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behalf of himself and all others similarly situated
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The ADT Security Corporation

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF LOS ANGELES

LOUIS ECHEGOYEN, on behalf of himself
and all others similarly situated and aggrieved,

Plaintiff,

v.

THE ADT SECURITY CORPORATION;
and DOES 1 through 100, inclusive,

Defendants.

CASE NO.: 21STCV07206

[Assigned to the Hon. Carolyn B. Kuhl, in
Dept. 12]

PAGA SETTLEMENT AGREEMENT

Action Filed: February 24, 2021

Trial Date: None set

This PAGA Settlement Agreement (“Settlement” or “Agreement” or “Settlement Agreement”) is made by and between plaintiff Louis Echegoyen (“Plaintiff”) individually and on behalf of the Aggrieved Employees, on the one hand; and defendant The ADT Security Corporation (“ADT” or “Defendant”), on the other hand, in the lawsuit entitled Echegoyen v.

The ADT Security Corporation, filed in Los Angeles County Superior Court, Case No. 21STCV07206 (the “Action”). Plaintiff and Defendant shall be, at times, collectively referred to as the “Parties”. This Agreement is intended by the Parties to fully, finally, and forever resolve the claims as set forth herein, based upon and subject to the terms and conditions of this Agreement.

1. DEFINITIONS

1.1. “Action” means the Plaintiff’s PAGA lawsuit alleging wage and hour violations against Defendant captioned Echegoyen v. The ADT Security Corporation, Case No. 21STCV07206, initiated on February 24, 2021 and pending in Superior Court of the State of California, County of Los Angeles.

1.2. “Administrator” means ILYM Group, Inc. (“ILYM”) the neutral entity the Parties have agreed to appoint to administer the Settlement.

1.3. “Administration Expenses Payment” means the amount the Administrator will be paid from the Gross Settlement Amount to reimburse its reasonable fees and expenses in accordance with the Administrator’s “not to exceed” bid submitted to the Court in connection with approval of this Settlement.

1.4. “Aggrieved Employee” means a person employed by Defendant in California and classified as a non-exempt, hourly paid employee who worked for Defendant during the PAGA Period.

1.5. “Aggrieved Employee Data” means Aggrieved Employee identifying information in Defendant’s possession including the Aggrieved Employee’s name, last-known mailing address, Social Security number, and hire dates, termination dates (as applicable), and re-hire dates (as applicable).

1.6. “Aggrieved Employee Address Search” means the Administrator’s investigation and search for current Aggrieved Employees’ mailing addresses using all reasonably available sources, methods and means including, but not limited to, the National Change of Address database, skip traces, and direct contact by the Administrator with Aggrieved Employees.

1 **1.7. “Court”** means the Superior Court of California, County of Los Angeles.

2 **1.8. “Defense Counsel”** means Lonnie D Giamela and Areen Babajanian of FISHER

3 & PHILLIPS, LLP.

4 **1.9. “Effective Date”** means the date by when both of the following have occurred:

5 (a) the Court enters a Judgment on its Order Approving the PAGA Settlement and (b) the

6 Judgment is final. The Judgment is final on the day the Court enters Judgment.

7 **1.10. “Gross Settlement Amount”** means \$200,000.00, which is the total amount

8 Defendant agrees to pay under the settlement except as provided in Paragraph 8.1 below. The

9 Gross Settlement Amount will be used to pay Individual PAGA Payments, PAGA Service

10 Payment, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel Litigation

11 Expenses Payment, and the Administrator’s Expenses Payment.

12 **1.11. “Individual PAGA Payment”** means the Aggrieved Employee’s pro rata share

13 of 25% of the PAGA Penalties calculated according to the number of Pay Periods the Aggrieved

14 Employee worked during the PAGA Period.

15 **1.12. “Judgment”** means the judgment entered by the Court based upon the Final

16 Approval.

17 **1.13. “LWDA”** means the California Labor and Workforce Development Agency, the

18 agency entitled, under Labor Code section 2699, subd. (i).

19 **1.14. “LWDA PAGA Payment”** means the 75% of the PAGA Penalties paid to the

20 LWDA under Labor Code section 2699, subd. (i).

21 **1.15. “Net Settlement Amount”** means the Gross Settlement Amount, less the

22 following payments in the amounts approved by the Court: Individual PAGA Payments, PAGA

23 Service Payment, the LWDA PAGA Payment, PAGA Counsel Fees Payment, PAGA Counsel

24 Litigation Expenses Payment, and the Administration Expenses Payment. The remainder is to be

25 paid to Aggrieved Employees as Individual PAGA Payments.

