

SETTLEMENT AGREEMENT AND RELEASE OF CLAIMS

This Settlement Agreement and Release of Claims ("Agreement") is entered into and between Zulma Avelar, as an individual, and representing the State of California pursuant to the California Labor Code Private Attorneys General Act ("PAGA") (collectively referred to as "Plaintiff"); and National Building Services L.L.C. (referred to as "Defendant") ("Plaintiffs" and "Defendant" are collectively referred herein as the "Parties").

RECITALS

WHEREAS, on July 7, 2014, Plaintiff filed a complaint against National Building Services, L.L.C., Gino Lopez, an individual, and DOES 1-10 alleging (1) sex discrimination in violation of Fair Employment and Housing Act ("FEHA"), (2) sexual harassment/hostile work environment, (3) retaliation/protected activity, (4) failure to prevent discrimination and harassment, and (5) aiding and abetting in the Los Angeles County Superior Court, Case No. BC550045, which was thereafter amended on April 6, 2015, and again on March 24, 2016 to add a sixth cause of action: (6) wrongful termination in violation of public policy (the "Discrimination Action");

WHEREAS, on November 3, 2014, Defendant filed a Cross-Complaint in the Discrimination Action against ABM Parking Services, Inc. and Gino Lopez for implied indemnity, contribution, comparative fault and declaratory relief. Thereafter, Defendant filed a First Amended Cross-Complaint on or about June 17, 2015 to include a cause of action for fraud against Plaintiff;

WHEREAS, on April 22, 2016, Plaintiff filed a complaint against National Building Services, L.L.C., Federico Oliver, an individual, and DOES 1-20 alleging (1) failure to pay minimum wages, (2) failure to pay overtime compensation, (3) failure to provide rest periods or compensation in lieu thereof, (4) failure to provide meal periods or compensation in lieu thereof; (5) failure to maintain and provide accurate itemized employee wage statements, (6) failure to maintain and provide accurate timekeeping records, (7) failure to timely pay all wages owed upon termination, (8) violation of unfair competition law, and (9) California Private Attorneys General Act (Lab. Code § 2699 et seq.), in the Los Angeles County Superior Court, Case No. BC617765 (the "PAGA Action") (both the Discrimination Action, the Cross-Complaint, and PAGA Action are referred to collectively as the "Actions").

WHEREAS, as part of over 4.5 years of litigation, the Parties conducted significant investigation of the facts and law during the prosecution of this Actions, and significant written discovery by the Parties;

WHEREAS, the Parties further investigated the applicable law as applied to the facts regarding Plaintiff's allegations and Defendant's potential defenses, and the damages claimed by Plaintiffs;

WHEREAS, the Parties engaged in extensive negotiations regarding possible resolution of the Actions;

WHEREAS, Defendant expressly denies each and every claim set forth in the Actions, or that it engaged in any wrongful or actionable conduct toward Plaintiff;

WHEREAS, Plaintiff and Defendant hereby acknowledge, represent and warrant that the terms of this Agreement are fair, reasonable, adequate, in their mutual best interest, and the product of their joint negotiation through counsel;

WHEREAS, the Agreement was designed to resolve Plaintiff's pending individual claims as well as Plaintiff's pending PAGA claims against Defendant;

WHEREAS, the Agreement was reached after extensive negotiations, and the Parties, based upon their independent investigation and evaluation, and taking into account the sharply contested and disputed legal and factual issues involved, and the expense and time necessary to prosecute and defend the Actions through trial and possible appeals, the risks, uncertainty and costs of further prosecution of the Actions, including the uncertainties of litigation, agreed settlement was an appropriate resolution of this matter. The Parties hereto agree as follows:

AGREEMENT

1. **Payments.** In full settlement of the Actions, the total amount of ONE HUNDRED FIVE THOUSAND DOLLARS (\$105,000) (the Gross Settlement Amount, or "GSA") shall be allocated as set for the below and paid by Defendant National Building Services, L.L.C. ("NBS"), as follows:

