denominator. The Settlement
28 Administrator shall assign to each PAGA Settlement Group Member a “PAGA Settlement Share”

which shall be calculated by multiplying that PAGA Settlement Group Member's Settlement Ratio by the total PAGA Allocation amount.

18. Notice to the LWDA. Class Counsel shall be solely responsible for complying with all procedural requirements associated with the settlement of a claim for penalties under PAGA.

19. Settlement Share Worksheet. Upon calculation of each Class Settlement Share and PAGA Settlement Share, the Settlement Administrator shall furnish to ABM Counsel a worksheet containing a list of the names of the Class Members with their corresponding Individual Pay Periods and Class Settlement and PAGA Settlement Shares.

20. Release of Claims by Plaintiff and Class Members. Upon the entry of an order by the Court granting final approval of this Stipulation of Settlement, and except as to such rights or claims as may be created by this Stipulation of Settlement, Plaintiff, the PAGA Settlement Group Members, and each Class Member who has not properly submitted a timely and valid request to “opt-out” or be excluded from the Action, in exchange for the consideration recited in this Stipulation of Settlement, on behalf of himself or herself and on behalf of his/her current, former, and future heirs, executors, administrators, attorneys, agents, and assigns, shall fully release and discharge Defendants ABM Industry Groups, LLC, and Cindys Cleaning Services, LLC dba Cyndy’s Cleaning Services, LLC, and each of their parents, predecessors, successors, subsidiaries, affiliates, partners, and trusts, employment agencies and professional employer organizations, and their owners, employees, officers, agents, attorneys, stockholders, fiduciaries, other service providers, and assigns (collectively hereinafter the “Releasees”), from any and all claims, demands, rights, liabilities, and causes of action of any kind whatsoever, that have been, or that could have been, asserted against the Releasees, whether or not presented, based on the primary rights or the facts alleged at any point in time in this Action (the “Released Claims”). The Released Claims expressly include all claims for unpaid wages, including overtime wages, off-the-clock claims, minimum wage claims, claims for failure to timely pay wages, both during and after termination of employment, claims for failure to keep accurate and complete payroll records, claims for failure to provide accurate and complete wage statements, claims relating to meal periods and rest breaks, claims for wage premiums, penalties, and interest; claims for penalties, including recordkeeping

1 penalties, wage statement penalties, minimum-wage penalties, missed meal-period and rest-break
2 penalties, waiting-time penalties, penalties under the Private Attorneys General Act; premiums or
3 costs and attorneys' fees and expenses, and any claim arising from the claims described above under
4 applicable federal, state, local or territorial law; all such claims arising under the California Labor
5 Code (including, but not limited to, sections 201, 202, 203, 204, 218.5, 226, 226.7, 510, 512, 558,
6 1174, 1174.5, 1182.12, 1194, 1194.2, 1197, 1197.1); the wage orders of the California Industrial
7 Welfare Commission (including the Minimum Wage Order and Wage Orders 5); the Private
8 Attorneys General Act, California Labor Code section 2698, *et seq.*; California Business and
9 Professions Code section 17200 *et seq.*; the California common law of contract; the Fair Labor
10 Standards Act, 29 U.S.C. § 201 *et seq.*; and federal common law. No release in this Agreement shall
11 become effective until the MSN is fully funded.

12 **21. General Release by Plaintiff.** In addition to the Released Claims set forth above,
13 Plaintiff releases the Releasees from any and all claims, actions, demands, causes of action, suits,
14 debts, obligations, damages, rights, or liabilities of any nature and description whatsoever, known
15 or unknown, that Plaintiff individually may possess against the Releasees arising from Plaintiff's
16 alleged employment and/or termination of employment with ABM. This general release is intended
17 to resolve any and all disputes involving Plaintiff that exist or could exist against the Released
18 Parties that can be validly released. Accordingly, this Release does not release claims that cannot
19 be released by Plaintiff as a matter of law.