26 **1.16. “PAGA Counsel”** means, the attorneys representing the Plaintiff in the Action.

27

28

1 **1.17. “PAGA Counsel Fees Payment” and “PAGA Counsel Litigation Expenses**
2 **Payment”** mean the amounts allocated to PAGA Counsel for reimbursement of reasonable
3 attorneys’ fees and expenses, respectively, incurred to prosecute the Action.

4 **1.18. “PAGA Pay Period”** means any Pay Period during which an Aggrieved
5 Employee worked for Defendant during the PAGA Period, based on hire dates, termination dates
6 (if applicable), and re-hire dates (if applicable).

7 **1.19. “PAGA Period”** means the period from February 23, 2020 to August 4, 2022.

8 **1.20. “PAGA”** means the Private Attorneys General Act (Labor Code §§ 2698. et seq.).

9 **1.21. “PAGA Notice”** means Plaintiff’s letter to Defendant and the LWDA providing
10 notice pursuant to Labor Code section 2699.3, subd.(a).

11 **1.22. “PAGA Penalties”** means the total amount of PAGA civil penalties to be paid
12 from the Net Settlement Amount, allocated 25% to the Aggrieved Employees and the 75% to
13 LWDA in settlement of PAGA claims.

14 **1.23. “PAGA Representative”** means the named Plaintiff in the operative complaint in
15 the Action seeking Court approval to serve as a PAGA Representative.

16 **1.24. “PAGA Representative Service Payment”** means the payment to the PAGA
17 Representative for initiating the Action and providing services in support of the Action.

18 **1.25. “Plaintiff”** means Louis Echegoyen, the named plaintiff in the Action.

19 **1.26. "Approval Order"** means the proposed Court Order Granting Approval of
20 PAGA Settlement.

21 **1.27. “Released PAGA Claims”** means the claims being released by the Plaintiff and
22 PAGA Counsel and as described in Paragraph (5) below.

23 **1.28. “Released Parties”** means: Defendant and each of its former and present
24 directors, officers, shareholders, owners, members, attorneys, insurers, predecessors, successors,
25 assigns, parents, subsidiaries, affiliates.

26 **1.29. “Settlement”** means the disposition of the Action effected by this Agreement and
27 the Judgment.

28 **1.30. “Defendant or ADT”** means named Defendant, The ADT Security Corporation.

1 **2. RECITALS**

2 **2.1.** On February 24, 2021, Plaintiff commenced this Action by filing a purported
3 class action Complaint alleging causes of action against Defendant for failure to pay overtime
4 wages, failure to pay minimum wages, failure to provide meal periods, failure to provide rest
5 periods, waiting time penalties, wage statement violations, failure to indemnify and unfair
6 competition. On May 17, 2021, Plaintiff filed a First Amended Complaint alleging causes of
7 action against Defendant for failure to pay overtime wages, failure to pay minimum wages,
8 failure to provide meal periods, failure to provide rest periods, waiting time penalties, wage
9 statement violations, failure to indemnify, unfair competition, penalties per labor code sections
10 210, 558, 119.1 and 2699 (“PAGA”). The First Amended Complaint is the operative complaint
11 in the Action (the “Operative Complaint.”). Defendant denies the allegations in the Operative
12 Complaint, denies any failure to comply with the laws identified in the Operative Complaint
13 and denies any and all liability for the causes of action alleged.

14 **2.2.** Pursuant to Labor Code section 2699.3, subd.(a), Plaintiff gave timely written
15 notice to Defendant and the LWDA by sending the PAGA Notice on February 23, 2021.

16 **2.3.** On March 4, 2022, the parties participated in an all-day mediation presided over
17 by Jeff Ross which was unsuccessful. However, the Parties continued negotiations, in
18 consultation with the mediator, which led to this Agreement to settle the Action by a mediator’s
19 proposal made on August 4, 2022. As part and parcel to the Settlement, the Parties have agreed
20 that Plaintiff will request dismissal of all class allegations, without prejudice, from the
21 Operative Complaint. Such request shall be made in conjunction with the motion for
22 preliminary approval.