- a. EIGHTY THOUSAND DOLLARS (\$80,000), Sexual Harassment Settlement Amount ("SHSA") is allocated for release of Plaintiff's FEHA, tort, and wrongful termination claims as alleged in her individual case, Los Angeles County Superior Court Case No. BC550045;

b. TWENTY-FIVE THOUSAND DOLLARS (\$25,000), the Wage and Hour Settlement Amount ("WHS"), is allocated for release of wage-and-hour claims brought on behalf of Plaintiff, individually, and the State of California as alleged in the PAGA Action, Los Angeles County Superior Court Case No. BC617765.

c. Within thirty (30) business days of delivery of this executed Agreement to Defendant's counsel, completed W-9 forms for Plaintiff and her legal counsel, and the Order of Dismissal signed by the Superior Court dismissing the Lawsuits with prejudice as to AVELAR's claims, Defendant is to pay Plaintiff the amount of Twenty Thousand Dollars (\$20,000.00);

d. In addition, Defendant agrees to pay Plaintiff seventeen (17) monthly installments on the 5th of each month in the amount of Five Thousand Dollars (\$5,000.00) starting on the 5th day of the consecutive month following the issuance of the first payment as stipulated in Section 1(a), but no later than 30 days after the first payment.

e. The settlement payments shall be made payable to Plaintiff's counsel, "MALLISON AND MARTINEZ ATTORNEYS AT LAW" and mailed to Mallison & Martinez, 1939 Harrison St., Suite 730, Oakland, CA 94612-3547.

f. Plaintiff's counsel shall deposit all payments from Defendant into their Trust Account and process the SHSA and WHSA payments as follows:

- i. To Plaintiff Zulma Avelar: Plaintiff will receive the SHSA in the amount of \$80,000 less attorneys fees and costs per her retainer agreement with counsel for physical injuries and resulting emotional distress as a result of those physical injuries. Plaintiff will also receive \$10,000 for release of her individual wage and hour claims from the WHSA less attorneys fees and costs. For tax purposes, \$5,000 of the individual settlement payment received from the WHSA will be categorized as *wages* for tax purposes, and Plaintiff's counsel will provide Defendant's counsel a Form W-4 after execution of this Settlement Agreement. The remaining \$5,000 and Plaintiff's pro rata share of the Employee Pool will be considered penalties for which Plaintiff's counsel will issue a Form W-9.
- ii. To Plaintiff's counsel: Plaintiff's counsel will seek Court approval of an award not to exceed more than 33.33% of the WHSA, plus costs expended in litigating and resolving this case (not to exceed actual costs incurred by Plaintiff's counsel). Defendant will not oppose this request. If the Court approves an attorneys' fees payment of less than 33.33%, the remainder will be retained in the

Employee Pool for *pro rata* distribution to the current and former employees that are part of the Employee Pool. Payroll tax withholding and deductions will not be taken from Plaintiff's counsel's attorneys' fees and costs and instead one or more Forms 1099 will be issued to Class Counsel with respect to those payments.

- iii. To the Labor and Workforce Development Agency ("LWDA"): Plaintiff's counsel will seek court approval of 75% of \$15,000 less attorneys fees and cost as the LWDA's share of the settlement of civil penalties paid under this Agreement pursuant to PAGA.
- iv. To Current and Former Employees: After the allocations described in Section 1(f)(i-iii), Plaintiff's counsel will seek Court approval of PAGA payments to the eight (8) current and former employees, whose identities have been disclosed by Defendant's counsel to Plaintiff's counsel, on a *pro rata* basis that would be determined by the total pay received by a participating member of the "Employee Pool," as defined below, during the period from April 22, 2015 to January 25, 2019. Defendant will provide Plaintiff's counsel with complete payroll records of the Employee Pool. This money, which is 25% of \$15,000 less attorneys fees and costs, is to be considered interest and penalties for which Plaintiff's counsel will provide each member in the Employee Pool a 1099 tax form.