20 **22. Plaintiff's Waiver of Known and Unknown Claims.** Plaintiff further waives all
21 rights and benefits afforded by Section 1542 of the Civil Code of the State of California, and do so
22 understanding the significance of that waiver, which states:

23 **"A general release does not extend to claims which the creditor or releasing**
24 **party does not know or suspect to exist in his or her favor at the time of**
25 **executing the release, and that, if known by him or her, would have materially**
26 **affected his or her settlement with the debtor or released party."**

27 **23. Release by ABM or the Releasees.** Pursuant to this Agreement, ABM and on
28 behalf of its agents, representatives, attorneys, insurers, assigns, and/or anyone acting on their

1 respective behalf, and in consideration of the promises, assurances, and covenants set forth in this
2 Agreement, hereby fully release the Plaintiff and Plaintiff's heirs, agents, representatives, assigns,
3 executors, and/or anyone on Plaintiff's behalf (collectively, the "Plaintiff Released Parties") from
4 all claims or causes of action by reason of any injuries and/or damages or losses, known or unknown,
5 foreseen or unforeseen, patent or latent, which the ABM or the Releasees has sustained or which
6 may be sustained as a result of any facts and circumstances arising out of or in any way related to
7 Plaintiff's employment with the ABM or the Releasees, and to any other disputes, claims,
8 disagreements, or controversies, between the Parties up to and including the date of this Agreement
9 is signed.

10 **24. Certification for Settlement Purposes.** Solely for the purposes of effectuating this
11 Settlement, and subject to Court approval, the Parties hereby stipulate to the conditional certification
12 of the following Settlement Class:

13 **"All persons who, from April 6, 2016, to April 22, 2020, performed work in**
14 **California for Defendant Cindys Cleaning Services, LLC dba Cyndy's**
15 **Cleaning Services, LLC, under contract with Defendant ABM Industry**
16 **Groups, LLC, in a non-exempt janitorial position."**

17 **25.** The Parties agree that if for any reason the Settlement is not preliminarily and finally
18 approved, the conditional certification of the Settlement Class will be of no force or effect, does not
19 constitute an admission by ABM that class certification is proper, and will not be deemed admissible
20 in this or any other proceeding, and that the Parties will litigate the issue of class certification.

21 **26. Motion for Preliminary Approval of Settlement by the Court.** Class Counsel will
22 move the Court for an order granting Preliminary Approval of the Settlement (the "Motion for
23 Preliminary Approval"), setting a date for the Final Approval Hearing, and approving the Class
24 Notice. At the hearing on the Motion for Preliminary Approval Class Counsel will submit an Order
25 Granting Preliminary Approval of Settlement, Approval of Notice to Class and Setting Hearing for
26 Final Approval of Settlement. Should the Court decline to approve the Settlement in its entirety, the
27 Settlement will be null and void and the Parties will have no further obligations under it.

28 **27. Duties of the Settlement Administrator.** The Parties have agreed to the

1 appointment of the Phoenix Class Action Administration Solutions (the “Settlement Administrator”)
2 or such other independent administrator as the Court might appoint to mail the Notice Packet (as
3 defined in paragraph 29 below), to independently review and verify documentation associated with
4 any submitted objections or opt-out requests, and to compute and pay the appropriate sums from the
5 MSN. Phoenix Class Action Administration Solutions will submit a declaration of its qualification
6 and experience as Settlement Administrator concurrently with the filing of the Motion for
7 Preliminary Approval as provided under paragraph 26. The Claims Administrator’s estimate of its
8 costs/fees for the administration of the settlement is \$16,387.51. The actual fees and costs of the
9 Claims Administrator which will be paid out of the MSN, will not be known until all claims are
10 administered, and could vary materially from the estimate.

11 **28. List of Class Members.** Within thirty (30) days after the Court grants Preliminary
12 Approval of the Settlement, ABM shall provide to the Settlement Administrator:

13 **a.** An electronic database of all Class Members and their last known mailing
14 address (“Class Members’ Data”), based on the payroll records provided by Defendant Cyndy’s
15 prior to withdrawal of Defendant Cyndy’s counsel;

16 **b.** Corresponding to each Class Member’s name, a figure indicating the total
17 number of Pay Periods during the Class Period in which that Class Member performed any work in
18 California for Defendant Cyndy’s, under contract with Defendant ABM Industry Groups, LLC, in a
19 non-exempt janitorial position, again based on the payroll records provided by Defendant Cyndy’s
20 prior to withdrawal of Defendant Cyndy’s Counsel. That number of Pay Periods shall be referred to
21 as that Class Member’s “Individual Pay Periods.” Additionally, corresponding to each Class
22 Member’s name, ABM shall provide a figure indicating the total number of Individual Pay Periods
23 worked during the PAGA Period. Class Members’ Data will otherwise remain confidential as no
24 *Belaire-West* notice has been completed in this Action, and will not be disclosed to anyone, except
25 as necessary for Class Counsel to discharge its fiduciary duties, or pursuant to express written
26 authorization or by order of the Court.