23 **2.4.** Prior to Settlement, Plaintiff obtained, through informal discovery: (1) time and
24 payroll records for approximately 20% of the estimated 258 Aggrieved Employees (2) data
25 points including the number of pay periods during the PAGA Period the number shifts worked,
26 the number of aggrieved employees, and the number of Pay Periods in the wage statement
27 period, (3) all of Defendant’s employment policy documents, and (4) Plaintiff’s personnel file.
28

1 **2.5.** The Parties, PAGA Counsel and Defense Counsel represent that they are not
2 aware of any other pending matter or action asserting claims that will be extinguished or
3 affected by the Settlement.

4 **3. MONETARY TERMS**

5 **3.1. Gross Settlement Amount.** Except as otherwise provided by Paragraph (9)
6 below, Defendant promises to pay \$200,000.00 and no more as the Gross Settlement Amount.
7 Defendant has no obligation to pay the Gross Settlement Amount prior to the deadline stated in
8 Paragraph (6.1) of this Agreement. The Administrator will disburse the entire Gross Settlement
9 Amount without asking or requiring Aggrieved Employees to submit any claim as a condition
10 of payment. None of the Gross Settlement Amount will revert to Defendant.

11 **3.2. Payments from the Gross Settlement Amount.** The Administrator will make
12 and deduct the following payments from the Gross Settlement Amount, in the amounts
13 specified by the Court in the Final Approval:

14 **3.2.1 To Plaintiff:** PAGA Representative Service Payment to the PAGA
15 Representative of not more than \$7,500 (in addition to any Individual PAGA
16 Payment the PAGA Representative is entitled to receive as a Participating
17 PAGA Member). Defendants will not oppose Plaintiff's request for a PAGA
18 Representative Service Payment that does not exceed this amount. As part of
19 the motion for PAGA Counsel Fees Payment and PAGA Litigation Expenses
20 Payment, Plaintiff will seek Court approval for any PAGA Representative
21 Service Payments no later than 7 court days prior to the Final Approval Hearing.
22 If the Court approves a PAGA Representative Service Payment less than the
23 amount requested, the Administrator will retain the remainder in the Net
24 Settlement Amount. The Administrator will pay the PAGA Representative
25 Service Payment using IRS Form 1099. Plaintiff assumes full responsibility and
26 liability for employee taxes owed on the PAGA Representative Service
27 Payment.
28

1 **3.2.2 To PAGA Counsel:** A PAGA Counsel Fees Payment of not more than 35%
2 which is currently estimated to be \$70,000.00 and PAGA Counsel Litigation
3 Expenses Payment of not more than \$20,000.00. Defendant will not oppose
4 requests for Court approval of these payments provided that they do not exceed
5 these amounts unless, in the event of a material breach of this Agreement by
6 Defendant, Plaintiff is required to move the Court for enforcement of this
7 Agreement. Plaintiff and/or PAGA Counsel will file an application or motion for
8 PAGA Counsel Fees Payment and PAGA Litigation Expenses Payment. If the
9 Court approves a PAGA Counsel Fees Payment and/or a PAGA Counsel
10 Litigation Expenses Payment less than the amounts requested, the Administrator
11 will allocate the remainder to the Net Settlement Amount. Released Parties shall
12 have no liability to PAGA Counsel or any other Plaintiff's Counsel arising from
13 any claim for any portion of PAGA Counsel Fee Payment and/or PAGA
14 Counsel Litigation Expenses Payment. The Administrator will pay the PAGA
15 Counsel Fees Payment and PAGA Counsel Expenses Payment using one or
16 more IRS 1099 Forms. PAGA Counsel assumes full responsibility and liability
17 for taxes owed on the PAGA Counsel Fees Payment and the PAGA Counsel
18 Litigation Expenses Payment and holds Defendant harmless, and indemnifies
19 Defendant, from any dispute or controversy regarding any division or sharing of
20 any of these Payments.

21 **3.2.3 To the Administrator:** An Administrator Expenses Payment not to exceed
22 \$6,880.00 except for a showing of good cause and as approved by the Court. To
23 the extent the Administration Expenses are less or the Court approves payment
24 less than \$6,880.00, the Administrator will retain the remainder in the Net
25 Settlement Amount.

26 **3.2.4 To the LWDA and Aggrieved Employees:** PAGA Penalties in the amount of \$
27 to be paid from the Gross Settlement Amount, with 75% allocated to the LWDA
28 PAGA Payment and 25% (\$) allocated to the Individual PAGA Payments.