The WWSA encompasses claims asserted in Plaintiff's operative complaint in the PAGA Action, covering the time periods from April 22, 2012 to January 25, 2019 for Plaintiff's individual wage and hour claims and from April 22, 2015 to January 25, 2019 for Plaintiff's PAGA claims, and attorneys' fees and costs. The SHSA encompasses claims asserted in Plaintiff's operative complaint in the Discrimination Action covering the time period from July 7, 2010 to January 25, 2019 and attorneys' fees and costs. Both parties shall pay their own taxes on any amounts due as a result of the settlement funds received including any required wage payment withholdings if applicable.

Under the Agreement, there will be no reversion of any settlement funds to Defendant. However, if the Agreement is not approved by the Court, the Agreement will be deemed void, and at that point, the Parties agree to cooperate to return the Actions to the procedural posture in place as of January 25, 2019, including the tolling of the Actions in accordance with Code Civ. Proc. section 583.330(b).

2. **Administration and Distributions.** The Parties agree that the administration and distribution of GSA to Plaintiff, Plaintiff's counsel and the Employee Pool shall be completed by Plaintiff's counsel.

Defendant has provided to Plaintiff's counsel the names in the Employee Pool as follows: (1) Zulma Avelar; (2) Alfonso Polanco; (3) Liliana Garcia; (4) Obdulia Calvillo; (5) Pedro Campos; (6) Alma Campos; (7) Maria Canas; and (8) Maria Diaz. Furthermore, within 10 court days of court approval of the Agreement, Defendant shall provide to Plaintiff's counsel the last known contact information for the members in the Employee Pool, as well as the information necessary to determine the proportionate share owed to each employee based upon the division of the Employee Pool as described in section 1(f)(iv), or as otherwise ordered by the Court.

Defendant will provide the names and payroll register reports from April 22, 2015 to January 25, 2019, so that Plaintiff's counsel can verify that the members in the Employee Pool only include non-exempt janitorial and building service employees that worked for Defendant during the relevant time period as prescribed in the PAGA Action. Furthermore, Defendant will provide the last known addresses of the members in the Employee Pool to Plaintiff's counsel to properly administer and distribute their settlement payments. This requirement will allow Plaintiff's counsel to carry out their due diligence on making the required payments.

Plaintiff's counsel will provide notice to Defendant's counsel of any settlement checks returned as undeliverable and any settlement checks remaining un-cashed for more than 180 calendar days after issuance. Plaintiff's counsel shall attempt to locate the impacted members in the Employee Pool and re-issue checks with an expiration date of 180 days following the re-issuing of those checks. In the event any Employee Pool member cannot be located within 180 days of the expiration of the initial settlement checks, remaining funds from undistributed or uncashed settlement checks shall be issued in cy pres to California Rural Legal Assistance ("CRLA") a public interest non-profit organization, unless the cy pres amount equals 10% or more of the original Employee Pool amount, in which case the funds will be redistributed to the workers in the Employee Pool on a *pro rata* basis.

3. **Settlement Payment Guarantees.** All payments due are to be paid in accordance to Section 1, and are to be guaranteed by Frank Chenouda, and any and all National Building Services, L.L.C. shareholders, jointly and severally. Should any payment be delinquent, Plaintiff's counsel shall give written notice of the delinquency with proof of delivery to both Defendant and its counsel at their corresponding mailing and electronic addresses. Specifically, Plaintiff's counsel shall provide written notices

of delinquency with proof of delivery to:

- Defendant National Building Services, L.L.C. at its corporate office located at 19737 Ventura Blvd., Ste. 300, Woodland Hills, CA 90364; and Frank Chenouda at 20759 Pacific Coast Highway, Malibu, CA 90265.
- Defendant's counsel David J. Fishman, Esq. located at Ballard, Rosenberg, Golper & Savitt, 15760 Ventura Blvd., 18th Floor, Encino, CA, 91436.
- Furthermore, Plaintiff's counsel shall provide electronic notification of the delinquent payment(s) to Defendant's counsel David J. Fishman, Esq. at dfishman@brgslaw.com
- Moreover, Defendant shall have 15 business days from the date of the last notice (mailed and electronic), as set forth above, to cure the default payment(s). Should Defendant not cure the delinquent payment(s) by the close of the 15th business day from the date of the last mailed and electronic notice of delinquent payment(s) from Plaintiff's counsel, Plaintiff and Plaintiff's counsel shall move to file the agreed Stipulation of Final Judgment enclosed as Exhibit A in the Los Angeles County Superior Court pursuant to Code Civ. Proc. section 664.6. This stipulated judgment is in addition to Plaintiff's contractual remedies of the foregoing contractual amounts stipulated herein, and it shall include an attorney's fees provision to enforce the stipulated judgment and the Judgment shall bear post-judgment interest at the legal rate for interest on judgments. The Stipulated Judgment shall be held by counsel for Plaintiff and shall not be entered unless there is an uncured default in the payment terms of this Settlement Agreement and Release of Claims.

4. **No Admissions.** The GSA, including all allocations referenced in Section 1, are made in full and final settlement of the Actions against Defendant, including any and all damages, costs, and fees of any sort and kind. The payments are being made in settlement of contested claims and said payments shall not be construed as an admission of wrongdoing or liability by Defendant. The Defendant denies liability for the allegations against them. Plaintiff acknowledges and agrees this Agreement: (1) is a compromise of disputed claims; (2) shall not be deemed to be or construed as an admission of any fact or act whatsoever or of any liability or wrongdoing of any kind whatsoever by Defendant or Released Parties; and (3) that Plaintiff shall not

hereafter assert that this Agreement, the fact of this Agreement, or any provision herein is an admission by Defendant or Released Parties as to any wrongful conduct, liability, or as to the merits of any claim or dispute settled herein, or otherwise.

5. **Release by Plaintiff.** Nothing in the foregoing release shall be construed as Plaintiff's release of her worker's compensation claims as prescribed under Cal. Lab. Code § 5001. Notwithstanding, in exchange for the payment referenced in Section 1, Plaintiff (on behalf of herself and her heirs, executors, administrators, successors or assigns, trustees and legal representatives) hereby unconditionally releases Defendant, and any of its current and former employees, officers, owners, directors, parents, subsidiaries and affiliates, agents, representatives, trustees, and employees, including but not limited to Federico Oliver and Frank Chenouda (collectively, the "Releasees" or "Released Parties") and forever waives, to the full extent permitted by law, any and all rights, claims, demands, alleged sums of money, Actions, obligations, damages and liabilities, whether known or unknown, suspected or unsuspected, arising from events that occurred on or before Plaintiff's execution of the Agreement, which Plaintiff now has, or at any time has had against Defendant regarding Plaintiff's employment with Defendant, including but not limited to: (1) any and all claims whatsoever arising out of or pertaining in any way to Plaintiff's employment with Defendant, the termination of her employment, or her compensation; and (2) any and all claims that are or could have been alleged in the Actions. This release is to be broadly construed to effectuate a complete release of all claims, known or unknown, with the exception of any claims that cannot by law be released. Should the Court not approve the Agreement, the Parties shall request leave of court and work jointly to attempt to remedy any issues to obtain the Court's approval of the Agreement. However, if the Court does not approve the Agreement after the Parties engage in reasonable efforts to resolve any issues presented by the Court, the Agreement will be completely void.

6. **Release by Defendant.** In exchange for the consideration provided in this Agreement, Defendant hereby releases Plaintiff, including her agents, attorneys, successors and assigns (collectively, the "Plaintiff's Releasees") and forever waives, to the full extent permitted by law, any and all rights, claims, demands, alleged sums of money, actions, obligations, damages and liabilities, whether known or unknown, suspected or unsuspected, which Defendant now has, or at any time has had against any of Plaintiff's Releasees regarding Plaintiff's employment with Defendants. This release is to be broadly construed to effectuate a complete release of all claims, known or unknown, with the exception of any claims that cannot by law be released.