27 **29. Notice to Class Members.** Upon receipt of the names and addresses, the Settlement
28 Administrator will run the same through the NCOA database to obtain current address information.

Within fifteen (15) days of its receipt of the Class Data, the Settlement Administrator will mail to each Class Member by first-class mail a Notice Packet containing a Notice of Pendency of Class Action Settlement, Proposed Settlement, and Final Approval Hearing (“Notice”) in the form attached hereto as **Exhibit “1”** and approved by the Court. Included in the Notice Packet will be a Class Member Settlement Information Sheet, which shall include the Class Member’s first and last name, last known address, Class Member’s Individual Pay Periods during the Class Period, and the estimated amount of the Class Member’s Class Settlement Share and PAGA Settlement Share.

a. Mailing of Class Notice. Within fourteen (14) days after receiving the Class Members’ Data, or as soon thereafter as it can do so, the Settlement Administrator will mail the Class Notice Packets to all identified Class Members via first-class U.S. mail using the mailing address information provided by ABM, unless modified by any updated address information that the Settlement Administrator obtains in the course of administration of the Settlement.

b. Returned Class Notice. If a Class Notice Packet is returned because of an incorrect address, the Settlement Administrator will promptly, and not later than ten (10) days from receipt of the returned packet, search for a more current address for the Class Member and re-mail the Class Notice Packet to the Class Member. The Settlement Administrator will be responsible for taking reasonable steps, consistent with its agreed-upon job parameters, court orders, and fee, to trace the mailing address of any Class Member for whom a Class Notice Packet is returned by the U.S. Postal Service as undeliverable. These reasonable steps shall include the tracking of all undelivered mail; performing address searches for all mail returned without a forwarding address; and promptly re-mailing to Class Members for whom new addresses are found. If the Class Notice Packet is re-mailed, the Settlement Administrator will note for its own records and notify Class Counsel and ABM Counsel of the date and address of each such re-mailing as part of a weekly status report provided to the Parties.

30. Request for Exclusion from Settlement. A Class Member may request to be excluded from the effect of this Agreement, and amounts under this Agreement (with the exception of the effect of this Agreement and amounts under this Agreement relating to Plaintiff’s PAGA claims) by timely mailing a letter to the Settlement Administrator stating that the Class Member

wants to be excluded from this Action. This letter must include the Class Member's name, address, telephone number, and signature. To be valid and timely, the request to be excluded must be postmarked by the date specified in the Class Notice (no less than forty-five (45) days from the initial mailing of the Class Notice by the Settlement Administrator). A Class Member who properly submits a valid and timely request to be excluded from the Action shall not receive any Class Settlement Share in connection with this Agreement or this Action, shall not be bound by or receive any benefit of this Agreement (other than the effect of this Agreement relating to Plaintiff's PAGA claims), and shall have no standing to object to the Settlement. A request for exclusion must be mailed to the Settlement Administrator (who shall transmit the request for exclusion to counsel for the Parties) as follows:

To Settlement Administrator:	To Class Counsel:	To Defense Counsel:
Phoenix Class Action Administration Solutions c/o Michael E. Moore P.O. Box 7208 Orange, CA, 92863	Katherine J. Odenbreit Kate Nicole G. Blanco Mahoney Law Group, APC 249 E. Ocean Blvd, Ste. 814 Long Beach, CA 90802	Laura Fleming, Esq. Philip K. Lem, Esq. Payne & Fears LLP 4 Park Plaza, Ste. 1100 Irvine, CA 92614

31. Objections to Settlement. The Class Notice will provide that any Class Member who does not request exclusion from the Action and who wishes to object to the Settlement must submit an objection in writing to the Settlement Administrator not later than forty-five (45) days after the Settlement Administrator mails the Class Notice, a written objection to the Settlement which sets forth the grounds for the objection and the other information required by this paragraph and paragraph 32. The objection must be mailed to the Settlement Administrator (who shall transmit the objections to counsel for the Parties).