1 **3.2.4.1** The Administrator will calculate each Individual PAGA Payment by (a)
2 dividing the amount of the Aggrieved Employees' 25% share of PAGA
3 Penalties (\$) by the total number of PAGA Period Pay Periods worked by all
4 Aggrieved Employees during the PAGA Period and (b) multiplying the
5 result by each Aggrieved Employee's PAGA Period Pay Periods. Aggrieved
6 Employees assume full responsibility and liability for any taxes owed on
7 their Individual PAGA Payment.

8 **3.2.4.2** If the Court approves PAGA Penalties of less than the amount requested, the
9 Administrator will allocate the remainder to the Net Settlement Amount. The
10 Administrator will report the Individual PAGA Payments on IRS 1099
11 Forms.

12 **4. SETTLEMENT FUNDING PAYMENTS**

13 **4.1. Aggrieved Employee Pay Periods.** Based on a review of its records to date,
14 Defendant estimates there are 258 Aggrieved Employees who worked a total of 6,500 PAGA
15 Pay Periods.

16 **4.2. Aggrieved Employee Data.** Within 14 days, Defendant will simultaneously
17 deliver the Aggrieved Employee Data to the Administrator in the form of a Microsoft Excel
18 spreadsheet. To protect Aggrieved Employee' privacy rights, the Administrator must maintain
19 the Aggrieved Employee Data in confidence, use the Aggrieved Employee Data only for
20 purposes of this Settlement and for no other purpose, and restrict access to the Aggrieved
21 Employee Data to Administrator employees who need access to the Aggrieved Employee Data
22 to effect and perform under this Agreement. Defendant has a continuing duty to immediately
23 notify PAGA Counsel if it discovers that the Aggrieved Employee Data omitted employee
24 identifying information and to provide corrected or updated Aggrieved Employee Data as soon
25 as reasonably feasible. Without any extension of the deadline by which Defendant must send
26 the Aggrieved Employee Data to the Administrator, the Parties and their counsel will
27 expeditiously use best efforts, in good faith, to reconstruct or otherwise resolve any issues
28 related to missing or omitted Aggrieved Employee Data.

1 **4.3. Funding of Gross Settlement Amount.** Defendant shall fully fund the Gross
2 Settlement Amount by transmitting the funds to the Administrator no later than 14 days after
3 the Effective Date.

4 **4.4. Payments from the Gross Settlement Amount.** Within 14 days after
5 Defendant funds the Gross Settlement Amount, the Administrator will mail checks for all
6 Individual PAGA Payments, the Service Payment, the LWDA PAGA Payment, the
7 Administration Expenses Payment, the PAGA Counsel Expenses Payment. Disbursement of
8 the PAGA Counsel Litigation Expenses Payment shall not precede disbursement of Individual
9 PAGA Payments.

10 **4.1.1** The Administrator will issue checks for the Individual PAGA Payments
11 and send them to the Aggrieved Employees via First Class U.S. Mail, postage
12 prepaid. The face of each check shall prominently state the date (not less than
13 180 days after the date of mailing) when the check will be voided. The
14 Administrator will cancel all checks not cashed by the void date. Before mailing
15 any checks, the Settlement Administrator must update the recipients' mailing
16 addresses using the National Change of Address Database.

17 **4.2.1** The Administrator must conduct an Aggrieved Employee Address
18 Search for all Aggrieved Employees whose checks are returned undelivered
19 without USPS forwarding address. Within 3 days of receiving a returned check
20 the Administrator must re-mail checks to the USPS forwarding address provided
21 or to an address ascertained through the Aggrieved Employee Address Search.
22 The Administrator need not take further steps to deliver checks to Aggrieved
23 Employees whose re-mailed checks are returned as undelivered. The
24 Administrator shall promptly send a replacement check to any Aggrieved
25 Employee whose original check was lost or misplaced, requested by the
26 Aggrieved Employee prior to the void date.

27 **4.3.1** For any Aggrieved Employee whose Individual PAGA Payment check is
28 uncashed and cancelled after the void date, the Administrator shall transmit the

funds represented by such checks to the California Controller's Unclaimed Property Fund in the name of the Aggrieved Employee.

4.4.1 The payment of Individual PAGA Payments shall not obligate Defendant to confer any additional benefits or make any additional payments to the Aggrieved Employees (such as 401(k) contributions or bonuses) beyond those specified in this Agreement.