7. **Dismissal.** Once the Court approves the Agreement, Plaintiff shall take all necessary steps to effectuate the cessation of these Actions and file Requests for

Dismissal with Prejudice in conformance with the above release and their general exceptions within 15 days of the Court's order granting approval of the Agreement.

8. **Waiver of Code of Civil Procedure Section 1542:** The Parties agree as further consideration and inducement for this compromise settlement of the above-referenced claims, that it is their intention to fully and forever settle and release any and all claims, disputes or differences between or among them, whether now known or unknown, suspected or unsuspected, past or present, arising from or related in any way to the Actions or matters released herein, except as prohibited by law. This release of all claims is specifically intended to include, but shall not be limited to, any and all known or unknown claims for: (1) unpaid wages, minimum wages or overtime; (2) missed meal or rest breaks; (3) penalties, including but not limited to waiting time, paystub, or PAGA penalties; (4) unfair competition; (5) expenses; (6) unpaid bonus or commissions; (7) unpaid vacation; (8) violation of the California Labor Code; (9) violation of any Wage Order issued by the Industrial Welfare Commission; (10) violation of the Fair Labor Standards Act; (11) unfair labor practices; (12) wrongful termination in violation of public policy; (13) discrimination based on any category protected by state, federal or local law; (14) harassment; (15) retaliation; (16) intentional or negligent infliction of emotional distress; (17) defamation; (18) breach of contract; (19) breach of covenant of good faith and fair dealing; (20) damages of any nature, past, present or future, including compensatory, general, special or punitive; and (21) costs, fees, or other expenses, including attorneys' fees.

This Agreement also is intended to constitute a complete release by the Parties of any and all unknown claims. Thus, in entering into this Agreement, the Parties knowingly extend this Agreement to claims of which they do not know or suspect to exist in their favor at the time of executing the release set forth in this Agreement, which if known would have materially affected this Agreement. Thus, in entering into this Agreement, the Parties also knowingly waive the provisions of Section 1542 of the Civil Code of the State of California, or any similar statute or law. Section 1542 of the Civil Code reads:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

The Parties acknowledge that this release encompasses all claims that are or could have been asserted by them, including individual claims, class claims and representative claims.

9. **No Filings.** The Parties warrant and represent that except for the Actions described above, they have not filed or otherwise initiated any legal actions or pleadings against the other with any federal, state or local governmental agency or in any court, based upon, arising out of or related in any way to any events, acts or omissions occurring at or prior to her execution of the Agreement. The Parties further agree that they will not do so in the future regarding claims that are subject to the Release, except as provided by the Agreement.

10. **Mutual Non-Disparagement and Incitement of Claims.** The Parties mutually agree that they will not make or cause to be made any statements that disparage, are inimical to, or damage the reputation of either Plaintiff, Defendant or the Released Parties.

11. **Neutral Reference.** If Defendant is contacted about Plaintiff by a prospective employer, Defendant shall disclose only Plaintiff's dates of employment and position(s) held.

12. **Intention to Bind.** The Agreement is binding upon and shall inure to the benefit of each party to the Agreement, and to all the Releasees.

13. **Regarding Interpretation of the Agreement.** This agreement is the result of arm's length negotiations between the parties. Accordingly, the parties agree that the provisions of Code Civ. Proc. section 1654 shall not apply to any party, and that no party shall be considered the drafting party under any rules of interpretation of the Agreement.

14. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto as to its subject matter, and supersedes any and all representations, promises and/or understandings of any kind, whether oral or written, between or among the parties hereto, which are not expressly set forth herein. The parties hereto agree that this Agreement may not be altered, amended, modified or otherwise changed except by a written instrument executed by all Parties.

15. **Taxation.** The Parties are each separately responsible for paying their share of any taxes resulting to them from the settlement payments to the appropriate tax authorities including any penalties and interest for non-payment. Plaintiff's counsel

will issue Forms 1099 for any settlement payment distribution to Plaintiff. Plaintiff agrees that she is responsible for any income taxes payable on the GSA and agrees to indemnify and hold Defendant harmless in the event any governmental agency seeks to recover those income taxes owing by Plaintiff. Plaintiff also acknowledges that she has not been given, and has not relied on, any tax advice from Defendant or its counsel.