32. The written objection must state the objecting Class Member's full name, address, and the written basis for each specific objection and any legal support in clear and concise terms. The written objection also shall state whether the Class Member intends to formally intervene and become a party of record in the action as now required under the California Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal.4th 260, 228 Cal. Rptr. 3d 106 (2018), and upon formally intervening, appear and argue at the Final Approval Hearing. The Notice will not contain

1 any language requiring a Class Member to appear at the Final Approval Hearing, unless they intend
2 to formally intervene as described herein. A Class Member who does not file and serve a written
3 objection in the manner and by the deadline specified above, in addition to formally intervening in
4 the action if they so intend as required under *Hernandez v. Restoration Hardware*, 4 Cal. 4th 260,
5 228 Cal. Rptr. 3d 106 (2018), will be deemed to have waived any objections and will be foreclosed
6 from making any objections (whether at the Final Approval Hearing, by appeal, or otherwise) to the
7 Settlement. If the objecting Class Member does not formally intervene in the action and/or the Court
8 rejects the Class Member's objection, the Class Member will still be bound by the terms of this
9 Agreement.

10 **33. Disputed Class Member Settlement Shares.** If a Class Member disputes his/her
11 Class Settlement Share, the Class Member may produce evidence to the Settlement Administrator
12 for the Class Period. In order for the dispute to be considered, he/she must follow the directions on
13 the Class Notice. To be valid and timely, all disputes and supporting documents must be postmarked
14 by the date specified in the Class Notice (no less than forty-five (45) days from the initial mailing
15 of the Class Notice by the Settlement Administrator). Any disputes concerning administration of the
16 settlement not resolved by the Parties will initially be decided by the Settlement Administrator. If
17 the Settlement Administrator's decisions are not mutually accepted by all Parties, the dissatisfied
18 party may request that the Court make a final decision. The Court's decision shall be final and
19 binding on the Parties.

20 **34. Report.** Not later than fourteen (14) days after the deadline for submission of
21 requests for exclusion, the Settlement Administrator will provide the Parties with a complete and
22 accurate list of all Class Members who sent timely requests to be excluded from the Action and all
23 Class Members who objected to the settlement.

24 **35. Declaration of Settlement Administrator.** Not later than sixteen (16) days prior to
25 the Final Approval Hearing, the Settlement Administrator will provide the Parties for filing with the
26 Court a declaration of due diligence setting forth its compliance with its obligations under this
27 Agreement. Prior to the Final Approval Hearing, the Settlement Administrator will supplement its
28 declaration of due diligence if any material changes occur from the date of the filing of its prior

1 declaration.

2 **36. No Solicitation of Objection; ABM's Right to Void.** Neither the Parties, nor their
3 respective counsel, will directly or indirectly solicit or otherwise encourage any Class Member to
4 seek exclusion from the Settlement, object to the Settlement, or to appeal from the Judgment. If five
5 percent (5%) or more of the Class Members submit a valid request to be excluded from the
6 Settlement, then ABM shall have the unilateral right to void this Settlement. ABM may do so by
7 giving notice to Class Counsel and the Court of its election to void the Settlement not later than
8 seven (7) days before the Final Approval Hearing. No sums shall be payable by ABM if this
9 Agreement is voided as provided for herein with one exception: ABM agrees to pay any fees owing
10 to the Settlement Administrator for services rendered in the event ABM exercises its right to void
11 the Settlement.

12 **37. Additional Briefing and Final Approval.** Plaintiff will file with the Court a motion
13 for final approval of the Settlement and payment of the Settlement Administrator's reasonable fees
14 and expenses and a memorandum in support of their motion; and Plaintiff and Class Counsel will
15 serve on ABM and file with the Court a motion for awards of the Class Representative Payment,
16 and the Class Counsel Fees and Litigation Costs Payment, pursuant to this Settlement, and
17 memoranda in support of their motions.

18 **38. Right to Respond to Objections.** Before the Final Approval Hearing, the Parties
19 shall be entitled to file and serve a response to any Class Member's objection to the Settlement
20 and/or reply in support of their motion for final approval of the Settlement, and payment of the
21 Settlement Administrator's reasonable fees and expenses to the extent that any opposition to the
22 motion is filed; and Plaintiff and Class Counsel may file replies in support of their motions for the
23 Class Representative Payment, and the Class Counsel Fees and Litigation Costs Payment.