5. RELEASES OF CLAIMS

Effective on the date when Defendant fully funds the entire Gross Settlement Amount, Plaintiff and PAGA Counsel will release claims against all Released Parties as follows:

5.1. Plaintiff's Release. Plaintiff and his or her respective former and present spouses, representatives, agents, attorneys (including PAGA Counsel), heirs, administrators, successors, and assigns generally, release and discharge Released Parties from all claims, transactions, or occurrences that occurred prior to the execution of this Agreement, including, but not limited to all claims that were, or reasonably could have been, alleged, based on the facts contained in the Operative Complaint and the PAGA Notice ("Plaintiff's Release"). This includes but is not limited to claims for or related to civil penalties based upon alleged pay for all hours worked/compensation due for services; calculation of the regular rate of pay when calculating the overtime rate; meal periods; rest periods; meal and/or rest period premiums and sick pay, including the calculation of the meal and/or rest period premium pay and sick pay; wage statements; payment of wages at termination; maintain accurate and complete records; unfair competition related to any or all of the foregoing; any unpaid wages or compensation related to any or all of the foregoing; restitution related to any or all of the foregoing. This release includes any and all claims pursuant to: California Labor Code sections §§ 96, 98.6, 200, 201, 202, 203, 204, 210, 226, 226.3, 22637, 227.3, 232, 232.5, 246, et seq., 432, 510, 512, 558, 1102.5, 1174, 1174.5, 1194, 1197, 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5, among others. Plaintiff's Release does not extend to any claims or actions to enforce this Agreement, or to any claims for vested benefits, unemployment benefits, disability benefits, social security benefits, or workers' compensation benefits.. Plaintiff acknowledges that

1 Plaintiff may discover facts or law different from, or in addition to, the facts or law that
2 Plaintiff now knows or believes to be true but agrees, nonetheless, that Plaintiff's Release shall
3 be and remain effective in all respects, notwithstanding such different or additional facts or
4 Plaintiff's discovery of them.

5 **5.1.1. Plaintiff's Waiver of Rights Under California Civil Code Section**

6 **1542.** For purposes of Plaintiff's Release, Plaintiff expressly waives and
7 relinquishes the provisions, rights, and benefits, if any, of section 1542 of the
8 California Civil Code, which reads:

9 A general release does not extend to claims that the creditor or releasing
10 party does not know or suspect to exist in his or her favor at the time of executing
11 the release, and that if known by him or her would have materially affected his or
12 her settlement with the debtor or Released Party.

13 **5.2. Release by Aggrieved Employees:** All Aggrieved Employees are deemed to
14 release, on behalf of themselves and their respective former and present representatives, agents,
15 attorneys, heirs, administrators, successors, and assigns, the Released Parties from all claims
16 under PAGA for PAGA penalties that were alleged, or reasonably could have been alleged,
17 based on the PAGA Period facts stated in the Operative Complaint and the PAGA Notice,
18 including but not limited to, claims for civil penalties based upon alleged pay for all hours
19 worked/compensation due for services; calculation of the regular rate of pay when calculating
20 the overtime rate; meal periods; rest periods; meal and/or rest period premiums and sick pay,
21 including the calculation of the meal and/or rest period premium pay and sick pay; wage
22 statements; payment of wages at termination; maintain accurate and complete records; unfair
23 competition related to any or all of the foregoing; any unpaid wages or compensation related to
24 any or all of the foregoing; restitution related to any or all of the foregoing. This release
25 includes any and all claims pursuant to: California Labor Code sections §§ 96, 98.6, 200, 201,
26 202, 203, 204, 210, 226, 226.3, 22637, 227.3, 232, 232.5, 246, et seq., 432, 510, 512, 558,
27 1102.5, 1174, 1174.5, 1194, 1197, 1197.1, 1197.5, 1198.5, 2699, 2802, and 2810.5, among
28 others..

1 **5.3. Release by PAGA Counsel:** PAGA Counsel releases on behalf of their present
2 and former attorneys, employees, agents, successors and assigns the Released Parties from all
3 claims for PAGA Fees incurred in connection with the Operative Complaint and the PAGA
4 Period facts stated in the Operative Complaint and the PAGA Notice.