16. **Informed and Free Consent to the Terms of the Agreement.** By signing below, each party verifies that they have read the Agreement, have had the benefit of input from their legal counsel, and each signs with an understanding of its terms and without undue influence or coercion.

17. **Non-Confidentiality.** This Agreement is binding, and it contains the material terms of the agreement between the Parties relating to the subject matter contained in it, and supersedes all prior and contemporaneous representations, agreements, or understanding between the parties, including, but not limited to the Stipulation Regarding Settlement signed on January 25, 2019. In addition, pursuant to Evid. Code section 1123, the Parties acknowledge that the Agreement is exempt from the confidentiality provision of Evid. Code section 1152 et seq., and is admissible in evidence to enforce the Agreement.

18. **No Re-Employment.** Plaintiff represents that she does not desire reemployment with Defendant or Released Parties and hereby waives any rights she may otherwise have to reemployment or employment. Plaintiff further agrees that she will not seek employment with Defendant or Released Parties. This Agreement shall be considered good cause to terminate Plaintiff if she should become employed by Defendant or Released Parties.

19. **Counterparts.** The Agreement may be executed in any number of counterparts by the Parties hereto, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

20. **Severability.** If any provision of the Agreement shall be held to be invalid, illegal or unenforceable, the validity and enforceability of the other provisions of the Agreement shall not be affected thereby.

21. **Miscellaneous.**

(a) This Agreement is intended to be and shall be construed to be an integrated agreement. Each Party understands, acknowledges and hereby represents and warrants that this Agreement supersedes any and all prior understandings, agreements, representations, promises or inducements, whether oral or written, which are not expressly set forth herein or expressly referred to, reserved or preserved in this Agreement. Each Party understands, acknowledges and hereby represents and warrants that no understanding, agreement, representation, warranty, promise or inducement has been made concerning the subject matter of this Agreement other than as set forth in this Agreement, and that such Party enters into this Agreement and settlement without any reliance whatsoever upon any understanding, agreement, representation, warranty, promise or inducement not set forth herein.

(b) Each Party agrees this Agreement is entered into under, and shall be construed under and governed by, the procedural and substantive laws of the State of California existing as of the date of execution, and that if any provision of this Agreement shall for any reason be held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision of this Agreement, but it shall be construed as if the invalid or unenforceable provision had never been contained in this Agreement.

(c) The Parties hereto agree that the Los Angeles Superior Court shall retain jurisdiction to enforce this Agreement pursuant to Code Civ. Proc. § 664.6. If any Party hereto should bring any action, suit, or other proceeding against any other Party hereto or its related individuals or entities concerning any matter referred to herein contesting the validity of this Agreement, or attempting to rescind, negate, or reform this Agreement or any of the terms or provisions thereof, or to remedy, prevent, or obtain relief from a breach of this Agreement, or arising out of a breach of this Agreement, the prevailing party shall recover all of such party's reasonable attorneys' fees and costs (including, without limitation, the costs of expert consultants and expert witnesses) incurred in each and every such action, suit, or other proceeding, including any and all appeals or petitions therefrom.

Dated: Jan 08, 2020

Zulma Avelar
ZULMA AVELAR

Dated: _____, 2020 NATIONAL BUILDING SERVICES, L.L.C.

By: _____
Name: _____
Its: _____

APPROVED AS TO FORM:

Dated: _____, 2020 MALLISON & MARTINEZ

By: Hector Martinez
HECTOR MARTINEZ
Attorneys for Plaintiff ZULMA AVELAR

Dated: _____, 2020 LAW OFFICE OF GREGORY J. RAMIREZ

By: _____
GREGORY J. RAMIREZ
Attorneys for Plaintiff ZULMA AVELAR

Dated: _____, 2020 BALLARD ROSENBERG GOLPER &
SAVITT LLP

By: _____
DAVID J. FISHMAN
Attorneys for Defendant NATIONAL
BUILDING SERVICES, LLC