24 **39. Right to Void Settlement Agreement.** If the Court ultimately does not grant final
25 approval of the Settlement or grants final approval conditioned on any material change to the
26 Settlement, then either Party will have the unilateral right to void the Settlement in its entirety; if
27 that occurs, the Parties will have no further obligations under the Settlement, including any
28 obligation by ABM to pay the MSN, NSN or any amounts that otherwise would have been payable

1 under this Agreement, except that ABM and Plaintiff will jointly and equally pay the Settlement
2 Administrator's reasonable fees and expenses incurred as of the date that the Party exercises the
3 right to void the Settlement under this paragraph. However, an award by the Court of a lesser amount
4 than that sought by Plaintiff and Class Counsel for the Class Representative Payment, or the Class
5 Counsel Fees and Litigations Costs Payment, will not constitute a material modification to the
6 Settlement within the meaning of this paragraph and shall not render the Settlement voidable.
7 Plaintiff and Class Counsel shall retain the right to appeal awards of attorneys' fees and costs less
8 than requested.

9 **40. Final Judgment.** Upon final approval of the Settlement by the Court at or after the
10 Final Approval Hearing, the Parties will present for the Court's approval and entry a Proposed Final
11 Order and Judgment. The Final Order and Judgment shall permanently bar all Class Members (other
12 than those who have submitted timely and valid requests to be excluded from the Action as provided
13 in this Agreement) from prosecuting against the Releasees any claims within the scope of the
14 Releases contained in this Agreement.

15 **41. Continuing Jurisdiction.** After entry of the Judgment, the Court will have
16 continuing jurisdiction over the Action and the Settlement solely for purposes of (a) enforcing this
17 Agreement, (b) addressing claims administration matters, and (c) addressing such post-Judgment
18 matters as may be appropriate under court rules or applicable law.

19 **42. Waiver of Right to Appeal.** Provided that the Judgment is consistent with the terms
20 and conditions of this Agreement, Plaintiff, Class Members who did not submit a valid and timely
21 objection to the Settlement and also formally intervene into the action as now required under the
22 California Supreme Court decision of *Hernandez v. Restoration Hardware*, 4 Cal. 4th 260, 228 Cal.
23 Rptr. 3d 106 (2018), ABM, and their respective counsel hereby waive, except as provided for in this
24 Agreement or prohibited by law, any and all rights to appeal from the Judgment, including all rights
25 to any post-judgment proceeding and appellate proceeding, such as a motion to vacate judgment, a
26 motion for new trial, any extraordinary writ, and any appeal, and the Judgment therefore will
27 become non-appealable at the time it is entered. The waiver of appeal does not include any waiver
28 of the right to oppose any appeal, appellate proceedings or post-judgment proceedings. If an appeal

1 is taken from the Judgment, the time for consummation of the Settlement (including making any
2 payments under the Settlement) will be suspended until the appeal is fully and finally resolved and
3 the Judgment, consistent with the terms of this Agreement, becomes Final.

4 **43. Vacating, Reversal, or Material Modification of Judgment on Appeal or**
5 **Review.** If, after a notice of appeal, a petition for review, or a petition for certiorari, or any other
6 motion, petition, writ, application, or appeal, the reviewing court vacates, reverses, or modifies the
7 Judgment such that there is a material modification to the Settlement, and that court's decision is not
8 completely reversed and the Judgment is not fully affirmed on review by a higher court, then either
9 Plaintiff or ABM will have the unilateral right to void the Settlement, which the Party must do by
10 giving written notice to the other Parties, the reviewing court, and the Court, not later than fourteen
11 (14) days after the reviewing court's decision vacating, reversing, or materially modifying the
12 Judgment becomes final. The Party exercising its right to unilaterally void the Settlement pursuant
13 to this provision agrees to pay any fees owing to the Settlement Administrator for services rendered.
14 An order vacating, reversing or modifying the Court's award of the Class Representative Payment
15 or the Class Counsel Fees and Litigations Costs Payment will not constitute a vacation, reversal, or
16 material modification of the Judgment within the meaning of this paragraph, and shall not render
17 the Settlement voidable.