5 **6. MOTION OR APPLICATION FOR APPROVAL OF SETTLEMENT**

6 The Parties agree to jointly prepare and file an application or motion for approval of this
7 Settlement.

8 **6.1. Plaintiff's Responsibilities.** Plaintiff will prepare and deliver to Defense
9 Counsel all documents necessary for obtaining approval of this Settlement under Labor Code
10 Section 2699, subd. (f)(2)) including (i) a draft proposed Order Granting Approval of PAGA
11 Settlement; (ii) a signed declaration from the Administrator attaching its "not to exceed" bid for
12 administering the Settlement and attesting to its willingness to serve; competency; operative
13 procedures for protecting the security of Aggrieved Employee Data; amounts of insurance
14 coverage for any data breach, defalcation of funds or other misfeasance; all facts relevant to
15 any actual or potential conflicts of interest with Aggrieved Employees or the LWDA; and the
16 nature and extent of any financial relationship with Plaintiff, PAGA Counsel or Defense
17 Counsel; (iii) a signed declaration from PAGA Counsel firm attesting to its timely transmission
18 to the LWDA of all necessary PAGA documents (initial notice of violations (Labor Code
19 section 2699.3, subd. (a)), Operative Complaint (Labor Code section 2699, subd. (l)(1)), this
20 Agreement (Labor Code section 2699, subd. (l)(2)); (iv) a redlined version of the parties'
21 Agreement showing all modifications made to the Model Agreement ready for filing with the
22 Court; and (v) all facts relevant to any actual or potential conflict of interest with Aggrieved
23 Employees and/or the Administrator. In their Declarations, Plaintiff and PAGA shall aver that
24 they are not aware of any other pending matter or action asserting claims that will be
25 extinguished or adversely affected by the Settlement.

26 **6.2. Responsibilities of PAGA Counsel.** PAGA Counsel and Defense Counsel are
27 jointly responsible for expeditiously finalizing and filing the application or motion for approval
28 of this Settlement after the full execution of this Agreement and, if necessary, obtaining a

1 prompt hearing date for the motion and appearing in Court to advocate in favor of the motion.
2 PAGA Counsel is responsible for delivering the Court's Preliminary Approval to the
3 Administrator.

4 **6.3. Duty to Cooperate.** If the Parties disagree on any aspect of the proposed
5 application or motion for approval of this Settlement and/or the supporting declarations and
6 documents, PAGA Counsel and Defense Counsel will expeditiously work together on behalf of
7 the Parties by meeting and conferring, and in good faith, to resolve the disagreement. If the
8 Court does not grant the motion for approval of this Settlement or conditions its approval on
9 any material change to this Agreement, PAGA Counsel and Defense Counsel will expeditiously
10 work together on behalf of the Parties by meeting and conferring, and in good faith, to modify
11 the Agreement and otherwise satisfy the Court's concerns.

12 **7. SETTLEMENT ADMINISTRATION**

13 **7.1. Selection of Administrator.** The Parties have jointly selected ILYM to serve as
14 the Administrator and verified that, as a condition of appointment, ILYM agrees to be bound by
15 this Agreement and to perform, as a fiduciary, all duties specified in this Agreement in
16 exchange for payment of Administration Expenses. The Parties and their Counsel represent that
17 they have no interest or relationship, financial or otherwise, with the Administrator other than a
18 professional relationship arising out of prior experiences administering settlements.

19 **7.2. Employer Identification Number.** The Administrator shall have and use its
20 own Employer Identification Number for purposes of calculating payroll tax withholdings and
21 providing reports state and federal tax authorities.

22 **7.3. Qualified Settlement Fund.** The Administrator shall establish a settlement fund
23 that meets the requirements of a Qualified Settlement Fund ("QSF") under US Treasury
24 Regulation section 468B-1.

25 **7.4. Administrator Duties.** The Administrator has a duty to perform or observe all
26 tasks to be performed or observed by the Administrator contained in this Agreement or
27 otherwise.
28

1 **8. AGGRIEVED EMPLOYEE SIZE ESTIMATES and ESCALATOR**
2 **CLAUSE**

3 Based on its records, Defendant estimates that, as of the date of this Settlement
4 Agreement, (1) there are 258 Aggrieved Employees who worked 6,500 Pay Periods during the
5 PAGA Period.

6 **8.1 Increase in the Gross Settlement Amount.** Defendants represents that there
7 are no more than 6,500 Pay Periods worked during the PAGA Period. In the event the number
8 of Pay Periods worked by Aggrieved Employees during the PAGA Period increases by more
9 than 10%, or 650 Pay Periods, then the Gross Settlement Amount shall be increased
10 proportionally by the Pay Periods in excess of 7,150 Pay Periods multiplied by the Pay Period
11 Value. The Pay Period Value shall be calculated by dividing the originally agreed upon Gross
12 Settlement Amount (\$200,000.00) by 6,500, which amounts to a Pay Period Value of \$30.77.
13 Thus, for example, should there be 8,000 Pay Periods in the PAGA Period, then the Gross
14 Settlement Amount shall be increased by \$26,156.00. ((8,000 Pay Periods – 7,150 Pay Periods)
15 x \$30.77).

16 **9. CONTINUING JURISDICTION OF THE COURT**

17 The Parties agree that, after entry of Judgment, the Court will retain jurisdiction over
18 the Parties, Action, and the Settlement solely for purposes of (i) enforcing this Agreement
19 and/or Judgment, (ii) addressing settlement administration matters, and (iii) addressing such
20 post-Judgment matters as are permitted by law.

21 **9.1. Waiver of Right to Appeal.** Provided the Judgment is consistent with
22 the terms and conditions of this Agreement, specifically including the PAGA Counsel Fees
23 Payment and PAGA Counsel Litigation Expenses Payment, the Parties, their respective counsel
24 waive all rights to appeal from the Judgment, including all rights to post-judgment and
25 appellate proceedings, the right to file motions to vacate judgment, motions for new trial,
26 extraordinary writs, and appeals. The waiver of appeal does not include any waiver of the right
27 to oppose such motions, writs or appeals. If another party appeals the Judgment, the Parties'
28 obligations to perform under this Agreement will be suspended until such time as the appeal is

1 finally resolved and the Judgment becomes final, except as to matters that do not affect the
2 amount of the Net Settlement Amount.

3 **10. ADDITIONAL PROVISIONS**

4 **10.1. No Admission of Liability or Representative Manageability for Other**
5 **Purposes.** This Agreement represents a compromise and settlement of highly disputed claims.
6 Nothing in this Agreement is intended or should be construed as an admission by Defendant
7 that any of the allegations in the Operative Complaint have merit or that Defendant has any
8 liability for any claims asserted; nor should it be intended or construed as an admission by
9 Plaintiff that Defendant's defenses in the Action have merit. The Parties agree that
10 representative treatment is for purposes of this Settlement only. If, for any reason the Court
11 does not approve this Settlement, Defendant reserves all available defenses to the claims in the
12 Action, and Plaintiff reserves the right to contest Defendant's defenses. The Settlement, this
13 Agreement and Parties' willingness to settle the Action will have no bearing on, and will not be
14 admissible in connection with, any litigation (except for proceedings to enforce or effectuate
15 the Settlement and this Agreement).

16 **10.2. Integrated Agreement.** Upon execution by all Parties and their counsel, this
17 Agreement together with its attached exhibits shall constitute the entire agreement between the
18 Parties relating to the Settlement, superseding any and all oral representations, warranties,
19 covenants, or inducements made to or by any Party.

20 **10.3. Attorney Authorization.** PAGA Counsel and Defense Counsel separately
21 warrant and represent that they are authorized by Plaintiff and Defendant, respectively, to take
22 all appropriate action required or permitted to be taken by such Parties pursuant to this
23 Agreement to effectuate its terms, and to execute any other documents reasonably required to
24 effectuate the terms of this Agreement including any amendments to this Agreement.

25 **10.4. Cooperation.** The Parties and their counsel will cooperate with each other and
26 use their best efforts, in good faith, to implement the Settlement by, among other things,
27 modifying the Settlement Agreement, submitting supplemental evidence and supplementing
28 points and authorities as requested by the Court. In the event the Parties are unable to agree

1 upon the form or content of any document necessary to implement the Settlement, or on any
2 modification of the Agreement that may become necessary to implement the Settlement, the
3 Parties will seek the assistance of a mediator and/or the Court for resolution.

4 **10.5. No Prior Assignments.** The Parties separately represent and warrant that they
5 have not directly or indirectly assigned, transferred, encumbered, or purported to assign,
6 transfer, or encumber to any person or entity and portion of any liability, claim, demand, action,
7 cause of action, or right released and discharged by the Party in this Settlement.