18 **44. Establishment of Settlement Account.** The Settlement Administrator will establish
19 a Settlement Account for the purpose of administering the funds described in this Stipulation of
20 Settlement. Within thirty (30) calendar days of the later of (a) the Court's final approval of settlement
21 if no objection by any Class Member has been filed, (b) the time for appeal has expired if an
22 objection has been filed, or (c) the final resolution of any appeal that has been filed, including any
23 subsequent proceedings on remand and appeals and remands thereof, if any, ABM shall pay the
24 MSM into the Settlement Account (via wire transfer).

25 **45. Payment of Settlement Shares.** The Settlement Administrator shall pay Class
26 Settlement Shares, from the Settlement Account, to all Class Members who have not opted out of
27 the settlement. The Settlement Administrator shall pay each Class Settlement Share and PAGA
28 Settlement Share by sending a check in the appropriate amount to the Class Member at the address

1 indicated in the list of Class Member names and addresses provided by ABM, or as subsequently
2 determined by the Settlement Administrator to be the correct address. Such payment shall be sent
3 by the Settlement Administrator via U.S. Mail within ten (10) days of its receipt from ABM of the
4 sums described above in paragraph 44 above.

5 **46. Uncashed Settlement Share Checks.** Any checks representing Class Settlement
6 Shares and/or PAGA Settlement Shares, shall be negotiable for one hundred and eighty (180)
7 calendar days. Those funds represented by checks returned as undeliverable and those checks
8 remaining un-cashed for more than 180 days after issuance (collectively, “Voided Settlement
9 Checks”) will be distributed to the California State Controller’s Unclaimed Property Division in the
10 name of the Class Member, an appropriate designee pursuant to California Code of Civil Procedure
11 section 384. The Parties agree this disposition results in no “unpaid residue” under California Civil
12 Procedure Code § 384 (b), as the entire Net Settlement Amount will be paid to Settlement Class
13 members, whether or not all checks are cashed. Because no unpaid residue will exist, ABM will not
14 be required to pay any interest on the uncashed checks.

15 **47. Final Report by Settlement Administrator to Court.** Within ten (10) days after
16 final disbursement of all funds from the Settlement Account, the Settlement Administrator will serve
17 on the Parties for filing with the Court a declaration providing a final summary report on the
18 disbursements of all funds from the Settlement Account.

19 **48. Non-Publicity Provision.** The Parties and their counsel agree that they will not issue
20 any press releases, initiate any contact with the press, respond to any press inquiry or have any
21 communication with the press about the fact, amount or terms of the Settlement. In addition, the
22 Parties and their counsel agree that they will not engage in any advertising or distribute any
23 marketing materials relating to the Settlement of this case in any manner that identifies ABM,
24 including but not limited to any postings on any websites maintained by Class Counsel. Neither
25 Plaintiff nor Class Counsel will discuss the terms or the fact of the Settlement with third parties
26 other than (1) their immediate family members, (2) their respective accountants or lawyers as
27 necessary for tax purposes; or (3) other Class Members. Plaintiff and Class Counsel agree not to
28 publish any of the terms or conditions of this Settlement in any manner that identifies ABM.

1 However, Class Counsel may identify this Settlement in other matters to demonstrate their adequacy
2 as counsel in such other matters.

3 **49. No Effect on Other Benefits.** The Class Settlement Shares and PAGA Settlement
4 Shares will not result in any employee benefit payments (such as pension, ERISA, 401(k), vacation,
5 or bonus) and shall not have any effect on the eligibility for, or calculation of, any employee benefit.
6 Plaintiff and Class Members are deemed to have waived all such claims, whether known or unknown
7 by them, as part of their release of claims under this Agreement.

8 **50. No Admission of Liability.** ABM denies that it engaged in any unlawful activity,
9 failed to comply with the law in any respect, or has any liability to anyone under the claims asserted
10 in the Action. This Agreement is entered into solely for the purpose of compromising highly
11 disputed claims. Nothing in this Agreement is intended or will be construed as an admission of
12 liability or wrongdoing by ABM, or an admission by Plaintiff that any of his claims was non-
13 meritorious or any defense asserted by ABM was meritorious. This Settlement and the fact that
14 Plaintiff and ABM were willing to settle the Action will have no bearing on, and will not be
15 admissible in connection with, any litigation (other than solely in connection with the Settlement).

16 **51. Improper Use of Settlement.** Whether or not the Settlement becomes final, this
17 Stipulation of Settlement is a settlement document and shall, pursuant to California Evidence Code
18 section 1152 and Federal Rule of Evidence 408(a), be inadmissible in evidence. The preceding
19 sentence shall not apply to an action or proceeding to approve, interpret, or enforce this Stipulation
20 of Settlement.

21 **52. Integrated Agreement.** After this Agreement is signed and delivered by all Parties
22 and their counsel, this Agreement and its exhibits will constitute the entire agreement between the
23 Parties relating to the Settlement, and it will then be deemed that no oral representations, warranties,
24 covenants, or inducements have been made to any Party concerning this Agreement or its exhibits
25 other than the representations, warranties, covenants, and inducements expressly stated in this
26 Agreement and its exhibits.

27 **53. Modification.** This Stipulation of Settlement may not be changed, altered, or
28 modified, except in a writing signed by the Parties hereto and approved by the Court. This

Stipulation of Settlement may not be discharged except by performance in accordance with its terms or by a writing signed by all of the Parties hereto.

54. Attorney Authorization. Class Counsel and ABM Counsel warrant and represent that they are authorized by Plaintiff and ABM, respectively, to take all appropriate action required or permitted to be taken by such Parties pursuant to this Agreement to effectuate its terms, and to execute any other documents required to effectuate the terms of this Agreement. The Parties and their counsel will cooperate with each other and use their best efforts to effect the implementation of the Settlement. In the event the Parties are unable to reach agreement on the form or content of any document needed to implement the Agreement, or on any supplemental provisions that may become necessary to effectuate the terms of this Agreement, the Parties will seek the assistance of the Court, and in all cases, all such documents, supplemental provisions and assistance of the court will be consistent with this Agreement.

55. Modification of Agreement. This Agreement, and all parts of it, may be amended, modified, changed, or waived only by an express written instrument signed by all Parties or their successors-in-interest.

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

57. Applicable Law. All terms and conditions of this Agreement and its exhibits will be governed by and interpreted according to the laws of the State of California, without giving effect to any conflict of law principles or choice of law principles.

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

59. Fair Settlement. The Parties and their respective counsel believe and warrant that this Agreement reflects a fair, reasonable, and adequate settlement of the Action and have arrived at this Agreement through arms-length negotiations, considering all relevant factors, current and potential.

60. Headings. The descriptive heading of any section or paragraph of this Agreement is

inserted for convenience of reference only and does not constitute a part of this Agreement.

61. Notice. All notices, demands or other communications given under this Agreement will be in writing and deemed to have been duly given as of the third business day after mailing by United States mail, addressed as follows:

To Class Counsel:

Katherine J. Odenbreit, Esq.
Kate Nicole G. Blanco, Esq.
Mahoney Law Group, APC
249 E. Ocean Boulevard, Suite 814
Long Beach, California 90802

To Defense Counsel:

Laura Fleming, Esq.
Philip K. Lem, Esq.
Payne & Fears LLP
4 Park Plaza, Ste. 1100
Irvine, CA 92614

62. Execution in Counterpart. This Agreement may be executed in one or more counterparts. All executed counterparts and each of them will be deemed to be one and the same instrument provided that counsel for the Parties will exchange between themselves original signed counterparts. Facsimile signatures will be presumptive evidence of execution of the original, which shall be produced on reasonable request. Any executed counterpart will be admissible to prove the existence and contents of this Agreement.

63. No 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 herein released and discharged.

64. Class Counsel Signatories. It is agreed that, because the members of the Settlement Class are so numerous, it is impossible or impractical to have each such Class Member execute this Stipulation of Settlement. The Notice will advise all Class Members of the binding nature of the release, and such shall have the same force and effect as if this Stipulation of Settlement were executed by each Member of the Settlement Class.

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DATED: March 28, 2022

DATED: March ___, 2022

ABM INDUSTRY GROUPS, LLC

By: 
MIRANDA TOLAR
Senior Vice President & Deputy General Counsel,
Employment Law and Litigation

By: _____
DERRELL ANDERSON

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DATED: March ___, 2022

DATED: March ²⁵ ___, 2022

ABM INDUSTRY GROUPS, LLC

By: _____
MIRANDA TOLAR
Senior Vice President & Deputy General Counsel,
Employment Law and Litigation

By:  _____
DERRELL ANDERSON