8 **10.6. No Tax Advice.** Neither Plaintiff, PAGA Counsel, Defendant nor Defense
9 Counsel are providing any advice regarding taxes or taxability, nor shall anything in this
10 Settlement be relied upon as such within the meaning of United States Treasury Department
11 Circular 230 (31 CFR Part 10, as amended) or otherwise.

12 **10.7. Modification of Agreement.** This Agreement, and all parts of it, may be
13 amended, modified, changed, or waived only by an express written instrument signed by all
14 Parties or their representatives, and approved by the Court.

15 **10.8. Agreement Binding on Successors.** This Agreement will be binding upon, and
16 inure to the benefit of, the successors of each of the Parties.

17 **10.9. Applicable Law.** All terms and conditions of this Agreement and its exhibits
18 will be governed by and interpreted according to the internal laws of the state of California,
19 without regard to conflict of law principles.

20 **10.10. Cooperation in Drafting.** The Parties have cooperated in the drafting and
21 preparation of this Agreement. This Agreement will not be construed against any Party on the
22 basis that the Party was the drafter or participated in the drafting.

23 **10.11. Confidentiality.** To the extent permitted by law, all agreements made, and
24 orders entered during Action and in this Agreement relating to the confidentiality of
25 information shall survive the execution of this Agreement.

26 **10.12. Use and Return of Aggrieved Employee Data.** Information provided to PAGA
27 Counsel pursuant to Cal. Evid. Code §1152, and all copies and summaries of the PAGA Data
28 provided to PAGA Counsel by Defendant in connection with the mediation, other settlement

1 negotiations, or in connection with the Settlement, may be used only with respect to this
2 Settlement, and no other purpose, and may not be used in any way that violates any existing
3 contractual agreement, statute, or rule of court.

4 **10.13. Headings.** The descriptive heading of any section or paragraph of this
5 Agreement is inserted for convenience of reference only and does not constitute a part of this
6 Agreement.

7 **10.14. Calendar Days.** Unless otherwise noted, all reference to “days” in this
8 Agreement shall be to calendar days. In the event any date or deadline set forth in this
9 Agreement falls on a weekend or federal legal holiday, such date or deadline shall be on the
10 first business day thereafter.

11 **10.15. Notice.** All notices, demands or other communications between the Parties in
12 connection with this Agreement will be in writing and deemed to have been duly given as of
13 the third business day after mailing by United States mail, or the day sent by email or
14 messenger, addressed as follows:

15 To Plaintiff:

16 Bibiyan Law Group, P.C.

17 8484 Wilshire Boulevard, Suite 500

18 Beverly Hills, CA 90211

19 To Defendant:

20
21 **10.16. Execution in Counterparts.** This Agreement may be executed in one or more
22 counterparts by facsimile, electronically (i.e. DocuSign), or email which for purposes of this
23 Agreement shall be accepted as an original. All executed counterparts and each of them will be
24 deemed to be one and the same instrument if counsel for the Parties will exchange between
25 themselves signed counterparts. Any executed counterpart will be admissible in evidence to
26 prove the existence and contents of this Agreement.

27 **10.17. Stay of Litigation.** The Parties agree that upon the execution of this Agreement
28 the litigation shall be stayed, except to effectuate the terms of this Agreement. The Parties

1 further agree that upon the signing of this Agreement that pursuant to CCP section 583.330 to
2 extend the date to bring a case to trial under CCP section 583.310 for the entire period of this
3 settlement process.

4 **10.18. Severability.** In the event that one or more of the provisions contained in this
5 Agreement shall for any reason be held invalid, illegal, or unenforceable in any respect, such
6 invalidity, illegality, or unenforceability shall in no way effect any other provision if
7 Defendant's Counsel and Class Counsel, on behalf of the Parties and the Settlement Class,
8 mutually elect in writing to proceed as if such invalid, illegal, or unenforceable provision had
9 never been included in this Agreement.

10 **IT IS SO AGREED:**

11
12 
13 Louis Echegoyen (Dec 22, 2022 19:28 PST)

14 For Plaintiff, Louis Echegoyen

15 

16 David D. Bibiyan
17 Vedang J. Patel
18 Counsel for Plaintiff

19 

20 For Defendant, The ADT Security Corporation

21 

22 Lonnie D. Giamela
23 Areen Babajanian
24 Counsel for Defendant